CURTAILING TRANSPARENCY: A CRITICAL ANALYSIS OF SECTION 8(1)(h) OF THE RIGHT TO INFORMATION ACT, 2005

ABSTRACT

Section 8(1)(h) of the Right to Information Act, 2005 relieves public authorities of the obligation to disclose information which would impede the process of investigation or apprehension or prosecution of offenders, and it is a recurring ground for refusing requests that touch criminal, vigilance and disciplinary proceedings. This article examines whether the clause, as drafted and applied, unduly restricts the right to information. Using a doctrinal and a comparative method, it reads the clause within the architecture of the Act, including the reasons requirement in section 7(8), the public interest override in section 8(2), the twenty-year rule in section 8(3), severability under section 10 and the burden of proof in section 19(5), and it traces the case law from *Bhagat Singh v. Chief Information Commissioner* to *Brij Mohan v. Central Information Commission*. It argues that the defect lies less in the absence of safeguards than in the clause's failure to state a likelihood standard, its indifference to the stage an investigation has reached, and the dormant, discretionary character of the override, a problem sharpened by the 2025 substitution of section 8(1)(j). Drawing on the law enforcement exemptions of the United Kingdom, the United States, Canada and Australia, it proposes a stage-sensitive standard of reasonable expectation of harm, an enforceable content requirement for reasons supported by confidential indices, a mandatory recorded consideration of public interest, and a shortened disclosure horizon once investigation closes.

Keywords: right to information; section 8(1)(h); harm test; public interest override; criminal investigation; transparency

I. INTRODUCTION

When Parliament enacted the Right to Information Act, 2005, it gave statutory form to a right which the Supreme Court had already located within the guarantee of freedom of speech and expression in Article 19(1)(a), the Court having held in *State of Uttar Pradesh v. Raj Narain* that citizens have a right to know what public functionaries do in the public's name,[1] and having

[1] State of Uttar Pradesh v. Raj Narain, (1975) 4 SCC 428, ¶ 74 (India) (Mathew, J., concurring).

treated, in *S.P. Gupta v. Union of India*, openness in the functioning of government as the norm and secrecy as an exception justified only by the most pressing public interest.[2] The Act converted that constitutional premise into an enforceable procedure, since section 3 confers the right on every citizen, section 6(2) relieves the applicant of any obligation to give reasons for the request, and section 19(5) places on the officer who denied a request the burden of proving in appeal that the denial was justified.[3] The Preamble ties this scheme to the promotion of transparency and accountability in the working of every public authority and to the containment of corruption, while recording at the same time that openness must be harmonised with other public interests, including the efficient operation of government and the preservation of the confidentiality of sensitive information.[4]

The exemptions in section 8(1) are the principal instruments through which that harmonisation is carried out, and clause (h), which removes the obligation to give "information which would impede the process of investigation or apprehension or prosecution of offenders", performs a function that no access regime can do without, because the disclosure of a witness's identity, of the direction an inquiry has taken, or of the evidence gathered against a suspect can defeat the enforcement of the criminal law itself.[5] The difficulty is that the clause is framed in a handful of words that leave most of the work to the officer who applies it, which means that it does not say how probable the impediment must be, it draws no distinction between an investigation that began last week and one that ended in a charge-sheet several years ago, and it does not state whether "investigation" is confined to criminal investigation or extends to tax, vigilance and disciplinary inquiries. The recurring challenges to clause (h) refusals that have reached the Delhi High Court suggest that public authorities have at times treated these silences as a licence to refuse whenever some proceeding is pending, while the statistics compiled from the annual reports of the Central Information Commission offer only a partial picture of how often the clause is invoked.[6]

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[2] S.P. Gupta v. Union of India, 1981 Supp SCC 87, ¶ 67 (India) (Bhagwati, J.).

[3] The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, §§ 3, 6(2), 19(5) (India) [*hereinafter* RTI Act].

[4] *Id.* pmbl.

[5] *Id.* § 8(1)(h).

[6] On the statistics, see Venkatesh Nayak, Trends from the CIC's Annual Report for 2014-15: RTI Applications Decline, CIC Imposes Fewer Penalties, Commonwealth Hum. Rts. Initiative (Mar. 17, 2016), https://www.humanrightsinitiative.org/blog/trends-from-the-cics-annual-report-for-201415-rti-applications-decline-cic-imposes-fewer-penalties.html, https://perma.cc/XR3H-THJV (last visited Oct. 20, 2026) [*hereinafter* Nayak, Trends]. On the challenges before the Delhi High Court, see Bhagat Singh v. Chief Information Commissioner, W.P.(C) 3114/2007 (Del. HC Dec. 3, 2007) (India); B.S. Mathur v. Public Information Officer of

This article asks whether section 8(1)(h), as drafted and as applied, unduly restricts the citizen's right to information, and, if it does, whether the remedy lies in legislative amendment or in the more rigorous use of tools that the Act already contains. The question has acquired a new urgency, because the substitution of section 8(1)(j) by section 44(3) of the Digital Personal Data Protection Act, 2023, brought into force in November 2025, has removed the public interest proviso from the personal information exemption and has left the general override in section 8(2) as the principal route by which disclosure may be secured against an exemption that, like clause (h), carries no public interest qualification of its own.[7] How that override operates against the investigation exemption can therefore no longer be treated as a peripheral question.

The argument proceeds in six steps. Part II reads the clause within the architecture of the Act and corrects the assumption, which the clause's brevity invites, that the Act lacks a public interest override, a reasons requirement or a time limit, when it in fact contains all three in sections 8(2), 7(8)(i) and 8(3). Part III traces the judicial treatment of the clause and sets the line of authority that begins with *Bhagat Singh v. Chief Information Commissioner* against the more deferential reasoning of *Brij Mohan v. Central Information Commission*. Part IV identifies the structural problems that the case law has not resolved. Part V examines how the United Kingdom, the United States, Canada and Australia frame their law enforcement exemptions. Part VI proposes reforms, addressing along the way the objections that investigating agencies would be likely to raise, before Part VII concludes.

II. THE STATUTORY ARCHITECTURE OF SECTION 8(1)(h)

A. The Text and Its Elements

Section 8(1) opens with a non obstante clause, providing that notwithstanding anything contained in the Act there shall be no obligation to give any citizen the categories of information that follow, and clause (h) identifies the category as "information which would impede the process of investigation or apprehension or prosecution of offenders".[8] There are

Delhi High Court, W.P.(C) 295 & 608/2011, 180 (2011) DLT 303 (Del. HC June 3, 2011) (India); Union of India v. Manjit Singh Bali, W.P.(C) 6341/2015 (Del. HC Aug. 6, 2018) (India); Amit Kumar Shrivastava v. Central Information Commission, W.P.(C) 3701/2018 (Del. HC Feb. 5, 2021) (India); Brij Mohan v. Central Information Commission, W.P.(C) 606/2017 (Del. HC Oct. 5, 2023) (India).

[7] Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023, § 44(3) (India); Ministry of Electronics & Info. Tech., Notification No. G.S.R. 843(E), Gazette of India, Extraordinary, Part II, Sec. 3(i) (Nov. 13, 2025) (India) (bringing §§ 44(1) and 44(3) into force on publication).

[8] RTI Act § 8(1)(h).

four elements of that formulation that require attention, because each has produced interpretive disputes that the text does not resolve.

The *first* element is the operative verb. By using "would impede", the clause states a conclusion about the consequence of disclosure rather than describing a class of document, and the exemption is therefore harm-based in form rather than class-based: it does not exempt investigation records as such, but only information whose disclosure would produce a particular effect. The distinction matters in practice, since a class-based exemption permits refusal on proof that a document belongs to an investigation file, whereas a harm-based exemption requires proof of the effect, and the international standards against which access legislation is ordinarily measured treat a harm requirement as an essential condition of a legitimate exception.[9] The clause does not, however, specify any degree of probability, and the word "would" can be read either as demanding something close to certainty that the process will be impeded or, far more loosely, as satisfied by any apprehension of impediment that the officer happens to hold; the Act contains no definition that settles the choice.

The *second* element is the object of the impediment, which is not the investigation, apprehension or prosecution as an outcome but the "process" of each, a word that carries the clause beyond information whose disclosure would defeat an inquiry outright to information whose disclosure would delay, complicate or distort the manner in which it is conducted. The *third* element is the scope of "investigation". Nothing in the Act confines the word to investigation under the Bharatiya Nagarik Suraksha Sanhita, 2023,[10] and the Delhi High Court has applied the clause both to an investigation by the Income Tax Department and to a disciplinary inquiry against a judicial officer,[11] although the word "offenders" at the end of the clause indicates that Parliament had in view proceedings capable of culminating in a finding that an offence was committed, a textual point that the courts have not squarely addressed. The *fourth* element is that the clause names three distinct processes and joins them disjunctively, so that an authority may rest a refusal on impediment to apprehension after investigation has closed, or on impediment to prosecution after the accused is in custody, and any argument that

[9] ARTICLE 19, The Public's Right to Know: Principles on Freedom of Information Legislation princ. 4 (June 1999), https://www.access-info.org/wp-content/uploads/Article_19_principles_on_the_public_right_to_know.pdf, https://perma.cc/8PTW-HYMN (last visited Oct. 20, 2026) [*hereinafter* ARTICLE 19, Principles].

[10] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India) [*hereinafter* BNSS].

[11] Bhagat Singh, W.P.(C) 3114/2007, ¶¶ 2–4; B.S. Mathur, W.P.(C) 295 & 608/2011, ¶¶ 3, 5.

the exemption lapses with the end of investigation must reckon with that structure rather than ignore it.

B. The Surrounding Provisions

The clause cannot be read in isolation, because at least six other provisions of the Act qualify how it operates, and the brevity of clause (h) tends to obscure them. Section 7(8)(i) requires the Public Information Officer, whenever a request is rejected, to communicate the reasons for the rejection to the applicant,[12] so that the Act already demands reasons; what it does not prescribe is the content that those reasons must have, it is that gap, rather than the absence of any requirement, which helps to explain refusals that do no more than reproduce the words of the clause, a pattern visible in the decisions examined in Part III.

Section 8(2) provides that, notwithstanding anything in the Official Secrets Act, 1923 or any of the exemptions permissible under sub-section (1), a public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interests.[13] The override therefore applies to clause (h) as fully as it applies to any other clause of section 8(1). Its weakness lies not in its absence but in its form, since it is framed as a permission rather than a duty, it does not require the officer to record that the balance was considered at all, and it identifies no factors by which the weighing is to be carried out.

Section 8(3) provides that information relating to any occurrence, event or matter which took place twenty years before the date of the request shall be provided, subject to the exceptions in clauses (a), (c) and (i) of sub-section (1), with a proviso that any question about the date from which the period is computed shall be decided by the Central Government, subject to the usual appeals.[14] Because clause (h) is not among the excepted clauses, investigation material becomes disclosable after twenty years, and the Act accordingly already contains a sunset for this exemption, though a period calibrated for the general run of state information fits poorly with material whose sensitivity ordinarily ends when a charge-sheet is filed or a case is closed.

Section 10(1) requires access to be given to the part of a record which does not contain exempt information and which can reasonably be severed from the part that does,[15] so that the refusal

[12] RTI Act § 7(8)(i).
[13] *Id.* § 8(2).
[14] *Id.* § 8(3).
[15] *Id.* § 10(1).

of an entire file, on the ground that some portion of it would impede an investigation, is itself contrary to the Act. Section 19(5) places the onus of proving that a denial was justified on the officer who denied the request, and section 20(1) empowers the Commission to impose a penalty on an officer who has, without reasonable cause, refused a request or who has mala fide denied it.[16] Finally, section 24(1) excludes from the Act the intelligence and security organisations listed in the Second Schedule, together with information furnished by them to the Government, subject to a proviso that information pertaining to allegations of corruption and human rights violations is not excluded, although information about human rights violations may be provided only with the approval of the Central Information Commission and within forty-five days;[17] since the Central Bureau of Investigation was added to the Second Schedule in 2011, requests concerning its investigations often engage section 24 before they reach clause (h).[18]

Read together, these provisions show that the Act's response to the risk of overbroad refusal is incomplete rather than missing. It demands reasons without prescribing their content, permits a public interest override without requiring that it be considered, provides a sunset fixed at twenty years, compels a severance that officers and Commissions may overlook, and imposes a burden of proof that, in several of the refusals reviewed in Part III, was discharged by assertion alone. The problems examined in Part IV arise within that architecture, and the reforms proposed in Part VI are accordingly directed at completing it rather than replacing it.

C. Comparison with the Neighbouring Clauses

The 2005 Act replaced the Freedom of Information Act, 2002, which received assent but was never brought into force and which section 31 of the 2005 Act repealed.[19] Clause (h) has not been amended since enactment, and the contours of the exemption have therefore been settled largely by the Information Commissions and the High Courts rather than by Parliament, which is itself a reason to attend closely to the standard that the case law has produced.

[16] *Id.* §§ 19(5), 20(1).

[17] *Id.* § 24(1) & proviso.

[18] Ministry of Personnel, Pub. Grievances & Pensions, Dep't of Pers. & Training, Notification No. G.S.R. 442(E), F. No. 1/3/2011-IR, Gazette of India, Extraordinary, Part II, Sec. 3(i) (June 9, 2011) (India) (adding the Central Bureau of Investigation, the National Investigation Agency and the National Intelligence Grid to the Second Schedule).

[19] The Freedom of Information Act, 2002, No. 5, Acts of Parliament, 2003 (India); RTI Act § 31.

Comparison with the neighbouring clauses sharpens the point about the degree of harm required. Clause (a) exempts information whose disclosure "would prejudicially affect" the sovereignty, integrity and security of India and related interests, and clause (g) exempts information whose disclosure "would endanger the life or physical safety of any person", while clauses (d) and (e), which deal with commercial confidence and fiduciary relationships, withhold protection where the competent authority is satisfied that the larger public interest warrants disclosure.[20] Clause (h) shares the consequence-based form of clauses (a) and (g) but carries none of the internal public interest qualification found in clauses (d) and (e), so the only route to disclosure against it, before the twenty-year period in section 8(3) expires, is section 8(2). After the substitution of clause (j) in November 2025, the personal information exemption stands in the same position, and the practical importance of the general override has grown accordingly.

III. JUDICIAL INTERPRETATION

A. Bhagat Singh and the Requirement of Germane Reasons

The foundational authority is the decision of S. Ravindra Bhat J in *Bhagat Singh v. Chief Information Commissioner*, delivered by the Delhi High Court on 3 December 2007.[21] The petitioner had sought information from the Income Tax Department, whose Public Information Officer rejected the application under section 8(1)(j) on the ground that the information was personal and related to dowry, and the appellate authority maintained that refusal and added section 8(1)(h) as a further ground.[22] The Central Information Commission set aside the reliance on clause (j) but directed that the information be disclosed only after the entire process of investigation and tax recovery was complete in every respect, and it was that condition which the petitioner challenged.[23] The court began from the proposition that access under section 3 is the rule and exemption under section 8 the exception, so that section 8, being a restriction on a fundamental right, must be strictly construed and must not be interpreted in a manner that overshadows the right itself; on clause (h) specifically, it held that the mere existence of an investigation cannot be a ground for refusal, that the authority withholding information must give persuasive reasons why its release would hamper the investigation, that those reasons must

[20] RTI Act § 8(1)(a), (d), (e), (g).
[21] Bhagat Singh, W.P.(C) 3114/2007.
[22] *Id.* ¶¶ 2–4.
[23] *Id.* ¶¶ 5–6.

be relevant to that question, and that the authority's opinion that the process would be hampered must be reasonable and grounded in some material, since otherwise clause (h) and similar provisions would become a convenient means of avoiding requests.[24] Finding that the orders before it disclosed no reasons at all on that question, the court set aside the condition tying disclosure to the completion of recovery and directed that the information be released within two weeks.[25]

Three features of that reasoning have shaped the later law. The judgment converts the bare words “would impede” into a standard of reasonableness grounded in material, which in substance approaches the reasonable expectation tests found in other jurisdictions even though the court did not borrow their language. It treats the existence of an investigation as a necessary rather than a sufficient condition, so that the authority must connect the particular information sought to a particular risk. And it rests the rigour of the standard on the constitutional status of the right, which gives the rule of strict construction a firmer footing than a mere canon of statutory interpretation would supply.

B. B.S. Mathur and the Extension to Disciplinary Inquiries

In *B.S. Mathur v. Public Information Officer of Delhi High Court*, decided on 3 June 2011, S. Muralidhar J examined refusals made under clause (h), read with rule 5(b) of the Delhi High Court (Right to Information) Rules, 2006, of information sought by a member of the Delhi Higher Judicial Service who had been placed under suspension pending disciplinary action.[26] The petitioner’s first application had been refused while the inquiry was in progress, and a further application, filed after the Inquiry Officer had submitted his report, was refused on the same ground.[27] The court held that the scheme of the Act makes disclosure the rule and non-disclosure the exception, that an authority seeking to withhold information must show that it falls within section 8, that the mere reproduction of the wording of the statute is not sufficient when clause (h) is invoked, and that the burden lies on the authority to show in what manner disclosure would impede the investigation; finding that burden undischarged, it directed disclosure.[28]

[24] *Id.* ¶ 13.
[25] *Id.* ¶¶ 14, 16, 18.
[26] B.S. Mathur, W.P.(C) 295 & 608/2011, ¶ 3.
[27] *Id.* ¶¶ 5, 8, 10.
[28] *Id.* ¶¶ 19, 22.

The decision matters for two reasons that the literature on the clause has tended to pass over. It applied clause (h) to a departmental inquiry and, on the reading of the judgment offered here, did not examine whether such an inquiry is an "investigation" into "offenders", and so accepted a broad reading of the clause's scope while insisting on a strict reading of its threshold.

C. Amit Kumar Shrivastava and the Charge-Sheet Stage

The same principles were applied by Jayant Nath J in *Amit Kumar Shrivastava v. Central Information Commission*, decided on 5 February 2021.[29] The petitioner, against whom the Central Bureau of Investigation had registered a case and a departmental charge-sheet had been issued, filed an application in September 2016 seeking point-wise information on twenty-five matters, and he alleged that the Central Public Information Officer had concealed the cases registered under the Indian Penal Code and the Prevention of Corruption Act; the information was refused under clause (h), and the Commission dismissed his second appeal on the footing that the criminal proceedings arising from the Bureau's charge-sheet and the departmental disciplinary proceedings were both pending.[30] Relying on *Bhagat Singh* and *B.S. Mathur*, the court held that an authority which invokes clause (h) bears the burden of showing in what manner disclosure could impede the investigation, and that it must give convincing reasons explaining how and why disclosure of the information in question would impair or hamper the investigation or prosecution.[31] Observing that the impugned order revealed only that a charge-sheet had been filed and that proceedings were pending, without spelling out any reason why disclosure would hamper either set of proceedings, it quashed the order and remanded the matter to the Commission for fresh consideration.[32]

The decision exposes the weakest variety of clause (h) refusal, namely a refusal that rests on the pendency of proceedings after the investigative stage has closed. Once a police report is forwarded to the Magistrate under section 193(3) of the Bharatiya Nagarik Suraksha Sanhita, the accused becomes entitled under section 230 to copies of the police report, the first information report, the statements of the witnesses on whom the prosecution proposes to rely and the other documents forwarded with the report, as he was entitled under section 207 of the

[29] Amit Kumar Shrivastava, W.P.(C) 3701/2018.
[30] *Id.* ¶¶ 2–3, 6, 8, 10.
[31] *Id.* ¶¶ 16, 18.
[32] *Id.* ¶¶ 18–19.

Code of Criminal Procedure, 1973 before it,[33] with the result that much of the material an authority might wish to protect is already in the hands of the person best placed to misuse it. A refusal at that stage must therefore identify some harm to apprehension or prosecution that survives the statutory disclosure to the accused, and in *Amit Kumar Shrivastava* no such harm was even articulated.

D. The Counter-Current: Aditya Bandopadhyay and Brij Mohan

It would be inaccurate to present the case law as uniformly restrictive of clause (h). In *Central Board of Secondary Education v. Aditya Bandopadhyay*,the Supreme Court held that the approach, adopted by some High Courts, of reading section 8 narrowly might not be the correct one, and that when section 8 exempts information from disclosure it should not be treated as a fetter on the right to information but as a provision protecting other public interests of equal importance.[34] The Court added that unrestrained and impractical demands for information would be counter-productive because they would burden the efficiency of the administration, and that the Act gives other public interests weight alongside transparency.[35] Although the case concerned the fiduciary exemption in clause (e) rather than clause (h), these observations have been invoked in support of a more generous reading of every exemption, and they sit uneasily beside the rule of strict construction stated in *Bhagat Singh*.

The clearest recent instance of a deferential approach to clause (h) is *Brij Mohan v. Central Information Commission*, decided by Subramonium Prasad J on 5 October 2023.[36] The petitioner, a retired officer of the Indian Audit and Accounts Service, had been examined by the Central Bureau of Investigation in its investigation into irregularities at the National Spot Exchange Limited, and after the Bureau recommended action against certain officers in a report of July 2015, a show cause notice was issued to him in April 2016.[37] He sought from the Department of Economic Affairs a copy of the Bureau's report, the notings recorded while processing it, the action taken report, the comments of the Central Vigilance Commission and the final orders passed by the Minister; the request was refused under clause (h), and the Commission upheld the refusal both on that ground and on the ground that the Bureau is

[33] BNSS §§ 193(3), 230; Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, §§ 173, 207 (India).
[34] Central Board of Secondary Education v. Aditya Bandopadhyay, (2011) 8 SCC 497, ¶ 33 (India).
[35] *Id.* ¶ 37.
[36] Brij Mohan, W.P.(C) 606/2017.
[37] *Id.* ¶¶ 2–7.

excluded from the Act by section 24.[38] The petitioner relied on *Union of India v. Manjit Singh Bali*, in which a coordinate bench had held that a bare statement that disclosure would impede an investigation is insufficient and that there must be specific disclosures as to how the information sought would do so.[39]

The court dismissed the petition, holding that the information sought would impede an investigation into a large-scale fraud involving many accused, that clause (h) exempts information of that kind, and that disclosure would impede an ongoing investigation if the material reached other offenders.[40] It distinguished the authorities on which the petitioner relied on the ground that most of them concerned cases in which investigation was complete and a charge-sheet had been filed, where information contained in the charge-sheet and placed before the court could be disclosed even to third parties, whereas the investigation before it was still ongoing.[41] It went on to consider whether the information was needed to answer the show cause notice and concluded that it was not, examining the point, as it said, only to satisfy its conscience that the petitioner's rights and the principles of natural justice were not prejudiced.[42]

Brij Mohan is defensible on its facts, since a report recommending action against several officials in an investigation of that scale plausibly contains material whose disclosure could alert persons who remain under inquiry. Its reasoning nonetheless departs from *Bhagat Singh* in two respects. It infers impediment from the nature and scale of the investigation rather than from material placed by the authority showing how the particular documents would hamper it, which is the kind of general inference that *Bhagat Singh* and *Manjit Singh Bali* had held to be insufficient. And it does not appear to have considered section 10, although the request extended to notings, the action taken report and ministerial orders, some of which may well have been severable from the Bureau's findings. The decision does, however, state expressly a distinction that *Amit Kumar Shrivastava* had applied without naming it and that the proposals in Part VI adopt, namely that the claim to protection is at its strongest while investigation is ongoing and weakens substantially once a charge-sheet has been filed.

E. The Public Interest Override in the Supreme Court

[38] *Id.* ¶¶ 8–10.
[39] Id. ¶ 13 (discussing Union of India v. Manjit Singh Bali, W.P.(C) 6341/2015 (Del. HC Aug. 6, 2018) (India)).
[40] *Id.* ¶ 17.
[41] *Id.* ¶ 18.
[42] *Id.* ¶¶ 20–21.

The Supreme Court has not decided a case squarely on clause (h), but two of its decisions bear on how section 8(2) should operate against it. In *Yashwant Sinha v. Central Bureau of Investigation*, a bench of three judges rejected a preliminary objection to the reliance, in a review petition concerning the Rafale procurement, on documents said to have been removed without authorisation from the Ministry of Defence, and K.M. Joseph J, in a concurring opinion, described section 8(2) as conferring on citizens a right of great value and reasoned that, because an officer under the Act is permitted to allow access even to information falling under section 8(1)(a) where a case is made out under section 8(2), a court could not be less empowered than that officer.[43] The importance of that reasoning for clause (h) is that the override was treated as operative even against the security exemption, the weightiest of the interests protected by section 8(1), so that there is no textual or principled basis for treating clause (h) as immune from it.

In *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*, a Constitution Bench held the Office of the Chief Justice of India to be a public authority and, in the course of doing so, characterised clauses (d), (e) and (j) of section 8(1) as qualified and conditional rather than absolute exemptions, and treated section 8(2) as the provision under which a public authority may disclose information where the larger public interest warrants disclosure.[44] Although that analysis was developed for other clauses, it treats the weighing of public interest as a judicial exercise rather than an unstructured discretion, and it supplies a framework that the Information Commissions could apply to clause (h) in place of the latitude that the word "may" in section 8(2) otherwise invites.

F. What the Case Law Settles and What It Leaves Open

The authorities settle three propositions with reasonable firmness: the pendency of an investigation, inquiry or prosecution does not by itself justify refusal; the authority must show, with reasons based on material, how the particular information would impede the relevant process; and the reproduction of the statutory words does not discharge the burden that section 19(5) imposes.[45] They leave at least three questions open. The first concerns the scope of "investigation", which the High Court has extended to tax and disciplinary proceedings without

[43] Yashwant Sinha v. Central Bureau of Investigation, (2019) 6 SCC 1, ¶¶ 20, 24 (India) (Joseph, J., concurring).
[44] Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481, ¶¶ 26–27 (India).
[45] Bhagat Singh, W.P.(C) 3114/2007, ¶ 13; B.S. Mathur, W.P.(C) 295 & 608/2011, ¶¶ 19, 22.

examining the significance of the word “offenders”. The second concerns the relevance of stage, which *Brij Mohan* treats as decisive but which no decision has turned into a workable rule about what may still be withheld after a charge-sheet is filed. The third concerns the weight of section 8(2), which, in the decisions on clause (h) examined here, has not been applied to order disclosure of information that was otherwise found to impede an investigation. These gaps, together with the uneven application of even the settled propositions by Public Information Officers and Commissions, are the subject of Part IV.

IV. STRUCTURAL PROBLEMS WITH SECTION 8(1)(h)

A. The Absence of a Stated Likelihood Standard

The reasonableness standard articulated in *Bhagat Singh* exists as a judicial gloss rather than as part of the text, and a gloss binds the Public Information Officer only to the extent that the officer knows of it and the appellate authority or Commission enforces it. The officer who decides a request is ordinarily an employee of the department conducting the investigation, answerable within its hierarchy, and without a stated standard in the statute such an officer is likely to resolve uncertainty in favour of refusal, since disclosure carries a perceived institutional risk while refusal carries almost none. The words “would impede” give that officer no guidance about whether a remote possibility suffices, and the result is that the threshold for refusal varies with the disposition of the individual official rather than with the nature of the information.

The available data is imperfect and does not establish the point, but it is not inconsistent with that account. An analysis of the Commission's annual report for 2014–15 recorded that about 6.1 per cent of applications were rejected under clause (h), against more than 35 per cent under clause (j), so that clause (h) was by no means the most frequently invoked exemption in that year.[46] The argument here therefore does not rest on the frequency of clause (h) refusals but on the structure of the provision and the decisions examined in Part III. What the data do show is how weakly reasons are given across the system: an analysis of the report for 2019–20 found that public authorities across the Government of India recorded 38.70 per cent of their rejections under the residual category of “others”, that is, without invoking any exemption

[46] Nayak, Trends, *supra* note 6. The published analysis states that "[a]bout 6.1% of the RTI applications were rejected under Section 8(1)(h)" and that its percentages are calculated on rejections recorded under §§ 8, 9, 11 and 24; because the denominator is not stated unambiguously, the figure is used here only to indicate the relative frequency of the clause and not as a precise rate.

permitted by the Act at all.[47] The second figure does not concern clause (h) as such, but it shows how weakly the reason requirement is observed across the system, and it is against that background that the operation of an undefined harm standard has to be assessed. Refusal also carries little risk for the officer, since the Satark Nagrik Sangathan report for 2024–25 found that penalties were not imposed in 98 per cent of the cases in which officers were potentially liable for delay or refusal.[48]

B. Indifference to the Stage of Proceedings

Clause (h) treats every stage of a criminal matter in the same way, although the sensitivity of the underlying information changes sharply as the matter progresses. The first information report is, subject to specified exceptions for sensitive offences such as sexual offences, offences under the Protection of Children from Sexual Offences Act, 2012, insurgency and terrorism, required to be uploaded on the police website within twenty-four hours of registration, in accordance with the directions of the Supreme Court in *Youth Bar Association of India v. Union of India*;[49] once a police report is forwarded under section 193(3) of the Bharatiya Nagarik Suraksha Sanhita the accused becomes entitled to the prosecution's documents under section 230; and the trial itself is ordinarily conducted in open court.[50] A provision that permits the same refusal at each of these stages over-protects the later ones, and it allows a public authority to maintain secrecy about matters that the criminal process itself has already placed in the public domain or in the hands of the accused.

This is not to deny that some legitimate protection survives the filing of a charge-sheet. An accused person may remain absconding, so that information about the efforts to apprehend him retains its sensitivity; the investigating officer may be conducting further investigation under section 193(9) of the Sanhita; and the safety of a witness who has yet to depose may depend on the confidentiality of particular details.[51] The objection is to the absence of any presumption

[47] Venkatesh Nayak, Findings from a Preliminary Study of the Central Information Commission's Latest Annual Report on the Implementation of the RTI Act (2019-20), Commonwealth Hum. Rts. Initiative (Mar. 25, 2021), https://www.humanrightsinitiative.org/blog/findings-from-a-preliminary-study-of-the-central-information-commissions-latest-annual-report.html, https://perma.cc/B7RW-JRAZ (last visited Oct. 20, 2026).

[48] Satark Nagrik Sangathan & Centre for Equity Studies, Report Card on the Performance of Information Commissions in India, 2024-25, SNS India (Oct. 9, 2025), https://www.snsindia.org/wp-content/uploads/2026/04/RC2025.pdf, https://perma.cc/25VT-L4ZP (last visited Oct. 20, 2026).

[49] Youth Bar Association of India v. Union of India, (2016) 9 SCC 473, ¶ 12(d) (India).

[50] BNSS §§ 193(3), 230, 366.

[51] *Id.* § 193(9).

that shifts with the stage, and not to the continued availability of protection where a specific residual harm can be shown.

C. Reasons Without Content

Because section 7(8)(i) requires reasons without saying what they must contain, the common refusal stating that information is exempt under section 8(1)(h) because the matter is under investigation is treated in practice as compliant, even though it merely restates the ground and supplies no reason at all. The consequence is that the burden placed on the authority by section 19(5) becomes formal rather than real, since the applicant cannot contest a harm that has never been identified, and the appellate authority or Commission has nothing against which to test the claim other than the authority's bare assurance. *B.S. Mathur* and *Amit Kumar Shrivastava* each involved refusals of this kind, and each reached the High Court because the refusal had not been corrected at an earlier stage.[52]

The Act already contains tools with which a Commission can look behind an assertion of this kind, since section 18(3) confers on it, when inquiring into a complaint, the powers of a civil court to summon persons and require the production of documents, and section 18(4) provides that it may examine any record under the control of the public authority, which may not be withheld from it on any ground.[53] These powers permit the Commission to inspect withheld material without disclosing it to the applicant, and so to decide for itself whether the particular information would impede the investigation, but there is little sign in the decisions examined in Part III that they are used for that purpose. Because section 18(3) and (4) confer these powers in proceedings on a complaint, their use in a second appeal under section 19 may need to rest on the Commission's procedural rules or on amendment.

D. A Dormant Override

Section 8(2) is framed in permissive language, it imposes no obligation to consider whether public interest favours disclosure, and it offers no criteria for the balance. An officer employed by the investigating department, who has just concluded that disclosure would impede the investigation, has little institutional reason to go on to hold that the public interest nonetheless requires disclosure, and nothing in the Act compels the officer to address the question. The

[52] B.S. Mathur, W.P.(C) 295 & 608/2011, ¶¶ 5, 8, 10; Amit Kumar Shrivastava, W.P.(C) 3701/2018, ¶¶ 2–3, 10.
[53] RTI Act § 18(3)–(4).

override is therefore exercised, if at all, at the level of the Commission or a court, after an applicant has persisted through two levels of appeal.

The proviso to section 24(1) shows that Parliament recognised the particular claim of information concerning corruption and human rights violations, which it made accessible, in the case of human rights allegations with the approval of the Central Information Commission, even against the intelligence and security organisations that the Act otherwise excludes altogether.[54] It would be anomalous if the same categories of information enjoyed stronger protection from disclosure when held by an ordinary department invoking clause (h) than when held by an organisation in the Second Schedule, and a structured application of section 8(2) that gives specific weight to allegations of corruption and human rights violations would remove the anomaly without any amendment to the Act.[55]

E. A Miscalibrated Sunset

The twenty-year period in section 8(3) was designed as a general rule for the release of historical information, and it bears no relation to the life cycle of an investigation, which may end in a closure report accepted by a Magistrate, a charge-sheet or an acquittal within a small fraction of that period.[56] Nothing in the Act requires an authority that refused information under clause (h) to revisit the refusal when the investigation ends, so the applicant must file a fresh application and begin the process again, and information may remain withheld long after any conceivable impediment has disappeared because no one has asked for it a second time.

F. Institutional Capacity

Every safeguard discussed above depends, in the end, on scrutiny at the second appeal, and that scrutiny is only as effective as the Commissions that perform it. The most recent assessment of the Information Commissions records that 4,13,972 appeals and complaints were pending before the twenty-nine Commissions as on 30 June 2025, that six Commissions were defunct for varying periods between 1 July 2024 and 7 October 2025, with two of them still defunct on the latter date, and that three Commissions, including the Central Information Commission,

[54] RTI Act § 24(1) proviso.
[55] *Id.* § 8(2).
[56] *Id.* § 8(3).

were functioning without a Chief Information Commissioner.[57] Where an appeal takes a year or more to be heard, a refusal under clause (h) often achieves its practical object regardless of its legal merit, because the information has lost its value to the applicant by the time the Commission reaches it. A doctrinal standard that depends on rigorous appellate review cannot therefore substitute for a clearer rule applied at the first stage.

V. COMPARATIVE PERSPECTIVES

A. The International Standard

The Human Rights Committee has recognised that Article 19(2) of the International Covenant on Civil and Political Rights embraces a right of access to information held by public bodies, which may be restricted only in conformity with the conditions in Article 19(3).[58] The principles developed by ARTICLE 19 translate those conditions into a three-part test for exceptions, under which the information must relate to a legitimate aim listed in the law, disclosure must threaten to cause substantial harm to that aim, and the harm to the aim must be greater than the public interest in having the information.[59] Measured against that test, clause (h) satisfies the first limb, gestures at the second without specifying how substantial or how probable the harm must be, and leaves the third to the separate and discretionary operation of section 8(2).

B. The United Kingdom

The Freedom of Information Act 2000 divides the ground covered by clause (h) between two provisions. Section 30(1) is a class-based exemption covering information held at any time for the purposes of certain investigations and proceedings, including an investigation which the authority has a duty to conduct with a view to ascertaining whether a person should be charged with an offence, while section 31(1) exempts information not covered by section 30 whose disclosure "would, or would be likely to, prejudice" interests that include the prevention or detection of crime and the apprehension or prosecution of offenders.[60] It follows that the harm

[57] Satark Nagrik Sangathan & Centre for Equity Studies, Report Card on the Performance of Information Commissions in India, 2024-25, SNS India (Oct. 9, 2025), https://www.snsindia.org/wp-content/uploads/2026/04/RC2025.pdf, https://perma.cc/25VT-L4ZP (last visited Oct. 20, 2026).
[58] Human Rights Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, ¶ 18, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011).
[59] ARTICLE 19, *Principles*, *supra* note 9, princ. 4.
[60] Freedom of Information Act 2000, c. 36, §§ 30(1), 31(1) (U.K.).

test often attributed to the British law applies only to section 31, and that material within section 30 is exempt by class without any showing of prejudice.

Both exemptions are nevertheless qualified, so that even where either is engaged the information must be disclosed unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.[61] In applying the prejudice test, the Information Tribunal has held that the word "would" requires prejudice to be more probable than not, while "would be likely to" is satisfied by a real and significant risk of prejudice that need not be more probable than not,[62] and the Information Commissioner's Office requires a public authority relying on a prejudice-based exemption to identify the applicable interest, to show that the prejudice claimed is real, actual or of substance and causally linked to disclosure, and to establish the likelihood of its occurrence.[63]

The Act also limits the duration of the class-based exemption, and does so far more tightly than the harm-based one. Information contained in a historical record, which section 62(1) now defines as a record twenty years old, cannot be exempt by virtue of section 30(1), whereas information may remain exempt under section 31 for one hundred years.[64] The British model therefore offers India two instructive features: it shows that even a class-based protection for investigation material can be made compatible with transparency when it is paired with a mandatory public interest test and a relatively short time limit, and it shows that a prejudice test acquires real content only when a review body insists on a structured inquiry into the nature, causation and probability of the harm.

C. The United States

The federal Freedom of Information Act exempts records or information compiled for law enforcement purposes, but only to the extent that production could reasonably be expected to produce one of six enumerated harms, the first being interference with enforcement

[61] *Id.* § 2(2)(b).

[62] Christopher Martin Hogan & Oxford City Council v. Information Commissioner, EA/2005/0026 & EA/2005/0030, ¶¶ 28–36 (Info. Trib. Oct. 17, 2006) (U.K.).

[63] Information Commissioner's Office, The Prejudice Test, ICO, 15 March 2024), https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-prejudice-test/, https://perma.cc/4DP4-PQ2K (last visited Oct. 20, 2026).

[64] Freedom of Information Act 2000 §§ 62(1), 63(1), (4); Constitutional Reform and Governance Act 2010, c. 25, § 46 & sch. 7, ¶ 4(2) (U.K.) (substituting twenty years for thirty years in § 62(1) with effect from Jan. 1, 2013, subject to transitional phasing that expired on Dec. 31, 2022).

proceedings.[65] The history of that wording cautions against assuming that the American standard is more demanding than the Indian one, because the phrase "could reasonably be expected to" was substituted in 1986 for the earlier requirement that production "would" interfere, with the acknowledged aim of easing the burden on agencies.[66] The Supreme Court had also held, in *NLRB v. Robbins Tire & Rubber Co.*, that an agency invoking the enforcement proceedings exemption may rely on generic determinations about categories of records rather than justifying the withholding document by document.[67]

The strength of the American system for present purposes lies less in the wording of Exemption 7(A) than in the procedures that surround it. The FOIA Improvement Act of 2016 requires an agency to withhold information only if it reasonably foresees that disclosure would harm an interest protected by an exemption or if disclosure is prohibited by law, which codifies a foreseeable harm requirement across all the exemptions.[68] The Act requires any reasonably segregable portion of a record to be released after the exempt portions are removed, and it provides for de novo review in federal court, where the court may examine the withheld records in camera.[69] The practice of requiring agencies to file a detailed index correlating each withheld document with the exemption claimed and the justification for it, developed in *Vaughn v. Rosen*, gives the requester and the court a means of testing the claim without the information itself being disclosed.[70] It is that index, far more than the statutory formula, that India lacks.

D. Canada

The Access to Information Act combines a class-based exemption limited in time with an injury-based exemption. Section 16(1)(a) permits the head of a government institution to refuse to disclose records obtained or prepared by a listed investigative body in the course of lawful investigations, but only where the record came into existence less than twenty years before the request, and section 16(1)(c) permits refusal of information whose disclosure could reasonably be expected to be injurious to the enforcement of any law of Canada or a province or to the conduct of lawful investigations.[71] Both exemptions are discretionary, and the Supreme Court

[65] 5 U.S.C. § 552(b)(7)(A) (2018).
[66] Freedom of Information Reform Act of 1986, Pub. L. No. 99-570, § 1802, 100 Stat. 3207, 3207-48.
[67] NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 236 (1978).
[68] FOIA Improvement Act of 2016, Pub. L. No. 114-185, § 2, 130 Stat. 538, 538 (codified at 5 U.S.C. § 552(a)(8)(A) (2018)).
[69] 5 U.S.C. § 552(a)(4)(B), (b) (2018).
[70] Vaughn v. Rosen, 484 F.2d 820, 826–28 (D.C. Cir. 1973).
[71] Access to Information Act, R.S.C. 1985, c. A-1, § 16(1)(a), (c) (Can.).

of Canada has held, in relation to the comparable law enforcement exemption in Ontario's legislation, that a discretion conferred by statute must be exercised consistently with the purposes underlying its grant and that the head of the institution must weigh the considerations for and against disclosure, including the public interest in disclosure.[72] The Canadian approach thus treats consideration of the public interest as an inherent part of exercising a discretionary exemption, which is precisely the element missing from Indian practice under section 8(2).

E. Australia

The Freedom of Information Act 1982 of the Commonwealth exempts a document whose disclosure would, or could reasonably be expected to, prejudice the conduct of an investigation of a breach or possible breach of the law.[73] That provision appears in Division 2 of Part IV, which contains the exemptions, and not in Division 3, which contains the public interest conditional exemptions to which the balancing test in section 11A(5) applies, so that a document exempt under section 37 is not subject to any public interest override.[74] Australia therefore demonstrates that a public interest override is not a universal feature of law enforcement exemptions in comparable democracies. What the Australian provision does share with the British, American and Canadian models is an express statement of the likelihood required, which the Indian clause omits.

F. Lessons for India

The comparative material does not support the simple claim that foreign exemptions are narrower than clause (h), since the British section 30 is class-based, the American formula was relaxed in 1986, and the Australian exemption carries no public interest test. It supports instead three more precise conclusions. The first is that every one of each jurisdiction's harm-based law enforcement exemption states the likelihood required. The second is that class-based or broadly framed protections are paired with limits on duration, whether through the twenty-year threshold for historical records in the United Kingdom or the twenty-year limit in section 16(1)(a) of the Canadian Act, and that those limits are set far below the period that applies to harm-based exemptions in the same statute. The third is that the effectiveness of any standard depends on procedures, such as the index of withheld documents, in camera examination and

[72] Ontario (Public Safety & Security) v. Criminal Lawyers' Ass'n, 2010 SCC 23, [2010] 1 S.C.R. 815, ¶¶ 45–48 (Can.).
[73] Freedom of Information Act 1982 (Cth) § 37(1)(a) (Austl.).
[74] *Id.* §§ 11A(5), 37, pt. IV, divs. 2–3.

a duty to consider the public interest, which force the authority to connect the particular information to the particular harm. India has partial counterparts to each of these features in sections 8(2), 8(3), 10 and 18, but lacks the connective duties that would make them operate at the stage where most refusals are made.

VI. PROPOSED REFORMS

The reforms proposed here fall into two groups: measures that the Information Commissions and the courts can adopt under the Act as it stands, and amendments that would place the resulting standards on a statutory footing. The first group matters more in the short term, because it does not depend on legislative action that may never come, and the second matters more in the long term, because a standard that exists only in case law is applied unevenly by officers who never read it.

A. Measures Available Without Amendment

First, the Commissions should read "would impede" in accordance with *Bhagat Singh* as requiring a reasonable expectation of impediment founded on material, and should state in their decisions that a refusal which does not identify the process affected, the nature of the harm apprehended and the link between the particular information and that harm does not satisfy section 7(8)(i) and does not discharge the burden in section 19(5). The kinds of harm that may justify refusal can be illustrated without being exhaustively defined: the destruction or fabrication of evidence, the intimidation or influencing of witnesses, the flight of a suspect, the exposure of a confidential source and the disclosure of an investigative technique whose effectiveness depends on secrecy.

Second, where an authority claims that its reasons cannot be stated in detail without revealing the very information sought to be protected, the Commission should require it to furnish a confidential index, modelled on the practice developed in *Vaughn v. Rosen*, that identifies each document withheld, the part of the clause relied on and the specific harm apprehended, and should where necessary exercise its power under section 18(4) to examine the documents themselves. This procedure answers the most serious objection to a content requirement for reasons, since the authority is not compelled to disclose sensitive material to the applicant in order to justify withholding it.

Third, every order sustaining a refusal under clause (h) should record whether severance under section 10 was considered and why it was rejected, and whether section 8(2) was considered and, if so, how the public interest was weighed, drawing on the treatment of the override in *Subhash Chandra Agarwal* and giving specific weight to information that bears on allegations of corruption or human rights violations, consistently with the proviso to section 24(1). Fourth, the Commissions should treat the forwarding of a police report, the acceptance of a closure report or the conclusion of a disciplinary inquiry as creating a presumption that clause (h) no longer applies, rebuttable only by a showing of a specific residual harm of the kind identified in Part IV, and should include in their annual reports a breakdown of appeals concerning clause (h) by outcome, so that the operation of the exemption can be monitored.

B. Legislative Amendment

The standards developed above would be more secure if written into the Act. A clause (h) redrafted for that purpose might read as follows:

> *"(h) information the disclosure of which could reasonably be expected, on the basis of material recorded in writing, to impede the process of investigation or apprehension or prosecution of offenders:*
>
> *Provided that the pendency of an investigation, inquiry or prosecution shall not by itself be a ground for refusal under this clause:*
>
> *Provided further that where a report has been forwarded under sub-section (3) of section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023, or the investigation or inquiry has been closed, information shall not be refused under this clause unless its disclosure could reasonably be expected to prejudice the apprehension of an accused person who has not been apprehended, any further investigation, the safety of a witness or the fairness of a trial.*
>
> *Explanation.–Disclosure may be regarded as impeding the process of investigation where it could reasonably be expected to lead to the destruction or fabrication of evidence, the intimidation or influencing of a witness, the flight of a suspect, the identification of a confidential source, or the compromise of an investigative technique."*

The choice of "could reasonably be expected" requires a word of justification in light of the American experience described in Part V, where the same phrase loosened an earlier standard. The phrase is proposed here not because it is stricter in the abstract than "would" but because, joined to the requirement of material recorded in writing and to the provisos, it states an objective and testable standard in place of the subjective apprehension that the present wording permits, and it codifies the reading that *Bhagat Singh* has already given the clause. The amendment should be accompanied by a change in section 8(2) requiring the officer to consider, and to record the consideration of, whether public interest in disclosure outweighs the harm to the protected interest, and by a proviso to section 8(3) under which information withheld under clause (h) becomes disclosable five years after the conclusion of the relevant investigation or inquiry, unless the Commission, on application by the public authority, is satisfied that a specific harm continues.

C. Anticipated Objections

The first objection that investigating agencies would raise is that a content requirement for reasons, together with confidential indices and inspection by the Commission, would divert investigators from their work. The answer is that section 19(5) already places the burden of justification on the authority, so the proposals impose no new burden but only require that the existing one be discharged in substance, and that the confidential index is designed precisely to allow the authority to meet it without prejudicing the investigation.

The second objection is that an accused person, or an associate, may use the Act to obtain material beyond what the Sanhita entitles the accused to receive, and so to gain an advantage at trial or to circumvent the trial court's control over documents. That risk is real, but the proposals address it, since the protection before a charge-sheet is left untouched, and after a charge-sheet a demonstrated risk to the fairness of the trial or to further investigation remains a ground for refusal under the second proviso. The objection supports a carefully drawn residual protection and not the present rule, under which pendency alone is invoked to refuse even information that the accused has already received under section 230.

The third objection is that the forwarding of a police report is too blunt a marker, because further investigation may continue under section 193(9) of the Sanhita and because co-accused persons may remain untraced. The second proviso accommodates both situations by preserving protection for material whose disclosure could reasonably be expected to prejudice further

investigation or the apprehension of an accused person, while shifting to the authority the task of showing that one of those situations exists. The final objection is that Parliament is unlikely to amend the Act. That may well be so, but it is the reason for placing the measures available under the existing Act first, since each of them can be adopted by the Commissions and the courts on the strength of provisions and authorities that already exist.

VII. CONCLUSION

Section 8(1)(h) protects an interest that any access regime must protect, and the case for reform does not rest on the proposition that information about investigations should be freely available. It rests instead on the observation that the clause, as drafted, fails to tell the officer who applies it how probable the harm must be, draws no distinction between stages of proceedings whose sensitivity differs greatly, and relies on a public interest override and a reasons requirement that the Act prescribes but does not make effective. The Delhi High Court has supplied much of what the text omits, holding in *Bhagat Singh*, *B.S. Mathur* and *Amit Kumar Shrivastava* that pendency alone does not justify refusal and that the authority must show with reasons based on material how disclosure would impede the process,[75] but the more deferential reasoning in *Brij Mohan*, and the broad cautions in *Aditya Bandopadhyay*, show that even the judicial standard is neither uniform nor secure.[76]

The comparative material, read with care, points to the same conclusion. It does not show that other jurisdictions have narrower exemptions, for in several respects they do not; it shows that they state the likelihood of harm required, limit the duration of broad protection, and surround the exemption with procedures that force the authority to connect particular information to particular harm. India already possesses partial counterparts to each of those features in sections 7(8), 8(2), 8(3), 10 and 18 of the Act, and the most important reforms consist in making those provisions operate together at the first stage of decision, where most requests are finally determined.

The substitution of section 8(1)(j) in 2025 has made that task more pressing, because section 8(2) is now the principal route to disclosure against those exemptions which, like clause (h) and the substituted clause (j), carry no public interest qualification of their own. If the override remains a permission that officers are never required to consider, the right to information will

[75] Bhagat Singh, W.P.(C) 3114/2007, ¶ 13; B.S. Mathur, W.P.(C) 295 & 608/2011, ¶¶ 19, 22; Amit Kumar Shrivastava, W.P.(C) 3701/2018, ¶¶ 16, 18.
[76] Brij Mohan, W.P.(C) 606/2017, ¶ 17; Aditya Bandopadhyay, (2011) 8 SCC 497, ¶ 33.

be qualified by exemptions whose limits depend on the disposition of the officials who apply them. If, on the other hand, the Commissions and the courts insist on stated reasons, stage-sensitive presumptions and a recorded weighing of public interest, and Parliament eventually writes those standards into the Act, clause (h) can be confined to the function it was enacted to serve, which is to protect investigations and prosecutions from genuine prejudice rather than to shield from scrutiny the public authorities that conduct them.