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Right to Information v. Right to Privacy: A Constitutional Battle

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ABSTRACT

“Government of the people, by the people, for the people” defines democracy worldwide. Democracy is founded on the ideals of equality, liberty, and open debate. Knowledge is power and the Right to Information Act, 2005 has made the citizens custodians of this power, while the Right to Privacy restricts it.

The paper sheds light on the Constitutional provisions securing the Right to Information and the Right to Privacy and features cases outlining the conflicts between the parallel rights. The paper further reflects on whether public interest trumps citizens’ right to privacy in the context of access to information from the government.

Keywords: *Government, Right to Information, Right to Privacy, Public Interest.*

I. INTRODUCTION

(A) Overview of the RTI Act

“Democracy must be built through open societies that share information, for there’s enlightenment.” – Atifete Jahjaga

The **Mazdoor Kisan Shakti Sangathan** is a grassroots organisation that has been instrumental in attaining the Right to information. Consequently, The Rajasthan State Right to Information Act was passed by the State Legislature in May 2000.

The precursor to the RTI Act, 2005 was the Freedom of Information Act, 2002, which never became operational.

The object of the RTI Act, as spelt out in its preamble and the legislative intent, is that disclosure is the norm and concealing information the exception. The citizens are not required to show a legal interest in the information sought.

Section 2(f) of the RTI defines "information" as "any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form, and information relating to any private body that a public authority can access under any other law

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currently in force."

The Act applies to Central and State Governments and all public authorities covered by Section 2 (h). Section 4 mandates preserving and publication of records, while Section 8 exempts disclosure of certain information such as commercial confidentiality, information received in confidence, personal information, national security and international relations.

The citizens can approach the Supreme Court and High Court under Article 32 and Article 226 once they exhaust the remedies of the first and second appeals under the Act.

The right to information provides for checking the arbitrary exercise of power and corruption and securing the Government's accountability to its citizens.

II. IMPLICATION OF RIGHT TO INFORMATION AND RIGHT TO PRIVACY

(A) Right To Information v. Right To Privacy – A Constitutional Battle

Governmental transparency² and good governance are the sine qua non of participatory democracy. Citizens' right to know stems from the fundamental right of freedom of speech and expression, enshrined in Article 19(1)(a) of the Constitution. This is because access to information is a pre-requisite to critique the policies and functioning of the government, holding the State accountable. Also, denying information to citizens chip away their right to equality under Articles 14 and 15 of the Constitution.

The right to privacy³ is implicit in the right to life, liberty guaranteed to the citizens of India by Art. 21 of the Constitution. Right to privacy is not absolute, and is subject to legally justified acts to safeguard the rights and freedoms of others⁴.

In the interplay of the competing rights under Article 19(1)(a) and Article 21 of the Constitution, information having no relation to public interest or activity is personal and such disclosure is exempted under Clause (j) of Section 8(1)(j) and Section 11 of the RTI Act. Section 8(1)(j) protects citizens from unwarranted invasion of their privacy. Additionally, Section 11 of the Act excludes from disclosure confidential information related to third party unless the disclosure satisfies the larger public interest test.

The principle of indivisibility of fundamental rights requires that the rights equally complement

² General Manager Finance Air India Ltd. v. Virender Singh, LPA No. 205/2012.

³ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.; Virodhak Sangh v. Mirzapur Moti Kuresh Jamat, (2008) 5 SCC 33.; Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.; Bhavesh Jayanti Lakhani v. State of Maharashtra, (2009) 9 SCC 551.; Amar Singh v. Union of India, (2011) 7 SCC 69.

⁴ James T. O'Reilly, Government Information and Right to Privacy, 1999 DEV. ADMIN. L. & REG. PRAC. 79 (1999-2000).

each other in promoting government accountability, while ensuring privacy protection.

(B) Seeking Information About Candidates Contesting Elections Is In Line With Right To Privacy

The voters have the right to know about the antecedents of the candidates contesting elections to make an informed decision. The representatives of the people run the State and thus, knowing the bio-data of the electoral candidates is within the realm of freedom of speech and expression enshrined in Article 19 (a) of the Constitution, as underlined in **Union of India v. Association for Democratic Reforms**⁵. Article 324 of the Constitution, read with Section 33A of the Representation of the People Act, 1951 mandates the electoral candidates to disclose information about their assets, liabilities, educational qualifications, and pending cases, amongst others.

(C) Seeking Information Related To PM Cares Fund Is Not Consistent With Right To Privacy

The mere ‘supervision’ or ‘regulation’ as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of Sec 2(h)(d)(i) of the RTI Act which means that the control of the body by the appropriate government should be substantial and not merely supervisory or regulatory⁶.

THE PM CARES Fund is a Trust under the Income Tax Act, 1961 and is not “substantially financed” and “controlled” by the Government, thereby not a Public Authority under Sec 2(h). PM CARES Fund is the trustee, and the people who have donated money are the beneficiaries. Thus, information shared between them cannot be disclosed to third parties as it doesn’t warrant larger public interests.

III. JUDICIAL PRONOUNCEMENTS

(A) Right To Information Is An Implicit Fundamental Right

In **Bennett Coleman and Co. v. Union of India**⁷, the right to information was incorporated in the right to freedom of speech and expression under Article 19(1)(a). The Court stated in **Indira Gandhi v. Raj Narain**⁸ that the public officials are obligated to explain and justify their acts. Further, the **State of UP v. Raj Narain**⁹ case discussed the citizens’ rights to know details of

⁵ Union of India v. Association for Democratic Reforms, (2002) 3 S.C.R. 294.

⁶ Thalappalam Service Cooperative Bank Ltd. v. State of Kerala, (2013) 16 SCC 82.

⁷ Bennett Coleman and Co. v. Union of India, AIR 1973 SC 106.

⁸ Indira Gandhi v. Raj Narain, AIR 1975 SC 2299.

⁹ State of UP v. Raj Narain, AIR 1975 SC 865.

public transactions undertaken by public officials. The Court in **Indian Express Newspapers (Bombay) Pvt. Ltd. v. UOI**¹⁰ reaffirmed the fundamental right of citizens to know about public acts. In **SP Gupta v. Union of India**¹¹, the right to information was held to be implicit in Article 19 under Part III of the Constitution.

(B) Right To Privacy Is An Implicit Fundamental Right

The Court stressed in **R. Rajagopal v. State of TN**¹² that right to privacy is implicit in the fundamental right to life and personal liberty under Article 21 of the Constitution. In **Kharak Singh v. State of UP**¹³, the right to life was held to have similar meaning to that of fourteenth and fifteenth amendments to the US Constitution.

Further, the right to privacy was ruled to be protected as a fundamental right under Articles 14, 19 and 21 of the Constitution of India in **K.S. Puttaswamy v. UOI**¹⁴.

In **Unique Identification Authority of India v. Central Bureau of Investigation**¹⁵, the CBI sought for access of the Unique Identification Authority database. The Supreme Court held that prior consent of the citizens must be obtained before accessing their data.

(C) Larger Public Interests Is The Ratio Decidendi

The Constitutional Bench in **Thalappalam Service Coop. Bank Ltd. v. State of Kerala**¹⁶ and **Bihar Public Service Commission v. Sayad Hussain Abbas Rizvi**¹⁷ observed that the right to information is not absolute.

The case **Karim Maraikayar v. Haji Kathija Beeri Trust, Nagapathinam**¹⁸ held that disclosure of information pertaining to public authority is mandatory when such information comes within the purview of the Act.

The government also stores personal information of citizens ranging from driving licence details to income tax returns. The question of balancing the right to information with the right to privacy arises when the citizens seek information held as personal by the Courts.

The 2005 Act has not defined “personal information”. Nonetheless, the term “personal information” has been referred to as information that is capable of identifying a natural person

¹⁰ Indian Express Newspapers (Bombay) Pvt. Ltd. v. UOI, (1985) 1 SCC 641.

¹¹ SP Gupta v. Union of India, AIR 1982 SC 149.

¹² R. Rajagopal v. State of TN, (1994) 6 SCC 632.

¹³ Kharak Singh v. State of UP, AIR 1963 SC 1295.

¹⁴ K.S. Puttaswamy v. Union of India, 2017 10 SC 1.

¹⁵ Unique Identification Authority of India v. Central Bureau of Investigation, Appeal (Crl) No (s).2524/2014.

¹⁶ Thalappalam Service Coop. Bank Ltd. v. State of Kerala, (2013) 16 SCC 82.

¹⁷ Bihar Public Service Commission v. Sayad Hussain Abbas Rizvi, (2012) 13 SCC 61.

¹⁸ Karim Maraikayar v. Haji Kathija Beeri Trust, Nagapathinam, AIR 2008 Mad 91.

in Section 2(i) of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

The Courts have subsequently interpreted the scope of personal information under the RTI Act following the principle of conceptual balancing. In **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal**¹⁹ case, inter alia, medical information, details of personal relations, employee records, professional income have been classified as personal information and disclosure of same must be determined by CPIO, considering the larger public interest test.

The **Bhagwan Chand Saxena v. Safdarjang Hospital**²⁰ case reiterated that disclosure of medical reports of citizens amount to unwarranted invasion of privacy, thereby exempted under Section 8(1) (j) of the Act. Likewise, the Court observed in **Subhash Chandra Agarwal v Registrar, Supreme Court of India**²¹, that public interest doesn't require disclosure of the details of the medical facilities availed by the individual Judges and such disclosure would amount to an invasion of privacy.

In contrast, the Commission in **Jyoti Jeena v. PIO**²² hold that the disclosure of the medical reports of the husband was not exempted under Section 8(1)(j) as the disease was communicable and concerned a larger public interest. Similarly, in **Venkatesh Nayak v. CPIO**²³, the Central Information Commission directed suo motu disclosure of the information related to covid-19 pandemic sought in the RTI application.

In **Girish Ramchandra Deshpande v. Central Information Commissioner**²⁴, the petitioner sought copies of inter alia memos, show-cause notices, gifts awarded by the employer to the third respondent. The Court observed that the performance of an employee is a matter between the employee and employer and holds no relationship with public interest, thereby the information sought falls under the expression "personal information" and is exempted under the Act.

Similarly, the Court in **R K Jain v. UOI**²⁵, held that the denial of information sought including personal details like date of joining, designation of employee, details of promotion, was justified for the respondent failing to establish a larger public interest.

¹⁹ Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481.

²⁰ Bhagwan Chand Saxena v. Safdarjang Hospital, New Delhi, ICPB/ A-10/ CIC/ 2006.

²¹ Subhash Chandra Agarwal v. Supreme Court of India, (2018) 11 SCC 634.

²² Jyoti Jeena v. PIO, 2015 SCC OnLine CIC 6095.

²³ Venkatesh Nayak v. CPIO, 2020 SCC OnLine CIC 346.

²⁴ Girish Ramchandra Deshpande v. Central Information Commr., (2013) 1 SCC 212.

²⁵ R.K. Jain v. Union of India, (2013) 14 SCC 794.

The **Shasankar Koushik Boruah v. The MD, Assam Electricity Grid Corp. Ltd.**²⁶ case reiterated the larger public interest test. The information sought in relation to the marks obtained by the selected candidates to the post of Assistant Managers in the Corporations coming under the ambit of Article 12 of the Constitution is in the realm of public activity and thus, not exempted under Section 8(1)(j) of the Act.

The cases **Bhagat Singh v. Delhi Police**²⁷ and **Nahr Singh v. Deputy Commissioner of Police**²⁸ upheld that disclosure of witness names endangers their safety and hence exempted under the Act.

The **Ranveer Singh v. National Commission for Minorities**²⁹ case stated that disclosure of personal information of third party is unjustified unless in relation to public activity.

Accordingly, in **Rajendra Vasantlal Shah v. Central Information Commissioner, New Delhi**³⁰, the disclosure of accounts of Income-tax returns and assessment orders of the Religious Charitable Trust was held to be not exempted under Section 8(1) (j) of the Act as functioning of the Trust under scheme formulated by District Court had public importance.

To sum up, the **ratio decidendi** of the cases is that larger public interest relaxes the right to privacy in context of right to information.

IV. COMPARATIVE ANALYSIS

The laws governing the right to information has been enacted worldwide. It was first developed in 1766 in Sweden, followed by inter alia the US in 1996, Norway in 1970, France and Netherlands in 1978, Australia, Canada and New Zealand in 1982, Denmark in 1985, Greece in 1986, Austria in 1987 and Italy in 1990.

The Universal Declaration of Human Rights, 1948 provides for everyone to “seek, receive and impart information.” Access to public information in the United Kingdom is provided by inter alia the Local Government (Access to Information) Act, 1985; Environment and Safety Information Act, 1988 and Access to Health Records Act, 1990.

The European Court of Human Rights stated that the public has the right to know certain aspects of the private life of public figures mainly politicians. Similarly, in Hungary, the right to privacy of government officials are significantly restricted than that of ordinary citizens.

²⁶ Shasankar Koushik Boruah v. The MD, Assam Electricity Grid Corp. Ltd., RTIR II (2022).

²⁷ Bhagat Singh v. Delhi Police, F. No. CIC/ AT/ A/ 2006/ 00274.

²⁸ Nahr Singh v. Deputy Commissioner of Police & PIO, Delhi Police, CIC/ AT/ C/ 2006/ 00452.

²⁹ Ranveer Singh v. National Commission for Minorities, F. No. CIC/ MA/ A/ 2008/ 01340.

³⁰ Rajendra Vasantlal Shah v. Central Information Commissioner, New Delhi, AIR 2011 Guj 70.

In addition, Article 17 of the International Covenant on Civil and Political Rights, 1966 and Article 8 of the European Convention on Human Rights and Fundamental Freedoms, 1953, while upholding the right to seek information, stressed that one is not entitled to interfere in the personal sphere of individuals unless such interference or disclosure serves the greater good of the society. The Health Insurance Portability and Accountability Act, 1996 in the United States allows personally identifiable health information to be disclosed by a covered entity following the Privacy Rule, for “treatment, payment, and health care operations purposes”³¹.

In United Kingdom, the Consumer Credit Act, 1974; Data Protection Act, 1984; Access to Medical Reports, 1988 restricts access to personal information.

The writ of habeas data is a remedy available to any person whose right to privacy is threatened or infringed by a public official engaged in storing information concerning the aggrieved party.

In India, besides the Right to Information Act, 2005, the Official Secrets Act, 1923; the Prevention of Corruption Act, 1988; the Securities and Exchange Board of India Act, 1992 were enacted to dilute privacy of government officials and companies, ensuring transparency.

V. CONCLUSION AND SUGGESTIONS

The RTI Act established the substantive and procedural rights to citizens inter alia, to demand copies of public records, works and seek information maintained in electronic form from the public authorities. Its enactment and implementation has resulted in a positive change by bringing transparency and openness to how the bureaucracy functions. Feelings of alienation emerge when access to information is restricted.

Section 6 of the Act is wider in its ambit than Section 3 as while Section 3 of the Act states that all citizens³² have right to information, Section 6 stipulates that a person desiring to obtain any information shall make a request under this Act, as noted in **Chief Information Commissioner and Another v. State of Manipur**³³.

In absence of the fundamental right to information conferred by the RTI Act, 2005, citizens would have been mere subjects. However, the right to information³⁴ is not an unfettered constitutional right, which means that the right is subjected to the criteria listed in Sections 8 to 11 of the RTI Act and the constitutional limitations outlined in Art. 21 of the Constitution.

³¹ Papiya Golder, Right to Information vs. Right to Privacy: A Judicial Approach, 4 INT'L J.L. MGMT. & HUMAN. 1598 (2021).

³² Manoj Chaudhry v. D.D.A., Appeal No. CIC/WB/A/2006/00194.

³³ Chief Information Commissioner and Another v. State of Manipur, 2012 SC 864.

³⁴ Bennet Coleman & Co. v. Union of India, (1972) 2 SCC 788, Union of India v. Association of Democratic Reforms, (2002) 5 SCC 294, State of U.P. v. Raj Narain, (1975) 4 SCC 428.

Section 8 opens with a **non-obstante clause**. The applicant seeking personal information must show the public benefit of its disclosure to the satisfaction of the Central Public Information Officer. In layman's term, the disclosure under Section 8 required under Section 8 by the public authority is discretionary rather than mandatory.

There are no provisions in the Act to make the political parties answerable to the citizens as they are outside the purview of public authority. They are both rife with corruption and lack accountability to people. Most information can be classified as personal since it relates to a natural person, limiting access to information.

The Data Protection Bill was recently introduced in 2022. The Bill introduces "deemed consent" in Section 8 as grounds for processing personal data, leaving room for vague interpretation. Government entities can collect personal information without being subjected to standard privacy obligations established in the Puttaswamy³⁵ judgment.

Furthermore, companies are not obligated to notify users if they will share their information with third parties, letting them exploit citizens' data.

In the backdrop of the above, the researcher opines that there should be a clear-cut definition of personal information in the Act and the State must adopt a conflict resolution strategy and further codify legislative standards to eliminate the ambiguity in the public interest principle. The political parties should also be incorporated under this Act to make them more transparent and responsive to the citizens, thereby strengthening democracy.

The researcher also believes that enacting the Data Protection Bill will be a step back in the privacy protection of citizens.

³⁵ Ibid.

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