

Right to privacy viz a viz right to information act, 2005

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ABSTRACT

Privacy is a fundamental right which is essential to accord and which protect the dignity of the individual. Privacy authorise us to create barriers and manage boundaries to protect ourselves from unwarranted interference in our lives. Privacy is a key component of individual liberty but it is not absolute right because right to information act (2005) permits citizen to acquire information from the public authorities but it should also be known that RTI does not permit discloser of personal information. In the legal scenario it becomes interesting where two strands of approach securing two most cherished right squawking asserting their legitimate position. The right that are suggested are 'RIGHT TO KNOW' AND 'RIGHT TO PRIVACY' Which are standing to each other and are contradictory to one another. There is various landmark Judgement by the Apex court related to this two contradictory right or to concede the potency of these two rights.

1. Right to information and privacy

In our first view it would appear that the right to information and right to privacy are conflicting to each other. Right to information provide laws to each and every person to ingress information which is held by the public authorities and on the other hand right to privacy grant an individual fundamental right to control the collection of, access to and use of personal information about them which is held by the government and private bodies.

Privacy and right to information are often described as 'two sides of the same coin'.

As these types of legislations are adopted by several other countries so it has been a debate around the globe. Both laws have been adopted in more than 50 countries.

Privacy is being questioned by new technologies and through different practices. Almost 90 countries have adopted a common or same RTI laws and are now common around the world. Information is being accessed through new technologies, websites through various other communication technologies.

Legislations and various judicial pronouncements have led to several discussions about rules governing access to personal information which is held by public authorities.

Thus, it is necessary to consider how these two rights and two laws to be adopted and implemented.

2. Right to information

Right to information impart that individual have the basic human right to demand information held by the public authority or government bodies.

It is derived from the right to freedom of expression to seek and receive information and is recognised worldwide as a human right.

Under this right a person may make a request to public authority to access to any information and that public authority is legally bound to provide information; unless there is any legal reason to refuse it.

There are certain components which are found in Indian RTI law:

- The right of an individual, organisation to access to information without explaining the reason.
- Relevant body are duty bound to response and dispose the request for information.
- There is exemption to right to information under certain categories of information. These exemptions include the protection of national security and international relation, personal privacy, commercial confidentiality, law enforcement and public order.
- Certain appeal has been made internally for the requestors to challenge the suppressing of information.
- Second appeal has been made to an independent commission regarding suppressing of information.
- Need for government bodies to affirmatively publish sixteen types of information about their structure, rules, and activities. This is frequently done using different technologies.

3. Right to information in India

Right to information was passed by the government of India in 2005; the right to Information Act, gave the fundamental or human right to its citizen to access to information from the public authority.

4. Historical background

On the Eve of LOK SABHA election, 1977 was led by Morarji Desai and in his election manifesto he pledged 'an open government' and proclaimed that the right to information would not misuse the intelligence services and the governmental authority for personal and partisan ends.' And it was to ascertain if the Official Secret Act, 1923 could be modified so, that the information can be accessed easily to the public. But there was 'no change' recommendation.

In 1986, Supreme Court in *Mr. Kulwal v. Jaipur Municipal Corporation* held that article 19 of the constitution, freedom of speech and expression implies right to information as without information as without information the freedom of speech and expression cannot be fully used by its citizen.

In 1989, the commitment to information was renewed by the national front governments. It was the frustration of the people which led to the outcome.

In 1994, **MAZDOOR KISAN SHAKTI SANGATHAN (MKSS)**, an organisation for workers right they started a grass root campaign for right to information. They started demanding information concerning development works in rural Rajasthan. The movement grew up which resulted in the government of Rajasthan enacting a law on right to information in 2000.

In 1996, national campaign for people's right to information (NCPRI), one among several civil society, the main objective was to get the right to information law passed.

In 1997 Tamil Nadu was the first state to pass Right to information law.

In pursuance, with the commitment of national democratic alliance, the new coalition to implement its national agenda on governance introduced the freedom of information bill 2000, in the parliament.

The bill was pending in the parliament for two years the bill was passed on 4th December, 2000 and the assent of the president of India on 6th January, 2003.

In 2004, national advisory council was adopted by the UPA government and it was done to monitor implementation of government schemes and advise government on policy and law.

As most of the information which was to be accessed by the state government so the civil society protested against the bill. After heavy influence by NCPRI and other organisations the right to information act, 2005 was passed.¹

5. Object of right to information act

1. The reason is not to be given to the public authority that for what reason the information has to be accessed.
2. The main objective is maximum disclosure of all information or document.

3. Obligation is imposed upon the state to propagate all significant information held by the public authorities.
4. To eliminate the corruption, it tends to promote culture of transparency, openness and accountability in government functioning.
5. Mechanism is set up to facilitate access to information.
6. This act attempts to find the public interest over the protected interest for the discloser of information which is for the public interest.
7. It protects the information which is capacious information and is being demanded by the reprobate information seekers.
8. The provision of the act shall have preponderant effect over other laws, when any of the provisions are contrary to it.
9. A stratified administrative contrivance has been set up by central information commission and state information commission to safeguard efficacious enactment by government department and public authorities with the provision of the appeal.
10. The act quests for coordination between the conflicting interest of the public authorities and private enterprises.

6. Right to privacy

Privacy is a fundamental right, which is essential to the autonomy, which protects the dignity of individual. Privacy enables us to create barriers and manage boundaries to protect ourselves from unwarranted interference in our lives, which allow us to negotiate who we are and how we want to interact with the world around us.

7. Historical perspective of privacy in India

Constitution of India Bill, 1895- In the house of every citizen there is an absolute asylum.

The commonwealth of India Bill, 1925- every citizen shall have the fundamental right to liberty of person and security of his dwelling and property.

The Nehru (SWARAJ REPORT)- no person shall be impoverished of his autonomy nor shall his dwelling or property shall be entered, cloistered, or seized according to the provision of the law.

DR. BABASAHEB AMBEDKAR'S MEMO ON F.R (March 1947)- the people's right be secured in their persons, houses, papers and sequel against unreasonable searches and seizure shall not be violated and warrant shall not be issued, supported by oath of confirmation and describing the place which has to be searched has to be described in the particulars and particulars has to be described about the person or things which has to be seized.

Final Report of the F.R. SUB COMMITTEE (April. 1947) – The people's right to be secured in their respective houses, papers and consequences against disobliging searches and seizure, which shall not be violated and warrant shall not be issued but upon foreseeable cause, which is supported by pledge of confirmation, and the place which has to be

¹<http://selflearn.co/pick-of-week-post/right-to-information-rti-act-2005-for-upsc-civil-services-exam/>

searched has to be described in the particulars and also the particulars has to be described about the person or things which has to be seized.

8. Right to privacy under the constitution and international convention

The right to privacy is protected as congenital part of the right to life and personal liberty under article 21 of the constitution and freedom guaranteed by part III of the constitution. The right to privacy in India has developed through a series of decisions over the past 60 years. The constitution does not grant in express terms any right to privacy. Right to privacy is not enumerated as a fundamental right in the constitution of India. However such a right has been culled by the Supreme Court from Article 21 and several other provisions of the constitution read with directive principal of state policy². In the case of **R.Rajagopal v.State of Tamil Nadu**³ guaranteed to the citizens by Article 21, it is "right to be left alone". "A citizen has right to safeguard the privacy of his own, his family, marital relation, procreation, motherhood and education among other matters. No one can publish anything concerning the above matters without his consent, whether it is true or false and whether it is critical, if he does so, he would be violating the right to privacy of the person concerned and would be liable to action for damages. In the case of **Kharak Singh v. UttarPradesh**⁴, a question was raised whether the right to privacy could be implied from the existing Fundamental Rights, such as, Article 19(1)(d), 19(1)(e) and 21. The majority of the judges participating in the decision said about the right to privacy that "Our constitution does not in terms confer any like constitutional guarantee."

9. International concepts of privacy

Right to privacy is the global concept now, which finds articulate demonstration in various International covenants. Article 12 of the universal declaration of human right (1948) states that 'no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence not to attack upon his honour or reputation, everyone has the right to protection of the law against such interference or attacks'. Article 8 of the European convention on human right 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 interest of national security, public safety or the economic well being of the country, for the protection health or morals or for the protection of the rights and freedom of others'.

10. Right to information viz –a- viz privacy invasion

When a person's personal matter or information is disclosed then it amount to privacy disruption. Right to privacy has long been recognised as a part of a person's right to life and liberty guaranteed under article 21 of the constitution.

Supreme Court in **Govind vState of Madhya Pradesh**,⁵ explained right to privacy as follows:-

'Individual autonomy' perhaps the central concern of any system of limited government, is protected in part under our constitution by explicit constitutional guarantees privacy primarily concerns the individual. It therefore relates to and overlap with the concept of liberty, privacy, interest in autonomy must be placed in the context of other's right and values.' In the affairs of Right to information, right to privacy means disclosure of any private fact about a person legal entity, which gives rise to cause of action for unwarranted publicity about the aggrieved persons.

As per the Report of the national commission to review the working of the constitution (2008) also suggested that mere recognition of right to privacy as a part of right to life and liberty. Article 21 is not enough in fact a new article 21-B, which should provide that "every person has a right to respect for his private and family life, his home and his correspondence" should be inserted in the constitution.⁶ State may impose reasonable restriction on right to privacy on certain ground which has been enumerated under article 19(2) of the constitution of India. The High court of Kerala in **Canara Bank v Central Information Commission**⁷, said that information regarding to postings, transfer, and promotion of clerical staff of a Bank does not pertain to fiduciary relationship between the Bank and its employees therefore, it cannot be claimed to be exempted under section 8(1)(j) of the RTI Act on the ground that it violates right to privacy.

Telephone Tapping –

In the case of **people's union for civil liberties v. Union of India**⁸ A petition was filed under Article 32 of the constitution by the petitioner, people's union civil liberties which is a voluntarily organisation by public interest litigation highlighting the incidents of telephone tapping. Validity of section 5(2) of the Indian Telegraph Act, 1885 was challenged by the petitioner. Section 5(2) permits the interception of messages in accordance of the provision of the said section.

"Occurrence of any public emergency" or "in the interest of public safety" are the sine quo none for the applicability of sec 5(2). Unless these conditions are satisfied the power cannot be exercised by the government. The expression "public safety" means those conditions, freedom from danger or risk for the people at large unless these two conditions are in existence the government cannot resort to telephone tapping. There is a satisfaction that it is necessary to do so in the interest of sovereignty of India. Court has laid down exhaustive guidelines to regulate the discretion vested in the state under section 5(2) of the Indian Telegraph Act for the purpose of phone tapping and interception of other messages, so as to safeguard public interest against arbitrary and unlawful exercise of power by the government. No rules have been framed the state to avert misuse of the power, the court held:-

⁵(1975) 2 SCC 148

⁶Report of the National Commission to Review the working of the constitution 2008, p.62

⁷AIR 2007 ker 225

⁸ AIR 1997 SC 568 : (1997) 1 SCC 301

²Infra Ch XXXIV

³ AIR 1995 SC 264 : (1994) 6 SCC 632

⁴AIR 1963 SC 1295 : (1964) 1 SCR 332; supra, Ch. XXIV, Sec. G

"In the absence of just and fair procedure for regulating the exercise of power under section 5(2) of the telegraph Act, it is not possible to safeguard the rights of the citizen guaranteed under the Article 19(2) (a) and Article 21 of the constitution." while exercising power under the act several lapses has been revealed by the CBI investigation while executing the orders which was passed by the state. Telephone tapping also violates Article 19(1)(a) unless it comes within grounds of restriction under article 19(2). The freedom means the right to express one's convictions and opinions freely by words of mouth, writing, printing, and picture or in any other manner. When a person is having conversation on telephone he is exercising his right to freedom of speech and expression. Telephone tapping comes within the ground of restriction under article 19(2) would violate 19(1)(a) of the constitution.

In *R.M. Malkani v. State of Maharashtra*⁹ the apex court held that the protection shall be made by the court to the innocent person in telephonic conversation against wrongful interference on conversation made by the police. But the protection shall not be made to the wrong doer against the effort of the police to exonerate the law.

11. Right to privacy as a fundamental right

In the landmark case of *K.S. puttaswamy v. Union of India*¹⁰ In the 547 page judgement the court held that right to privacy is a fundamental right in India as this is a landmark case so this will lead to constitutional challenges in Indian legislation.

Background

IN 2012, Justice K.S. Puttaswamy challenged the constitutionality of Aadhaar project that it violates the right to privacy, which aims to build a database of personal identity and biometric information which is covering every Indian. There is a majority of Indians who have registered in the Aadhar programme who actually look forward for those 12 digit numbers that align to specific biometric data such as fingerprints and eye scan. It has become mandatory for everyone to register to the Aadhar for opening bank account, buying and selling property, securing loan, for tax return etc. But the government argued that there exists no constitutional right to privacy and the decision made by the court in the case of *M.P.Sharma v. Satish Chandra in 1954* and *Kharak singh v. State of Uttar Pradesh in 1964*. And In these two cases Supreme Court of India held that right to privacy is not a fundamental right. The matter came before the three judge bench but later was referred to the five judge bench and ordered that the matter will be decided by the nine judge bench.

The court observed that privacy is a constitutionality protected right which emerges, primarily from article 21 of the Indian constitution. Although, right to privacy is not an absolute right but An Interference must meet threefold requirement of (1) legality (2) the need for a legitimate aim and (3) proportionality (P. 264). It is also to be noted that, as

informational privacy is a facet of the right to privacy the government will need to put robust regime for data protection.

12. Conclusion

The main aim behind the discussion was to perceive the relational spirited between two competing rights and to proceed toward accession incompatibility between them. The paragraph which has been given by me in this are aimed toward exploring strategies to bring some kind of moderation in both the laws. It is interesting that both the right do exist but the Indian Constitution Remain diffident with regard to this right. Both the laws are effective in their own due assiduity would ensure that to ingress to information have a compatible definitions of personal information.

13. Suggestion

The above mentioned thing is all about the right to information and right to privacy which is essential and important in their sphere, and the main objective of both the law are to protect its citizen. So the legislature should make such law with are not colliding with the other one and they should not be contradicting with one another and the government should discern the comparative vivacious between the two rivalry rights and to continue in the direction of elevation antipathetic between them.

Books:

1. The Constitution Of India By: J.N Pandey , M.P Jain
2. Right To Information Law In India By: Nv Paranjape
3. Rti Act In India : Pankaj K P Shreyaskar

⁹AIR 1973 SC 157 : (1973) 1 SCC 471

¹⁰WRIT PETITION (CIVIL) NO 494 OF 2012