

Right to Privacy and Right to Information, Two Conflicting Rights of the Era: An Analysis

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ABSTRACT

Both the right to privacy and the right to information are fundamental human rights in today's quickly developing innovative society. These two rights essentially point to hold governments responsible to the individuals. If a request is made for obtain to personal information kept by government offices, there may be a strife between these rights. States must build up a system for recognizing fundamental issues in order to dodge disputes and keep up the balance of rights where they wander. Without one of these right the smooth functioning of the society and Country cannot be ensured. Therefore in this work it is aimed to study and analyse about both these rights and how far these rights are fruitful and same time how they are conflicting to each other and to find out necessary solution for the same.

WHAT IS PRIVACY

The term 'privacy' is originated from a latin word 'privatus' which implies private, personal or secret and not a public one nor belonging to the state. Privacy is exceptionally much wanted by each citizens who considered it a the most important fixing of one's liberty. With the advancement and development of actives of people significance of privacy too expanded proportionately. Exigencies of the life and changes in the political order also enhanced the same. Hence no one likes any interference by others in one's personal freedom and way of living. A society in which people can select how they need to live their lives is a society that permits for privacy choices. This incorporates not only segregation from neighbours and evasion of exposure, but also freedom from unjustified impedances by the state.

In its most fundamental form, privacy is essentially a condition, the state of separation ,secrecy and anonymity. Privacy is regarded as the essential right of the each individual. But shockingly there is small consistency among the definitions of the term privacy utilized by various authors and Judges.

Blacks Law dictionary defines Privacy in four different aspects: Firstly Physical: Restricting another person from experiencing an individual or situation

Secondly Decisional: Restricting an entity

Thirdly Informational: Preventing the search for unknown information

And lastly Dispositional: Preventing endeavors to get to know an individual's state of mind

According to Stone in his book Civil Liberties, the term privacy was barely defined as “ the right to prevent, or to be compensated for , the unauthorised acquisition or publication of secret personal information”. This definition limits the scope of privacy to a right to control the use of information about oneself, its ambit is protection of reputation.

Later other definitions of privacy not only included physical intrusion as well as attack over individual data but also included right to clear out alone.

"Privacy is the right of individuals, organizations, or groups to control the timing, manner, and degree to which information about them is shared with third parties." The voluntary, short-term physical and psychological separation of

an individual from the wider community is known as privacy.¹ The right to privacy is also guaranteed under Article 11 of the American Human Rights Declaration, which states that (1) Everyone has the right to have their dignity and honor upheld.

(2) No one may be the victim of arbitrary interference with his family, home, communications, or private life, or of illegal attacks on his honor or reputation.

(3) Everyone is entitled to legal protection from these kinds of intrusions or assaults².

INTERNATIONAL PERSPECTIVE OF RIGHT TO PRIVACY

At the global level, the United Nations is an international organization whose mission is to achieve and promote peace and justice. United Nations was well aware about the fact that the fundamental rights of the human are getting worse day by day. Numerous declarations and treaties have been adopted at the international level to raise human rights standards. States parties have assumed the responsibility to abide by these treaties and declarations. Meanwhile, the right to privacy has become one of the most important human rights today and is now recognized in many cultures and places around the world. One of the most important International instrument which recognise the privacy is United Nations Declaration on Human Rights (UDHR) 1948. "No one shall be subjected to arbitrary interference with his family, privacy, home, or correspondence, nor to attacks upon his honor and reputation," according to Article 12. Everyone is entitled to legal protection from these kinds of intrusions or assaults³.

The International Covenant on Civil and Political Right (ICCPR) 1966 is another instrument which recognized privacy in international level. Article 17 of the ICCPR states that "everyone has the right to protection of the law against such interference or attack and no person shall be subjected to arbitrary or unlawful interference with his home, privacy, family, or correspondence, nor to unlawful attack with his honor or reputation."⁴

In addition to the above provisions, Article 8 of the European Convention on Human Rights, which came into force on September 3, 1953, provides that the private and family life of individuals shall be respected, but public authorities may only interfere in exceptional circumstances.

It makes clear that the right to privacy is not absolute and that the government may interfere in one individuals private life for reasons of national or public security. Furthermore, private rights cannot be obtained by endangering the health, morals, rights or freedoms of others.

Article 16 of the UN Convention on the Protection of Children (UNCPC) and Article 14 of the UN Convention on Migrant Workers (UNCMW) and Article 8 of European Convention on Human Rights and Fundamental Freedom also guarantees respect for one's personal life and privacy but subject to some reasonable restrictions like health, national security and

¹ DURGA DAS BASU COMMENTARY ON THE CONSTITUTION OF INDIA p.3139 LexisNexis Butterworths Wadhwa Nagpur 8TH ed 2008

² Article 11 American Human Rights 1969

³ Article 12 of United Nations Declaration on Human Rights (UDHR) 1948.

⁴ Article 17 of ICCPR.

morals. Thus all these Conventions have set out the right to privacy in terms similar to the UDHR. And India is one of the signatory to both these international conventions, the UDHR and the ICCPR.

PRIVACY UNDER INDIAN CONSTITUTION

Distinguished members of the Constituent Assembly, such as Dr. B R Ambedkar and K M Munshi, fervently pushed for the right to privacy to be included as a fundamental right under section III of the Indian Constitution prior to its ratification. Later the Advisory Committee rejected the same and it was not grant in specific and express term as a fundamental right.

However Right to privacy has been culled by the Supreme Court from Article 21 of the Indian Constitution which provides right to life and personal liberty which is available to both citizens of India and also to the aliens. It was in 1963 through Kharak Singh case⁵ Supreme Court for the first time raised a question whether right to privacy could be impliedly included under existing Fundamental Rights. Majority of Judges opinion was “ Constitution does not in terms confer any like constitutional guarantee”. On the other hand minority was having an opinion in favour of inferring the right to privacy from the expression.

In Govind v. State of Madhya Pradesh⁶ the Supreme Court took a more elaborate appraisal and accepted limited fundamental right to privacy from Article 19(1), 19(1)d and 21, however it is not an absolute right and subjected to reasonable restrictions. After that in R. Rajagopal v. State of Tamil Nadu⁷ Apex Court grants a Constitutional status to the privacy under Article 21. It is a right to be let alone. Among other things, a citizen has the right to protect his or her privacy about marriage, procreation, motherhood, childbearing, education, and family.⁸

In the case of Peoples Union for Civil Liberties (PUCL) v. Union of India⁹, the Supreme Court ruled that while it is undeniably true that all governments, regardless of whether they are democratic or not, carry out some subrosa operations as part of their intelligence apparatus, citizens' right to privacy must also be safeguarded against abuse by the government.

The Honourable Supreme Court ruled in Hindustan Times v. High Court¹⁰ of Allahabad that the media's ability to inform readers and the public at large must be balanced with each individual's basic right to privacy.

The Apex Court affirmed the right to privacy as an inherent part of Article 21 of part III which says about the right to life and personal liberty in the K S Puttaswamy v. Union of India¹¹ case, also known as the Aadhaar case. The court held that the right to privacy as an inherent right should be unquestionably a fundamental right embedded in part III of the Indian Constitution, subject to the limitations mentioned and related to that part.

⁵ Kharak Singh v. Union if India, AIR 1963 SC 1295.

⁶ AIR 1975 SC 1378

⁷ AIR 1995 SC 264

⁸ M P JAIN INDIAN CONSTITUTIONAL LAW p.1169 7th edition reprint 2016 Lexisnexis

⁹ (1997) 1 SCC 301

¹⁰ (2011) 13 SCC 155

¹¹ (2017) 10 SCC 1

INTERSECTON OF RIGHT TO INFORMATION AND RIGHT TO PRIVACY

Access to information is the ability of the citizen to secure information from the government and its authorities and such access is an essential and most crucial element of democratic government. It may be stated that democracy to flourish, the citizens must have adequate information about the policies and functioning of the government. Freedom of Information as a tool to make a government accountable is not a recent phenomenon. The oldest laws pertaining to public access to official documents are found in Sweden.

The Swedish Freedom of the Press Act 1766 includes the principle that the government records were by default to be made accessible to the public and granted the citizens the right to demand documents from the government bodies, which were prepared and received by them.¹² In accordance with Article 14 of the Declaration of Human and Civic Rights 1789, the French Constitution also grants citizens "the right to know" so they can learn more about the specifics of the taxes they pay to the government.

Following the Declaration, the United Nations General Assembly in 1946 declared that the right to information was the foundation of all freedoms and that it was a fundamental right. It alludes to the freedom to gather, disseminate, and publish news anywhere. The assembly believed that in order to advance peace and development, it was crucial that citizens everywhere have access to this right.

In the history of human rights, the 1948 Universal Declaration on Human Rights is regarded as a turning point. It established a number of liberties and rights that, in different ways, aided in the expansion and advancement of society. The declaration's Article 19(2) states that the "right to seek, collect, and transmit information, be it in written form or in oral form," is a component of the freedom of expression.

RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT UNDER INDIAN CONSTITUTION

Article 19 (1) (a) of the Indian Constitution provides that every citizen shall have the right to have freedom of speech and expression, subject to any reasonable restriction on the right conferred in the interest of sovereignty and integrity of India, security of State, friendly relation with foreign States, public order, decency etc¹³. Accordingly a citizen has a right to know about all the activities of the State. The old-fashioned privilege of secrecy, which said that the government was not required to tell the public the truth, is no longer very much in place, which is provided under freedom of speech is guaranteed by Article 19.

Freedom of speech is based on the foundations of the freedom of right to know. The State is empowered to impose and should impose reasonable restrictions on the rights where it affects national security, national integrity etc. In *L. K. Kootwal v. State of Rajasthan*¹⁴, it was held that every citizen has got a right to know how the State is functioning and why the State is withholding such information.

ORIGIN OF RTI MOVEMENT AND RTI ACT IN INDIA

At national level, in 1996, a nation wide network of senior journalist, lawyers, distinguished bureaucrats, academicians and activists from non governmental organisations vigorously advocated the removal of The Official Secrets Act 2023

¹² SUDHIR NAIB THE RIGHT TO INFORMATION IN INDIA p.1 Oxford University Press 2013

¹³ Article 19 (2)

¹⁴ AIR 1988 Rajasthan 2

and pressed for a legislation for right To Information in central level. The other organisations which took active interest in this regard were National Campaign for Peoples Right to Information (NCPRI) in New Delhi and Press Council of India.

The first major draft legislation on right to information was circulated by the Press Council of India in 1996. The important feature of the Press Council draft legislation was that it affirmed in its Preamble the Constitutional position that the right to Information already exist under the Constitution as the natural corollary to the fundamental right to freedom of speech and expression under Article 19(1). Every citizen's right to knowledge from any public body was upheld under the draft law. Public body includes not only state as defined under Article 12 of the Indian Constitution but all undertakings, non-statutory authorities, company, corporation, society, trust, firm or corporative society owned or controlled by private individuals and institutions whose activities affect public interest. The Government of India then constituted a Working Group on Right to Information and Transparency in 1997. The Working Group submitted the draft Bill on Freedom of Information and the same was circulated to all the States and Union Territories for comments. Later the Bill was introduced in the Parliament and same was passed by the Parliament in December 2002 and got Presidents assent on 6th January 2003. However the Act could not come into force since it was not notified in the Official gazette. The National Advisory Council was tasked by the UPA administration later in 2004 with proposing amendments to the Act of 2002. Following certain changes suggested by the NAC, the RTI Bill 2004 was presented to Parliament and ultimately approved by both Houses in May 2005. On June 15, 2005, the president gave his approval.

ROLE OF JUDICIARY IN INTERPRETING RIGHT TO INFORMATION UNDER ARTICLE 19(1)

Indian Judiciary has played a vital role in uplifting right to information as a fundamental right under part III of Indian Constitution.

"There can be few secrets in a government of responsibility like ours, where all the agents of the public must be responsible for their conduct," the Supreme Court declared in the case of *State of Uttar Pradesh v. Raj Narain*.¹⁵ The citizens of this country are entitled to know about all public actions and activities¹⁶.

In *S. P. Gupta v. Union of India*¹⁷, the Supreme Court ruled that "the right to know, which appears to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a), is the direct emanation from the concept of an open government." Therefore, it should be the norm rather than the exception to share information about how the government operates, with secrecy only being allowed when it benefits the general public.

The Court's strategy must be to reduce the area of secrecy as much as possible while adhering to the public interest requirement, always keeping in mind that disclosure also serves a significant public interest function.

In *Dinesh Trivedi v. Union of India*¹⁸ "It is axiomatic that citizens have a right to know about the affairs of the government that, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare," the court stated.

In *Girish Ramachandra Deshpande v. Central Information Commission*¹⁹ an important issue raised before the Apex Court of India was whether the exception listed in Section 8(1)(j) of the RTI Act, 2005, allows the Central Information

¹⁵ AIR 1975 SC 865

¹⁶ S RAJARAMAN, THE RIGHT TO INFORMATION ACT, 2005, P. 41, c Sitaraman & Co. Pvt. Ltd 2015

¹⁷ AIR 1982 SC 149

¹⁸ (1997) 4 SCC 306

¹⁹ (2013) 1 SCC 212

Commission (CIC) to withhold information about a public servant's personal affairs, including details about his assets, liabilities, and movable and immovable properties, as well as information about his service career.

In this case, the Court expanded the application of Section 8(1)(j) of the Act and determined that the public servant's employment letter, assets, income tax return, gift-receiving details, and orders of censure or punishment are all considered personal information and are therefore exempt from disclosure under Section 8(1)(j). It further noted that an officer's or employee's performance in an organization is essentially a matter between the employer and the employee, and that these aspects are governed by the service rules, which fall under the category of "personal information," the disclosure of which would constitute an unjustified invasion of that person's privacy.

DIGITAL PERSONAL DATA PROTECTION ACT 2023 AND PRIVACY

Thanks to the 2023 legislation, India now has a data privacy law for the first time. It stipulates that consent must be obtained prior to processing personal data and offers a small number of explicitly listed exceptions. Along with the right to nominate, it gives customers the ability to view, update, amend, and remove their data. It adds more protections for the handling of children's information. It establishes purpose limitations, requires businesses to notify customers of data collection and processing, and requires security measures. Businesses are required by law to establish grievance redress mechanisms. In addition to managing grievances and complaints, the DPB has the authority to impose fines for breaking the law.

Finally India has a statutory framework for data protection for the first time. The law's existence will eventually cause minimal standards of conduct and compliance among data collection companies to emerge. The key variable in this regard will be how the government implements and enforces the law; for instance, whether implementation will be concentrated on data-heavy businesses or across the economy will be a significant consideration.

Apart from unresolved implementation-related issues, there are some worries about various legal provisions and how they might compromise the protections that the law appears to offer.

Second, in certain situations, the legal protections may be compromised by the government's discretionary rule-making authority. For instance, within five years of the law's enactment, the government may declare, in accordance with Section 17(5), that no business or class of businesses will be subject to any of the provisions of this law. Neither a time limit nor any guidelines regarding the application of this provision are provided. A positive interpretation of this language suggests that it could be used to extend the time for start-ups or emerging sectors to comply with the law.

But this has already been covered by Section 17(3), which gives start-ups some restricted exemptions.

Third, there are issues with the DPB's design. The government will set up procedures for choosing and appointing the board's members, and it is an autonomous body with a restricted mandate. The law specifies the requirements for board members, but it doesn't specify the number of members or the requirement that only one of them be a legal expert. This final clause is problematic because one of the board's primary responsibilities is to provide sanctions and guidance for noncompliance.

Furthermore, the DPB chairperson has the authority to give any board member permission to carry out "any of the functions of the board and conduct any of its proceedings." It's possible that the chairperson won't give the legal board member permission to lead the proceedings before a penalty is imposed. Additionally, the internal division of duties between the chairperson and the members conducting inquiries is not maintained by this design. Since members are chosen by the chairperson to carry out investigations, they might not always carry out this duty objectively.

Thus, even though the DPDP Act establishes data privacy protections for the first time, if the government does not implement the law's provisions as strictly as possible, they may effectively negate their advantages.

CONCLUSION

The purpose of both rights is to assist citizens in holding the government responsible and open. By adhering to a well-defined and tried-and-true system that serves as a due diligence mechanism for the protection of private information and the regulation of public information, the majority of problems can be resolved. The Indian Constitution recognizes both the right to privacy and the right to information as fundamental rights, and it interprets these rights to protect Indian citizens.

The fundamental idea behind the RTI Act is that every citizen has the right to ask a public authority for information, and that public authorities are required to comply with the request, provided that the information does not fall under the exemptions listed in Sections 8 and 9. A breach of confidence occurs when a third party obtains access to private data that has been entrusted to a public entity. The private sphere is inviolably sacred. Therefore, section 8(1)(j) does not apply to applicants who are looking for information about their own cases; rather, it only applies to third-party information that results in a privacy violation. Although they are regarded as equal to human rights, the rights to privacy and information access