
THE CLASH BETWEEN RTI AND THE RIGHT TO PRIVACY

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Introduction:

It is quite interesting how two of the most cherished rights, The Right to Information and The Right to Privacy, though being poles apart, and contradictory and antagonistic to each other, still exist together, complementary to each other, in the Indian Legal System. Both are two essential rights for the survival of a human being in the rapidly advancing, modern and technical world - where, the protection of an Individual's privacy and Security are becoming a matter of concern. Though not explicitly mentioned under the Constitution of India, it was through various judgements of the apex court, held that, both the rights are a part of the fundamental rights - wherein, The Right to Information stands as a part of Article 19(1)(a) - Right to freedom of speech and expression, and The Right to Privacy holds a position under the provision, which is also known as the Heart of the Indian Constitution - Article 21: Right to Life.

The privacy of the individual is being increasingly challenged by new technologies and trends in the society. In such a circumstance, where, it becomes of significance to choose between two essential rights - which one do we choose and how?

This paper deals with third party information, which includes personal information. For a biological person, the protection of Right to Privacy is available under Article 21 of the Constitution of India. Though such protection is not available to other kinds of Third party information, legal right conferred by RTI Act and other Statutes are available to those third parties. This aspect is as important Right to Privacy. The lacuna present in RTI Act with reference to this type of personal information is also present and equally effecting the interests of third parties in the other types of third party information. The problem needs to be plugged in both the cases. In this paper, an attempt has been made to underline the importance of both the rights, i.e., 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.

2. The Right to Information :

2.1. What is Information?

“Information is the resolution of uncertainty; it is that which answers the question of "what an entity is" and thus defines both its essence and nature of its characteristics. Information relates to both data and knowledge, as data represents values attributed to parameters, and knowledge signifies understanding of a concept.” According to Section 2(f) of The Right to Information Act, 2002, 1 “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 materials 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. Information, basically, is everything that can be related to anything. It is something of some value, which might be beneficial to someone. Every citizen has a right to impart and receive information as part of his right to know. Right to know cannot be separated from a democratic polity. Right to information is necessary for self expression, which is an important means of free conscience and self-fulfilment. It enables people to contribute on social and moral issues and it is the best way to find a truest model of anything, since it is an only through it that widest possible ideas can be circulated .

2.2. Why is it necessary?

First of all, what is the meaning of the word “Democracy”? Democracy basically means, “the people’s rule” - it is made by the people and for the people. And if, in a democracy, the people are such an important element, then, how can a democracy survive, if the people themselves do not know what is going around them, and what their elected representatives are doing? In a democracy, the people have the right to ask, or question their government, or in simple terms, they have the right to seek information.

2.3. Genesis of the RTI Act, 2005 :

Dr. Manmohan Singh, the then Prime Minister of India, when bringing to light India's first significant step towards anti-corruption – The Right To Information Bill, said:

“ The passage of the Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, benefits of growth will flow to all sections of the society, eliminate the scourge of corruption, and will bring the common man's concern to the heart of all processes of governance and fulfil the hopes of the founding fathers of our Republic.”

The Right to Information Bill having been passed by both the Houses of Parliament, received the assent of the President on 15th June 2005. It came on the Statute Book as THE RIGHT TO INFORMATION ACT, 2005 (22 of 2005). The basic objective of this Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely effect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand; Institute of Chartered Accountants of India vs. Shaunak H. Satya.

2.4. Why is the RTI 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.

2.5. However, the Right to Information is not an absolute right :

Nothing can be absolute - everything is bound to certain limitations or restrictions - as, in a phase of complete absoluteness, things often go haywire. It can be very well said that, with an absolute power in hand, comes also the power to misuse or abuse the same. Therefore, there must always be a balance between a "right" and a "no right". Not all the Information related to the Government can be disclosed, just because a person seeks such information under the RTI Act, as it might put the larger public interest at a stake, and may endanger the life or physical safety of any person or the nation as a whole. There will always be area of information that should remain protected in public and national interest. For example : When we talk about the war, there should be some secrecy or confidentiality to be maintained of a particular nation, so that, the counter nation or opposition does not make any ambiguous plan to destroy the nation.

2.6. Misuse of the Act:

The experience of the past years has shown that there are cases wherein frivolous applications are being filed in the name of transparency. Some of the instances when provisions of the RTI Act are being misused are:

1. To know the secrets of competitors (third party).
2. To harass the Public authority or bring disrepute to a public servant with the intention of settling a score.
3. For promotion of self-interest like a survey or research; tender or other business interest; blackmailing; derailing investigating; service matter- appointment , transfer, promotion, vigilance enquiry, etc.;
4. It has the potential for being misused for spying activities.
5. The Act does not have strict penal provisions. The fee charged for information and the manner of payment is not uniform, there is also confusion about the head of accounts to which the application and other fees are to be credited.

3. The Right to Privacy :

3.1. What is Privacy?

"Privacy", in general sense, means, "the quality or state of being apart from company or observation" or "freedom from unauthorised intrusion" . Privacy is a boundary wall, that a person makes in his life, beyond which, he does not wish another person's interference. Privacy enables a person to create barriers and manage boundaries to protect himself from unwarranted interference in his life, which allows him to understand who he is and how he wants to interact with the world surrounding him. Privacy helps a person establish boundaries



to limit who has access to his body, place and things related to him, as well as his communications and information. Privacy of a person may include his day-to-day activities, his personal information, and things which are private, and hence, sensitive to him. Privacy, basically means, “the right to be let alone” or “the option to limit the access others have to one's personal information”. Privacy is an important way, in which one seeks to protect himself and the society, against the arbitrary and unjustified use of power, by limiting what can be known about him and done to him, by another person, while protecting him from others who may wish to exert control.

3.2. What is The Right to Privacy?

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

In the case of *Gobind vs State of M.P*, a case of surveillance, the Supreme 28 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.”

3.3. However, the Right to Privacy is not an absolute right :

As already discussed above, no right is an absolute right, as, with absoluteness, comes also the power to misuse or abuse the same. Everything comes with certain restrictions and limitations. Similarly, the Right to Privacy is also bound to certain restrictions. For example, the right may be lawfully restricted for the prevention of crime, disorder, or protection of health or moral; or protection of rights and freedom of others. Although the right to privacy is a part of fundamental right guaranteed under the Constitution, but specific laws can over ride this where larger public interest is involved. For example, the restriction imposed in Section 19-L of the Rajasthan Panchayat Raj Act, 1994 does not outrage the dignity of the individual. The object of this provision is to control population growth and family planning and such type of interference is necessary in a democratic society in the economic welfare of the country.

4. The Conflict between two Fundamental Rights

4.1. The 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?

Conceptually, RTI and the right to privacy are both complementary and in conflict. While RTI increases access to information, the right to privacy veils it instead. At the same time, they both function as citizen rights safeguarding liberty against state overreach. The Supreme Court in a judgment passed in the case of Babu Ram Verma vs State of Uttar Pradesh has interpreted that the expression “public interest” in common parlance means an act beneficial to the general public and an action taken for public purpose. Though the word ‘personal’ has not been defined in the Act, but according to the Concise Oxford Dictionary (10th edition), the word ‘personal’ means affecting or belonging to a particular person, involving the presence or action of a particular individual or concerning a person’s private rather than professional life.

Moreover, where there is a clash of two fundamental rights, namely the right to privacy, which is part of the right to life, which is a fundamental right guaranteed under Article 21 of the Constitution of India, the right which would advance the public morality or public interest would alone be enforced for the reason that moral considerations can not be kept at bay and the persons deciding the issues shall have to be sensitive in disclosure of such issues.

5. Conclusion :

This research paper discusses about the clash between two fundamental rights guaranteed to the citizens of India, under the Part III of the Constitution of India, 1950, namely, The Right to Information, implicitly a part of Article 19(1)(a) and The Right to Privacy, which is a part of Article 21, “Right to Life”, which is also known as the heart of the Indian Constitution. While the Right to Information helps create a transparency in the functionalities of the government, the Right to Privacy helps in creating a line of difference between “The Public” and “The Private”, and “What Information should be disclosed” and “What Information shouldn’t be”. It should be noted that the Right To Information and Privacy are not always conflicting rights, and are designed, in part, to ensure the accountability of the state. The important issue is how the legislation and the implementing and oversight bodies balance the two rights. In order to keep the conflicts at bay, a balance must be established between the Right to Information and the Right to Privacy.

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