

## **An Analytical Study on the Interplay Between Right to Information and Right to Privacy**

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### **Abstract**

This paper attempts to study how **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 **sorts**. The right to information (RTI) and the right to privacy (RTP) are two important rights upheld by the Supreme Court of India. For the most part, they are two sides of the same coin. They complement each other in giving Indian citizens the rights they value highly and holding the government accountable to the people. Many presume that when citizens invoke the RTI, then government bodies can seek shelter under the RTP. This is a myth that was recently exposed by the Supreme Court when it ruled that even the Chief Justice of India's office will come under the Right to Information Act. The apex court stated that public interest should be upheld while disclosing any information under that law. Notably, the country's top court had also said that judicial independence and accountability should go hand in hand, and that one cannot wear a garb of privacy as protection from information disclosure requirements under the RTI Act.

The country's law on our right to information was enacted in 2005. However, since 1975, in multiple judgements, the Supreme Court has recognized the right to information as a fundamental right of citizens under Article 19(1)(a) of the Constitution on our freedom of speech and expression. This has been read together with Articles 14, 19 and 21 to guarantee our right to equality, right to freedom of speech and expression, and our right to life and liberty, respectively. It was those judgements, together with the RTI movements by citizens, that culminated in the RTI Act of 2005. This was an Act of Parliament that set forth a practical regime and framework to grant citizens this right and replaced the erstwhile Freedom of Information Act, 2002. Under the RTI Act, any citizen of India can request information from a "public authority", including the Chief Justice of India, and the relevant authority is required to reply within 30 days. The law also encourages the dissemination of public information through digital means to minimize the

occasions on which citizens would need to take recourse to its provision that lets them lodge a formal request for information on some matter. The government stores a lot of personal information on individuals. This ranges from income tax returns and driving licence details to census data and medical information. When an application is made under the RTI Act for disclosure of some information on an identifiable individual, there is a conflict between the RTI and the RTP.

*Key words: the RTI Act, right to privacy, citizens, fundamental right*

## **Introduction**

The Right to Information (RTI) is considered as a fundamental right under Article 19(1)(a) of the Constitution and is often described as a tenet for strengthening the pillars of democracy. The Right to Information Act, 2005 provides for transparency and accountability of Government through access of information to the general public.

On the other side, the right to privacy is also considered as a fundamental right under Article 21 of the Constitution since 2017 when the Supreme Court ruled so in *K.S. Puttaswamy v. Union of India*.

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.

In *Girish Ramchandra Deshpande v. Central Information Commission (Girish Deshpande)*, the issue before the Supreme Court was whether the Central Information Commission (CIC) can deny the information pertaining to the personal matters of a public servant, pertaining to his service career and the details of his assets, liabilities, movable and immovable properties on the basis of exception mentioned in Section 8(1)(j) of the RTI Act, 2005.

Section 8(1)(j) of the RTI Act, 2005 provides that: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen 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 Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to Parliament or a State Legislature shall not be denied to any person.

The Court while expanding the scope of Section 8(1)(j) of the Act in the aforementioned case held that the documents pertaining to the public servant including his employment letter, assets, income tax return, details of gift received, orders of censure/punishment are exempted from being disclose by the virtue of Section 8(1)(j) and qualifies to be personal information. It further observed that the performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and these aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which would cause unwarranted invasion of privacy of that individual.

Further, the Supreme Court in R.K Jain v. Union of India wherein the appellant sought copies of all note sheets and correspondence pages as contained in an Annual Confidential Report (ACR) and any follow up action pertaining integrity of a public servant was denied on the basis of Section 8(1)(j) of the RTI Act.

Similarly, in 2017 the Supreme Court again reiterated its position in the judgment of Canara Bank v. C.S. Shyam, wherein the information sought was of personal information of an employee of Canara Bank. The court while affirming the position of Girish Deshpande as well as R.K. Jain v. Union of India held that personal information is outside the ambit of the RTI and that there was no public interest having larger good involved in respect of personal information being sought.

## Digital Transparency: A Right to Information Report for March, 2021



### Data Protection and Privacy



### Free Speech and Censorship

Since our last report for the month of February, IFF has filed **23 RTI requests, 5 first appeals and 1 second appeal**. We participated in a hearing at the CIC for another second appeal that we had filed in 2019.

When a citizen is seeking information about his own case, there is no intrusion into the privacy of his case for denying the information.<sup>1</sup> Personal information mean about a third party. [Section 8\(1\)\(j\)](#) can be applied only when some one is seeking information about a [third party](#) and there will be **an element of invasion of privacy**.

CIC Defined “Invasion of Privacy” as *“One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”*

A personal information must be saved from being made public by the public authority which happens to receive such information. It is to be remembered that a **personal information does not cease to be personal just because it is delivered into the care of the public authority by the individual such information**.

Commission also cannot be oblivious to the fact that personal information, when allowed to be accessed by third parties has the potentially to expose the owner of such information to mischief, harassment, intimidation, defamation and worse. The boundaries of personal/private domains must never be allowed to be breached and, if at all breached, must be for compelling reasons,

cautiously, carefully and responsibly evaluated by a competent authority as the Act can't be so interpreted as to allow poaching by third parties into personal domains

### **Objective:**

This paper intends to explore and analyze the relationship between **privacy and RTI laws** is currently the subject of the right of access to information held by government bodies.

### **Trends in observing privacy and RTI laws**

Recently, after the promulgation of the Citizenship Amendment Bill, 2019 (CAA), there were nationwide protests against the Government and the CAA which led the Uttar Pradesh Government/administration to take an unforeseen action against the protestors who were accused of vandalism. The administration displayed banners in the city of Lucknow which had all the details of those protestors including their photographs, name and address, against whom the administration had initiated actions to claim compensation for public vandalism.

The poster sought to confiscation of property if the accused failed to pay up the compensation. This found widespread telecast and reporting in print. The Allahabad High Court had taken a suo motu cognizance of such move considering it to be a gross violation of right to privacy as enshrined under Article 21 of the Constitution.

The Court although had not referred to the judgment of Girish Deshpande, but had held that such move by the UP Government was uncalled for and breached the right to privacy of the rioters. Though the judgment in Girish Deshpande had little relation to the referred case here, but it is worth mentioning in the context of right to privacy of personal information which won in this case.

### **Let us try to Analyse Excerpts of the Ruling by the Allahabad High Court**

It has been often said that the right to privacy provides lungs to the edifice of the constitutional system. The slightest injury to this right is impermissible as it would put the values designed and depicted in the Preamble of the Constitution to jeopardy. Primarily, the foregoing was upheld in the ruling by the Allahabad High Court.

The act on the part of district and police administration of Lucknow was in conflict with the right of life and liberty of individuals. The territorial jurisdiction of the Allahabad High Court which was challenged was put to rest with the argument that despite the fact that the action might have happened in Lucknow and no personal injury was caused, but the act on the part of the administration demonstrated gross ignorance of constitutional and democratic values and the fact that it was widely prone to public dissemination via media, it could lead to form a State-wide nature of impugned action.

The administration's logic to display the names of the accused at a conspicuous place was that it should act as a deterrent to public to take law in their hands and was in public interest. This was challenged to be in violation of people's fundamental rights. Further, it was held that there was no provision in the current law by which the Government could display such names in public fora and that those persons were not even fugitives.

The Allahabad High Court also questioned rational nexus between the object (to deter public at large from participating in such illegal acts of rioting, etc.) and means (display of identity against whom compensation has been claimed for destroying public property) adopted to achieve the object and further how the extent of interference is proportionate to its need. It was said that the fact that only few peoples' name was put on the banners while there must be several thousand cases against several accused in the State for several serious crimes, the administration had done a colourable act in exercise of its executive powers.

UP authorities was ordered to take down banners from the road side displaying the personal information of individuals and not to do such acts without authority of law. The UP Government has appealed against the aforesaid order before the Supreme Court, which has not been stayed yet and has been referred to a larger Bench.

### **Right to Fair Trial over and above Right to Privacy**

The issue arose through a matrimonial dispute wherein the family court had admitted a Compact Disk (CD) filed by husband wherein the wife could be heard talking ill about the husband and his family. The husband contended that such derogatory remark amounts to cruelty. Thereafter, the wife approached the Delhi High Court under Article 227 of the Constitution seeking dismissal of the CD being taken on record as evidence. The reasoning provided by wife was that the CD was

tampered, therefore unreliable and that the conversation between her and so called friend was recorded without her knowledge or consent which constituted violation of her fundamental right to privacy, therefore not admissible as evidence. For the purpose of case analysis here, we will only consider the legal point pertaining privacy.

The argument put forth by wife was that privacy had been recognised by the Supreme Court as a fundamental right, available to a person not only against the State but also against private individuals as is recognised by the Supreme Court in *K.S. Puttaswamy v. Union of India*.

On the other hand, husband's contention was that although privacy had been recognised by the Supreme Court as a fundamental right, but it was not absolute and subject to reasonable restrictions.

Relying upon other judicial precedents, it was urged that the husband was entitled to establish cruelty on the wife's part and to prove his case seeking dissolution of marriage on that ground under the family law concerned. Accordingly, the wife's right to privacy must accede to the husband's right to bring evidence to prove his case, else the husband would be denied the right to fair trial guaranteed under Article 21 of the Constitution.

The single Judge Bench while considering the various judicial precedents cited on both sides categorically held that in the case of conflict between two rights i.e. right to fair trial and right to privacy, the fundamental right to privacy had to yield to right to fair trial and thus any incriminating evidence collected through breach of privacy was admissible in the court of law. The court had harmoniously interpreted two fundamental rights which flows out from Article 21 of the Constitution and had observed that no fundamental right is absolute.

The Court relied upon the decision of the Supreme Court in *M.P. Sharma v. Satish Chandra* wherein it was contended that the evidence collected should be inadmissible being an illegally compelled evidence and thus is violative of Article 20(3) of the Constitution, the Supreme Court held that although the search or seizure was illegally conducted and may amount to breach of a fundamental right but that would not make the search or seizure invalid in law. The court also relied upon a Supreme Court decision of *Pooran Mal v. Director of Inspection (Investigation)*, wherein the seizure of account books, documents and valuables by income tax

authorities was challenged to be in conflict with Articles 14, 19(1)(f), 19(1)(g) and 31 of the Constitution.

The Supreme Court while interpreting the provision of the Evidence Act, 1872 noted that the only test of an admissibility of evidence is its relevancy and thus it is immaterial whether the evidence is procured through an illegal search or seizure.

### **Investigation is an Intrusion to Privacy, but the Unearthing of Truth must Happen in the Interest of Justice**

The year 2020 has not only been marred by so many deaths due to Covid-19, but also under mysterious circumstances particularly the much media investigated and publicised case of Sushant Singh Rajput. Due to dissemination of personal information in public both from the right and wrong parties (referring to the parties in dispute), there is a privacy angle that has gained prominence.

In normal instances, investigation are done by State police and investigative bodies under the Government (State or Central, or both), but the mysterious stories including foul play circling round the matter has allowed the media to take centre stage in investigation. One of the good instances wherein due to free media reporting, the case is probably heading in the right direction otherwise it would have gone under cover long ago. Interestingly, from call data records to WhatsApp chats are on display in several news channels.

Now, this is personal information. Given the background, it may be worthwhile to look into some judicial pronouncements particularly from the admissibility of evidence and court's opinion on privacy with respect of phone tapping. It may be further provided that in current times a separate process is required for accessing phone records from the telecom providers and these pronouncements should not be read in entire isolation.

In [R.M. Malkani v. State of Maharashtra](#) it has been held that conversation that is tape-recorded by an external device, without tampering or interrupting telephone lines, is admissible in evidence. In this case the Supreme Court has spelt-out three conditions for admissibility of a tape recording, namely, (a) relevance, (b) voice identification; and (c) proof of accuracy. Further it has been held that evidence, even if procured illegally, is admissible.

In another case of *Tukaram S. Dighole v. Manikrao Shivaji Kokate*, it has been held that tape recordings of speeches are documents under [Section 3](#) of the Evidence Act, 1872 which stand on no different footing than photographs, and are admissible after satisfying the three conditions as laid down inter alia in *R.M. Malkani*. Further in *N. Sri Rama Reddy v. V.V. Giri*, it has been held that a tape recording can be used to corroborate as well as contradict evidence.

There has been contrary pronouncements as well to include as in *State of Punjab v. Baldev Singh* where the Supreme Court has held that while considering the aspect of fair trial, the nature of the evidence obtained and the nature of the safeguard violated are both relevant factors. Courts cannot allow admission of evidence against an accused where the court is satisfied that the evidence had been obtained by conduct of which the prosecution ought not to take advantage, particularly when that conduct causes prejudice to the accused. In terms of procedure, before an applicant asks for the personal information of an individual, he or she has to justify the public benefit of its disclosure and the information officer should be convinced of it. If the officer accepts the argument, public interest trumps the RTP.

Thus, together, the RTI and RTP present us a paradox. Can it be harmonized? While the two rights frequently look irreconcilable, they can, as stated earlier, act in complementary ways to confer individual rights and promote greater government accountability and transparency. However, this would require the country to work on reconciliation of the two.

There needs to be common definitions and internal consistency within the entire framework to limit conflict and establish a balance. Since this exercise involves specific legal provisions, it might even call for legislative efforts. Perhaps, a “conflict resolution strategy” can be adopted to harmonize the two rights. Even though Section 8(1)(j) of the RTI Act explicitly grants exemption from the disclosure of personal information, for example, it comes with the caveat mentioned above, public interest may warrant the disclosure of such data to an applicant by a public authority, thereby nullifying the exemption and disregarding the RTP.

However, challenging as it may be, it is still possible to demarcate the extent to which personal information may be disclosed in the general interest. As of now, there is no line of demarcation for disclosure and non-disclosure. This is a bridge that could resolve at least part of the RTI-RTP paradox. With times changing, tape recordings have been replaced with WhatsApp chats,

however the above principles should still be applicable subject to any evolving judicial pronouncements and evidence laws pertaining e-information.

### **Conclusion**

Right to privacy is not an absolute right and has to be placed in the context of other rights and values depending upon the facts of the case. And we see the beam balance swaying on either side when right to privacy and other rights are involved as we researched in the foregoing. Consider our right to privacy. This is a fundamental right and an intrinsic part of Article 21, which protects the life and liberty of citizens under Part III of the Constitution. On 24 August 2017, a nine-judge bench of the Supreme Court in Justice K.S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors. unanimously held that the right to privacy is an intrinsic part of the right to life and personal liberty under Article 21 of the Indian Constitution. Personal information can be denied if it infringes an individual's privacy. A good example is our medical records. Such information, the disclosure of which would invade someone's privacy, is exempt from the RTI requirements. According to section 8(1)(j) of the RTI Act, if the information is personal and would cause an unwarranted invasion of privacy and serves no public interest, then it cannot be disclosed, unless the central public information officer or the state public information officer, or any other appellate authority, is of the opinion that the disclosure of this information would serve a larger public interest.

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