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# **STRIKING A BALANCE BETWEEN RIGHT TO PRIVACY AND RIGHT TO INFORMATION: CRITICALLY STUDYING THE INDIAN SCENARIO**

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## **ABSTRACT**

The right to information and the right to privacy are both crucial human rights in growing technological world. For the most part, these two rights strive to make governments accountable to individuals. However, there may be a discrepancy between these rights if a request for access to personal information stored by government bodies is presented. States must provide framework for detecting fundamental issues in order to prevent conflicts and balance rights where they overlap.

With the advancement of technology, an increasing amount of data is being made public and disseminated on public sites. Furthermore, this information is shared among companies in order to better understand partners and track human behaviour. As a result, the question of where the right to information end and privacy begins arises. The research focuses on doctrinal approach to analyse and examine numerous judgments, intellectual papers, publications, and articles.

To understand the origins and importance of both rights, this paper will briefly examine the history of the right to information and the right to privacy. In addition, the relationship and contradiction between two rights are discussed.

This project also explores about how Indian courts while adjudicating and striking a fine balance between conflicting rights to information and privacy. The study's goal is to find a point of balance between the right to privacy and the right to information.

This paper will finish by recommending ways to improve the balance and implementation of these two rights in order to better adapt to the ever-changing Indian democracy.

## Research Question

To understand the conflict between right to information and right to privacy and its role in a modern Indian democracy.

## INTRODUCTION:

The Universal Declaration of Human Rights, 1948, through Article 19 articulates the rights to information as follows<sup>1</sup>:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

"No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, or to attacks on his honour and reputation," according to Article 12 of the same UDHR. Everyone has a legal right to be protected from such interference or attacks."

The right to freedom of expression is frequently viewed as a basic human right. The right is to allow for the growth of individual personalities while simultaneously ensuring that government institutions are held accountable. Similarly, the right to privacy attempts to safeguard and support an individual's personal growth. As a result, attaining the purposes of both of these rights needs harmonisation, especially when they contradict.

In Indian law, the scope of free expression is well defined. The right to freedom of expression is not absolute.

It is subject to reasonable restrictions that adhere to the constitutional constraints imposed. It is important to stress that, since the right to privacy has become a fundamental right, privacy cannot be viewed solely as a restriction on the autonomous right to free speech. As a result, a balancing act is required to safeguard the integrity of both rights. It is intended to investigate whether or if a balancing mechanism exists for two fundamental human rights, namely the right to privacy and the right to information.

These rights are fundamentally at odds. In England, the Freedom of Information Act of 2000 established a disclosure test that considers how information was initially obtained, the impact

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<sup>1</sup> P.K. Das, International Law Documents, p. 36

on the individual from whom the information was obtained, whether consent was obtained to share the information and there was a public interest in the information being released.

The Right to Information Act of 2005 has provisions exempting specific kinds of information from disclosure, allowing public authorities to do so if they believe the wider public interest justifies it. The RTI Act's core concept is that every citizen has the right to request information from a public authority, and every public authority is obligated to provide the requested information as long as it does not fall under the exemptions set forth in Sections 8 and 9.

In today's digital age, privacy and the right to information are both considered essential human rights. Individuals also have a basic right to restrict the collection, access, and use of personal information about them kept by government bodies under the right to privacy. RTI laws protect fundamental right of citizens to access to information held up the government authorities. These rights are primarily competitive, although they can also be complementary. Individual privacy rights stand side by side with government accountability. If there has been no RTI laws privacy laws could be used to obtain information and RTI can be used to enhance privacy by revealing abuses<sup>2</sup>.

The IT Revolution accelerated the adoption of contemporary technology, making it easier to acquire and share personal data. This resulted in privacy violations when sensitive personal data, such as DNA make-up, and public records were disclosed. The two rights' conflicting and complementary nature necessitates the creation of a balance mechanism in which none of the two equal human rights-privacy and access, take primacy.

## **EVOLUTION OF RIGHT TO INFORMATION**

India has traditionally prided itself on being the world's largest democracy, but it has also become a responsible, interactive, and participatory democracy since the passage of the Right to Information Act in 2005.

The Right to Information Act of 2005 is one of India's most popular, reformative, and ambitious pieces of legislation. In 2005, the United Progressive Alliance<sup>1</sup> (UPA) government led by Prime Minister Dr. M. Manmohan Singh introduced the Right to Information Act (14th Lok Sabha). The Right to Information Act permits Indian citizens to fight corruption and erratic/in

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<sup>2</sup> David Banisar, "The Right to Information and Privacy", World Bank Institute, cited in Privacy Law, Rishika Taneja & Sidhant Kumar p. 96

correct governance. This statute discloses information about government and administrative operations, programs, and processes available to the general public.

The concept of the right to information began to take shape in the 1970s as a result of liberal judicial interpretations of many Fundamental Rights, particularly the right to freedom of speech and expression. In the case of *Bennete Coleman and co v. Union of India*<sup>3</sup> in 1973, the majority opinion of the Supreme Court then put it “*Freedom of speech and expression includes within it compass the right of all citizens to read and be informed*” In 1975 during National Emergency, Supreme Court of India dictate in a case judgement<sup>4</sup>, information gathering is a right to every person. The 1981 court judgement in *Manubhai Shah v. Life Insurance Corporation of India (LIC)*<sup>5</sup> reaffirmed this point.

The average citizen lacked the financial means, as well as the time and interest, to engage in a complicated legal process, and PIL was a tool available only to a select few. The bold and effective grassroots struggle of the rural poor to combat endemic corruption in famine relief efforts gave new energy to the RTI movement. Mazdoor Kisan Shakti Sangathan led this struggle (MKSS). The repercussions of this conflict prompted a widespread call for a law ensuring that every citizen has access to the RTI. Again Supreme Court of India stated that in *Raj Narayan v. Uttar Pradesh* case<sup>6</sup>, “*The RTI is a fundamental right following from article 19(1)(a) of the Constitution*”.

The Indian government passed the landmark Right to Information Act in 2005 after a statewide movement led by grass-roots and civil society organisations. Since then, the Act has been successfully used by social activists, civil society organisations, and ordinary citizens to combat corruption and enhance government transparency and accountability. The Freedom of Information Act of 2002 was repealed, and the "official secrets act of 1923" was repealed, along with many of the other British raj and Union Legislature laws and ordinances.

The Right to Information Act provides a provision to appoint a Public Information Officer (PIO) and Assistant Public Information Officer (APIO) in every administrative units and

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<sup>3</sup> (1972) 2 SCC 788 : AIR 1973 SC 106

<sup>4</sup> *Maneka Gandhi vs Union Of India*, (1978) 1 SCC 248

<sup>5</sup> 1993 AIR 171, 1992 SCR (3) 595

<sup>6</sup> (1975) AIR 865

offices of the public authority.<sup>7</sup> PIO and APIO is answerable to the public request related to information within a time limit of 30 days.

The second schedule of the RTI Act exempts twenty-five government organisations from its reach. Intelligence agencies, the Central Economic Intelligence Bureau, and others are among them. Paramilitary personnel and research institutes cooperating with the country's security authorities are likewise exempt from the statute.

The RTI Act exempts the Directorate of Enforcement, the Narcotics Control Board, the Special Service Bureau, and the Special Branch of the Police in Andaman and Nicobar, Lakshadweep, and Dadra Nagar Haveri. If the panel feels the appellant's question relates to a case of corruption or human rights abuse, these organisations must furnish information.

## **EVOLUTION OF RIGHT TO PRIVACY**

Privacy refers to a person's desire to keep himself or his personal information completely private. It is natural for a person to set boundaries so that he can be alone whenever he wants without being bothered by the outside world. In fact, a human person has the right to determine the scope of his desires to share himself with society and to govern the amount of time he wants to spend speaking with others. In other words, an individual has the right to become involved or withdraw as he sees suitable.

In far-flung areas, the concept of privacy encompasses a variety of issues such as information concealment, sexual concerns, and corporate confidentiality and there will be no encroachment or intrusions from outsiders. Over time, the concept and meaning of privacy have changed. The idea has been debated many times, but it has never been demanded.

Justice Cooley first recognized the "*right to be let alone*"<sup>8</sup>. The phrase was also cited in an eminent Article<sup>9</sup> written by Samuel D. Warren and Louis D. Brandeis where they recognized intrusion into one's privacy as a separate tortious wrong. "Political, social, and economic changes need the acknowledgment of new rights, and the common law, in its everlasting youth, grows to meet the new demands of society," the paper continued. Thus, the law only provided a remedy for physical interference with life and property, or transgressions *vi et armis*, in the

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<sup>7</sup> The Right to Information Act, 2005, (Act 22 of 2005), S. 5

<sup>8</sup> Cooley on Torts, 2d ed., p. 29.

<sup>9</sup> Warren & Brandeis, The Right to Privacy, 4 Harvard Law Review (1980)

early days. The "right to life" then only served to protect the subject from various sorts of battery; liberty meant freedom from physical restraint; and the right to property guaranteed the individual's ownership of his lands and animals. The spiritual nature of man, as well as his affections and intellect, were later recognised.

In India, the constitution did not fully recognise the notion of privacy until 2018, when the Indian judiciary officially recognised the right to privacy as a fundamental right. The law of privacy has been adequately explained in historical legal commentary. However, the term 'privacy' is not defined elsewhere in ancient or modern law, nor does the country have any other statute defining the idea. The issue of Right to Privacy was debated for the first time in the Constituent Assembly, and an amendment was proposed. The Right was not put into the Indian Constitution after getting snobbish support.

### **PRIVACY AS A FUNDAMENTAL RIGHT HOWEVER NOT ABSOLUTE**

Since 1960, the concept of privacy has been dealt with both as a common law as well as a fundamental right. The right to privacy in India is derived primarily from two sources: the Common Law of Torts and the Constitution. An unlawful breach of privacy, for example, can be pursued as a private action for damages under common law.

In an eight judge bench judgment<sup>10</sup> of 1954, the Supreme Court declared that Privacy is not a Fundamental Right for the very first time. The India Constitution doesn't expressly recognize the right to privacy.

In 1964, the issue whether right to privacy is a fundamental right first came into existence in the case of *Kharak Singh v. State of Uttar Pradesh*<sup>11</sup>, where the same was rejected again. While discussing the concept of privacy the court also relied on an American judgment *Wolf v. Colorado*(338 U.S. 25 (1949)) where it was held that the common law rule that event man's house was his castle, expounded a concept of personal liberty which did not rest upon a theory that had ceased to exist and that the domiciliary visit was repugnant to personal liberty and hence unconstitutional.

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<sup>10</sup> AIR 1954 SCR 1077.

<sup>11</sup>1963 AIR 1295.

Again in the case of *Gobind v. State of Madhya Pradesh*<sup>12</sup> On a smaller bench, the issue of privacy as a fundamental right was discussed once more. Article 21 was found to contain the fundamental right to privacy. "A citizen has a right to protect his or her own privacy, family, marriage, reproduction, motherhood, childbearing, and education, among other things," the Supreme Court stated. Without his permission, no one can write anything on the above-mentioned topics, whether true or false, laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and could be liable in an action for damages.<sup>13</sup>

The Supreme Court of India had in multiple cases *R. Rajagopal v. State of Tamil Nadu*<sup>14</sup>, *People's Union for Civil Liberties (PUCL) v. Union of India*,<sup>15</sup> *State of Maharashtra v. Bharat Shanti Lal Shah*<sup>16</sup> debated necessity of privacy, as well as whether the right should be acknowledged as a fundamental right.

The Supreme Court held in *People's Union for Civil Liberties v. Union of India* 26 (2004) 1 SCC 712 that "the right to life and personal liberty includes the right to privacy, and right to privacy includes telephone conversations in the privacy of one's own home or office, and thus telephone tapping violates Art. 21."

Despite various decisions the right to privacy wasn't conferred strict status of being a fundamental right. Hence, in the year 2015 three-judge bench of the Supreme Court of India referred to a constitution bench a batch of petitions to decide whether right to privacy is actually fundamental right or not.<sup>17</sup>

The constitution bench later referred the matter to a nine-judge bench. It was unanimously declared that the right to privacy is a fundamental right and that its status amongst the Golden Trinity of Article 14, Article 19 and Article 21 will never be forgotten. In addition to this, the bench also discussed different aspects of privacy, its scope and ambit in the case of *K.S. Puttuswamy v. Union of India*<sup>18</sup>.

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<sup>12</sup> 1975 (2) SCC 14.

<sup>13</sup> R. RAJAGOPAL VS. STATE OF TAMIL NADU , (1994) 6 SCC 632 AT P. 276 PARA 29(1)

<sup>14</sup>1994 SCC (6) 632.

<sup>15</sup>(2004) 2 SCC 476.

<sup>16</sup>(2008) 13 SCC 5 490.

<sup>17</sup>Raj Kamal, EshaneeAwadhya, "Transparency & Privacy: Unconscionable or Amicable" in SairamBhat (ed.), AshwiniArun, Sindhu V Reddy (asst. eds.), *Right To Information And Good Governance* 165 (NLSIU, Bengaluru, 2016).

<sup>18</sup>(2017) 10 SCC 1.

That was laid by Justice S.A. Bobde "A right to privacy can be found not only in Article 21, but in any of the other Part III guarantees as well. Articles 19(1), 20(3), 25, 28, and 29 are all rights that are aided and made relevant by the exercise of privacy in the current state of affairs. This is not a comprehensive list. Future technological and sociological advancements may well reveal that there are additional constitutional sites in

Justice R.F. Nariman spoke about the fundamental right to privacy in numerous ways. The following are at least three dimensions of privacy: a) Privacy relating to a person's body b) Informational Privacy relating to person's mind and, c) Privacy of choice.<sup>19</sup>

"It goes without saying that no legal right can be absolute," Justice Chalmeshwar said. Every right has its limits. At the bar, this component of the case is admitted. As a result, even the most basic right to privacy has constraints. The limitations are to be identified on case to case basis depending upon the nature of the privacy interested claimed."<sup>20</sup>

After the landmark judgment<sup>21</sup> of 2017, Under Article 21, privacy has been deemed to be an essential component of the right to life and personal liberty, as well as a constitutional principle represented in Part III of the Constitution's fundamental freedoms. As a result, unlike the rights to life and liberty, privacy is not absolute. Same limitations operate on to the right to privacy as the ones that apply on right to life. The law which provides for the curtailment of the right must also be subject to constitutional safeguards. Therefore, the right is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. The judgment also safeguards the right of an individual to control his personal data on the internet but not absolutely.

The right of an individual to control his or her personal data and to live his or her own life would also include the right to govern his or her internet presence. Taking into account the right to information, this would not be an absolute right.

## **CONFLICTS AND BALANCE BETWEEN BOTH THE RIGHTS**

Article 19(1)(a) of the Constitution, recognised the right to information as a fundamental right and it is usually referred to as a cornerstone for enhancing the foundations of democracy. By

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<sup>19</sup>K.S. Puttuswamy v. Union of India, (2017) 10 SCC 1.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*



enabling the general public access to information, the Right to Information Act of 2005 fosters government transparency and accountability.

On the other hand, the Supreme Court since 2017 ruled so in a landmark Judgment<sup>22</sup> that the right to privacy is also considered as a fundamental right under Article 21 of the Constitution.

The true difficulty arises when both of these rights are at a fork in the road, and enforcing one would result in the other being overturned. Thus, the RTI Act of 2005 sets the path for the right to privacy by barring the revelation of information that intrudes on an individual's privacy unless it is necessary for greater public good<sup>23</sup>.

In *Girish Ramchandra Deshpande v. Central Information Commission*<sup>24</sup> (*Girish Deshpande*), On the basis of the exception mentioned in Section 8(1)(j) of the RTI Act, 2005, the Supreme Court decided whether the Central Information Commission (CIC) can deny information pertaining to a public servant's personal matters, pertaining to his service career, and the details of his assets, liabilities, movable and immovable properties.

Section 8(1)(j) of the RTI Act, 2005 provides that: Notwithstanding anything in this Act, there shall be no obligation to give any citizen information relating to personal information disclosure of which has no relationship to any public activity or interest, unless the appellate authority, the State Public Information Officer, the Central Public Information Officer, or as the case may be, is convinced that in the larger public interest it will be justified to disseminate such information: However that information shall not be denied to anyone that cannot be concealed from Parliament or a State Legislature.

The Court concluded that papers relevant to the public servant, such as his employment letter, assets, income tax return, details of gifts received, and judgments of censure/punishment, are exempt from disclosure and qualify as personal information under Section 8(1)(j) of the Act in the aforementioned instance.

Further, the Supreme Court in *R.K Jain v. Union of India*<sup>25</sup> wherein on the basis of Section 8(1)(j) of the RTI Act, the appellant was refused copies of all note sheets and communication

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<sup>22</sup>*Ibid.*

<sup>23</sup> The Right to Information Act, 2005, (Act 22 of 2005), S. 8(1)(j)

<sup>24</sup> (2013) 1 SCC 212

<sup>25</sup> (2013) 14 SCC 794

pages contained in an Annual Confidential Report (ACR), as well as any follow-up action relevant to the integrity of a public official.

Similarly, in 2017 the Supreme Court again reiterated its position in the judgment of *Canara Bank v. C.S. Shyam*<sup>26</sup>, the information sought was personal information of a Canara Bank employee. While affirming the positions of *Girish Deshpande and R.K. Jain v. Union of India*, the court stated that personal information remains outside the scope of the RTI and that there was no public interest or larger good at stake in the personal information requested.

### **Privacy Upheld by Judiciary in the Often Referred to “Name and Shame” Case<sup>27</sup> in Lucknow, Uttar Pradesh**

Due to the passage of the Citizenship Amendment Bill, 2019 (CAA), large protests against the government and the CAA occurred, causing the Uttar Pradesh government/administration to take unforeseen action against protestors suspected of vandalism. The administration displayed banners in Lucknow with all of the information on the protestors, including their personal information including photographs, names, and addresses, from whom the administration had lodged a complaint for compensation for public demolition.

If the accused did not pay the compensation, the poster demanded property confiscation. This was widely broadcast on television and covered in print. *Suo motu*, the Allahabad High Court has taken notice of the action. The High Court stated, "we have no doubt that the State's action, which is the subject of this public interest litigation, is nothing more than an improper intrusion into people's privacy." The same hence, is in violation of Article 21 of the Constitution of India".<sup>28</sup> The Court also noted that no law exists that allows the State to display banners with personal data of the defendants who would be charged with compensation. The legitimate goal as held by the Supreme Court in the case of *K.S. Puttaswamy*<sup>29</sup> the proposed action must be necessary for a democratic society for a legitimate aim.<sup>30</sup>

### **Investigation is an invasion of privacy, yet it is necessary to uncover the truth in the sake of justice**

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<sup>26</sup> (2018) 11 SCC 426

<sup>27</sup> *In-Re Banners Placed On Road Side in The City of Lucknow Vs. State of U.P.* , 2020(4)ADJ386

<sup>28</sup> *ibid*

<sup>29</sup> *Supra*

<sup>30</sup> *ibid*

The year 2020 has been marked not only by the high number of deaths caused by COVID-19, but also by mysterious circumstances, most notably in Sushant Singh Rajput death case, which has received widespread media attention. As a result of the public disclosure of personal information from both the right and wrong parties, a privacy perspective has emerged (referring to the parties in dispute).

In most cases, state police and investigating bodies under the jurisdiction of the government (state or national, or both) conduct investigations, however the unknown circumstances surrounding the case, including allegations of foul play, have allowed the media to take centre stage in the investigation. One of the few instances where free media reporting helped in the case going in the right direction; otherwise, the case would have been hidden long ago. Everything from call data records to WhatsApp communications has been made public by several media sources. It should also be noted that obtaining phone records from telecom firms now involves a separate procedure, and therefore these statements should not be taken in isolation.

This information is now considered private. Given the circumstances, it could be worth looking into various legal rulings, particularly those involving evidence admissibility and court views on privacy in the context of phone tapping

In *R.M. Malkani v. State of Maharashtra*<sup>31</sup> it was held conversations taped using an external device without altering or interrupting telephone lines have been held to be admissible in evidence. In this decision, the Supreme Court outlined three requirements for tape recording admissibility: (a) relevance, (b) voice identification, and (c) proof of accuracy. Furthermore, it has been decided that evidence obtained illegally is admissible.

In another case of *Tukaram S. Dighole v. Manikrao Shivaji Kokate*<sup>32</sup>, it was held that tape recordings of speeches are considered documents under Section 3 of the Evidence Act of 1872, and are no different than photographs and are admissible after meeting the three standards set therein. *inter alia* in *R.M. Malkani*<sup>33</sup>.

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<sup>31</sup> (1973) 1 SCC 471 : AIR 1973 SC 157

<sup>32</sup> (2010) 4 SCC 329

<sup>33</sup> *Supra*

Tape recordings have been replaced with WhatsApp chats as technology has advanced, but the foregoing principles should still apply, subject to any evolving judicial rulings and evidence laws relating to e-information.

To summarise, the right to privacy is not an absolute right that must be weighed against other rights and interests based on the facts of the case. And, as we discovered in the preceding studies, the beam balance sways on either side when the right to privacy and other rights are implicated.

## **CONCLUSION**

The RTI Act's core concept is that every citizen has the right to request information from a public authority, and every public authority is obligated to provide the requested information as long as it does not fall under the exemptions set forth in Sections 8 and 9. If a third party gains access to personal information entrusted to a public entity, there will be a breach of confidence. The sanctity of the private domain is inviolate. Thus, applicant seeking information about its own case does not attract section 8(1)(j), but the applicability of this section is restricted to third party information giving rise to breach of individual's privacy. The right to privacy and access to information, though placed on an equal footing as human rights, are complementary to each-other insofar as attaining the common goal of government accountability. In the event of a conflict, however, balancing the competing rights might be a herculean task. Governments bear the responsibility for resolving conflicts by enacting clear regulations and rules. While doing so, the government must guarantee that laws governing access to information and data protection contain compatible definitions of "personnel information." As a result, no one right should be overweight than other. Because no single measure can be used to judge all situations on the same ratio, which right should be enforced must be decided on a case-by-case basis, emphasising the requirement of public interest.