

**Right to Information and Good Governance**  
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**Lecture – 71**

**Comparative Perspective on RTI Law - II**

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- **USA**
- Every federal agency/public authority must set up a FoIA Office to deal with all requests for information
- Applications to be dealt with within 20 working days with an extension of 10 working days in exceptional circumstances in which case the applicant are to be informed.
- If information likely to affect life or personal liberty and safety or a person then information to be provided on a "compelling need basis" within 10 days
- Applicant may be asked to pay additional fee to the already prescribed fee to process and provide the requested information
- In case of denial applicant must be informed of the name and designation of the officer who denied the request along with reasons thereof.
- The applicant need not mention the reasons for making an application unless they intend to claim waiver of fee.
- Fee can be waived
  - when request for information is made for educational or scientific purposes and non-commercial use of information
  - disclosure is likely to contribute to public understanding of government activities in public interest



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The public agency may request the applicant to pay additional fee to the already prescribed fee to process and provide the requested information and to communicate the information to the applicant. If any public agency denies to provide information, then the applicant must be informed of the name and designation of the officer who denied the request along with the reasons for such demand.

Now, the applicant, rather it is not necessary for the applicant to give reasons for making the application, but the applicant may have to present the reasons if he or she is claiming for waiver of fees. Now, fees can be waived under certain circumstances. Now, fees is the seeking information under the Act can be waived if they are or if information is basically sought for certain cases.

For instance, a fee waiver can be claimed when the information is being requested for educational or scientific purposes of a non-commercial use of information or if the disclosure that will be made is likely to contribute to the public understanding of government activities and is in public interest. Now, all requests for information which are made for commercially

using the information will be charged. And they will be charged for the search of the information, duplication and also for review of such documents.

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#### • UNITED KINGDOM

- Operation of the Act overseen by **Office of the Information Commissioner** - public authorities to adopt and maintain proactive 'publication scheme' for the routine release
- Applicants to submit a written application and information sought
- Public authorities to provide / deny information within 20 working days excluding the day of communicating to the applicant of the fee payable and the day on which such fee is paid. Upper time limit is 60 days and every refusal has to be reasoned out.
- Applicant has 3 months to pay the fee from the date of communication.
- In case of a request to obtain exempt information then applicant are to be informed of their request being considered within 20 working days of receipt of request and an estimated time for providing the information sought.



Now, let us look at what the law in United Kingdom is. Now, in the United Kingdom the office of the information commissioner oversees the operation of the Act and the Act enjoins all the public authorities to adopt and maintain a proactive publication scheme for the routine release of information that is important such as annual reports and accounts. Now, these publication schemes must be approved by the information commissioner who is responsible for the enforcement of the Act and were also responsible for handling all appeals on behalf of those people whose request for information has been refused. So, the office of the information commissioner, it looks at how the operation of the act is taking place that is the implementation of the Act and this office is also responsible to handle appeals under the act. Now, what are the applicants required to do?

The applicants must submit a written application, give details of the information that they are seeking and the writing must be legible and comprehensible for future reference. Now the public authorities are required to provide or deny providing information within 20 working days. Now, the counting for these 20 days would exclude the day of communicating to the applicant.

The fee payable and the day on which the fees is actually paid and so the days on which the fee is paid or how much fee is required for this information sought to this communication that time would actually not be counted within 20 working days and there is an upper limit which

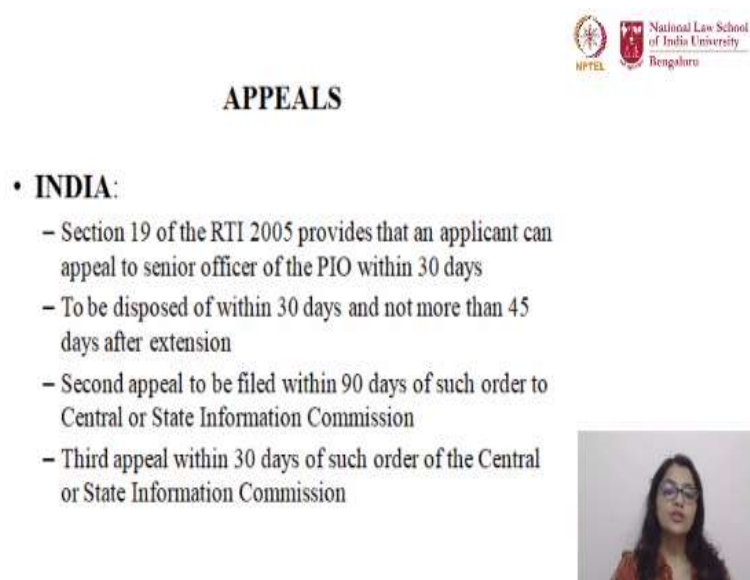
is set that is the upper limit is of 60 days. So, the information must be provided within 60 days and every refusal to grant information has to be a reason refusal.

You cannot just refuse to give information, but you also have to give reasons why the information has been refused. Now, the applicant has 3 months to pay the fee from the date of communication of the same by the authorities without payment of the requisite fee obviously the request would not be processed. Now, if the request to obtain exempt information is made, then the applicants are to be informed of their request being considered within 20 working days of receipt of request and an estimated time for providing the information sought. So, what the exemptions under the UK law we will be dealing with that a little later. So, basically the UK Freedom of Information Act also allows for information which are exempt to be sought.

And when such an application is made by an applicant the authority will give them a time and they will inform the applicant that whether their request is being considered or not within 20 working days of the receipt of such request and they will also inform the applicant that what could be the estimated time for providing the information. So, this provision is actually unique to the law in the UK.

Now, in case where the cost of information sought exceeds a certain limit set by the authorities from time-to-time then such information would not be provided under the Act, but under a different regulation if it provides for the same.

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The slide is titled "APPEALS" in bold, black, uppercase letters. In the top right corner, there is a logo for "National Law School of India University, Bangalore" with "NLSIU" and "NLSIU" text. Below the title, there is a bullet point "• INDIA:" followed by four hyphenated list items. In the bottom right corner, there is a small video inset showing a woman with dark hair and glasses speaking.

**APPEALS**

- **INDIA:**
  - Section 19 of the RTI 2005 provides that an applicant can appeal to senior officer of the PIO within 30 days
  - To be disposed of within 30 days and not more than 45 days after extension
  - Second appeal to be filed within 90 days of such order to Central or State Information Commission
  - Third appeal within 30 days of such order of the Central or State Information Commission

All the three legislations that we have discussed make provisions for appeal if the applicant has not received the information that he has sought for or if the applicant is not satisfied with the information receipt. Now, if we look at the Indian law, section 19 of the Right to Information Act provides that an applicant can file an appeal before a senior officer of the PIO within 30 days.

Now, who can actually file an appeal an appeal may be filed by the person who has submitted an RTI application and who has been aggrieved because no response has been received or the response received is unsatisfactory or incorrect. Additionally, even third parties of parties whom the information sought relates to can also file appeal under the right to information act. Now, the appeals must be disposed of within 30 day and not more than 45 days after extension.

A second appeal has to be file within 90 days of the order to the central or the state information commission and a third appeal may be filed within 30 days of the order of the central or the state information commission.

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• **UNITED STATES OF AMERICA:**

- An internal appeal can be filed by the applicant which needs to be decided within 20 working days
- Applicant can file an appeal to the court of law if an application is taking more than the stipulated time
- Response to such court appeal to be filed within 30 days of service of complaint
- Burden of proof is on the agency to justify non-disclosure of information
- The court may take into consideration exempted information, in case dispute relates to denial of information, and records of agency, in case dispute relates to waiver of fee



Now, if we look at the law in the United States of America there and internal appeal can be filed by the applicant which needs to be decided within a period of 20 working days. Now, if the application is taking more than the stipulated time of 20 working days plus 10 working days upon the extension of time then the applicant can file an appeal before a court of law. Now, the agencies are required to file a response to the court appeal within 30 days of service of the complaint.

And the burden of proof is on the agency to justify non-disclosure of information. Now even under the right to information act in India the burden of proof is on the PIO to basically proof that whatever information he has provided is adequate. Now, the court in US may take into consideration exempted information if the disputes relate to denial of information and it can also take into consideration records of the public agency if the dispute relates to the waiver of fee.

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• **UNITED KINGDOM**

- Similar to the Indian RTI Act there is a three tier appeal system under FoIA 2000, where
  - First appeal lies in front of a senior public authority.
  - Second appeal lies before the Information Commissioner
  - Third appeal lies before a Special Information Tribunal
  - No set time limit under the UK FoIA
  - Central Government Departmental Guidelines states that simple issues need to be decided within 2-3 weeks and complex issues within 6 weeks
  - If issue pertain to Environmental Information then the appeals need to be dealt within a maximum of 40 working days



Now, in the United Kingdom, the appeal system is similar to the Indian Right to Information Act and there is a three-tier appeal system. The first appeal lies in front of the Senior Public Authority. The second appeal lies before the Information Commissioner and the third appeal lies before a Special Information Tribunal. Now if there is a need of any further appeal to be filed those appeals would be entertained only if there is a question of law involved.

So, you actually cannot dispute the information received after the third appeal, but there is no time limit set under the United Kingdom Freedom of Information Act. However, if we look at the Scottish freedom of information act then those appeals must be settled within 40 working days or rather appeals must be made within 40 working days. Now, the central government departmental guidelines state that simple issues need to be decided within two to three weeks.

And complex issues must be decided within 6 weeks. In case the issue pertains to any kind of environmental information then the appeals need to be dealt with expeditiously within a maximum time limit of 40 working days. Now, the Scottish Freedom of Information Act provides 20 working days of time limit to decide any appeal including those pertaining to environmental information. So, if we look at the Scottish law because that law applies to the British citizens living in Scotland then they have a shorter time duration for settling off or deciding appeals.

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- USA – Govt. Agencies can withhold 9 categories of information:
  - Information to be kept secret in the interest of national defence or foreign policy mandated by an Executive Order
  - Internal personnel rules and practices
  - Information that is exempt under other laws
  - Trade secrets, commercial/ financial information obtained from a person and privileged and confidential;
  - Inter-agency or intra-agency memoranda, letters
  - Personal and medical files and similar files
  - Records or information compiled for law enforcement purposes, subject to exceptions
  - Information concerning bank supervision
  - Geological and geophysical information
- 3 category of law enforcement and national security records are excluded from under the purview of FOIA
- Much in common between India and USA



Third information relating to FBI in foreign intelligence, a counter intelligence or international terrorism records. Now, if we look at the list of exemptions under the freedom of information act of US and to the right to information act in India. It would be evident that there is much in common between the two countries. Now since the Indian law came into force only in 2005 and the American law has been an existence since 1966 it may be concluded that the Indian law makers were influenced somewhat by the American model, but it is important to note that although the American list of exemption is far more detailed the freedom of information act limits the discretionary powers of the officials by placing some explicit limitations on their decision making power by responding to request for information by citizens.

But on the other hand, when we look at the Right to Information Act and when we look at section 8 of the right to information act it does provide some kind of flexibility or some kind of discretion to the public authority to decide whether it is in the interest or it is in the interest of the public that the information sought should be revealed even though it falls under the exemptions listed under section 8. So, in that way we can say that the Indian law has given more decision-making power to the authorities when compared to the freedom of information act.

Now if we look at the law in United Kingdom we see that there are two types of exemptions. First, there is the absolute exemptions and second there are qualified exemptions. First, let us look at the qualified exemptions. Now, all qualified exemptions require a judgment to be



made on whether the release of information will prejudice the interest specified in the particular exemption.

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- **UNITED KINGDOM**

- Two types of exemptions-absolute and qualified
- Qualified exemptions – have to pass- ‘prejudice test’ and ‘Class’ test- 17 categories
- The Prejudiced Test Exemptions include: the country's national defence, international relations, relation within UK, the country's economic interests, law enforcement, audit functions, efficient conduct of public affairs, health and safety, and commercial interests.
- The Class Exemptions include: material intended for future publication, national security, investigations and proceedings by public authorities, the formulation of government's policy, communication with the Queen, environment information, personal information, legal professional privilege, commercial information such as trade secrets and information relating to any private sector involvement with public authorities.



Now, there is a name for this test which is called the prejudice test or the harm test. Now it may so happen that sometimes only a part of the information contained in the document will be exempt while not the entire record. Now, qualified exemptions are also known as balanced exemptions or public interest exemptions and they are left with the judgment of the public authorities with whom the information is available to decide whether it would be in public interest to confirm what information it has, but not to release it.

So, it may agree that we have the information, but the discretion has been given to the public authority to not divulge or release the information. Now, there are 17 qualified exemptions which are divided into two categories or two sub classes and there are two tests which are applicable to these two sub classes. First is the prejudice test and the class test. While the prejudice test denotes the judgment of the public authority on whether or not the information requesting is prejudicial to specific interest included in a particular exemption.

The class test means whether or not the information sought contains a further public interest. So, these are the two tests which would be applied. Now, the prejudice test exemption includes the matters of the country national defence, international relations, relations within UK, the country's economic interest, law enforcement, audit functions, efficient conduct of public affairs, health safety and commercial interest.



On the other hand, the class exemptions include material which are intended for future publication. National security, investigations and proceedings by public authorities, the formation of governments policy, communication with the queen, their information relating to the environment, personal information, legal professional privilege, commercial information such as trade secrets and information relating to any private sector involvement with public authorities. Now let us look at what are the absolute exemptions.

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- *Absolute Exemptions* – 8 categories
  - Information accessible by other means
  - Information relating to the State security bodies
  - Court records
  - Parliamentary privileges
  - Information that could prejudice the efficient conduct of public affairs
  - Personal data
  - Information provided in confidence
  - Information disclosure which is legally prohibited
- Almost all exemptions mentioned in the FoIA find their echo in the Indian law as well.



There are 8 categories of absolute exemptions and request for information falling into any of these 8 categories will not require the public interest test or judgment of a public authority on whether the release of information will be in public interest or not. Now, such requests or requests for information which fall under the absolute exemptions can be rejected outright. and it also relates the authority of the duty to confirm or deny that it has the information.

Now, this is very interesting so under the UK law if any information is sought from a public authority it has to actually say whether they have the information or they do not have the information, but if any information falls under these absolute exemptions, then the public authority also does not need to confirm with this requirement. So, they do not even need to inform the public or inform the applicant whether the information sought is with them or not.

Now, the 8 absolute exemptions are information which is already accessible by other means. Now for instance some information which is available in the website of each agency or authority that is not something that they will provide. Second, information relating to state

security bodies such as MI5, MI6 court records. Now, these records are left with the discretion of the court so they will not be granted there are absolute exemptions.

Parliamentary privileges including proceedings in both houses of parliament much of which is routinely published and transcript then background data supply to various committee of the parliament then information which could prejudice the efficient conduct of public affairs, personal data because they are protected under the data protection act and they are generally available to the person who is subject to the information.

Information provided in confidence, the disclosure of which will constitute breach of confidence or actionable by the other party. So, this is almost like information available in fiduciary capacity. Now this exemption is particularly important in relation to commercially sensitive information which are provided by private suppliers. Now information the disclosure of which is legally prohibited.

Now there are certain prohibitions under this for instance the UK Human Rights Act of 1998 prohibits disclosure of certain kind of information then the local government finance act etcetera. Now close look at the absolute and qualified exemptions of the freedom of information act of UK shows that it has actually influenced the law makers in India when they had enacted the RTI Act.

So, we can see that the Indian Act is actually taken a lot from both these legislations. Now 1966 was when the Freedom of Information Act in America was passed although the United Kingdom law was passed only in 2000. It does bear a lot of resemblance with the Indian law. The Indian legislations does not classify exemptions into absolute and qualified exemptions nor the qualified ones into prejudicial.

And class exemptions as is done in the United Kingdom, but all exemptions which are mentioned in the UK freedom of information act finds that echo in the Indian law as well and there are a number of provisions in the RTI Act that empowers the CPIO or the SPIO in each of this to judge if public interest outweighs other interest in the information sought. If it does, then it can release the information.

But under the UK law as we have just seen that if any kind of information falls under the absolute exemptions the public authority need not even get into this. So, they may even deny information that they do not also need to reveal that they have the information or not. So, this was the discussion on the three laws in India, UK and the US on the right to information and the Freedom of Information Act.