

Right to Privacy and Right to Information are related to each other



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I perceive this opportunity as a big milestone in my career development. I will strive to use the gained skills and knowledge in the best possible way, I will continue to work on their improvement in order to attain the desired career objectives.

Sincerely,

Shreyans Gaur

INDRODUCTION

Right to information (RTI) caters a fundamental right upon the citizens so that it gives them a legal right to access the information held by government bodies or instrumentalities of the government. And simultaneously, right to privacy allows the individuals to have authority and supervision of the personal information about them that is held by the government and private bodies for instance Aadhar card or bank details. Right to Information and Right to privacy are complementary and supplementary to each other. They are the two sides of the same coin. They can be rightly called as complementary and supplementary to each other. But contrary to this nature of these two there exit a conflict between them. Right to Information and Right to privacy both have been globally recognised by more than 110 countries have adopted these laws. 50 countries across the globe guarantee right to Information in its constitution.¹ If we talk about current situation which is prevalent around us it can be witnessed that technologies have taken over lives, and as far as it is concerned with privacy, the privacy of the individual is being increasingly challenged by new technologies and trends in the society and with the introduction of internet the invasion over an individual privacy are quotidian. Sensitive personal data of an individual is very elementary to leak. Public records are disclosed over internet and go viral with a blink of an eye. In response to this it became the necessity of an hour to give the control over their personal information to promote it many countries have incorporated comprehensive laws that give individual certain rights to control over the collection and use of their personal information by public and private bodies. Right to information is a “Sine quo non” of democratic polity which means that right to information cannot exist without a democratic establishment.

Right to Information

The Right to Information Act, 2005 (RTI Act) was enacted by Parliament to with the objectives of making governance more transparent and accountable. The objective of RTI Act, as stated in the preamble, is to provide practical regime of right to information for the citizens to secure access to Information under the control of the Public Authorities, in order to promote transparency and accountability in the working of every Public Authority and for the constitution of **Central Information Commission** (CIC) and **State Information Commission** (SIC).

The RTI Act empowers citizens to get Information from any '**Public Authority**'. It is the responsibility of a Public Authority to supply correct and complete Information within the specified time to any person seeking Information under the RTI Act. There are possibilities that a Public Authority may not act as per provisions of the RTI Act or an applicant may not otherwise be satisfied with the decision of the Public Authority. The RTI Act contains the provision for two appeals to tide over such situations. **The first appeal** lies within the Public Authority itself which is made to an officer designated as the First Appellate Authority by the concerned appellant. **The second appeal** lies with Central Information Commission (CIC) if the public authority did not respond to the RTI filed by the appellant.

Section 2(f) of the RTI states the definition of "**information**" which 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.¹

The act also requires every public authority to computerise there records so that the citizens need minimum recourse to request for information formally and they could also get the information online on that public authority easily.

¹ <https://indiankanoon.org/doc/1516599/>

The Constitution of India acknowledges that the people are the sovereign power. To exercise their sovereignty in a responsible, ethical, and effective manner, the people must have the right to know. The elected government and the bureaucracy exercise power arbitrarily. They are both riddled with corruption, without any real accountability to the people. Corruption impacts the poor and their survival. In a democratic framework, it makes a mockery of the people's right to decision making by undermining even the formulation and implementation of law and policy. Right to Information is an effective tool to control the arbitrary exercise of power and corruption, and to secure the Government's accountability to its people. Exercising the Right to Information can transform the relationship between people and their Government by empowering people to exercise control over governance.

Mazdoor Kisan Shakti Sangathan

The Mazdoor Kisan Shakti Sangathan is a social movement and grassroots organisation which played a major and successful role for demanding **Right to information**. The MKSS was founded on 1 May 1990 by **Aruna Roy** along with **Nikhil Dey**, **Shankar Singh** and others in the village of **Devdungari, Rajasthan**.

In this village there was literacy level was very low among both men and women, the region was drought prone. Land ownership was limited and the rural poor had to look for alternatives jobs for their livelihood and some time has to migration in search of job. To help these people the government construction of roads, famine relief work, construction of water tanks. These project provided jobs to the poor for the daily wages, but this initiative failed to serve the poor due to the reportedly high level of corruption in the system. In spite of the right to minimum wages act in Rajasthan, the wages that were been paid to the workers were very low then what was shown in the official documents many time the workers were not even got paid for their work.

MKSS functioned as a partner of the poor in important local struggles which were mainly related to land ownership and wages, market prices, protection from sectarian violence and women's rights. When the member of MKSS demanded the file and documents related to the government project when the government departments refused to give the information about the files and document to the public, then the MKSS started a huge campaign for the right to information. Due to the campaign **The Rajasthan State Right to Information Act** was formally passed by the State Legislature in **May 2000** as the campaign became increasingly visible and popular. However, the Rajasthan Act suffered from many various gaps due to which the **Right to Information Campaign** continued to highlight these gaps with the use of the Act. Public Hearings continue to be held, and have moved beyond development works to many other areas of human, development and democratic rights. These have been powerful illustrations of the scope and potential of the right of citizens to question, examine, audit and finally control every act of a democratic government. In a democracy, without the right to know there can be no real right to exercise power and make the Government and the State accountable to its people. The Constitution of India acknowledges that the people are the sovereign power. To exercise their sovereignty in a responsible, ethical, and effective manner, the people must have the right to know. The elected government and the bureaucracy

exercise power arbitrarily. They are both riddled with corruption, without any real accountability to the people. Corruption impacts the poor and their survival. In a democratic framework, it makes a mockery of the people's right to decision making by undermining even the formulation and implementation of law and policy. Right to Information is an effective tool to control the arbitrary exercise of power and corruption, and to secure the Government's accountability to its people. Exercising the Right to Information can transform the relationship between people and their Government by empowering people to exercise control over governance. It is of utmost importance in preventing anti-people policies and is a crucial part of the larger movement to deepen democracy and ensure democratic rights, development rights and human rights. It is now recognized that Right to Information legislation is necessary to enable enforcement of the citizens' fundamental rights under both the **Freedom of Expression under Article 19 – (1)A** and the **Right to Life under Article 21** of the Indian Constitution.

Right to Privacy

Right to Privacy is an integrated and very important part of **Article 21 of the Constitution of India**. It is also being stated by the Supreme court that Article 21 is the heart of the Fundamental Rights provided in the part III of the constitution of India. The Constitution of India does not specifically guarantee a “right to privacy”. However, through various judgments, Indian courts have interpreted the other rights in the Constitution as giving rise to a right to privacy under Article 21 with other, the right to life and liberty. The right to privacy also includes rights such as protection from trespassers into family and home life, control of sexual and reproductive rights and communications secrecy. The right to privacy is define as **“the right of a person to be free from any unwarranted publicity”** but right to privacy is not just fully define under definition it is it also includes rights such as protection from trespassers into **once family and house life, communications secrecy such as Doctor-patient communication, Lawyer-client.**

Right to privacy is important for a development of individual idea's and an individual relationship with other individual and society. In the adhar card matter- “Aadhar” which means, in English, ‘foundation’ or ‘base’, has become the most talked about expression in recent years, not only in India but in many other countries and international bodies. A word from Hindi dictionary has assumed secondary significance. Today, mention of the word ‘Aadhar’ would not lead a listener to the dictionary meaning of this word. Instead, every person on the very mentioning of this word ‘Aadhar’ would associate it with the card that is issued to a person from where he/she can be identified. It is described as an ‘Unique Identity’ and the authority which enrolls a person and at whose behest the Aadhar Card is issued is known as Unique Identification Authority of India (hereinafter referred to as ‘UIDAI’ or ‘Authority’). It is described as unique for various reasons. UIDAI claims that not only it is a fool proof method of identifying a person, it is also an instrument whereby a person can enter into any transaction without needing any other document in support. It has become a symbol of digital economy and has enabled multiple avenues for a common man

At the same time, the very scheme of Aadhar and the architecture built thereupon has received scathing criticism from a section of the society. According to them, Aadhar is a serious invasion into the right to privacy of persons and it has the tendency to lead to a surveillance state where each individual can be kept under surveillance by creating his/her

life profile and movement as well on his/her use of Aadhar. There has been no other subject matter in recent past which has evoked the kind of intensive and heated debate wherein both sides, for and against, argue so passionately in support of their respective conviction. The petitioners in these petitions belong to the latter category who apprehend the totalitarian state if Aadhar project is allowed to continue. They are demanding scrapping and demolition of the entire Aadhar structure which, according to them, is anathema to the democratic principles and rule of law, which is the bedrock of the Indian Constitution. The petitioners have challenged the Aadhar project which took off by way of administrative action in the year 2009. Even after Aadhar got a shield of statutory cover, challenge persists as the very enactment known as Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and service, 2016 (hereinafter referred to as the 'Aadhar Act') is challenged as constitutionally impermissible. The wide range of issues involved in this case is evident from the fact that it took almost four months for the parties to finish their arguments in these cases, and the Court witnessed highly skilled, suave, brilliant and intellectual advocacy, with the traces of passions as well.

In case of **the Aadhar Act Justice K.S.Puttaswamy(Retd) vs Union Of India on 26 September, 2018** according to **Justice Chandrachud**, who was part of the **five judge Constitution bench headed by Chief Justice Dipak Misra**, wrote a separate judgement saying he had expressed some views different from that of the verdict pronounced by **Justice A.K. Sikri**.²

He bypassed the Rajya Sabha to pass the Aadhar Act amounted to subterfuge and the law was liable to be struck down as being violation of Article 110 of the Constitution.

Justice Chandrachud said that Article 110 has specific grounds for Money Bill and the Aadhar law went beyond this thereby holding the Act to be unconstitutional.

He observed that the enactment of the Act does not save the Centre's Aadhar scheme. Noting that mobile phone has become an important feature of life and its seeding with Aadhar posed

²WRIT PETITION (CIVIL) NO 494 OF 2012
<https://indiankanoon.org/doc/127517806/>

a grave threat to privacy, liberty, autonomy, he favoured deletion of consumers' Aadhar data by the mobile service providers.

Maintaining that the Prevention of Money Laundering Act Rules proceeded on assumption that every bank account holder is a money launderer, he said the assumption that every individual who opens a bank account is a potential terrorist or a launderer is "draconian".

Justice Chandrachud also said collection of data may lead to individual profiling of citizens.

He said the Aadhar programme violated informational privacy, self-determination and data protection. It has been admitted by **UIDAI** that it stores vital data which is violation of right to privacy.³

³ https://www.business-standard.com/article/current-affairs/justice-chandrachud-dissents-in-aadhaar-verdict-calls-it-unconstitutional-118092600349_1.html

Right to information and right to privacy interrelated to each other

Laws provide a fundamental right to information for any person to access information held by government bodies. But 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. Right to information and right to privacy are interrelated to each other in as right to privacy and the right to information are both important human rights in this modern information society. For the most of the 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.

Right to privacy and RTI are often described as mainly the same and acting as complementary rights that promote individuals' rights to protect themselves and to promote government accountability.

Privacy is increasingly being challenged by new technologies and practices. The technologies facilitate the growing collection and sharing of personal information. Sensitive personal data which includes biometrics and DNA 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.

Conclusion

After completing the research work on the topic of Right to privacy and Right to information I got to know how RTI was and Right to privacy came into formation and became a fundamental right. I got to know about **The Mazdoor Kisan Shakti Sangathan** because of them the RTI came their hard work and to do something for the welfare of the society so that all the government offices work transparently for the people and if any person requires any information about any government department. If a particular government department does not give reply to a RTI filed by a person or the reply which was been submitted by the PIO of the government department to the appellant RTI, and the appellant does not find that reply given to the RTI correct or incomplete then he could go for a second appeal to the Central information commission which help the appellant to get the reply of the RTI from the government department.

I also got to know about right to privacy that why is right to privacy is important for every individual. By doing this research paper I got to know about the case of **Justice K. S. Pettaway vs. Union of India** in this case he challenges the adhar act which was been implemented by the central government and in which there was 6 judge bench was set up in the Supreme court. The Right to Information, Right to Privacy and also the various important aspects such as Data protection. It can be alleged that Right to Information and protection of an individual's Privacy is paramount and helpful for an individual to exist in today's scenario where technologies have taken over our lives, where everybody is a tech savvy. These two Rights should exist together. The simple solution for harmonizing these to right can be through sanctioning crystal clear definition in legislation, regulations, guidelines and implementing it in the system. Determination of public interest of Public Interest Test should be adopted in case of Right to Information and Right to Privacy as in the Supreme Court case of Girish Ramachandra Deshpande in 2012, which concerned with the issue of service details of public officials. Supreme court gave a strong interpretation of Right to Privacy and held that such information is out of the ambit of RTI unless a larger public interest is involved in the disclosure can be proven. Now the legal boundaries of a person's privacy should be specified strictly as determined in Supreme Court Case R. Rajagopal vs State of Tamil Nadu.⁴

⁴ 1994 SCC (6) 632

Finally, there should be an institutional organization to ensure the harmony between Right to Information and Right to Privacy, and resolving the conflict between these two rights.