

RIGHT TO INFORMATION in CONSONANCE with **RIGHT TO PRIVACY**

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INTRODUCTION –Right to privacy and Right to Information

The right to privacy and the right to information are both essential human rights in the Modern information society. For the most part, these two rights complement each other in holding governments accountable to individuals. But there is a potential conflict between these rights when there is a demand for access to personal information held by government bodies. Where the two rights overlap, states need to develop mechanisms for identifying core issues to limit conflicts and for balancing the rights.

The “two forms of protection against the Leviathan state that have the aim of restoring the balance between the citizen and the state: On first inspection, it would appear that the right of access to information and the right to protection of personal privacy are irreconcilable.

Laws provide a fundamental right for any person to access information held by government bodies. At the same time, right to privacy laws grant individuals a fundamental right to control the collection of, access to, and use of personal information about them that is held by governments and private bodies. However, the reality is more complex.

Privacy and RTI are often described as “two sides of the same coin”—mainly acting as complementary rights that promote individuals’ rights to protect themselves and to promote government accountability.

The relationship between privacy and RTI laws is currently the subject of considerable debate around the globe as countries are increasingly adopting these types of legislation. To date, more than 50 countries have adopted both laws.

Privacy is increasingly being challenged by new technologies and practices. The technologies facilitate the growing collection and sharing of personal information. Sensitive personal data (including biometrics and DNA makeup) are now collected and used routinely. Public records are being disclosed over the Internet. In response to this set of circumstances, more than 60 countries have adopted comprehensive laws that give individuals some control over the collection and use of these data by public and private bodies.

At the same time, the public's right to information is becoming widely accepted. RTI laws are now common around the world, with legislation adopted in almost 90 countries. Access to information is being facilitated through new information and communications technologies, and Web sites containing searchable government records are becoming even more widely available. International Bodies are developing conventions, and relevant decisions are being issued by international courts. Availability, legislation, and judicial decisions have led to many debates about rules governing access to personal information that is held by public bodies. As equal human rights, neither privacy nor access takes precedence over the other. Thus it is necessary to consider how to adopt and implement the two rights and the laws that govern them in a manner that respects both rights. There is no easy way to do this, and both rights must be considered in a manner that is equal and balance.

RIGHT TO INFORMATION

The right of access to information held by government bodies (RTI) provides that individuals have a basic human right to demand information held by government bodies. It derives from the right of freedom of expression to "seek and receive information,"¹ and is recognized worldwide as a human right.² Under this right, any person may make a request to a public body; the body is legally required to respond and provide the information, unless there is a legally compelling reason to refuse the request.

The RTI is "*requisite for the very exercise of democracy*" (OAS 2003).³ Democracy is based on the consent of the citizens, and that consent turns on the government informing

¹ See the Universal Declaration of Human Rights (UDHR), art. 19

² For a detailed overview of international standards on RTI, see Mendel (2008) and Banisar (2006)

³ In 2006, the Inter-American Court of Human Rights ruled that "the State's actions should be governed by the principles of disclosure and transparency in public administration that enable all persons subject to its jurisdiction to exercise the democratic control of those actions, and so that they can question, investigate and consider whether public functions are being performed adequately. Access to State held information

citizens about its activities and recognizing their right to participate. The collection of information by governments is done on behalf of its citizens, and the public is only truly able to participate in the democratic process when it has information about the activities and policies of the government.⁴**The RTI is also an important tool for countering abuses, mismanagement, and corruption and for enforcing essential economic and social rights.**

The following elements are typically found in national RTI laws:

- A right of an individual, organization, or legal entity to demand information from public bodies, without having to show a legal interest in that information.
- A duty of the relevant body to respond and provide the information. This includes mechanisms for handling requests and time limits for responding to requests.
- Exemptions to allow the withholding of certain categories of information. These exemptions include the protection of national security and international relations, personal privacy, commercial confidentiality, law enforcement and public order, information received in confidence, and internal discussions. Exemptions typically require that some harm to the interest must be shown before the material can be withheld.
- Internal appeals mechanisms for requestors to challenge the withholding of information.
- Mechanisms for external review of the withholding of information. This includes setting up an external body or referring cases to an existing ombudsman or to the court system.
- Requirement for government bodies to affirmatively publish some types of information about their structures, rules, and activities. This is often done using information and communications technologies.

RIGHT TO INFORMATION IN INDIA

- *History Of The Right To Information Act*

of public interest can permit participation in public administration through the social control that can be exercised through such access” (Marcel Claude Reyes et al.v.Chile, judgment of September 19,2006) .

⁴ See, for example ,ACHPR (2002);and the Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, and the OAS Special Rapporteur on Freedom of Expression, November 26,1999.

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

Right To Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the center of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus it clearly flows from this, that the Citizens Right To Know is paramount.

The Act and its rules define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.

- *The Need For The Right To Information*

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy - it is essential to ensure accountability and good governance. The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the more restrictions that are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

The free flow of information in India remains severely restricted by three factors:

- a. The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923;
- b. The pervasive culture of secrecy and arrogance within the bureaucracy; and

c. The low levels of literacy and rights awareness amongst India's people.

The primary power of RTI is the fact that it empowers individual Citizens to requisition information. Hence without necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy- the Citizen.

- Applicability

The Act applies both to Central and State Governments and all public authorities. A public authority (sec. 2(h)) which is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organization substantially financed - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

- Maintenance And Publication Of Records

Sec. 4 makes it a duty of public authorities to maintain records for easy access and to publish within 120 days the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. Subsection (3) of sec. 4 states that for the performance of subsection (1), all information shall be disseminated widely and in such form and manner, which is easily accessible to the public.

- Exemptions

Sec. 8 exempts from disclosure certain information and contents as stated in Sub-clauses (a) to (j) thereof. Sub-clause (b) exempts information, which is expressly forbidden by any court of law or tribunal or the dispute of which may constitute contempt of court. Sub-clause (g) exempts information the disclosure of which would endanger life, or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose. Sub-clause (h) exempts information, which could impede

the process of investigation or apprehension or prosecution of offenders. Sub-clause (i) exempts Cabinet papers.

It is important to note that the Act specifies that intelligence and security organizations are exempted from the application of the Act. However, it is provided that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply even to such institutions.

- Constitutional Avenues Remain Open

Under the Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners and appellate authorities is only for the purposes of the Act and the citizen has a right to approach the High Court under Art. 226 or where it refers to a fundamental right, he may even approach the Supreme Court under Art. 32.

- Right To Information As A Fundamental Right: Supreme Court On The Right To Information.

The right to information is a fundamental right flowing from Art. 19(1)(a) of the Constitution is now a well-settled proposition. Over the years, the Supreme Court has consistently ruled in favour of the citizen's right to know. The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a number of cases:

The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint, bans on distribution of papers, etc. It was through these cases that the concept of the public's right to know developed.

The landmark case in freedom of the press in India was **Bennett Coleman and Co. v. Union of India**,⁵, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art. 19 (1) (a).

⁵ AIR 1973 SC 106

In Indira Gandhi v. Raj Narain⁶, the Court explicitly stated that it is not in the interest of the public to ‘cover with a veil of secrecy the common routine business - the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.’

In **SP Gupta v. Union of India**⁷, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.

In **People’s Union for Civil Liberties v. Union Of India** ⁸the court held that exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country.

This principle was even more clearly enunciated in a later case in **Indian Express Newspapers (Bombay) Pvt. Ltd. vs India**⁹where the court remarked, “ The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.” In **State of U.P Vs. Raj Narain**¹⁰. The Court said, “While there are overwhelming arguments for giving to the executive the power to determine what matters may prejudice public security, those arguments give no sanction to giving the executive exclusive power to determine what matters may prejudice the public interest. Once considerations of national security are left out there are few matters of public interest which cannot be safely discussed in public”.(emphasis added) Justice K.K.Mathew went further to say, “ In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. 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. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The

⁶AIR 1975 SC 2299

⁷ AIR 1982 SC 149

⁸ 2003(001) SCW 2353 SC

⁹ (1985) 1 SCC 641)

¹⁰ AIR 1975 SC 865

responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.

In **Kuldip Nayar v. UOI**¹¹ Y.K. Sabharwal, C.J. Secrecy becomes a source of corruption - Sunlight and transparency have the capacity to remove it.

In **Secretary General, Supreme Court of India, vs. Subhash chandra Agarwal**¹² High Court of Delhi held that :The CJI is a public authority under the RTI Act and information so given by CJI of the assets in public information. Declaration of assets by the SC Judges, is 'information u/s 2(f) of the Act and the contents of asset declaration are to be treated as personal information, and may be accessed in accordance with the procedure prescribed under section 8(1)(j). Lastly, the CJI, if he deems appropriate, may in consultation with the Supreme Court Judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declaration to be made. The Delhi HC directed that the CPIO, Supreme Court of India, shall release the information sought by the respondent of the declaration of assets.

LEGISLATIONS IN INDIA

1) Right To Information Act, 2005

- All information that relates to the working of Government and the use of public funds is critical.
- Designated officers for release of information responsible for releasing information to the public;
- **Complaint Mechanism**: The CIC or SIC is responsible for receiving and inquiring into complaints by individuals;
- **Proactive disclosure**: Governmental bodies are required to proactively release specified types of information,
- Act lays down clearly what is public, and in doing so protects the privacy of both citizens and public figures.
- Any public official is permitted to disclose any information (exemptions included) if public interest outweighs the protected interest.

2) Official Secrets Act 1923

Prior to the Right to Information Act, the Official Secrets Act

¹¹ AIR 2006 SC 3127

¹² (2009),

was established to protect sensitive governmental documents and communications;

3) **The Prevention of Corruption Act 1988**

In the context of the Prevention of Corruption Act information related to a public figures assets and financial transactions is critical. The Prevention of Corruption Act enables law enforcement to investigate governmental officials on allegations of corruption;

4) **The Securities and Exchange Board of India Act, 1992**

Information relating to finances of companies is critical to the Act. By enforcing transparency and disclosure of information the Act ensures that companies are fairly portrayed to the public, and are unable to manipulate markets. In turn dilutes the privacy of companies;

Criticisms

The Act has been criticized on several grounds. It provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively, or *suo moto*, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information -- vital in a country with high levels of illiteracy and poverty -- or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information.

The most scathing indictment of the Bill has come from critics who focus on the sweeping exemptions it permits. Restrictions on information relating to security, foreign policy, defence, law enforcement and public safety are standard. But the Right to Information Act also excludes Cabinet papers, including records of the council of ministers, secretaries and other officials; this effectively shields the whole process of decision-making from mandatory disclosure.

Another stringent criticism of the Act is the recent amendment that was to be made allowing for file noting except those related to social and development projects to be exempted from the purview of the Act. File noting are very important when it comes to the policy making of the government. It is these notes that hold the rationale behind actions or the change in

certain policy, why a certain contract is given or why a sanction was withheld to prosecute a corrupt official. Therefore the government's intention to exempt the file noting from the purview of the Act has come in for stringent criticisms.

RIGHT TO PRIVACY

The quest of privacy is an inherent instant of all human beings. As a matter of fact it is a natural need of an individual to establish individual boundaries with almost perfect seclusion. The concept of privacy in its broad sweep covers a number of prospects like non-disclosure of information, sexual affairs, business secrets and no observance by others. It may be said that the privacy is antithesis of being public, if any private letters to one's friend are published by anyone without his express or implied permission then his privacy would come to be violated. Similarly if one's neighbour peeps into in his house from outside then it would also constitute violation of his right to privacy. Thus privacy is a state of isolation and separation from others. Privacy in general means the right to be let alone.

This Expression was used by Justice Cooley in 1888. This abbreviated meaning of privacy was followed by Samuel Warren and Loues Brandeis in 1890 in one of their articles.' They were of view that object of privacy is to protect 'inviolate personality'. They elaborated the proposition and said that in early times the law gave remedy only for interference with life and property, for trespasses vi et armis. Then the right to life served only to protect life from battery in its various forms; later there came recognition of spiritual nature and his feelings and his intellect. Gradually the scope of these legal rights came to mean the right to enjoy life and the right to be let alone.

Once an American Court observed that privacy is the right to live one's life in seclusion without being subjected to unwarranted and undesired publicity.¹³ Similarly, the common law jurists have described the idea of privacy as an idea of being private or secluded. Prof. Nizer states that the right to privacy is the individual's rights to a secluded and anonymous existence.¹⁴Dr. Winfield opines that violation of privacy is the unauthorized interference with another's seclusion of himself, his family or his property from the public gaze.¹⁵ A panel to U.S. President's Office of Science and Technology in 1967 defined privacy as the right of the individual to decide for himself how much, he will share with others his

¹³ Karby v. Hal Roach Studios, 1942 53 Cali. App. 207, 127

¹⁴ Michigan Law Review, 1939, P. 526.

¹⁵ Seventh Edn 1963 at page 726

thoughts, his feelings and the parts of his personal life. L.Luskey in his article "Invasion of Privacy: A Classification of Concepts" has described privacy as an interest which someone has, that is to say a person would be better off for being a private state.¹⁶

American Law so far could not give any explicit position to the right to privacy in any of its statute as Justice Blackman in *Roe v. Wade*¹⁷ observed that the US constitution did not explicitly mention any right of privacy. However, Judiciary recognized this right of personal privacy and declared that such a right already exists in the Constitution *Stanley v. Georgia*¹⁸, *Griswold v. Connecticut*¹⁹, *Meyer v. Nebraska*²⁰ are some of the cases decided by the US Courts in which they found the traces of right to privacy, in different constitutional amendments as well as in the form of touching from a distance of the Bill of Rights. It is submitted that privacy is such an essential component of human dignity without which human dignity cannot be maintained and enjoyed.²¹

CONCEPT OF PRIVACY IN INDIA

The Indian Constitution did not guarantee the Right to Privacy as a fundamental right earlier. In our country the sole-credit goes to the judiciary for recognizing the concept of privacy because neither the Constitution nor any other statute in our country defined this concept. As a matter of fact this concept is quiet in primitive stage of its development. But its development is bound to have tremendous effect on the individual's living, However if we go through various statutes of our country to understand the position of the concept of privacy, then we would find several provisions which have been enacted for protecting privacy. Ss 28,29,164(3) and 165of Cr. P.C., 1973, S 509 of IPC 1860 and S. 18 of Easements Act,1882 may be taken as example. Not only this, ancient law in Dharam Shashtraas also recognized the concept of privacy. Really the law of privacy has been well expounded in the commentaries of old Law.

¹⁶ (1972) 78 Cal. Law Rev. 698

¹⁷ 410 U.S. 113 (1973)

¹⁸ 394 U.S. 557 (1969)

¹⁹ 381 U.S. 479 (1965)

²⁰ 262 U.S. 390 (1923)

²¹ Shrinivas Gupta, 'Right to Privacy is an Aspect of Human Dignity', LAWYER (Madras) Vol. 17 (1986) pp 67-73

Kautilya in his Arthashastra has prescribed a detailed procedure to ensure right to privacy while ministers were consulted. But neither in ancient law nor in the present law has the term 'privacy' anywhere been defined.

It is the matter of pleasure that the emerging trend of the new constitutionalism by our judiciary justifies the need of a law trenching on one's privacy-his dignity. Besides, Art. 12 of the Universal Declaration of Human Rights, 1948, Art. 17 of the International covenant of Civil and Political Rights, 1966 and Art. 8 of the European Convention of Human Rights have recognized and provided for the protection of this right to privacy. Further the Nordic conference of Jurists and Legal Experts also emphasized that the right to privacy is paramount to the human happiness.

JUDICIAL PRONOUNCEMENTS

Allahabad high Court in **Nihal chand v. Bhawan Deit** took first step when it recognized an independent existence of the right to privacy as emerging from the customs and traditions of the people besides being a statutory right. It observed :'the right to privacy based on social custom....is different from a right to privacy based on natural modesty and human morality, the latter is not confined to any class, creed, colour or race and it is a birth right of any human being and is sacred and should be observed. The right should not be exercised in an oppressive way'.

Then **M.P. Sharma v. Satish Chandrawas**²² the first case before the Supreme Court wherein it had an opportunity of considering the constitutional status of the right to privacy in the context of state power of search and seizer, but a very narrow view of constitutional provisions was taken in this case. Unfortunately the opportunity was missed and the right to privacy could not be put into the public law.

In **Kharak Singh v. State of U.P.**²³ the petitioner was charged and tried for committing dacoity and he was subjected by the police to domiciliary visits and surveillance. While determining the validity of such visits and surveillance by the police, the apex court examined whether the right to privacy formed a part of personal liberty. It observed that

²² 1954 AIR 300,

²³ AIR 1963 SC 1295

personal liberty is a compendium of rights that go to make up the personal liberty of an individual and that the right to life in Art. 21 of our constitution is similar to that of fourteenth and fifteenth amendments to the US Constitution. Further the court relied on **Wolf v. Colorado**²⁴ held that the common law rule that every man's house was his castle, expounded a concept of personal liberty which did not rest upon a theory that had ceased to exist and that the domiciliary visit was repugnant to personal liberty and hence unconstitutional.

In **Pooran Mal v. Director of Instruction**²⁵ apex the court restricted the right to privacy to search and seizure.

In fact in a landmark judgment in the case of **People's Union for Civil Liberties v. Union of India**²⁶ the Supreme Court held that "right to life and personal liberty includes the right to privacy and right to privacy includes telephone conversation in the privacy at home or office and thus telephone tapping violates Art. 21".

In **R. Rajagopal v. State of T.N**²⁷. popularly known as "**Autoshanker case**" the Supreme Court has expressly held the "right to privacy" or the right to be let alone is guaranteed by Art. 21 of the constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. No one can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages. However, position may be differed if he voluntarily puts into controversy or voluntarily invites or raised a controversy.

In **State of Maharashtra v. Madhulkar Narain**²⁸ it has been held that the 'right to privacy' is available even to a woman of easy virtue and no one can invade her privacy. A police Inspector visited the house of one Banubai in uniform and demanded to have sexual intercourse with her.

On refusing he tried to have her by force. She raised a hue and cry. When he was prosecuted he told the court that she was a lady of easy virtue and therefore her evidence was not to be

²⁴ 338 U.S. 25 (1949)

²⁵ [1974] 1 S.C.C. 345

²⁶ (2004) 1 SCC 712

²⁷ (1994) 6 SCC 632

²⁸ AIR 1991 SC 207

relied. The court rejected the argument of the applicant and held him liable for violating her right to privacy under Art. 21 of the Constitution.

There are many aspects of privacy found in the Indian socio-legal system but the right to privacy in the light of conjugal rights requires special attention. The question of relation between the right to privacy and conjugal right arose for the first time in **T.Sareetha v. T.Venkata Subbaiah**²⁹ ' Andhra Pradesh High Court observed that sexual the cohabitation is an inseparable ingredient of a decree for restitution of conjugal rights.

In case of **Mr. 'X' Vs. Hospital 'Z'**³⁰ person was found to be a HIV positive and the information was disseminated by the doctor to his prospective wife. The person preferred a suit against the doctor for breach of right to privacy and damages as well. Doctor patient relationship though basically commercially is professionally a matter of confidence and therefore, doctors are normally and ethically bound to maintain confidentiality. In such a situation public disclosure of even true private facts may amount to an invasion of the "right to privacy" which may sometimes lead to clash of one person's "right to be let alone" with another person's "right to be informed".

Ram Jethmalani and Ors.V. Union of India³¹ Supreme Court held:

“Right to privacy is an integral part of right to life, a cherished constitutional value and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner.

RIGHT TO PRIVACY NOT AN ABSOLUTE RIGHT

The right to privacy is an essential component of right to life envisaged by Art. 21. The right however is not absolute and may be lawfully restricted for the prevention of crime, disorder, or protection of health or moral; or protection of rights and freedom of others. With the growth of terrorism and related activities each country is trying to do its best curbing this trend.

²⁹AIR 1983 AP 356

³⁰ 2003 (1) SCC 500

³¹ (2011)

Today, there are cases where in organisations; all the e-mails of the employees are monitored. It is an absolute abuse of the right to privacy. Further to recently all the cell phone companies activated the tracking system wherein wherever the cell phone user goes his mobile phone shows the name of the area. This makes one feel as if he is being tracked or shadowed. It is a fit case of unreasonable restriction on the freedom of movement. The Indian government is currently considering the idea of enacting a detailed law on data protection under the initiative of the Ministry of Communication and Information Technology. A detailed enactment in respect of the right to privacy is the need of the hour. Otherwise every Indian citizen will be like a prisoner in his own backyard. In **Govind v. State of Madhya Pradesh**³² it was held "Assuming that the fundamental right explicitly guaranteed to a citizen has penumbral zones and that the right to privacy is itself a fundamental right, and it must be subject to restriction on the basis of compelling public interests. "The code further observed that" if there is a conflict between fundamental rights of two parties that right which advances public morality would prevail.

The right to privacy in any event will necessarily have to go through a process of case by case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy, it is an emanation from them which one can characterise as a fundamental right but the right is not absolute.

Furthermore in **Peoples Union for Civil Liberties (PUCL) v. Union of India**³³ Supreme Court discussed whether declaration of assets of an elected candidate is infringement of his right to privacy or it is in favour of voter's right to information. In the instant case P. Venkatarama Reddy J. observed: "Privacy primarily concerns the individual. It therefore, relates to an overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values".

Concluding, The norms of privacy should be determined and measured to a common standard because a right without description is a right without protection.. It may be hoped that when an appropriate case comes before the Apex court, it would make an overall review and reconsider the existing position regarding the right to privacy.

³² 1975) 2 SCC 148

³³ AIR 2003 SC 2363

Right to Information v Right to Privacy- Balancing both rights .

Dr Manmohan Singh opined *“There is a fine balance required to be maintained between the right to information and the right to privacy, which stems out of the fundamental right to life and liberty. The citizens' right to know should definitely be circumscribed if disclosure of information encroaches upon someone's personal privacy. But where to draw the line is a complicated question,”*³⁴

RTI is focused on ensuring the accountability of powerful institutions to individuals in the information age. It provides rights to individuals tools to obtain Information about themselves that is held by government bodies. RTI laws are the only means to access personal records but are not applicable to the private sector.

In 1998, using Article 8, of the European Convention on Human Rights, as a basis, the European Court of Human Rights ruled that in cases where a lack of information could endanger their health, individuals may demand information from government bodies.

In many countries, like United States and United Kingdom, RTI laws are a primary tool used by privacy advocates to identify abuses and to campaign effectively against them. Hence using RTI to promote Privacy.

AREA OF CONFLICT.

Third party information-A public authority should not straightway reject a written request for information simply on the ground that it relates to a third party. The public authority if satisfied may obtain consent from the third party for disclosure.

“Right to life” includes right to lead a healthy life as to enjoy all the faculties of the human body in their prime condition, and the disclosure that the prospective spouse is a HIV(+) can in no way be said to violate the rule of confidentiality or the right to privacy.

Clash of two Fundamental rights, namely right to privacy and the right to live a healthy life -the right which would advance the public interest would alone be enforced.

³⁴ Times of India , dated Oct 12 , 2012, “RTI should be circumscribed if it encroaches on privacy”.

Elected officials—there is also significant agreement that information about elected or high-ranking public officials is less restricted, even when it relates to their personal lives.

The European Court of Human Rights (2004) said, “the public has a right to be informed i.e., certain circumstances can even extend to aspects of the private life of public figures, particularly where politicians are concerned.” In Hungary, the Constitutional Court ruled in 1994 that there are “narrower limits to the Constitutional protection of privacy for government officials and politicians appear in public than to that of the ordinary citizen” In India, the Supreme Court ruled that the criminal records of persons running for Parliament should be made public. A recent case ruled that medical information could be released if there was a sufficient public interest, however, ordinarily “personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act .In India, a review of the data of National Rural Employment Guarantee Scheme found that millions of rupees were being siphoned off because fake identity cards in the names of children and public employees were created and used .In most developed countries, like in the U.S, there is sensitivity about individuals receiving social support, so personal information held by government bodies is not generally made public. Public Registers- An increasing controversy relates to access to information in public registers, such as birth, marriage, and death registers; electoral registers; land records; lists of license holders & similar records.

Misuse of the Privacy Exemption- Not all arguments for privacy made by officials is legitimate. Former U.K. Cabinet Secretary Sir Richard Wilson said “I believe that a certain amount of privacy is essential to good government”. Both the RTI and privacy are internationally recognized human rights with long histories and important functions. The rights must be decided on a case-by case basis with a view toward the relative importance of various interests. The important issue is how the legislation and the implementing and oversight bodies balance the two rights.

CONCLUSION

Both the rights are intended to help the individual in making government accountable and transparent. Most issues can be mitigated through the enactment of clear definitions in legislation, guidelines, techniques, and oversight systems. Due diligence would ensure that the access to information and data protection laws have compatible definitions of personal information. Appropriate institutional structures and public interest tests should be created to balance these rights and ensure that data protection and right to information work together in harmony.

The public authorities should deal with the applicants in a friendly manner and public interest should be the core &the disclosures should be made accordingly.

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