LEGISLATIVE RESTRICTIONS ON RIGHT TO INFORMATION

“A people who mean to be their own governors, must arm themselves with power that knowledge gives”.

-James Madison

Every right legal or moral carries with it corresponding obligations. No right is absolute or unrestricted. Absolute right cannot exist in any modern state. The possession and enjoyment of any right is subject to "such reasonable conditions as may be deemed, by the governing authority of the country, essential to the safety, health, peace, general order and morals of the community." Restrictions have to be placed upon free exercise of individual's right to safeguard the interest of the society, on the other hand, social control, which exists for public good, has got to be restrained, lest it should be misused to the detriment of individual's right and liberty.

Prior to the year 2002, India had no central legislation that provided access to official information and this right became available only by way of constitutional interpretation, in freedom of speech and expression. The situation has four restrictive factors:

(i) Restrictions as contemplated under clause (2) of Art. 19 apply to this right to information.

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(ii) Acts like The Official Secrets Act, 1923, The Indian Evidence Act, 1872, and the Procedural Codes along with the Civil Servant’s Conduct Rules, 1964 severely restrict the right to know.

(iii) The colonial mindset of bureaucracy resulted into continuance of pervasive culture of secrecy and arrogance towards the common man.

(iv) Low level of literacy, massive poverty, Indifference and faith in status-quo deny whatever accessibility is possible.3

The most contentious issue in the implementation of the Right to Information Act relates to official secrets. In a democracy, people are sovereign and the elected Government and its functionaries are public servants. Therefore, by the very nature of things, transparency should be the norm in matters of governance. However it is well recognized that public interest is best served if certain sensitive matters affecting national security are kept out of public gaze. Similarly, the collective responsibility of the Cabinet demands uninhibited debate on public issues in the Council of Ministers, free from the pulls and pressures of day-to-day politics. People should have the unhindered right to know the decisions of the Cabinet and the reasons for these, but not what actually transpires within the confines of the ‘Cabinet room’. The Right to Information Act recognizes these confidentiality requirements in matters of State and

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Section 8 of the Right to Information Act⁴ exempts all such matters from disclosure.⁵

**Secrecy in Government in India**

According to Blank’s Law Dictionary ‘Secrecy’ means the state or quality of being concealed, especially from those who would be affected by the concealment⁶.

The concept of secrecy is present in almost all Governments, yet it is only recently that a demand for openness in the system of governance has been made. The debate on this issue started in the West but India could not remain completely untouched. India has had its own reasons for feeling concerned about secrecy in Government. The country knows too well and too bitterly that political executive of the land was indulging in the most reprehensible behaviour, all this rendered possible by its habit of not letting the people know about its doings. The Shah Commission of Inquiry (1977-78) has rightly cautioned, that more the effort at secrecy the greater the chances of abuse of authority by the functionaries.⁷

Secrecy in Indian Government has a long history indeed longer than in many other countries. As early as August 1843 the Central Government of India issued a notification asking its personnel not to communicate to the outsider any paper or information in their possession. Actually, at that time some civil servants were supplying information on matters relating to Government to the press, causing occasional embarrassment to the Government. It was precisely this indulgence, which was sought to be curbed by this notification, which reads:

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⁴ Section 8 of the Right to Information Act 2005, it is mentioned at p.28 Footnote 81 of the present the chapter.
"Some misconception appearing to exist with respect to the power which officers of both services (i.e. civil and military) have over the documents and papers which come into their possession officially. The Governor General in Council deems it expedient to notify that such documents and papers are in no case to be made public, or communicated to individuals, without the previous consent of the Government to which they belong”.

Under these rules, no public functionary was permitted without the previous sanction in writing of the Government under which he immediately served to become the proprietor either in whole or in part of any newspaper or periodical. Public personnel were not absolutely prohibited from contributing to the press; but the Government wanted them to confine themselves within the limits of temperate and reasonable discussion. To remind all officers of the Government that information received by them in their official capacity, whether from official sources or otherwise, which is not from its nature obviously intended to be made public, cannot be treated as if it were at their personal disposal.

Officers of the Government are bound to be as reserved in respect to all matters that may come within their cognizance during the discharge of their public duties as lawyers, bankers or other professional men in regard to the affairs of their clients. While promoting secrecy, the Government was also in a way alive to its responsibility for flow of what it considered as legitimate information to outsiders, especially to the press. It made departmental arrangements for communicating to the press such information as it might unobjectionably be given. The Government had appointed a press commissioner in 1877 to liaison with the press and through whom official papers or information was given. Disclosure of the

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8 Government of India. Home Department, Public Proceedings, August 1884, pp. 213-220.
confidential information of Government to unauthorized persons was punishable under the disciplinary rules, but it was not a penal offence as such. It attracted penal punishment since 1889 when the Indian Official Secrets Act was passed.\textsuperscript{10}

\textbf{Need for Official Secrets Act and other Acts imposing Restrictions}

While managing the affairs of the country, the Government has to face the menace of spying by the citizens of the country, may be in Government service or in private business or just thriving over this unpleasant Official secrets Act. Spying was being done by foreigners settled in the country, by visiting tourists, by the staff and officers employed in foreign missions, by missionaries and by organizations of Indian or foreign origin. To combat this, Government had been adopting various measures by making various provisions in different laws. The first step in this direction was the enactment of the Indian Official Secrets Act, 1889 which was amended by the Indian Official Secrets (Amendment) Act, 1904. Later, the Official Secrets Act, 1911 (1 and 2 George V.C. 28), a British Act was brought into force in India. But it has been recognized that it is unsatisfactory to have two separate laws in force simultaneously in India. Further, although the British Act of 1911 was in force in India, difficulties arose in applying it because of the use of English common law terms in it. For these reasons it was felt desirable that there should be a single consolidated Act applicable to Indian conditions. To consolidate and amend the law relating to official secrets the Official Secrets Bill was put before the Legislature. It was passed in the year 1923.\textsuperscript{11}

The Official Secrets Act, 1923 enacted during the colonial era, governs all matters of secrecy and confidentiality in governance. The law

\textsuperscript{10} Ibid.
\textsuperscript{11} Received the assent on 2nd April, 1923.
largely deals with matters of security and provides a framework for dealing with espionage, sedition and other assaults on the unity and integrity of the nation. However, given the colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, the Official Secrets Act created a culture of secrecy. Confidentiality became the norm and disclosure the exception. While Section 5 of Official Secrets Act was obviously intended to deal with potential breaches of national security, the wording of the law and the colonial times in which it was implemented made it into a catch-all legal provision converting practically every issue of governance into a confidential matter. Section 123 of the Indian Evidence Act, enacted in 1872, prohibits the giving of evidence from unpublished official records without the permission of the Head of the Department, who has abundant discretion in the matter.\(^1\)

**The Official Secrets Act, 1923**

India, following the British principle that the liberty of the journalist and the press is no greater, if no less, than that of the average citizen, based its official Secrets Act, 1923, on the British Act of 1911. The primary aim of Official Secrets Act, 1923 was to prevent spying. It vested enormous discretionary powers with the Government to determine the scope of official secrets. It makes all disclosures and use of official information a criminal offence, unless expressly authorized.

This Act has narrowed the categories of Information prohibited from disclosure. While in comparison to it the British Act states that it would be sufficient defense to plead ignorance to “damaging” nature of Information, Indian Act does not provide any such defense. There is a glaring difference between English and Indian practices. In England, the Attorney-General

\(^1\) Romena Shafaq, ‘Right to information: Transparency and accountability’ Kashmir University Law review, Vol.8,2000, p.249.
alone decides whether to prosecute or not. As Lord Shaw Cross pointed out:

“Although the Attorney-General is a political appointee, his actions as Attorney-General and the way he exercises his discretion are entirely non-political. I know of no instance (since the Campbell Case) in which the Cabinet has been called upon to decide whether or not a prosecution should take place, still less in which it has taken any such decision on political grounds”.

In India the executive controls the launching, and the withdrawal of prosecutions. The real difference, however, is in the difference of cultures of the two regimes. While the Official Secret Act had legally perpetuated a culture of secrecy and corruption and denial of any right against them, the Freedom of Information Act brings in an era of transparency and accountability, and creates a valuable right to usher in this new era.

The Official Secrets Act, 1923 violates all the rights incorporated within the Freedom of Speech and Expression by virtue of the restrictions it puts on the Freedom of Information. No court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Appropriate Government or some officer empowered by the Appropriate Government in this behalf. It places a restriction on the trial of offences. The section vests powers only in Government officials to “report offences” which means a member of general public or press has no right to report the offences. It provides for in camera trials on the ground that such proceedings may be prejudicial to the safety of the state.

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13 A letter to The Times (November 19, 1970)
14 Section 13 (3) of the Official Secrets Act, 1923.
15 Section 14 of the Official Secrets Act

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Spying and Penalties for that under the Official Secrets Act

The Act prohibits approaching, inspecting, passing over or entering in the vicinity of a prohibited place. Further, under the Act, it is also an offence to obtain, collect, record, publish or communicate to any other person these items or any other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy or which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with Foreign States. It provides that on prosecution for an offence under Act, it shall not be necessary to show that the accused committed any act with mensrea. It would be sufficient to infer from the circumstances of the case, its conduct or known character, that its purpose was ‘prejudicial’ to the safety or

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16 Section 3. of Official Secrets Act.
18 Ibid Section 3 (2)
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interest of the State. Any person guilty of committing any offence under this section shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

Wrongful communication of Information

Section 5 relates to the willful communication, uses, retention or failure to take reasonable care of information which has been entrusted in

Section 5 (1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been, employed under a person who holds or has held such an office or contract—

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or

(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information, he shall be guilty of an offence under this section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both
confidence to a person by any person holding office, or which he has obtained or which he has had access to owing to his position. Further, if any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence.

This provision makes no distinction of kind or degree. A blanket is thrown over everything and nothing escapes from the operations of this section. This Section covers all the servants of Indian government and all the citizens in India or abroad as well as all official information. All information which a Government servant acquires in the course of his official duties is official notwithstanding its nature, its importance and its original source. Consequently any one whether a newsman or a layman who receives such information is liable to punishment.

The official information covered by the Section is also extremely broad. Any kind of information is covered provided it is a "secret". This includes any official code, password, sketch, plan, model, article, note, document or information. The only qualification is that it should be "secret". Nowhere the word "secret" or "official secrets" are defined in the Act. The only thing, which is clear, is that, the Act applies only to official secrets and not to secrets of a private nature. Hence, the Act extends to the secrets of a ministry or department of the Government, but not to an incorporated body like a University, Government Company or Public Corporation. Therefore, in theory, the Government has the discretion to classify anything and everything as a "secret" as per the Official Secrets

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20 Section 5(2) of the Act.
Act. Hence, the all important question arises, whether the Government has an unquestioned right to decide what should be classified as secret and kept away from public? In practice, the Government does not seem to be the sole judge of the matter and the Courts do reserve the right to review the decision of the Government. The standard practice of the Government is to treat an information secret, even though it may no longer be of any danger to national interest or public safety or any other public interest, merely because it may embarrass the Government, or in other words, the political party in power.

The Supreme Court in *Sama Alana Abdulla vs. State of Gujarat*\(^\text{21}\) has held that: (a) that the word ‘secret’ in clause (c) of sub-section (1) of Section 3 qualified official code or password and not any sketch, plan, model, article or note or other document or information and (b) when the accused was found in conscious possession of the material (map in that case) and no plausible explanation has been given for its possession, it has to be presumed as required by Section 3(2) of the Act that the same was obtained or collected by the appellant for a purpose prejudicial to the safety or interests of the State. Therefore, a sketch, plan, model, article, note or document need not necessarily be secret in order to be covered by the Act, provided it is classified as an ‘Official Secret’. Similarly, even information which does not have a bearing on national security cannot be disclosed if the public servant has obtained or has access to it by virtue of holding office. Such illiberal and draconian provisions clearly breed a culture of secrecy. Though the Right to Information Act now overrides these provisions in relation to matters not exempted by the Right to Information Act itself from disclosure, the fact remains that Official Secrets Act in its current form in the statute books is an anachronism.

\(^{21}\) (1996) 1 SCC 427.
In a major boost to freedom of press, a Delhi court has ruled that the publication of a document merely labeled 'secret' shall not render the journalist liable under the colonial relic of the Official Secrets Act 1923. Consequently the Journalist (Saikia) was discharged, in a case booked against him by the Central Bureau of Investigation 10 years ago for publishing the contents of a Cabinet note on divestment policy. The court's liberal interpretation minimizes the scope for misuse of the Official Secrets Act by the official machinery as it makes a sharp distinction between a secret document or report dealing with day-to-day routine affairs and one containing information on the sensitive issue of national security.

"The qualifying word 'secret' has to be read in respect of an official code or password".

The main ground on which the court discharged the journalist (Saikia) was that the publication of the disinvestment document was unlikely to affect the sovereignty and integrity of India or the security of the state or friendly relations with foreign states. The Court also recalled the bizarre circumstances in which Central Bureau of Investigation (CBI) booked Saikia under Official Secrets Act in 1999 after a three-year in-house probe to find out how the secret document on disinvestment had been leaked just a day before a Cabinet meeting. Although the prolonged probe yielded no result and the Central Bureau of Investigation (CBI) made no recovery from Saikia, a case was registered against him. On his part Saikia, who argued the case himself in court, pointed out "how an archaic Act framed to nab spies was being used to harass a journalist in the 21st century. He also argued that in the age of the Right to Information Act where courts and commissions are broadening the ambit of official

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documents accessible to citizens, a news report on divestment could in no way be seen as an offence inviting penalties as strict as those prescribed under The Official Secret Act”.

In Buddhikota Subbarao v State of Maharashtra24, the Supreme court dismissed the petition and held that a court of law has to draw certain inferences and record a reasoned finding. Such a finding cannot be based on the subjective satisfaction but on the objective appraisal of the evidence and material placed before the judge concerned. The nature of offences contemplated by sections 3 and 5 of the Official Secrets Act, 1923 are distinct and separate. As to whether in a given set of facts the offence is covered under Section.3 or Section.5, must ultimately depend upon the facts and circumstances of each case, and no general rule can be laid down.

The Statement of Objects and Reasons of The Official Secret Act (Act No. 19 of 1923) amended by Act 24 of 1967,25 had been utilized to impart meaning to the Official Secrets Act, 1923 and it has been stated that:

"It is by now well settled that such words take color from the context. While interpreting the words or statutory provisions, it becomes necessary to have regard to the subject matter of the statute and the object, which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the word occurs, the object of the statute in which the provision is included and the policy underlying the statute, assume relevance and become material the

24 AIR 1989 SC 2292
25 The Statement of Objects and Reasons to the Amending Act 24 of 1967 reads as under : The protection of official secrets is regulated by the Indian Official Secrets Act, 1923. Except for a few minor amendments made in 1951, the Act has remained unmodified since it was enacted more than forty years ago. In view of the changed circumstances after the attainment of independence and the wide variety of unscrupulous methods which anti­national elements have of late been adopting to secure their ends, it has become necessary to amend the Act suitably to remove certain shortcoming and to make it more effective.

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words will have to be construed and understood in the light of their context. If so understood, the connotation, the area and the meaning to be attached to them, gets crystallised and cannot be termed as vague."

The Law Commission in its report, summarized the difficulties encountered with the all inclusive nature of Section 5 of Official Secrets Act, 1923, in the absence of a clear and concise definition of ‘official secret’, in the following words:

"The wide language of section 5 (1) may lead to some controversy. It penalizes not only the communication of information useful to the enemy or any information which is vital to national security, but also includes the act of communicating in any unauthorized manner any kind of secret information which a Government servant has obtained by virtue of his office. Thus, every noting in the Secretariat file to which an officer of the Secretariat has access is intended to be kept secret. But it is notorious that such information is generally communicated not only to other Government servants but even to some of the non-official public in an unauthorized manner. Every such information will not necessarily be useful to the enemy or prejudicial to national security. A question arises whether the wide scope of section 5(1) should be narrowed down to unauthorized communication only of that class of information which is either useful to the enemy or which may prejudicially affect the national security leaving unauthorized communication of other classes of secret information to be a mere breach of departmental rules justifying disciplinary action. It may, however, be urged that all secret information accessible to a Government servant may have some connection with national security because the maintenance of secrecy in

Government functions is essentially for the security of the State. In this view, it may be useful to retain the wide language of this section, leaving it to the Government not to sanction prosecution where leakage of such information is of a comparatively trivial nature not materially affecting the interests of the State. The language of sub-section (1) of section 5 is cumbersome and lacks clarity. Hence without any change in substance, we recommend the adoption of a drafting device separately defining “official secret” as including the enumerated classes of documents and information.”

The Law Commission also recommended consolidation of all laws dealing with national security and suggested a “National Security Bill”. The Shourie Committee recommended a comprehensive amendment of Section 5(1) to make the penal provisions of Official Secrets Act, 1923 applicable only to violations affecting national security. However the Ministry of Home Affairs, on consultation expressed the view that there is no need to amend the Official Secrets Act, 1923 as the Right to Information Act, 2005 has an overriding effect. The Ministry, quite understandably, is concerned about the need for a strong legal framework to deal with offences against the State. While recognizing the importance of keeping certain information secret in national interest, the Commission is of the view that the disclosure of information has to be the norm and keeping it secret should be an exception. The Official Secrets Act, 1923, in

27 The observations made by the Law Commission reproduced below are pertinent: “The Commission agrees with the recommendation of the Law Commission that all laws relating to national security should be consolidated. The Law Commission’s recommendation was made in 1971. The National Security Act (NSA), subsequently enacted in 1980, essentially replaced the earlier Maintenance of Internal Security Act and deals only with preventive detention. Therefore, a new chapter needs to be added to the NSA incorporating relevant provisions of OSA and other laws dealing with national security. The Commission studied the Report of the Working Group constituted under the Chairmanship of Shri H. D. Shourie on “Right to Information and Transparency, 1997” which has provided valuable inputs in framing the recommendations on this issue.
its present form is an obstacle for creation of a regime of freedom of information, and to that extent the provisions of the Official Secrets Act, 1923 need to be amended. The Commission, on careful consideration agrees with the amendment proposed by the Shourie Committee, as it reconciles harmoniously the need for transparency and the imperatives of national security without in any way compromising the latter. These can be incorporated in the proposed new chapter in the National Security Act relating to Official Secrets.

There is no doubt that despite its several shortcomings the prevalence of a statute of the nature of the Official Secrets Act, 1923 is justified by the need to provide protection to the Sovereignty and Integrity of the State. The problem therefore of reconciling through law the nation's need in Government Secrecy and its need in disclosure is quite a complex and difficult one. Two basic issues, which need to be effectively tackled, are:

1. The Problem of classification of information;
2. Procedural Safeguards to the individual against administrative abuse including the safeguard of Judicial Review.

With regard to the Problem of Proper Classification of Information the Following Categories of Information may avail of the protection entitled to 'Official Secrets:

Information pertaining to National Security and Defence - National Security and Defence Affairs has always been universally regarded as justifying secrecy. The problem here is not of the legitimacy of these two matters favouring secrecy, but that should not become an excuse

28 Abhimanyu Gosh, (Third Year Student of (NUJS), Calcutta) 'Open government and the Right to information', www.Legal Service Com.
for wholesale, indiscriminate cover-up. Therefore, even the Information pertaining to National Security and Defense is a broad category and everything under the same cannot be considered to be secret. Information may have to be disclosed under this accepted category in Public Interest without violating national security or national interests.

**Information affecting Friendly Relations with Foreign States** - Foreign Policy has often been an accepted ground of Official Secrecy however it is also subject to the condition of Public Interest as unauthorized disclosure could severely jeopardize foreign relations.

**Information relating to the maintenance of Law and Order** - With a view to facilitating the effective work of Law and Order Departments, the condition of assured secrecy and confidentiality are necessary.

**Information relating to the Economic Policy** - Secrecy may be necessary in controlling and regulating the Economy - Budget Proposals for example have to be kept in utmost secrecy so that persons through premature disclosure do not gain undue economic advantages. Premature disclosure of economic plans and policies may frustrate their very purpose, and precipitate activities, which they intended to avoid. However, secrecy on economic grounds is to be confined only to cases where disclosure would enable persons to make unjust gains or harm national interests 29.

**Conditions to be necessarily fulfilled to qualify as an 'Official Secret' under the above mentioned categories**

The above-mentioned categories are broad and everything falling within the categories may not be assured of protection under the Act. Thus, the following considerations have to be taken into account:

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a. Public Interest has to be the overriding consideration in determining commission of an offence under the Act.

b. Information, which is already within the Public Domain or within Public Knowledge, cannot be made a basis of prosecution.

c. In accordance with the object of the Act, disclosure must necessarily be prejudicial to National Security, Sovereignty and Integrity of the State or Friendly Relations with Foreign Nations.

The Official Secrets Act, 1923 and Articles 19(1) a & 21 of the Constitution

Article 19(1) (a.) of the Constitution guarantees the Right to Freedom of Speech and Expression to every citizen. The Right to Freedom of Speech and Expression means Right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode which is of great importance in a democracy because without the Freedom of Speech the appeal to reason which is the basis of democracy cannot be made. The Freedom of Speech and Expression further includes the right to acquire and disseminate information.\(^{30}\)

In State of U.P. vs Raj Narain\(^ {31} \), It has been observed that:

"The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing".

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\(^{31}\) (1975) 4 SCC 428.
It has been observed in *Union of India vs Association for Democratic Reforms*. In this landmark case, the Supreme Court directed the Election Commission to issue orders making it mandatory for people contesting elections to submit affidavits giving information about their assets and liabilities, criminal cases, and educational attainments, the Court observed that:

"The people of the country have a Right to know every Public Act, everything that is done in a public way by public functionaries. The Right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy."

In *S.P Gupta v Union of India*, The Supreme court held that 'disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of Public Interest. It was decided by the Seven Judges Constitution Bench that disclosure of documents relating to the affairs of state involves two competing dimensions that is: (i) the right of citizen to obtain disclosure of information; (ii) the right of the state to protect information relating to its crucial affairs. It was held that whether or not to disclose information, a Judge must balance the competing interest and make his final decision, depending upon facts involved in each case.

However, In Shri Dinesh Trivedi, M.P. & Ors. V. Union of India & Ors, Petition was filed for disclosure of a report submitted by a committee established by the Union of India and popularly known as "Vohra Committee". The committee was set upon to make available information about the activities & links of all mafia organizations. In July,
1995 a known Political activist Naina Sahni was murdered and one of the person was arrested, who happened to be a politician. A newspaper report published a series of articles on criminalization of parties. The attention of the masses was drawn towards ‘Vohra Committee Report’. It was suspected that the content of the reports were such that the Union Government was reluctant to make it public. The Report was placed before the parliament. In this case, the Court dealt with Citizen’s ‘Right to Freedom of Information’ and observed that citizens have a right to know about the affairs of the Government, which is elected by them, the Supreme Court responded by saying:

“In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.”

In People’s Union for Civil Liberties vs Union of India35, The appellants i.e. People’s Union for Civil Liberties (“PUCL”) had sought for disclosure of a report prepared by Atomic Energy Regulatory Board (AERB) envisaging issues relating to purported safety violations and defects on various nuclear installations & Power Plants across the country. It was contended by Union of India that the report was classified as “Secret” as it pertains to several sensitive facilities carried out dummy nuclear installation and raised a plea of privilege in relation to the said report. The Supreme Court held that when for determining a question, a claim of privilege is made the following questions need to be answered : (i) whether the document in respect of which the privilege is claimed, relates to the affairs of any state? (ii) whether the disclosure of the contents would

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go against public interest? On the aforementioned test, the Supreme Court observed that:

“Right to Information is a facet of the freedom of ‘speech and expression’ as contained in Article 19 (1) (a) of the Constitution of India. Right to Information, thus, indisputably is a Fundamental Right.” Here it is also recognized that a reasonable restriction on the exercise of the right is always permissible for the security of the state.

As per article 21 of the Constitution it has been held in L.K. Koolwal, v. State of Rajasthan\textsuperscript{36} that:

“A Citizen has a right to know about the activities of the state, the instrumentalities, the department and the agencies of the State. For the first time the Supreme Court recognized the right to information as part of the right to live under Article 21”.

In Reliance Petrochemicals Ltd. V. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd\textsuperscript{37}, it was observed by Sabyasachi Mukharji, J. that:

“The Constitution of India is not absolute with respect to freedom of speech and expression, as enshrined by the First Amendment to the American Constitution. The Judiciary is not independent unless courts of justice are enabled to administer law by absence of pressure from without, whether exerted through the blandishments of reward or the menace of disfavour. A free Press is vital to a democratic society for its freedom gives it power. The law of contempt must be judged in a particular situation. The process of due course of administration of justice must remain. Public interest demands that there should be no interference with the judicial

\textsuperscript{36} AIR 1988 Raj.2.
\textsuperscript{37} AIR 1989 SC 19, 1988 4 SCC 592
process\textsuperscript{38} and the effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications. At the same time, the right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. A balance has to be struck between the requirements of free Press and fair trial\textsuperscript{39}

The Official Secrets Act, 1923 interferes with these rights incorporated within the Freedom of Speech and Expression by virtue of the restrictions it puts on the Freedom of Information. No court shall take cognizance of any offence under this Act unless upon a complaint made by order of, or under authority from, the Appropriate Government or some officer empowered by the Appropriate Government in this behalf.\textsuperscript{40} It places a restriction on the trial of offences. The section vests powers only in Government officials to “report offences” which means a member of general public or press has no right to report the offences. It provides for in camera trials on the ground that such proceedings may be prejudicial to the safety of the state.\textsuperscript{41}

It can be said that Legislation that arbitrarily or excessively invades any of the six freedoms cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the Freedoms guaranteed under Article 19(1) and the social control permitted by clauses (2) to (6) of Article 19, it must be held to be wanting in reasonableness. Moreover, the onus of proving that the restriction is reasonable is on the State. The wide and vague provisions of the Official Secrets Act, 1923 also facilitate attempts on the part of the Government to

\textsuperscript{38} Ibid at 214.
\textsuperscript{39} Ibid at 235.
\textsuperscript{40} Section 13 (3) of the Act
\textsuperscript{41} Section 14. of the Act
threaten Media Personnel with prosecution upon the publication of information that may damage the image of the Government. The provisions of the Official Secrets Act, 1923 makes one realize that in any modern State, freedoms cannot be guaranteed in absolute terms and cannot be uncontrolled. For an organized society is a pre-condition for civil liberties. While absolute power results in tyranny, absolute freedoms led to ruin.

**The Official Secrets Act 1923 and Right to information, 2005:**

The Official Secret Act, 1923 acted as a relic of colonial rule covering every information in secrecy. The common people did not have any legal right to know about the public policies and expenditures. It was quite ironical that people who voted the persons to power and made them responsible for policy formation, contributed towards financing of huge costs of public activities were denied access to relevant information. The Official Secrets Act, 1923, a legacy of British rule in India, contains several provisions prohibiting the flow of information from the Government to ordinary people. It can be discussed in relation to the news in which the Government of India, through the Central Bureau of Investigation (CBI) decided to proceed in action against a former Research and Analysis Wing (RAW) Official V.K Singh for not following the guidelines under the Official Secrets Act in 2007. In fact, the folly of the Central Bureau of Investigation (CBI) in that particular matter came to the fore almost immediately as a simple study of the provisions of law spread negative information that by exposing corruption in Research and Analysis Wing of (RAW), no violation had been committed by the official. Further, the official Secrets Act had already been given the status of being

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42 Section 8(4) of the Act.
"incongruous with the regime of democracy." The most popular case on the conflict between Official Secrets Act and the Right to Information Act 2005 is the Iftikhar Gilani case. This case was the pioneer in exposing the incongruence between the Official Secrets Act and the Right to Information Act 2005. Iftikhar Gilani, a journalist with Kashmir Times, was falsely implicated of having classified Information despite the same being freely available to public at large. He was kept in Jail for seven months in 2002 under the Official Secret Act for possessing a 10 year old-information on Indian troop deployment in Kashmir downloaded from a document published in Pakistan. The first military report suggested that the information he was accused of holding was ‘secret’ despite being publicly available. The second military intelligence report contradicted this, stating that there was no "official secret". Even after this, the Government denied the opinion of the military and was on the verge of challenging it when the contradictions were exposed in the press. The military reported that, "the information contained in the document is easily available" and "the document carries no security classified information and the information seems to have been gathered from open sources". On January 13, 2003, the government withdrew its case against Gilani to prevent having two of its ministries having to give contradictory opinions. Gilani was released the same month. Mr. V.K. Singh has resurrected the debate on the Official Secret Act. There can not be any argument against the government keeping secrets as long as there is a classification system which is transparent. All developed countries have such classification systems like top secret, secret, confidential and restricted. Apparently such a system exists in India, but

45 en.wikipedia.org/wiki/Official_Secrets_Act_(India)
our classification is vague, non-transparent and arbitrary and the Official Secret Act encourages this trend. Let us not also forget that the ancestor of our Official Secret Act, the 1911 Official Secret Act in the United Kingdom (UK), was passed at a time when there was a scare about foreign spies infiltrating society’s top echelons. That is surely not our scare now.⁴⁶

At a function organized by the Network of Women in the Media recently, Mr. Geelani said that after seven months of imprisonment, freedom was enough compensation for him. He had been made a scapegoat by a section of intelligence agencies bent on intimidating journalists in Kashmir. He emphasized the need to bring changes in the Official Secrets Act 1923, under which he was arrested. He pointed out that to prosecute a person under the Official Secrets Act; the agencies did not have to show that the person was guilty. Mere possession of a supposedly incriminating document was enough.⁴⁷

The Official Secrets Act is India’s anti espionage act which was acquired from the British. It states that one cannot approach, inspect, or even pass over a prohibited Government site or area. According to this Act, helping the enemy State can be in the form of communicating a sketch, plan, model of an official secret, or of official codes or passwords, to the enemy. The disclosure of any information that is likely to affect the sovereignty and integrity of India, the security of the State, or friendly relations with foreign States, is punishable by this Act. However, in the Official Secrets Act clause 6, information from any Governmental office is considered official information; hence it can be used to override freedom of

⁴⁷ Amend Official Secrets Act’, says Iftikar Geelani ,TNN Feb 17, 2003, 12.22am IST
information requests. In fact, the Chief Information Officer of the Government of India has pondered aloud over this issue by taking a stand against the Government of India, especially the Central Bureau of Investigation. In his view, India being a democracy, public is the Government and hence there cannot be any protection offered by the Official Secrets Act to the Government from the public at large. He further elaborates the law point by discussing the core of Section 8 (d), (e) and (j) of Right to Information Act 2005, wherein the Information Officer on being satisfied that "public interest in disclosure outweighs the harm to the protected interests" can issue even information held as secret under Official Secrets Act.

However, there have been Constitutional Law experts from other countries who have expressed their opinion on such type of conflict. In view of J. Duncan and M. Derrett, although such an inconsistency is inevitable, some action must be taken up by the judiciary on the issue and it should be resolved. Otherwise, there might be more and more cases wherein, the authorities will be at a loss to take decisions in favour of the

48 As quoted by en.wikipedia.org
49 8(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
8(e) information available to a person is his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
8(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information; Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

**Cases relating to misuse of the Act:** Since Independence, there have been many cases of information curbs and victimization of press people by enforcing the provisions of the Official Secrets Act, which include the following:

a. **The Bhopal Gas Tragedy**

An instance which has been in the eye of international storm during the last few years is the ‘Bhopal Gas Tragedy’.\footnote{The Tragedy occurred in December 3, 1984, in which leakage of Methyl Isocynate gas from the Union Carbide factory in Bhopal, the capital of the largest state in India, claimed several thousand lives and maimed and handicapped at least the next three generations.} The lack of information about this massive disaster continues to raise serious questions even today. People are still asking about the Government’s responsibility. As one author has noted:\footnote{Jasanoff, ‘The Bhopal Disaster and the Right to Know’, in Divan and Rosencranz, Environmental Law and Policy in India. Social Science and Medicine (1988) 1113.}

“The tragedy in Bhopal can be seen not merely as a failure of technology but as a failure of knowledge. The accident might not have happened at all if the right people had obtained the right information at a time when they were capable of appreciating it and taking appropriate preventive action. A central challenge for the future right to know policies is to bridge the information gaps and the communication gaps that are likely to arise in the course of technology transfer”.


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The Government's response even in the wake of the tragedy has been secretive. It has refused to release crucial information. Not only did the Government refuse to make public details of the monetary settlements between the Government and the Union Carbide, but several participants at a workshop on the medical aspects of the victims were arrested for taking notes under the provisions of the Official Secret Act.

b. The Sardar Sarovar Project

In 1995, a labour dispute arose in the ‘Sardar Sarovar Project’. The Government declared the whole region a prohibited area and entry into the region was banned. Even the press people were not allowed to collect information with regard to the dispute and other related developments. This is highlighted in a series of reports by a Delhi-based Non-Governmental Organisation working on the issue of displacement and rehabilitation. The foreword to the report presents the picture as:

"We found that the level of information about the dam, the submergence, displacement and rehabilitation is lamentably low. Information about the dam was given only when displacement began to loom on the state government's horizon. There was no interaction with the local people at all. Only after giving the notice can any work of surveying, soil testing etc. be done on that land. Admittedly, the notice does not have to be served individually but what sort of a public notice is it, if no-one, not even the village headman has seen it? What sort of democracy is it if the stone markers are implanted with indifference and silence at best and callous secrecy at worst? The quality and quantity of

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information given to the villagers had varied quite a bit from village to village, tehsil to tehsil. Some were ill-informed, others were misinformed. But no-one had been informed about the full extent of their rights under the Award.

c. Brigadier Surinder Singh’s Disclosures

In 1999, when the Kargil war with Pakistan started, the Pakistan forces had intruded in Indian Territory and made their bases there, our forces were caught unaware. The Opposition in the country interpreted this as an intelligence failure and held the then Government responsible for the lapse. In the meantime Brigadier Surinder Singh, who was posted in Kargil just before the conflict started, came out with the disclosure that intelligence had been collected and had been sent to higher authorities but nobody has taken notice of that. Outlook, (a news magazine in India) published an interview of Brigadier Surinder Singh and published the classified information in this regard. The Government took action against Brigadier Singh but did not do anything related to the publication in Outlook.57

The Indian Evidence Act (1872) and the Right to Information

Public Law in its procedural aspect is of as much interest as substantive law. Although the citizen may sue public bodies and the Government, it does not necessarily follow that the law and procedure applied by the courts in such suits will be the same as is applied in litigation between private citizens. Special procedural advantages and protections are enjoyed by the State. One such protection operates in the field of evidence and is in the nature of a privilege regarding the production of certain documents and disclosure of certain communications. The term “privilege” as used in Evidence law means freedom from compulsion to

57 Ibid.
give evidence or to discover material, or a right to prevent or bar information from other sources during or in connection with litigation, but on grounds extrinsic to the goals of litigation.58

Law is universal but like every law it has its exceptions. Privilege in law is one such exemption of law. Privilege is an exemption from some duty, burden or attendance to which certain persons are entitled; from a supposition of law usually. It is a right or immunity granted as a peculiar benefit; advantage or favour; a peculiar or personal advantage or right, especially when enjoyed in derogation of a common right59. Privilege in its most extended sense, comprehends by far every prerogative, exemption and immunity offered.

State privilege is a special dispensation given to state under sec 123, 124 and 162 of the Indian Evidence Act. Section 123 and 124 hold that disclosure of secret information contained in unpublished state papers are privileged from production on the ground of public policy or as being detrimental to the public interest or service. Moreover no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by disclosure.

The Constitution holds that everybody is equal before the law, even the State or the Government. This equality is given to fulfill the purpose of law, which is justice.60 Theorists as far removed from one another as

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59 See Or.11, R.19(2) C.P.C and Art59(3) Const.
Acquinas and Salmond\textsuperscript{61} have claimed justice as the goal of law was indeed for them the logical part of very notion of law.\textsuperscript{62} Even the well-known positivist Austin held the importance of the two concepts although denied any logical connection.\textsuperscript{63} Hence the intricate issue comes up why is such a privilege given to the state which causes blatant disregard of the equality before law which the constitution diligently guarantees for eternity. As a matter of fact the matter would still be in question in absence of the Constitution and its principles. This intricate discrepancy would look to deter the principles of natural justice.

Sections 123 and 124 of the Indian Evidence Act give blanket power to the Government to withhold documents. Over time, courts have, however, watered down the powers given to the Government under these provisions. Judicial review has provided some safeguard to an individual against Governmental arbitrariness in matters of official secrecy\textsuperscript{64}.\textsuperscript{65}

\textbf{Section 123 of the Evidence Act, 1872}

Section 123 of the Indian Evidence Act, 1872 refers to evidence derived from unpublished official records which have a relation to any affairs of State, and it provides that such evidence shall not be permitted to

\textsuperscript{61}Salmond, \textit{Jurisprudence} The law may be defined as the body of principles recognized and applied by the state in the administration of justice. In other words, the law consist of rules recognized and acted on by courts of justice (7th ed), p.39,1924.

\textsuperscript{62}Ibid.


\textsuperscript{64}The science of jurisprudence is concerned with positive law or with laws strictly so called as concerned without regard to their goodness or badness.

\textsuperscript{65}Section 123. No one shall be permitted to give any evidence desired from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Section 124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.
be given unless the head of the department concerned gives permission on that behalf. As a result of this section, a document which is material and relevant is allowed to be withheld from the Court, and that undoubtedly constitutes a very serious departure from the ordinary rules of evidence. In the administration of justice it is a principle of general application that both parties to the dispute must produce all the relevant and material evidence in their possession or their power which is necessary to prove their respective contentions; that is why the Act has prescribed elaborate rules to determine relevance and has evolved the doctrine of onus of proof. If the onus of proof on any issue is on a party and it fails to produce such evidence, Section 114 of the Act justify the inference that the said evidence if produced would be against the interest of the person who withholds it. As a result of section 123 no such inference can be drawn against the State if its privilege is upheld. This shows the nature and the extent of the departure from the ordinary rule which is authorized by Section 123. The principle on which this departure can be and is justified is the principle of the overriding and paramount character of public interest. 66

There is no sacrosanct rule about the immunity from the production of documents and the privilege should not be applicable in respect of each and every document. The claim of immunity and privilege has to be based on public interest. The Supreme Court in State of Bihar v. Kripalu Shanked67 has held that:

"We would like to outline the general principle on which confidentiality of state documents should be protected. The general principle is that if a person is involved in litigation, the courts can order him to produce all the documents he has which relate to the issues in the case. Even if they are confidential, the

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67 1987 SCR (3) 1, at p. 17, AIR1987SC1554
court can direct them to be produced when the party in possession does not produce them, for the other side to see or at any rate for the court to see. When the court directs production of those documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the side for whose purpose documents are summoned by the court cannot use them for any purpose other than the one relating to the case involved”.

Section 123 and 165, Evidence Act came up for consideration for the first time before the Supreme Court in *State of Punjab v. Sodhi Sukhdev Singh*. It was pointed out that the principle behind the exclusionary rule enacted in Section 123 is that a document should not be allowed to be produced in court if such production would cause injury to public interest, and where a conflict arises between public interest in non disclosure and private interest in disclosure, the latter must yield to the former. The Supreme Court held that the documents which embody the minutes of the meetings of the Council of Ministers and indicate the advice which the Council of Ministers gave to the Raj Pramukh and the documents embodying the advice tendered by the Public Service Commission to the Council of Ministers are protected under Section 123. If the head of the department does not give permission for their production, the Court cannot compel the State to produce them. Once the Court came to the conclusion that the document involved fell into the category of “affairs of State”, then it would be left to the head of the department to decide whether its production should be permitted and the Court would not go into the

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question of whether, as a matter of fact, public interest would be injured or not by the disclosure. Kapur, J. has observed:

"The words of Sec. 123 of the Act are very wide and cover all classes of documents which may fall within the phrase "affairs of State", some noxious and others innocuous, and may even appear to be unduly restrictive of the rights of the litigant but if that is the law the sense of responsibility of the official concerned and his sense of fair play has to be trusted. Under that section discretion to produce or not to produce a document is given to the head of the department and the court has not the power to override the ministerial certificate against production".

Subba Rao, J has observed:

"Records relating to affairs of State" in Sec. 123 of the Act mean documents of State whose production would endanger the public interest; documents pertaining to public security, defence and foreign relations are documents relating to affairs of State; unpublished documents relating to trading, commercial or contractual activities of the State are not, ordinarily, to be considered as documents relating to affairs of State, but in special circumstances they may partake of that character and it is a question of fact in each case whether they relate to affairs of State or not in the sense that if they are disclosed public interest would suffer.

In Duncan v Camell Laird Co. Ltd, Viscount Simon, L.C. has stated that:

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69 Ibid at 374
70 Ibid at 375
71 Ibid at 375
72 1942 AC 624
73 1942 AC 624 at p. 642

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"Although an objection validly taken to production, on the ground that this would be injurious to the public interest, is conclusive, it is important to remember that the decision ruling out such documents is the decision of the judge. It is the judge who is in control of the trial, not the executive, but the proper ruling for the judge to give is as above expressed."

In, *Henry Greer Robinson v. State of South Australia*, Lord Blaneshburgh observed that:

“As the protection is claimed on the broad principle of State policy and public convenience, the papers protected as might have been expected, have usually been public official documents of a political or administrative character. Yet the rule is not limited to these documents. Its foundation is that the information cannot be disclosed without injury to the public interests and not that the documents are confidential or official which alone is no reason for their non production”.

*Robinson v. State of South Australia* is the leading authority on the principles governing the privilege, the extent of the privilege, the manner in which it should be claimed and the powers of the court in relation to the claim of state privilege. Following the Robinson case it has been held that where a public officer declines to produce certain documents, claiming privilege under section 123 and 124, it is for the court in the first instance to satisfy itself that the documents relate to any state affairs or their production will be detrimental to public interest.

In deciding the question as to which of these views correctly represents the true legal position under the Act, Section 162 of the Indian

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*Ibid*
Evidence Act, 1972 needs examination. Under Sec. 162 the Court has overriding power to disallow a claim of privilege raised by the State, but in its discretion, the court will exercise its power only in exceptional circumstances when public interest demands. Sections 123 and 162 were enacted in the Act in 1872, were intended to introduce in India the English Law in regard to Crown privilege in the same form in which it obtained in England at the material time. The true state of English Law in or about 1872 A.D, is correctly represented in three English decisions in regard to the Crown privilege in England in the second half of the Nineteenth Century, when the Indian Evidence Act was drafted by Sir James Stephen. He intended to make provisions in the Act which would correspond to the said position in the English Law. In other words Section 123 and 162 are intended to lay down that, when a privilege is claimed by the State in the matter of production of State documents, the total question with regard to the said claim falls within the discretion of the head of the department concerned, and he has to decide in his discretion whether the document belongs to the privileged class and whether its production would cause injury to public interest.

The matter was discussed at length recently by the Supreme Court in State v. Sodhi Sukhdev and has held that the combined effect of section 123 and 162 is that:

Section 162: Production of documents.- A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. Translation of documents.- If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in.


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Section 162: Production of documents.- A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. Translation of documents.- If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in.


i. It is for the court to determine the claim of privilege by giving a decision on the character or class of document, i.e. whether it relates to any affairs of State or not.

ii. In this enquiry which the court is bound to hold, it may well take other evidence in lieu of inspection to determine the character of the document. The jurisdiction conferred on the court to determine the character of the document and the validity of an objection to produce the document is not illusionary or nominal. If the document cannot be inspected, its contents cannot indirectly be proved, but that is not to say that collateral evidence cannot be produced in determining the validity of the objection.

iii. If the affidavit in support of the claim for privileges is found to be unsatisfactory, the Minister or the Secretary making the affidavit should be summoned to face cross examination on relevant points. It would be open to the opponent to put such relevant and permissible questions as may help the court in determining whether the document belongs to the privileged class or not. If the Court comes to the conclusion that the document does not relate to the affairs of the state, it should leave it to the discretion of the head of department whether it should direct its production or not.

Section 123 and 162 together mean that the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. That is a matter for the authority concerned to decide but the Court is competent, and indeed is bound, to hold a preliminary enquiry and determine the validity of the objections to
its production, and that necessarily involves an enquiry into the question as to whether the evidence relates to an affair of State under s. 123 or not.\textsuperscript{78}

In \textit{Amar Chand Butail v. Union of India},\textsuperscript{79} the Supreme court has held that though under Sections 123 and 162 of the Evidence Act, the Court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question, that matter being left for the authority concerned to decide, the court is competent to hold a preliminary enquiry and determine the validity of the objection to its production and that necessarily involves an enquiry into the question as to whether the document relates to affairs of State under Section 123. In view of the fact that Section 123 confers wide powers on the head of the department, this court took the precaution of sounding a warning that the heads of departments should act with scrupulous care in exercising their right under Section 123 and should never claim privilege only or even mainly on the ground that the disclosure of the document in question may defeat the defense raised by the State.

In \textit{Conway v. Rimmer},\textsuperscript{80} The opinion given by Lord Denning was upheld and it was held that the court had the power to examine the document. In this case the law on the subject was revised and it was held as below:

"The courts have and are entitled to exercise a power and duty to hold a balance between the public interest, as expressed by a Minister, to withhold certain documents or other evidence and the public interest in ensuring the proper administration of justice. That does not mean that a court would reject a Minister's view. Full weight must be given to it in every case, and if the Minister's reasons are of a

\begin{footnotesize}
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\item \textsuperscript{78} Ibid at 393.
\item \textsuperscript{79} AIR 1964 SC 1658
\item \textsuperscript{80} (1968) 1 All ER 874.
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character which judicial experience is not competent to weigh then the Minister's view must prevail; but experience has shown that reasons given for withholding whole classes of documents are often not of that character."

In State of U.P. v. Raj Narain and others, the Supreme Court took a different view from that in State of Punjab v. Sodhi Sukhdev Singh case and held that the Court had the residual power to decide whether the disclosure of a document was in the public interest or not and for that purpose it had the power to inspect a document if necessary. The Supreme Court opined as under:

"It is now the well settled practice in our country that an objection is raised by an affidavit affirmed by the head of the department. The Court may also require a minister to affirm an affidavit. That will arise in the course of the enquiry by the Court as to whether the document should be withheld from disclosure. If the Court is satisfied with the affidavit evidence that the document should be protected in public interest from production the matter ends there. If the Court would yet like to satisfy itself the Court may see the document. This will be the inspection of the document by the Court.

In the Judges Transfer case Bhagwati, J. (as the learned Chief Justice then was) observed:

"The basic question to which the court would therefore have to address itself for the purpose of deciding the validity of the objection would be whether the document relates to affairs of State or in other words, it is of such a character that its disclosure would be against the interest of the State or the public service and if so, whether the public interest in its non disclosure is so strong that it must prevail over the public interest in the administration of justice.

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81 (1975)4 SCC 428para42
82 S.P. Gupta v. Union of India, 1981 Supp SCC 87(SCC p. 279, para 69)
and on that account, it should not be allowed to be disclosed. The final decision in regard to the validity of an objection against disclosure raised under Section 123 would always be with the court by reason of Section 162."

Analysing the provisions of Sections 123 and 162 of the Indian Evidence Act, it was opined:

"The court has thus to perform a balancing exercise and after weighing the one competing aspect of public interest against the other, decide where the balance lies. If the court comes to the conclusion that, on the balance, the disclosure of the document would cause greater injury to public interest than its non-disclosure, the court would uphold the objection and not allow the document to be disclosed but if, on the other hand, the court finds that the balance between competing public interests lies the other way, the court would order the disclosure of the document. This balancing between two competing aspects of public interest has to be performed by the court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, because there is no absolute immunity for documents belonging to such class.

Section 124 of the Evidence Act, 1872

This section is really supplementary to section 123 and gives effect to the same principle of public policy, prejudice to the public interest in disclosure. If it were not so then it would be impossible to communicate freely. The objection is sometimes based upon the view that the public interest requires a particular class of communication with or

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83 Ibid at para 73
84 "No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interests would suffer by the disclosure".
85 Lady Dinbai Dinshaw Petit v. Dominion of India, AIR1951Bom72, Governor General in Council v. Peer Md Khuda AIR1950 228.
86 Lady Dinbai Dinshaw Petit v. Dominion of India, AIR1951Bom72, Governor General in Council v. Peer Md Khuda AIR1950EP228
within a public department to be protected from production on the ground such communication might be prejudiced. The prime object of Section 124 is to prevent disclosures to the detriment of public interest. The very basis and foundation of the claim of privilege conferred on public officers under Section 124 is that the disclosure of the contents or information made to public officers in official confidence cannot be made without injury or detriment to public interests.

Wassoodew J, observed about the basis for the privilege under Section 124:

"It is essential to bear in mind the cardinal fact that privilege does not attach to a document merely because it is a State or official document. The foundation of the claim rests on the consequence of disclosure of a communication made in official confidence whose publication the officer to whom it is made considers contrary to the public interests. In my opinion a communication in official confidence requiring protection under Section 124, Evidence Act, must be such as to necessarily involve the willful confiding of secrets with a view to avoid publicity by reason of the official position of the person in whom trust is reposed, under an express or implied promise of secrecy. The test must be whether the disclosure would result in betrayal of the person confiding by the publication of the communication having regard to the nature thereof. The prerogative right therefore has to be distinguished from the evidence showing how it arises in a particular case."

In Public Prosecutor v. P.S. Ismail, it was held that Under Section 124 no revenue officer can be compelled to reveal the source of the information got by him as to commission of any offence against the public

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87 Duncan v. Gamell Laird & Co [1942]AC624  
88 Observed in, Henry Greer Robinson v. State of South Australia AIR 1931 PC 254  
89 In Bhalchandra v. Chanbasappa, AIR 1939 Bom 237 at p. 247  
90 1973 Cri. L.J. 931.
revenue. Similarly, no magistrate, or police officer shall be compelled to disclose the source of the information which he has got as to the commission of any offence

In *State of Andhra Pradesh v. Appanna*, the learned Judge Satyanarayana Raju J. (as he then was) who spoke for the court, observed\(^9\):

> "the privilege under Section 124 has been given not for the benefit of the person making communication but for the protection of the public interest and the dominant intention of the section is to prevent disclosures to the detriment of the public interests. The words "official confidence" indicates that the section applies to communications from one public officer to another public officer, in the discharge of their official duties and not to communications to such officers by outsiders. Communications in official confidence, though they import no special degree of secrecy or protection, include generally all matters communicated by one officer to another in the performance of his duties."

In *State of Haryana v. K.C. Bangar*\(^{92}\) One of the issue raised was that, whether Public Service Commission can claim privilege from production of documents/record regarding selections made by it under Sections 123 and 124 of the Indian Evidence Act, 1872. In this Case the Punjab & Haryana High Court held that Public Service Commission cannot be considered to be State for the purpose of claiming privilege for production of records/documents under Sections 123 and 124 of the Indian Evidence Act, 1872. It was observed by the court that, the need for transparency in working has even been recognized by the Parliament with the enactment of the Right to Information Act, 2005 where the exemption

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\(^9\) (1962) 1 Andh WR 256 at P. 259
\(^{92}\) 2009(1) R.C.R.(Criminal) 822
from disclosure of information is provided for under Section 8 of the Right to Information Act, 2005.

Section 8(2) of the 2005 Act even gives overriding effect to the 2005 Act over the Officials Secrets Act, 1923 where public interest and disclosure outweigh’s harms to the protected interests. Under Section 123, 124 of the Act, what the Commission has in possession is the requisition made by the Government or any appointing authority requiring

8. Exemption from disclosure of information. - (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -(a) information, disclosure of which would prejudicially affect 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;(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;(e) information 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;(f) information received in confidence from foreign government; (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;(h) information which would impede the process of investigation or apprehension or prosecution of offenders;(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:Provided that the decision of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of subsection (1), 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: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeal provided for in this Act.
the Commission to complete the process of selection for the purpose of recommendation for appointment to the posts, written tests or interviews conducted in that process or the criteria adopted by the Commission for the purpose of recommendation. Any authority which is in possession of this record cannot in any manner be said to be in possession of the record which has anything to do with the affairs of the State. The privilege is sought to be claimed by the Commission only with regard to the answer-sheets and the interview proceedings.  

If a public authority takes a position that a certain information should be held to be non disclosable under Section 123 and 124 of the Indian Evidence Act, it will hold good only so long as the relevant Section of the Right to information Act also allows the public authority to withhold such information in public interest. In other words, if within the meaning of the Right to Information Act, information is to be disclosed in public interest and if the same information is held confidential in public interest within the meaning of the Indian Evidence Act, then the provisions of the Indian Evidence Act shall be inconsistent with the Right to Information Act. There may be circumstances, however, where, as in Section 8(1)(j) of the Right to Information Act, a personal information can be held to be non disclosable unless warranted by public interest. If such personal information is also held confidential under any Section of the Indian Evidence Act on grounds of public interest, there shall be perfect compatibility and harmony between that withholding of the information or any order to withhold the information under Section 8(1)(j) of the Right to information Act.  

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95 Shri Milap Choraria vs CBDT (No.CIC/AT/C/2008/00025 dated 27-7-2009),
Professional communications

Section 126 of the Indian Evidence Act States that, No barrister, attorney, pleader or vakil shall, at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

In Southwark and Vauxhall Water Company Cotton, L.J., has observed:

"If a document comes into existence for the purpose of being communicated to the solicitor with the object of obtaining his advice, or for enabling him either to prosecute or defend an action, then it is privileged, because it is something done for the purpose of serving as a communication between the client and the solicitor. The fact that it was not laid before him can, in my opinion, make no difference; the object of the rule and the principle of the rule is that a person should not be in any way fettered in communicating with his solicitor, and that must necessarily involve that he is not to be fettered in preparing documents to be communicated to his solicitor."

The Commissions of Inquiry Act (1952)

Under the Commissions of Inquiry Act the State and the Central Government can set up a commission of inquiry to investigate into the facts specified in the notification issued by the government for the purpose. On
May 14, 1986 the President issued an Ordinance98 thereby amending the Act. Under the amendment, the Government can protect the proceedings and the findings of the Commission from the disclosure from Parliament, if the interests of the sovereignty and relations with foreign countries of public interests are in danger99.

The Industrial Disputes Act (1947)

There are certain matters which are required to be kept confidential under Industrial Law. A protection is given to business and trade secrets. The Industrial Disputes Act specifically provides that:100

“There shall not be included in any report or award under this Act, any information obtained by a conciliation officer, Board, Court, Labour Court, Tribunal, National Tribunal or an arbitrator in the course of any investigation or inquiry as to a trade union or as to any individual business (whether carried on by a person, firm or company) which is not available otherwise than through the evidence given before such officer, Board, Court, if the trade union, person, firm or company, in question has made a request in writing to the conciliation officer, Board, Court, as the case may be, that such information shall be treated as confidential; nor shall such conciliation officer or any individual member of the Board, or Court or the presiding officer of the Labour Court, Tribunal or National Tribunal or the arbitrator or any person present at or concerned in the proceedings disclose any such information without the consent in writing of the secretary of the trade union or the person, firm or company in question, as the case may be, provided that nothing contained in this section shall apply to a disclosure of any such information for the purposes of a

98 No. 6 of 1986.
100 Section 21 of Industrial Disputes Act (1947)
Without this information, the workers and unions face a number of difficulties while fighting for wage issues. Article 21 of the Act says that confidential information will not be disclosed if the party which is supplying the information so requests. After such a request is made the party can withhold information and publication of any such information is liable for punishment.101

The Atomic Energy Act (1962)

The Act says that no suit, prosecution or other legal proceedings shall lie against the Government or any other person or authority in respect of anything done by it or him in good faith in pursuance of this Act or any rule or order made there under”. Thus, there is no legal provision to hold the authorities responsible for any nuclear mishaps102.

The Atomic Energy Act 1962 also imposes restrictions on disclosure of information, which are103:

(1) The Central Government may by order restrict the disclosure of information, whether contained in a document, drawing photograph, plan, model, or in any other form whatsoever, which relates to, represents or illustrates:

(a) an existing or proposed plant used or proposed to be used for the purpose of producing or developing or using atomic energy, or

(b) Or the purpose or method of operation of any such existing or proposed plant, or

101 Ibid. p.18.
102 Sec. 29 of Atomic Energy Act, 1962
103 Sec. 18 of Atomic Energy Act, 1962
(c) Or any process operated or proposed to be operated in any such existing or proposed plant.

(2) No person shall:

(a) disclose, or obtain or attempt to obtain any information restricted under sub-section (1),

(b) Or disclose, without the authority of the Central Government or any information obtained in the discharge of any functions under this Act or in the performance of his official duties.

(3) Nothing in this section shall apply:

(i) to the disclosure of information with respect to any plant of a type in use for purposes other than the production, development or use of atomic energy, unless the information discloses that plant of that type is used or proposed to be used for the production, development or use of atomic energy or research into any matters connected there with; or

(ii) where any information has been made available to the general public otherwise than in contravention of this section, to any subsequent disclosure of that information.104

Under this Act severe restrictions on the disclosure of information have been imposed. This law prohibits disclosure of any information restricted by Central Government. It thus prohibits sharing of information even in matters such as what hazards the surrounding population of atomic reactor can have. The Act empowers the Chairman of the Atomic Energy Commission to refuse in public interest, information related to the project, environmental problems and hazards and other aspects of the

104 Ibid. p. 152.
nuclear power projects in the country. Clause 19 of the Act empowers the Central Government “to declare as restricted any information not so far published or otherwise made public relating to the theory, design, construction and operation of nuclear reactors, research and technological work on materials and process involved in or derived from atom”.

The All India Services (Conduct) Rules, 1968:

The Central Civil Services (Conduct) Rules prohibit unauthorized communication of information (similar provisions exist for the state government employees under their respective Rules).

Unauthorized communication of information:105

No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.

Explanation- Quotation by a Government servant (in his representation to the Head of Office, or Head of Department or President) of or from any letter, circular or office memorandum or from the notes on any file, to which he is not authorised to have access, or which he is not authorized to keep in his personal custody or for personal purposes, shall amount to unauthorized communication of information within the meaning of this rule”.

105 Section 95 Sec.9 of The All India Services (CONDUCT) Rules, 1968
The Shourie Committee examined this issue and stated as follows:

“There is a widespread feeling that the Central Civil Services (Conduct) Rules, 1964, and corresponding rules applicable to Railways, Foreign Services and All India Services, inhibit government servants from sharing information with public. The accent in these rules is on denial of information to public. This situation has obviously to change if freedom of Information Act is to serve its purpose and if transparency is to be brought about in the system”.

It has been recommended by the Administrative Reforms Commission that:

“Every Government servant shall, in performance of his duties in good faith, communicate to a member of public or any organisation full and accurate information, which can be disclosed under the Right to Information Act, 2005”.

Explanation – Nothing in this rule shall be construed as permitting communication of classified information in an unauthorized manner or for improper gains to a Government servant or others.

Ministers Oath of Secrecy:

Every Minister, whether for the Union or a State, while assuming office, is administered an oath of secrecy which is as follows:

“I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union/State except as may be required for the due discharge of my duties as such Minister”.

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107 Administrative Reforms Commission.
A Minister is a bridge between the people and the Government and owes his primary allegiance to the people who elect him. The existence of this provision of oath of secrecy and its administration along with the oath of office appears to be a legacy of the colonial era where the public was subjugated to the government. However, national security and larger public interest considerations of the country’s integrity and sovereignty may require a Minister or a public servant with sufficient justification not to disclose information. But a very public oath of secrecy at the time of assumption of office is both unnecessary and repugnant to the principles of democratic transparency, accountability, representative government and popular sovereignty.¹⁰⁹

Manual of Office Procedure: Anti Right to Information:

The relevant portions of the Manual of office procedure which conflict with the Right to Information Act are reproduced below:¹¹⁰

"Unauthorised communication of official information
– Unless authorised by general or specific orders, no official will communicate to another official or a non-official, any information or document(s) (including electronic document(s)) which has come into his possession in the course of his official duties".

Confidential character of notes or files¹¹¹

1) The notes portion of a file referred by a department to another will be treated as confidential and will not be referred to any authority outside the secretariat and attached offices without the general or specific consent of the department to which the file belongs. If the information is in the electronic form it will be handled by authorized official only.

¹⁰⁹ www.commonlii.org/ng/legis/num_act/oa79/
¹¹⁰ Para 116 of Manual which conflict with the Right to Information Act.
¹¹¹ Ibid 118
It has been Recommended by Administrative Reforms Commission that the Manual of Office Procedure need to be reworded as follows\textsuperscript{112}:

Communication of Official Information: Every Government Servant shall, in performance of his duties in good faith, communicate to a member of public or any organization full and accurate information, which can be disclosed under the Right to Information Act. (Nothing stated above shall be construed as permitting communication of classified information in an unauthorized manner or for improper gains to a Government Servant or others.

It is thus quite obvious that such restricted provisions are in conflict with the now fully recognized Right to information of the people.

\textbf{Restrictions Imposed by the Right to Information Act, 2005} \textsuperscript{113}

The Right to Information Act, 2005 itself is self-restrictive in nature. The Act does not make the Right to Information an absolute right but imposes restriction on this right. Section 3 of the Act itself provides that subject to provisions of this Act, all citizens shall have the right to information. So the right provided to citizens by the Act, has to be exercised subject to the limitations embodied in the Act itself. The Right to Information Act provides that certain sensitive information may be withheld from the public, if the public authority in possession of the information thinks that the same is likely to jeopardize either national interests or to violate the trade secrets. These exceptions are found in primarily, in Sec. 8 and Sec. 9 of the Right to Information Act, 2005

\textsuperscript{112} Para,116 of Manual of Office Procedure. It also recommended that b. Para 118 (1) should be deleted. The State Governments may be advised to carry out similar amendments in their Manuals, if such provisions exist therein.

Section 8114 lays down certain qualified exemptions, which are subject to the Public Interest Test. Here, the public authority in possession of the information, must consider whether there is greater public interest in disclosing the information or withholding the information (popularly called balancing the public interest or herein referred to as the Public Interest Test). The identity of the organizations exempted from the provisions of

Section 8114.

(i) Information, disclosure of which would prejudicially affect 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;

(ii) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(iii) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(iv) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(v) Information 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.

(vi) Information received in confidence from foreign government.

(vii) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.

(viii) Information which would impede the process of investigation or apprehension or prosecution of offenders.

(ix) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(x) Information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State legislature shall not be denied to any person.
Right to Information Act has been mentioned in Second Schedule of the Act, in conformity with Section 24 of the Act.

Sec. 9 of the Right to Information Act, 2005, lays down that any information, whose copyright is not held by the state, cannot be provided by it under any circumstances. This exemption laid down in the Right to Information Act 2005, is not a qualified exemption, but rather an absolute one. It is primarily intended to prevent misuse of the Right to Information Act 2005, by the Governmental agencies, especially in matters of infringement of copyright and the like.

The Exclusion of certain organizations

Under the Act Central Intelligence agencies and security agencies like the Intelligence Bureau(IB), Research Analysis Wing (RAW), Directorate of Revenue Intelligence (DRI), Central Economic Intelligence Bureau (CEIB), Directorate of Enforcement (DE), Narcotics Control Bureau (NCB), Aviation Research Centre(ARC), Special Frontier Force(SFF) , Border Security Force (BSF) , Central Reserve Police Force (CRPF), Indo Tibetan Border Force (ITBP), Central Industrial Security Force (CISF) , National Security Guard (NSG), Assam Rifles, Special Service Bureau (ARSSB) , Criminal Investigation Department (CID) Special Branch of Andaman and Nicobar Island (SBAN), CID Crime Branch of Dadra Nagar Haveli and Special Branch, Lakshadweep Police are exempted from the purview of Right to Information Act. Similar agencies established by the State Governments will also be excluded. Information relating to corruption and human rights must be given but only

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117 Section 24 of RTI Act, 2005.
with the approval of the Central or State Information Commission as the case may be.

Section 24 of the Right to Information Act 2005, dictates that the intelligence and security organisations cannot fall under the purview of this act. It also makes a statement to the effect that any information given by such agencies to the Government to would be outside the scope of the applicability of this act. These organizations are sought to be mentioned in Second Schedule of the Right to Information Act, 2005, which has a comprehensive list of 18 different organizations. However, the Section also lays down a proviso to prevent the basic aim of the act from being violated by declaring that allegations of corruptions and violations of human rights cannot be excluded under this act. Therefore, this section can be said to be the quintessence of the spirit of democracy as it provides for information to the public, but at the same time, puts a reasonable limit in place over the same.\textsuperscript{118}

Under powers conferred by Section 24 (4) of the Right to Information Act 2005, the only notification till date has come from the Office of Governor of State of Tamil Nadu, dated 14.10.2005, and it reads to exclude many of the Correcting Agencies of the State like Cyber Crime Cell, Idol Wing, Police Radio branch, Coastal Security Group, Finger Prints bureau, etc from the act. There are a number of intelligence and security organizations established by the Central Government which are not there under the purview of the Act.\textsuperscript{119}

\textsuperscript{118} Ibid.
\textsuperscript{119} Intelligence Bureau, Research and Analysis wing of the Cabinet Secretariat, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, National Security Guards, Assam Rifles, Sashastra Seema Bal, CIB Special Branch, Andaman and Nicobar, The Crime Branch – CID – CB, Dadra and Nagar Haveli, Special Branch, Lakshadweep Police, Special Protection Group, Defence Research and
The Government Securities Act, 2006

According to this Act, no person shall be entitled to inspect or to receive information derived from any Government security in the possession or custody of the Government or from any book, register or other document kept or maintained by or on behalf of the Government in relation to Government securities or any Government security, save in such circumstances and manner subject to such conditions as may be prescribed.120

Grounds of Restrictions under Indian Constitution

Clause (2) of Article 19 contains the grounds on which reasonable restrictions on the freedom of speech and expression can be imposed:(a) Security of the State(b) Friendly Relations with foreign states(c) Public Order(d) Decency and Morality(e) Contempt of Court(f) Defamation(g) Incitement to an offence(h) Sovereignty and integrity of India121

In this manner we conclude that participation in any process presupposes the existence of knowledge about the process itself, its operation and its outputs as well as outcomes. And for that access to relevant information is the necessity. So long as the Government and the administrative processes remain shrouded in secrecy, informed participation of citizenry becomes a non-starter.

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120 The Government Security Act, 2006, Section 24
121 Dr. Ambrish Saxena, ‘Right to Information and Freedom of Press’, Kanishka Publishers Distributors, New Delhi, p. 30. (these have been already discussed in detail in chapter 3 of the thesis from page 26 to 56)