



Data Privacy and Right to Information

Centre for Right to Information ,
Yashada, Pune.

Agenda



- Data Privacy: Indian Scenario (*Pre and Post RTI Regime*)
- Data Privacy under RTI Act, 2005
- Justice Shrikrishna Committee on Data Protection Framework of India.
- The data (*Privacy and Protection*)Bill, 2017
- The Right to Information and The Right to Privacy : balancing the paradox
- Conclusion

Data Privacy : Indian Scenario (Pre RTI)

- Data privacy deals with personal data and in a broader sense
Right to Privacy
- Not an explicit right under Indian Constitution , but implicit component of Art. 21
- Few Landmark Judgements -
 - **M. P. Sharma v. Satish Chandrawas (AIR 1954 SC 300)**
Right of privacy in the context of State power of search and seizer.
 - **Kharak Singh v State of UP (AIR 1963 SC 1295)**
The apex court examined whether frequent domiciliary visits were repugnant to personal liberty

Data Privacy : Indian Scenario (Pre RTI)

- State of Maharashtra v Maddhulkar Narain (AIR 1991 SC 2007)

Right to privacy is available even to a woman of easy virtue.

- Autoshankar Case (AIR1994 , 6, SCC 632)

✓ *Right to safeguard the privacy of the citizen , their family, marriage, procreation, motherhood, childbearing and education among other matters .*

✓ *No publication without consent of the citizen.*

Data Privacy in RTI

- RTI – Pragmatic piece of legislation
- New era of governance – transparency, peoples participation,
- Legitimate model of democratic governance
- Empowers the citizens of this country to actualize their right to know or receive the information - extension of Art. 19(1) and Art. 21 of the Constitution.

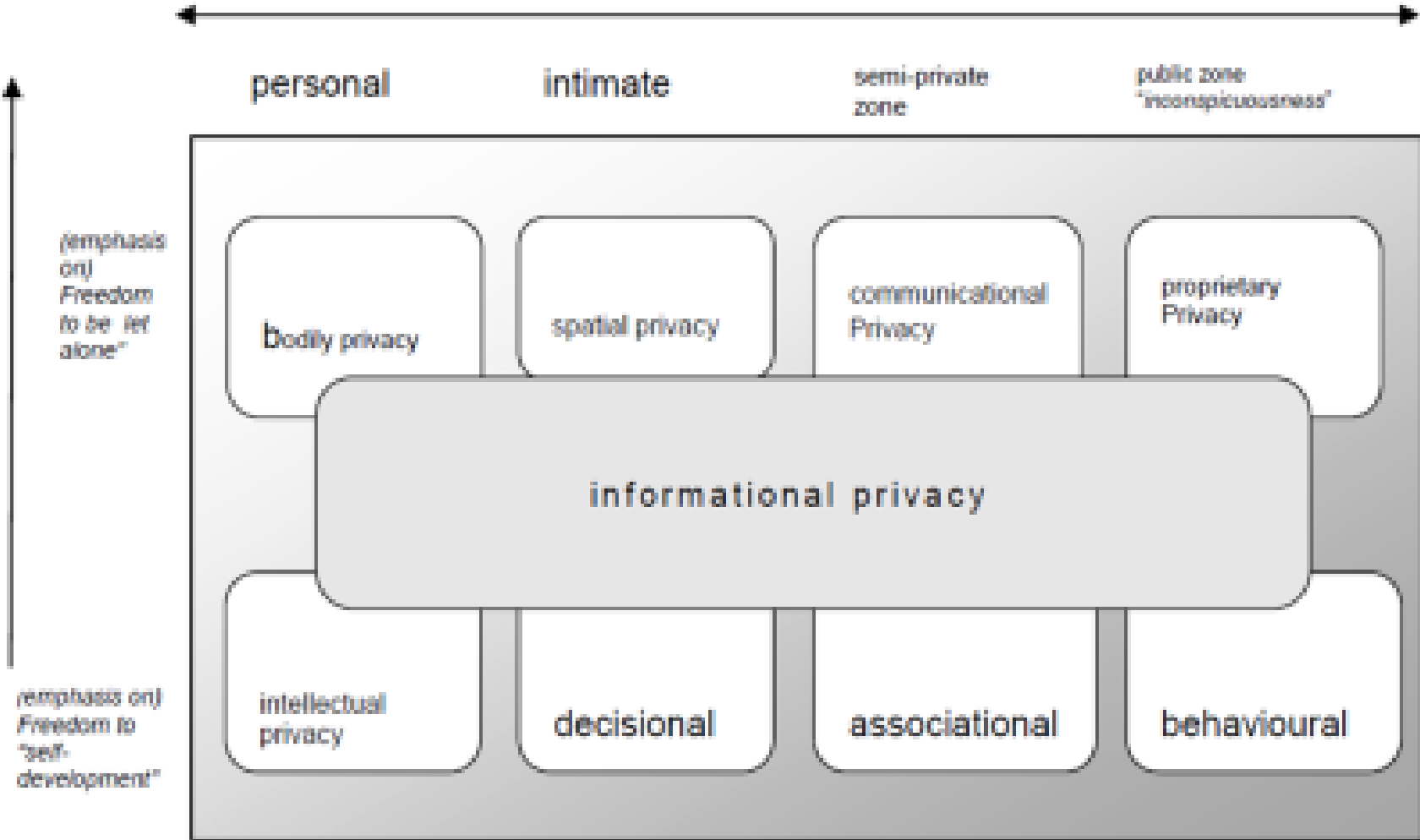
➤ Section 8 (1) (j) of RTI Act – Exemption

- ✓ Information which relates to personal information , the disclosure of which has no relationship with any public activity or interest or
- ✓ which would cause unwarranted invasion of the individual's privacy unless there is a larger public interest involved.

Data Privacy : Indian Scenario (Post RTI)

- Swarupsingh Naik v. State of Maharashtra (WPNo.1750,2007)
 - ✓ The public's right must prevail over the privacy of the third person
- Vijay Prakash v Union of India (2009, 82,AIC 538)
- Girish R. Deshpande v. CIC
 - ✓ Sec. 8 (1) (j) does not make any distinction between private person and public authority .
 - ✓ right to privacy of public servant in favor of transparency.
- Unique Identification Authority of India & Others v. CBI
- Justice Puttuswamy & others v Union Of India
 - ✓ Landmark legal development in informational privacy.

Topology of Privacy



Justice Shrikrishana Committee on Data Protection Framework of India.



- to ensure growth of the digital economy while keeping personal data of citizens secure and protected.
- data protection is synonymous with protection of informational privacy
- data protection is the foundation on which data-driven innovation and entrepreneurship can flourish in India.

Part I : Context Setting

Part II : Scope and Exemptions

Part III : Grounds of processing, Obligation on Entities and Individual Rights

Part IV : Regulation and Enforcement

Data & Information

Meaning of “ Data “ in the Proposed Bill

"data" means

- a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner,
- and is intended to be processed, is being processed or has been processed in a computer system or computer network,
- and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes)
- or stored internally in the memory of the computer

Meaning of “Information” as per RTI Act

“Information” means

- any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models,
- data material held in any electronic form and
- information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

The data (Privacy and Protection)Bill, 2017 : At a Glance

- [First data privacy law](#)
- Individual consent the centerpiece of data sharing.
- provisions on data storage, making it mandatory for a copy of personal data to be stored in India,
- applies to both governmental and private actors
- as well as any data processing within India and to any processing by the State, Indian companies or Indian citizens.
- Concept of “Personal Data” and “Sensitive personal data “

The data (Privacy and Protection)Bill, 2017 : At a Glance

Schedule 1 of the Bill

The Act shall not apply to collection and processing of data which falls within the following categories

- purely for personal reasons or pertaining to household activities
- of a deceased person
- eligible to be disclosed under the Right to Information Act, 2005
- that is anonymised and can not be used to identify the natural person.



- ***On a positive note*** Draft Data Protection Bill also strengthens Sec 8(1)(j) — which accounts for the right to privacy — of the RTI Act.
- The Section 8(1)(j) aims to fine-tune the balance between one's personal information and the need for transparency in public.

Conclusion



- Both the rights are intended to help the individual in making Government accountable and transparent.
- Enactment of clear definitions in legislation is required to make both the laws effective.
- Effective Implementation of Sec. 4.
- Due diligence of PIO .
- Making institutional structure more functional.
- Public Interest Test- to balance and harmonize data protection and right to information.



thank
you