

Contemporary Relevance of Right to Information and Right to Privacy

Submitted by-

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**RIGHT TO
INFORMATION**

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LIST OF ABBREVIATION

RTI	Right to Information
CIC	Central Information Commission
SIC	State Information Commission
CPIO	Central Public Information Officer
SPIO	State Public Information Officer
CAPIO	Central Assistant Public Information Officer
SAPIO	State Assistant Public Information Officer
IC	Information Commissioner
ICs	Information Commissioners
FAA	First Appellate Authority
PA	Public Authority
PAs	Public Authorities
GOI	Government of India
Sec.	Section
vs.	Versus
Corp.	Corporation
Ltd.	Limited
SC	Supreme Court
HC	High Court
LC	Legal Consultant

ABSTRACT

“Information is the currency of democracy”

-Thomas Jeffers

In the modern era the information has become the new currency by the use of which one can rule as well as control the world and right to information is a marvellous step taken to strengthen the roots of the democracy to make the information available to the citizen and non-governmental organisation in hand and still maintaining the privacy of the individuals. It is a significant tool in maintaining the transparency and privacy at the same time in the operation of government. Its proper implementation ensures good governance and eliminates discrepancies. ‘Right to Information’ simply means that each and every citizen of India has free and easy access to the information. Its sole motive is to maintain the transparency in working of the government while maintaining the privacy under the same sphere.

As it is said that “the more vigilant citizen, the more the nation grow” It is the responsibility of the government to instill the curiosity in the citizen of a nation for good governance to exist in both theory and practice. Citizens must be empowered to participate in meaningful ways in decision-making processes.

The Constitution of India has enshrined the principles of democracy; especially by guaranteeing to its citizens Fundamental Rights which, inter-alia include the people’s right to know everything performed by the public functionaries. This right is inherent & implicit in Article 19(1) (a) and Article 21 of the Constitution of India. The right to information which is enshrined in Article 19(1)(a) of the constitution, which empowers the citizen to seek any information from public authority and on the other hand right to privacy enshrined under Article 21, assures privacy to the citizen. Both of them exist under the same constitution, as a result both conflict in various aspects. The research paper elucidates that how the right to information is upheld even after protecting the privacy of an individual.

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The researcher would also point out that how the highly educated and learned citizen use the right to information for their own benefit risking the privacy of the individual. It deals with various perk of the right to information and suggestion to remove those flaws quoting various judgements and there outcomes which have provided new sphere to the right to information and making a fine line of distribution between where the right to information end and the point from where right to privacy begin.

INTRODUCTION

The concept of information and privacy could be opposing and is also interrelated. Individual privacy is tried to be achieved by maintaining governmental and institutional transparency. As the only governmental organisation are liable to answer under the right to information exempting the personal information. But the situation of transparency and privacy brings out the question of how the public good should be balanced against the private interest and upto what extent.

Both the concepts of transparency and privacy are based on the use of information and are concerned with the preservation of citizens' rights enshrined under the fundamental rights of the constitution. It is an interesting crossroad in the Indian legal scenario where two strands of approach securing two most cherished rights, called fundamental rights though marked by constitutional reticence, yet vociferously claiming their legitimate position in the order of things and in the scheme of legalism, underpinned by robust moral and ethical undertones, creates the much-needed substratum for confrontation marked by belligerent interaction with a conspicuous claim of superiority and it is here where lies the rub. To achieve these means transparency uses the disclosure of governmental/corporate information and is applied to public figures, governments, and corporates while privacy establishes standards for personal information and is applied to private individuals. Finding an appropriate balance between privacy and transparency is a challenging task as the standards associated with transparency and privacy cannot be applied equally across different groups. Privacy and transparency only become meaningful when one looks at what information needs to be treated private and what information to be treated as public as applicable to private persons, public persons, corporates, private entities, and governments.

Right to Information Act 2005

In India right to information works to promote transparency while preserving the privacy. It has become the backbone of the smooth functioning of the government. It is often held to be an appropriate tool to control corruption and make the Indian government accountable to citizens. The logic behind providing the information under the right to information is simple, as the government run on the money of the public collected as the tax. The general public as the tax payer and as an integral part of the democracy as democracy in itself state that it is the rule of people. People will have the right to inquire as to the various activities of the government departments in order to be better informed about their functioning. The Act provide the right to citizens to request information held by public authorities from appointed public information officers in each governmental department. Alternatively, more restricted public access, more the system will become opaque and will make the general public disempower and alien to the rule and the sole motive of the democracy will be wasted. The constitution of India quite emphatically upholds tenets of justice, liberty, equality and fraternity as the core of the Indian democratic polity. It took a long time to enact such a law which empowers citizens and decreases the gap between the public and government. The fundamental objective of such a legislative enactment is to animate the processual component of a vibrant functional democracy. Right to Information expands the domain and interpretation of the article 21 under the right to life it empowers the citizens of this country to actualise their right to know or receive information.

The RTI is “requisite for the very exercise of democracy”¹ (OAS 2003). Democracy is based on the consent of the citizens, and that consent turns on the government informing citizens about its activities and recognizing their right to participate. The information is collected by the government in the form of public information officer on the behalf of the citizen and is provided to the general public when they demand. General public can only truly participate in the working of the government only if it is well informed about the activities and policies of the

¹ 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 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) .

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government.²Following points can be seen as the basis of the formation of the RTI Act of any nation

- An individual, organisation, or a legal entity can demand information from any organisation without mentioning the motive of obtaining a particular information.
- The duty arises of the relevant body to respond with an answer to the query of the individual within a time limit.
- Transparency and privacy should go hand in hand which means 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. Exception typically require that there can be more harm in providing the information than not doing so.
- Provision of appellate authority in form of internal appeal mechanism to challenge the withholding of the information.
- Mechanism of external review of the information provided in forms of the court. That means the decision of the appellate authority could also be challenged in the high court.
- 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 in the form of website, which is easily available to general public.

Therefore, a culture of sharing knowledge and information pertaining to virtually all the aspects of functioning by the public authorities has been encouraged by RTI. The basic prerequisite of a welfare state is a climate of transparency, participation and engagement to give shape to the aspirations of a modern democratic India – all of which uphold the idea of participatory democracy. . It is in tandem with such a spirit that RTI emerged as one of the most pragmatic piece of legislation having immense potential to mark the beginning of a new era of governance which celebrates the potency of

² 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.

transparency, interaction and participation as legitimate models of democratic governance while maintaining the privacy on the same road.

Right to information in India

- History of right to information

It has taken 82 years for the transition of an opaque system of governance to a transparent system of the government. Such a culture seems alien in the background of colonial rule in India when secrecy was meant to be the rule and transparency an exception. But when India freed itself from the clutches of foreign bondage, the idea of a welfare state seemed to be a dominant theme of the framers of the constitution. But it took a long way to reach here. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy. Greater the access of the citizens to information, the greater will be the responsiveness of government to community needs.

It forms the core of the Right to freedom of speech and expression enshrined under article 19 of the constitution. If the general public does not have the knowledge that how the government or public authorities function how they will keep a check on them. Democracy revolves around the basic idea of Citizens being at the centre of governance.

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

At present time the information is the currency as it has become a global trend towards recognition of the right to information by countries, inter-governmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which is related to the integrity fraternity and liberty of a person. The right to information plays an important role in keeping a check on the function of the government and to make government accountable and liable towards the general public. The greater the access of the citizen to information, the greater the responsiveness of government to

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community needs. Alternatively, if more restrictions are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation' of general public from the government. 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 RTI primarily empowers individual to obtain information from public organisation.

- Applicability

The act applies in overall India in the both 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.

- Right to Privacy under RTI

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.

The act list types of information that is exempt from public disclosure that include³:

- would affect the sovereignty, integrity, security, strategic, scientific or economic interests of the state; relations with foreign States or lead to incitement of an offense;⁴
- the courts have prohibited from being published; or disclosure of which may lead to contempt of court;⁵
- would cause a breach of privilege of parliament or the State Legislature;⁶
- relates to a company's trade secrets, intellectual property, or commercial confidence; unless the larger public interest warrants such disclosure;⁷
- available to a person in his fiduciary relationship; unless the larger public interest warrants such disclosure;⁸
- information received in confidence from a foreign government;⁹
- information that would endanger the life or safety of an individual or identify the source of assistance given in confidence for law enforcement purposes if disclosed;¹⁰
- information that would impede the process of investigation; apprehension or prosecution of offenders;¹¹

³ Right to Information Act, 2005 s. 8

⁴ Right to Information Act, 2005 s. 8(1)(a)

⁵ Right to Information Act, 2005 s. 8(1)(b)

⁶ Right to Information Act, 2005 s. 8(1)(c)

⁷ Right to Information Act, 2005 s. 8(1)(d)

⁸ Right to Information Act, 2005 s. 8(1)(e)

⁹ Right to Information Act, 2005 s. 8(1)(f)

¹⁰ Right to Information Act, 2005 s. 8(1)(g)

¹¹ Right to Information Act, 2005 s. 8(1)(h)

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- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers till the matter is complete, or over;¹²
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless the disclosure would be in the interest of the larger public good;¹³

The act clearly states that intelligence and security agencies are exempted. However in certain cases, like corruption and human right violation, information could be obtained from these institutions as well.

Court have cited in various cases exemption of certain information under 8(1)(j) and to a very vast extent right to privacy has been discussed for further understanding. Let us see some cases within the courts have resolved the conflict between right to information and right to privacy:

Union Public Service Commission v. R.K. Jain¹⁴

RTI was filed by an applicant asking for the records related to disciplinary proceedings of a third party. It was denied by the public information officer and first appellate authority but in second appeal the CIC allowed the information to be disclosed. High Court upheld the decision of CIC and held that:

“22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act. The querist must make out a case (in his application under Section 6 of the Act) justifying the disclosure of the

¹² Right to Information Act, 2005 s. 8(1) (i)

¹³ Right to Information Act, 2005 s. 8(1) (j)

¹⁴ 1 <http://lobis.nic.in/dhc/VS/judgement/17-07-2012/VS13072012CW12432011.pdf>

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information sought on the touchstone of clause (j) of Section 8(1) of the Act.

34. It follows that the “privacy” of a person, or in other words his “private information”, encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. “Personal information”, on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, “private information” is a part of “personal information”. All that is private is personal, but all that is personal may not be private. A person has a right to keep his private information, or in other words, his privacy guarded from disclosure. It is this right which has come to be recognised as fundamental to a person’s life and liberty, and is accordingly protected from unwarranted/unauthorised invasion under the Act, and can be overridden only in “larger public interest”.

35..... The expression “larger public interest” connotes that the public interest that is sought to be addressed by the disclosure of the private information, serves a large section of the public, and not just a small section thereof. Therefore, if the information has a bearing on the state of the economy; the moral values in the society; the environment; national safety, or the like, the same would qualify as “larger public interest”.

36. Take for instance, a case where a person is employed to work in an orphanage or a children’s home having small children as inmates. The employer may or may not be a public authority under the Act. That person, i.e. the employee, has a background of child abuse, for which he has undergone psychiatric treatment in a government hospital. A querist could seek information regarding the medical and psychiatric treatment undergone by the person concerned from the government hospital where the person has undergone treatment, in larger public interest, even though the said information is not only personal, but private, vis-à-vis. the employee. The larger public interest in such a case would lay in protecting the children living in the orphanage/ children’s home from possible child abuse.

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40. The information sought, in the present case, also does not relate to the privacy of the charged officer. Disciplinary inquiry of the charged officer is with regard to the alleged irregularities committed by him while discharging public duties and public functions. The disclosure of such information cannot be regarded as invasion of his privacy.

41. Even otherwise, the disclosure of such information would be in the larger public interest, keeping in view the object of the Act, which is to promote transparency and accountability and also to contain corruption.”

- Role of judiciary

Under the RTI Act if an individual has exhausted the opportunity of appeal and second appeal, after the order of commissioners and appellate authorities the individual have the right to approach the high court under article 226 or Supreme Court for the infringement of the fundamental right under article 32.

- Right to Information as a Fundamental Rights

The right to information is covered under the fundamental right flowing from Art 19(1)(a) of the constitution is now a well-settled proposition. Several times the Supreme Court has consistently ruled in favour of the citizen’s right to know. The nature of this right and its exemption thereto has been discussed by the Supreme Court in several cases.

In SP Gupta v. Union of India¹⁵, 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 8 the court held that exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country.

The same principle is explained in the case Indian Express Newspapers (Bombay) Pvt. Ltd. vs India¹⁶ where 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

¹⁵ 7 AIR 1982 SC 149

¹⁶ 2003(001) SCW 2353 SC

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here is the people's right to know." In State of U.P Vs. Raj Narain¹⁷ 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." 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 responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption"

In Kuldip Nayar v. UOI¹⁸ 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 Agarwal¹⁹ high court 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.

¹⁷ AIR 1975 SC 865
¹⁸ 6 AIR 2006 SC 3127
¹⁹ (2009)

Right to Privacy

In current era of internet and technology the information has become the key to every lock and its protection first and for most priority of an individual. As a matter of fact an individual always demand a perfect seclusion of his information from others. Concept of privacy in his domain covers a number of prospects like nondisclosure of information, sexual affairs, business secrets and no observance by others. Privacy should not be confused with the personal something which is private will be personal but everything which is personal cannot be private. Privacy is just the reverse of being public, at present time the privacy is not only constitute to tip of one's nose it is spread all around what all information related to an individual he doesn't want to share comes under his private information. For example if one's neighbour peeps into in his house from outside then it would constitute violation of his right to privacy in the same way publishing the private chat in social media of two person also comes under violation of right to privacy. Thus privacy is a state of isolation and separation from others. Privacy in general means the right to be let alone.

The expression "Right to Privacy" was used by the Justice Cooley in 1888. The same was followed by the Samuel Warren and Loues Brandeis in 1890 in their article they stated that the object of privacy is to protect 'inviolable personality'. Further they elaborate that in early time law provide relief only for the inheritance with life and property, for trespasses and other criminal offences. Right to life used to exist but only for protecting the life and liberty in forms of battery and assault later own they realise that right to life have a vast arena covering right to be alone.

Indian legislation has taken a long time to form such a law which increases the arena of Right to Life to such a vast level it concludes that right to life does not cover only to live but also the having the choice that how you wish to live Right to privacy is not an explicit right under the Indian Constitution. Rather, it is implicit in the „right to life“ under Article 21 of the Constitution of India. Every individual has a private side and right to privacy aims to identify and confer the right to a person to be left alone, to indulge in certain activities either alone or with someone whom he/she considers to be his/her confidante (spouse).

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In this world of information the privacy of an individual have attracted the attention world-wide and Right to Privacy has become a universal concept that finds eloquent manifestation in various international covenants. Article 12 of Universal Declaration of Human Rights (1948) states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to unlawful attacks on his honor and reputation.” Article 8 of European Convention on Human Rights, 1950 states “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of the rights and freedoms of others.”²⁰ And finally the Right to Privacy became an implicit fundamental right under Right to Life by Puttaswamy judgement. It is further stated in Puttaswamy that privacy has two roles: normative and descriptive. Privacy in the normative sense affiliates to moral principles, eternal values and essentials pertaining to human dignity, autonomy and self worth. In the descriptive sense, it refers to a bunch of entitlements and claims vindicated on the normative basis and rendered implementable being supported by constitutional mandate. If the State denies it to any person, he/she may approach the highest court of the land to vindicate and enforce the right. The Supreme Court of India felt it increasingly imperative to accommodate right to privacy into the fold of right to life and the judicial journey towards such a regime commenced roughly when A. K. Gopalan came for pointed consideration in Kharak Singh and finally culminated into a wellstructured perspective based on integrative approach linking Articles 14, 19 and 21 of the Indian Constitution (popularly called the Golden Triangle) in Maneka Gandhi owing to the growing consciousness and acceptance of the idea of self-development of every human being. The human rights consciousness further fortified the growing realisation that creativity is best nurtured and honed in an atmosphere of privacy and seclusion. This is the developmental aspect of privacy which more than justifies the quick incorporation of the right to privacy into the broader embrace of right to life under the Indian Constitution. But if we fathom the other end of the spectrum which deals with the protectionist approach justifying the right to privacy, the rationale for holding this right fundamental under the aegis of the Indian Constitution seems impressive. A

²⁰ Hinailiyas, „The Right to Privacy under Article 21 and the Related Conflicts“ (Legal Services India, 2014) accessed 5 July 2017.

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practical approach to the privacy simply means a right which is intrinsically riveted to an individual's personality and denying which impedes the spontaneous behaviour or conduct of an individual thereby impairing his right to freedom. Privacy means different for different people the mere translation of the word privacy cannot cover the wide interpretation of the Right, for instance when we talk about sexual freedom or romantic verbal or gesticular exchanges which are considered intimate in nature we cannot think of a public display of such behaviour or conduct given the ethical and moral prescriptions in the context of India. Concept of privacy as a whole is a culture-specific social phenomenon, it has a strong moral, ethical, psychological and social bearing. The privacy is a concept which is more often determined by the moral and ethical considerations in the immediate context.

Right to Information in conflict with Right to Privacy

The right to information and the right to privacy are both essential human rights in the modern information society. In most of the cases, both the rights complement each other in holding governments accountable to individuals. But there is a zone of conflict which emerges when there is a demand for access to personal information stored in a government database. RTI is an act which guarantees all the access to the public data or data pertaining to any activities of various public authorities. There is no conflict between the Right as far as the disclosure of the information is related to public authorities because it is the essential right of the citizen to have access all the detail which is essential for the good governance. In some cases, the citizens may also claim access to information kept in the database of private agencies provided such agencies are involved in activities related to governance of the nation or outsourced to function at the instance of certain public authorities and public departments. The citizens of India are taken as partners in the functioning of the wheel of democracy and progression and this philosophy caters to the justification of participatory democracy where transparency in its functioning is the truest hallmark.

Government act as a bridge between both of the rights when the conflict arises government need to develop strategies, mechanisms to limit the conflict and reconcile the true essence of right as far as possible some structural and legislative means need to be established for creating harmony between both the rights Right

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to Privacy and Right to Information.²¹ When the question of harmonising the apparently conflicting rights is raised, a sense of compromise and accommodative culture needs to be promoted to ensure that the larger interest that needs to be nurtured under all circumstances is not compromised. It has to be understood that both the right even being in the conflict have to deal with the broader regime of human rights. Human right does not support any type of hierarchy between two rights so no right could be put above the other. But if someone's private information holds a large public interest and holds the benefit of large number of people it could be disclosed but only under one condition when public interest becomes a crying need, private interest must yield to the demands of public interest.

Case Highlights

- Personal Information (third party information) held by a public authority can be disclosed under two circumstances:
 - it has a relationship to the public activity (i.e. his activities falling in the public domain) of the third party,
 - there is a larger public interest involved.
- Information having a bearing on the state of the economy; the moral values in the society; the environment; national safety, or the like, the same would qualify as "larger public interest"
- Information relating to disciplinary inquiries against public servants may be disclosed as it does not relate to the privacy of the charged officer. Thus such information cannot be considered as "personal information".

Girish Ramchandra Deshpande vs. Central Information Commissioner,²² the case was decided by the supreme court in which it stated that "copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest."

²¹ 4 David Banisar, „The Right to Information and Privacy: Balancing Rights and Managing Conflicts“ (The International Bank for Reconstruction and Development/ The World Bank , 2011)

²² <http://www.judis.nic.in/supremecourt/imgs1.aspx?filename=39615>

Jamia Millia Islamia v. Sh. Ikramuddin²³

In the cited case the applicant asked the details about the land deal between Jamia Millia Islamia and some individuals. Jamia refused claiming invasion of privacy under section 8(1)(j). The question involved was whether a public authority such as a university itself can claim that its privacy rights will be violated by the disclosure. Answering the question in the negative, the Court held that:

“16. However, in my view the expression "personal information" used in Section 8(1)(j) of the Act, does not relate to information pertaining to the public authority to whom the query for

17. No public authority can claim that any information held by it is "personal". There is nothing "personal" about any information, or thing held by a public authority in relation to itself. The expression "personal information" used in Section 8(1)(j) means information personal to any other "person", that the public authority may hold. That other "person" may or may not be a juristic person, and may or may not be an individual. For instance, a public authority may, in connection with its functioning require any other person - whether a juristic person or an individual, to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if it satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity or interest vis-à-vis the public authority, or which would cause unwarranted invasion of the privacy of the individual, under clause (j) of Section 8(1) of the Act. The use of the words "invasion of the privacy of the individual" instead of "an individual" shows that the legislative intent was to connect the expression "personal information" with "individual". In the scheme of things as they exist, in my view, the expression "individual" has to be and understood as "person", i.e., the juristic person as well as an individual.”

Thus the right to protection of personal information extends to juristic persons (corporations, trusts, etc.) as well. This is different from the constitutional concept of the right to privacy which is available only to individuals.

In some other cases the court have sighted

²³ <http://lobis.nic.in/dhc/VS/judgement/22-11-2011/VS22112011CW56772011.pdf>

Contemporary relevance of Right to Information and Right to Privacy.

1. Public authorities cannot claim that information held by them in relation to themselves, is 'personal'.
2. The expression "personal information" found in the RTI Act refers to information that is personal to another individual.
3. The Protection under Section 8(1)(j) extends to juristic persons (corporations, etc.) as well.

Secretary General Supreme Court of India v. Subhash Chandra Agarwal,²⁴(2010)

RTI application was filed seeking information as to whether Supreme Court and High Court Judges had been providing their asset details as per the requirements of a 1997 Resolution of the Full Court of the Supreme Court. One of the grounds on which this information was denied was that such a disclosure would affect the right to privacy of the Judges. A Full Bench of the Delhi High Court, while deciding whether such information should be disclosed under the RTI Act also discussed the interplay between the right to privacy and the right to information in the following words:

"114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains to "personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (i.e. the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it. The

²⁴ <http://lobis.nic.in/dhc/APS/judgement/12-01-2010/APS12012010LPA5012009.pdf>

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nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them. 115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge "----- an individual"s or citizen"s fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office." Section 8(1)(j) ensures that all information furnished to public authorities - including personal information [such as asset disclosures] are not given blanket access. When a member of the public requests personal information about a public servant, - such as asset declarations made by him - a distinction must be made between personal data inherent to the person and those that are not, and, therefore, affect his/her private life. To quote the words of the learned single Judge "if public servants ---- are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or "interest". ----- That the public servant has to make disclosures is a part of the system's endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose these investments and assets is to check the propensity to abuse a public office, for a private gain." Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants. 116. In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8(1)(j) inasmuch as the only information the applicant sought was whether 1997 Resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8(1)(j). We concur with the view of the learned single Judge that the contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure

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prescribed under Section 8(1)(j); that they are not otherwise subject to disclosure. Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in "larger public interest".

This issue was discussed by the Delhi High Court but the court did not reach to a result because particular information was not asked regarding the judges and it is possible that this issue was never resolved since the judges of the supreme court voluntarily agreed to disclose their asset in the website of the Supreme Court which is still an on-going practice. However it is not the case with all high court as it is the will of the judges.

'Private Right' Yielding to 'Public Interest'

The public-private debate essentially germinates from public and private interest. The right to privacy and right to information come into conflict where a third party does not want to disclose his information but appellant is asking for the same then there arises a conflict which right to be provided priority then come the exemption that if the private information involve the welfare of a large public then the information could be provided. The same has been cited in various cases

Case Highlights:

1. Health records are personal information and are exempted from disclosure under the RTI Act, unless it is connected to public activity or interest.

Shri.Chetan Kothari v. Bhabha Atomic Research Centre, ²⁵ (2011)

This case demonstrates that records pertaining to the deceased are considered personal information and are exempt from disclosure under the RTI Act. In the case Dr. Rajabali Lane requested from the Bhabha Atomic Research Centre information regarding the employees that had committed suicide during the past 15 years. The CPIO revealed the number of suicides but no further details. The decision was appealed and the Commission upheld the decision not to disclose the information as the family members of the deceased have a right to live a life of dignity and it would cause an invasion of privacy. It is important to note here that the CIC is not talking about the privacy rights of the deceased person but instead it is relying upon the privacy rights of the family members of the deceased to deny the disclosure of information to the applicant.

²⁵ <http://indiankanoon.org/doc/425930/>

Mr. Pritpal Singh Sawhney v. Ministry Of External Affairs, ²⁶ (2011)

This case demonstrates that passport details, when not in the public interest, cannot be disclosed under the RTI Act. In the case Shri Pritpal Sawhney requested from the Regional Passport Office, the passport details of Mr. Ghai, who had a criminal case pending against him. The CPIO at the Passport Office declined to disclose the passport details on the ground that the information related to third parties, and the disclosure would cause an unwarranted invasion of privacy. Shri Pritpal Sawhney filed an appeal with the Commission on the grounds that public interest was involved because a criminal case was pending against Shri Ghai. The Commission maintained that the passport details sought belong to a third party, and thus are exempt from disclosure under the RTI Act.

It is interesting to note here that the mere pendency of a criminal case and the argument that information is required for such a criminal case is not considered as falling within the concept of 'public interest' so as to disclose personal information. However in the case of Sanjiv Kumar Jain discussed above, the CIC considered that investigation of a doctor practicing on fraudulent documents is within the bounds of public interest.

²⁶ <http://indiankanoon.org/doc/1773560>

Conclusion

The entire discussion primarily has one motive - to decipher the relational dynamics between the two competing rights and to approach towards a regime of harmonising the patent incompatibility between them. The whole research model deals with the contemporary relevance of both the rights. When we try to understand both the rights, we have to think of the implicit constitutional limits up to which the rights can be extended. It is quite interesting that both the rights do exist but the Indian Constitution remains reticent with regard to these rights. All the information asked by the general public is provided without infringing the privacy of an individual. 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.