

THE CLASH BETWEEN THE RIGHT TO INFORMATION & THE RIGHT TO PRIVACY THE CONFLICTING RELATIONSHIP & CREATING HARMONY

Akshita Pasi¹ Mithlesh Malviya²

^{1,2} School of Legal Studies and Governance, Career Point University, Kota

Abstract: 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 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 This paper examines legislative and structural means to better define and balance the rights to privacy and information and also examine the conflicts between two rights that arise, and will describe institutional models to ensure the exercise of both rights.

In this paper, an attempt has been made to underline the importance of both the rights. The Right to Information and The Right to Privacy, and the various conflicts concerning their relationship, and possible solutions to the issues concerned, after an analysis.

Keywords : Right to information, Right to Privacy, Fundamental Rights Balance, Conflict, Co-existent.

I Introduction

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

Research Objective

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. This paper examines legislative and structural means to better define and balance the rights to privacy and information.

Research Question

1. How to balance both the fundamental rights?
2. Focusing the area of conflicts along with solution?
3. What if right to information intertwined with right to privacy?

II Literature Review

Sudhir Naib in his book “Right to Information in India” (2013) gives a short introduction analysis. The evolution of this landmark Act, the procedures in valued in seeking the information, the duties of information suppliers as also the kinds of information exempted from disclosure.

Mandakini Devasha Suries “ RTI in India- An effective tool to tackle corruption” (2011) describes the RTI Act as the most fundamental law this country has seen as it can be used from the local Panchayats to Parliament, from non descript village to posh Delhi and from ration shop to 2 G scam. P.K Sainiand R K Gupta in these paper titled RTI ACT 2005 objectives, challenges and suggestion have discussed about mass or obstacles in the effective implementation of the RTI ACT.

III Research Methodology

DEFINING BOTH FUNDAMNETAL RIGHTS

1. RIGHT TO INFORMATION

Right to Information has been an aspect of immense grandeur right from its inception. It sought not only to provide access of information to the individuals from the control of Government authorities, but also promoted information disclosure on a transparent scale. It has predominantly ensured that the entities are answerable to the public and proved that for effective functioning of the public authorities, efficient enforcement and disclosure mechanism is important.

On the other hand, Right to Privacy has been held to be an implicit fundamental right within the ambit of the Article 21 of the Constitution following the landmark Justice K. S Puttaswamy V Union of India¹. Both Right to Information and Right to Privacy are recognized worldwide as fundamental and basic human rights and have their own sets of origins and functions applicable.

The RTI is “requisite for the very exercise of democracy” (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 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. **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

¹ Justice K.S. Puttaswamy V Union of India, 2017 (10) SCALE 1,2017 10 SCC 1, WP (C) No. 494/2012.

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.

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:

- i. The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923
- ii. 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.

Why is the Right To Information Act 2005, successful

For the first time in the history of independent India, there is a law which casts a direct accountability on the officials for non-performance. If the concerned official does not provide information within the stipulated period of time, a penalty of Rs 250 per day of delay, can be imposed by the Information Commissioner on that particular concerned official. If the information provided is false or subject to negligence, a penalty of a maximum of Rs 25,000/- can be imposed. A penalty can also be imposed for providing incomplete or for rejecting your

application for malafide reasons. This fine is deducted from the officer's personal salary. And, it can be said that this Act, justifies a person's right to information, and makes sure, the convenience in enforcement of the same. Also, every citizen of this country is a beneficiary to this Act.

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*²", the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art. 19 (1) (a).

2. RIGHT TO PRIVACY

Privacy" in general sense means, "the quality or state of being apart from company or observation" or "freedom from unauthorized intrusion".

The Right to privacy is an aspect of human dignity. Privacy helps an individual protect his individuality, or what is his personal and can be distinguished from what is not and can be accessed. People describe themselves by exercising power over information that is about them and a free country does not ask its people to answer for the choices they make about what information they choose to share and what they choose to keep undisclosed. At the same

² AIR 1973 SC 106

time, this does not mean that public policies cost people their individuality, their choices, on the pretext of protecting them.

In the case of *Kharak Singh V The State of U.P.*³ The Supreme Court, for the first time, recognized that, there is a right of privacy implicit in the Indian Constitution, under Article 21. The Court held that the Right to Privacy is an integral part of the Right to Life, but without any clear cut laws, it still remains in the grey area.

In the case of *Gobind V State of M.P.*⁴, a case of surveillance, the Supreme Court, held that, “Depending on the character and the antecedent of the person subjected to surveillance as also the object the limitation under which surveillance is made, it cannot be said surveillance by domiciliary visit would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental right explicitly guaranteed to a citizen of have penumbral zone and that right is itself a fundamental right that fundamental right must be subject to restriction on the basis of compelling public interest.”

3. 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," 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

³Kharak Singh Vs State Of UP, 1963 AIR 1295, 1964 SCR (1) 332
⁴Gobind Vs State Of M.P. 1975 AIR 1378, 1975 SCR (3) 946

identify abuses and to campaign effectively against them. Hence using RTI to promote Privacy.

4. AREA OF CONFLICT & SOLUTION

The two fundamental rights guaranteed under the Constitution of India, that herein we refer to, are : The Right to Information and The Right to Privacy both these rights happen to be fundamental rights, but if we observe their nature, they are rather contradictory. Then how can one choose between them, when they are so contradictory, but even the absence of one of these rights could make a person suffer. Both the Right to Information and the Right to Privacy are essential for a person to survive in this modern world, where, everyday, something new is invented, some new technology or some extraordinary ideologies how will a person be able to protect himself without his fundamental rights in his hand?

In most of the cases, both these rights happen to be complementary to each other - Both are focused on ensuring the accountability of powerful institutions to individuals in the information age. Right to privacy, once incorporated as a fundamental right, is wide enough to encroach into any sphere of activity. The conferment of such a right has become extremely difficult with the advancement of technology and the social networking sites. But the other side of the picture is that right to privacy of a person includes the right to seclude personal information. The extent to which the realm of privacy of each person should remain is subjective, which might differ from person to person. But, the complication or the clash between these two rights arises, when one demands the disclosure of some information, that is private, personal & sensitive to another, but it is in the hands of some governmental body.

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.

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.

5. RIGHT TO INFORMATION INTERWINED WITH RIGHT TO PRIVACY ON PERSONAL INFORMATION

The real challenge is when both these rights are at crossroad and enforcement of any one would lead to other being overridden. Thus, the RTI Act, 2005 paves the way for right to privacy by restricting the disclosure of the information which interferes with the privacy of any individual unless it is required for greater public good.

IV 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. Finally, I would like to submit that both the rights being equally essential, should co-exist in the system of governance, while managing a safe balance between the two, which would decrease the conflicts and bring about, a harmony, in the system.

V Suggestion

Finally there should be institutional organization to ensure the harmony between Right to Information and Right to Privacy, and resolving the conflict between these two rights .The loopholes that still exist in these two laws of Right to Information and Right to Privacy must be filled. This can be achieved through airtight legislation for Right to Information, Right to Privacy and Data Protection Laws.

VI Reference

- [1] <https://rti.gov.in/>
- [2] https://indiacode.nic.in/handle/123456789/2065?sam_handle=123456789/1362
- [3] <http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html>
- [4] <https://www.merriam-webster.com/dictionary/privacy>
- [5] <http://www.ijllr.com/s>