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Right to Information Vs.Right to Privacy

Abstract

Right to information law provides every citizen a fundamental right to have information held by or under the control of public authorities. At the same time, right to information has to be reconciled with legal interests protected by law, such as other fundamental rights, particularly the fundamental right to privacy. Certain conflicts may arise in particular cases of access to information and the protection of personal data stemming from the fact that both rights cannot be exercised absolutely. The rights of all those affected must be respected and no right can prevail over others, except in clear and express circumstances. Thus, the possibility of 'Harmonious Construction' between the two conflicting fundamental rights exists to some extent so that right to information juxtaposes with privacy right and both the rights may be exercised without compromising on their respective objectives.

Keywords: Information, privacy, personal information, unwarranted invasion, conflicts, juxtapose.

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Introduction

The recently enacted Right to Information Act, 2005[1] (herein after referred to as "the RTI Act") makes the right to information (herein after RTI) a statutory right. It recognizes the right of citizens of the country to have information knowledge about the functioning of public authorities. The main objective of this Act is to ensure greater and more effective access to information and to maintain transparency and improve accountability in the working of the public departments both central and state. Even prior to this Act coming into existence thereby conferring a statutory right on the citizens of the country to obtain information from the public authorities, the Supreme Court has in the past recognized this right as a fundamental right embedded with "freedom of speech and expression"[2] (Article 19(1)(a) of the Indian Constitution)- unless one has a right to express and know, one cannot express opinion on any issue. The Supreme Court of India has further inferred the right to information from the right to life and personal liberty[3]. The Apex court has observed that the people at large have a right to take part in a participatory development in the industrial life and democracy. Right to know is a basic right to which citizens of a country aspire under Article 21 of our constitution. It has further stated that the Right to know is part of the Right to Life and Personal liberty – people have right to know information that affects their lives, liberty and dignity.

At the same time, the Right to Privacy provides a person to control the collection of access to and use of personal information which is held by the government bodies. Privacy underpins human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age. The right to privacy is one of the fundamental rights recognized the world over[4].

The 'right to privacy' even though by itself has not been identified by our constitution and though as a concept it is too broad and moralistic to define, judicially, the Supreme Court of India has established by its liberal interpretation that the right is an integral part of the right to personal liberty under Article 21 of the constitution.

Paradoxically, the right to privacy, recognized as a fundamental right by our Supreme Court, has found articulation by way of safeguard, though limited, against information disclosure, under the Information Act. Privacy and dignity has always been considered a fundamental human right of every human being like any other key values such as freedom of association and freedom of speech.

In India, there is no law relating to data protection or privacy; privacy rights have evolved through the interpretive process. The right to privacy in United States, characterized by Justice Brandeis in his memorable dissent, in Olmstead V. United States[5] as "right to be let alone… the most comprehensive of rights and the right most valued by

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civilized men" has been recognized under our constitution by the Supreme Court in several rulings[6]. But none of the judgment, however, explored the interest between the two values of information rights and privacy rights. With the recent media disclosure of secrets mass surveillance programs by the United States and British governments in the name of security, the issue of right to privacy has assumed a new dimension in international arena.

Information is, for instance, beginning to be collected on regular basis through statutory requirements and through e-governance projects. This information ranges from data related to : health, travel, taxes, religion, education, financial status, employment, disability, living situation, welfare status, citizenship status, marriage status, crime records etc.

At the moment, there is no overarching policy regarding the collection of information by the government. This has led to ambiguity over who is allowed to collect data, what data can be collected, what are the rights of the individual and how the right to privacy will be protected. The extent of personal information being held by various service providers, and especially the enhanced potential for convergence that digitization carries with it, is a matter that raises issues about privacy.

Citizen's right to access information has been widely accepted and appreciated all over the world to dilute the positional differences between citizenry and the government. Further, an individual's privacy is increasingly being challenged by the new technologies and practices facilitating the sharing of individual's personal data at public platform.

Right to Freedom of speech and expression, as enshrined in Article 19(1)(a) of the constitution of India, encompasses right to impart and receive information. Thus, right to information has stood incorporated by the interpretative process, laying the unequivocal statement of law that there is a definite right to information of the citizens of this country inbuilt in the constitutional framework.

Similarly, the Right to Privacy has been interpreted as a part of right to life and personal liberty guaranteed under Article 21 of the constitution of India, which entitles every person for protection of his life and personal liberty by making it an essential ingredient of the personal liberty. Right to Privacy has become an integral part of the fundamental right to life, a cherished constitutional value and it has been positioned at an eloquent status in the wake of new emerging technological challenges and practices.

The right to information often collides with the right to privacy. The Government stores a lot of information about individuals in its dossiers supplied by individuals in applications made for obtaining various licenses, permissions, including passports, or through disclosures such as income tax returns or for census data. When an applicant seeks access to Government records containing personal information concerning identifiable individuals, it is obvious that these two rights are capable of generating conflicts. In some cases this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern. As one American writer said, "one man's freedom of information is another man's invasion of privacy".

The citizens do not have any right to know about the personal matters or information of individuals. The state also is precluded from interfering with the personal and private matters of the citizens except when it becomes necessary in the interest of public and nation. Therefore, the right to privacy constitutes an effective limitations on the right to information. At present there is no legislation in India to protect the right to privacy and private information. In these circumstances this paper is an attempt to examine the Right to Information juxtaposed with privacy rights, their inter relationship and possibility for the exercise of both the rights without compromising on their respective objectives.

Right to Information

It is being increasingly recognized that access to information is not only a human right but also an important right to promote good governance and fight corruption. Overtime, Freedom of Information laws are becoming more and more common worldwide. Over 70 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies. In the previous decade, a record number of countries around the world including India, South Africa and Japan have taken steps to enact legislation giving effects to this right. Taking cue from this, many other countries are also making efforts to formulate legislation in this regard.

All four main regional systems of human rights within the Americas, Europe, Asia and Africa have formally recognized the importance of freedom of information as a human right. The importance of right to information as a fundamental right is beyond doubt. In its first session in 1946, the United Nations General Assembly adopted Resolution No. 59(1) which clearly states, "Freedom of Information is a fundamental human right and the touchstone of all the freedoms to which the UN is concerned"[7].

The European convention on Human Right's, Article 10 guarantees freedom of speech and expression which also includes right to information. Article 10(1) says :

> "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by a public authority…"

The European Court of Human Rights (ECHR) has held that Article 10 of the European convention for the Protection of Human Rights and Fundamental Freedom, guarantees freedom of expression, "basically prohibiting a Government from restricting a person from receiving information that others wish or may be willing to impart him"

In the two more recent of the three cases[8], the court held that the denial of access could not be justified and hence represented a breach of the respective State's human rights obligation. In Gaskin

V. U.K.[9] the court held that an individual had a right to access records held by a local authority relating to the period while under foster care. In the most recent case Guerra & others V. Italy[10], the court went further, holding that the Government was under an obligation to provide certain environment information to residents in "at-risk" area, even though it had not yet collected the information.

The Parliamentary Assembly of the Council of Europe has considered in 1996 that "public access to clear and full information must be viewed as a basic human right"

Right to Privacy

Privacy is a fundamental human right recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many other international and regional treaties. The right to privacy means the right to be left alone and the right of a person to be free from unwarranted publicity. There is a vast literature on the nature and scope of the right to privacy, but there is no consensus on the constitutional, legal, or general meaning of the concept of privacy. The concept of privacy is certainly not confined to mere isolated individuals, it goes far beyond so as to include the kinship 'zone' of the family. The physical zone of protection includes the home and correspondence with others, which may go very far from the physical home (and is, of course, informational as well as being physical). On the basis of the past experience and cultural understanding the meaning of Privacy Rights varies among countries. With technological advancements, the personal information does not limit itself to any physical boundaries, thereby increasing the importance of the Privacy Rights among individuals.

Government's information collection activities related to government services such as taxation, medical, employment, fingerprints, DNA mapping and personal communications etc. have expanded enormously in recent years. This has led to the concerns about the possibility of abuse of such personal information for unlawful purposes. In addition to the issue of protection of personal data kept in government records, the impact of internet on collection and transfer of personal data have also come to the fore as emerging problems posed by the new technology.

In United States, the right to privacy has been analysed as two separate interests; an interest in avoiding disclosure of personal matters and an interest in independence for personal decisions involving marriage, procreation, contraception, family relationship, child rearing and education. But like all other rights, right to privacy is also subject to various restrictions such as national security, law enforcement etc.

The concept of right to privacy has initially evolved in response to the development of new sophisticated methods of surveillance, like wire taps etc. akin to right to property. More recently, privacy of a human personality has also been recognized. In America, in Griswold V. Connecticut[11] in 1965, recognized the privacy of the freedom of married couple, where the Supreme Court declared unconstitutional a Connecticut statute prohibiting the use of contraceptives –because it violated the right of marital privacy, a right "older than the Bill of Rights". The constitution makes no mention of the right of privacy. Yet in a series of cases the American Supreme Court has – via the Bill of Rights (particularly the Fist, Third, Fourth, Fifth, and Ninth Amendments) – recognized, amongst other privacy rights, that of 'associational privacy', 'political privacy', and 'privacy of counsel'. It has also set the limits of protection against eavesdropping and unlawful searches.

By far the most divisive 'privacy' decision that the court has decided is the case of Roe V. Wade[12] in 1973. It held, by a majority, that the abortion law of Texas was unconstitutional as a violation of the right to privacy. Under that law, abortion was criminalized, except when performed to save the pregnant woman's life. The court held that states may prohibit abortion to protect the life of the foetus only in the third trimester.

The Supreme Court on December 16th 1992, rendered a landmark decision on the right to privacy in a case involving the names and home addresses of returned Haitian refugees. In Department of State V. Ray[12], the court overturned a lower court order that would have required disclosure of personal identifying information for possible use in pending immigration proceedings. Writing for the court, Justice John Paul Stevens first determined that release of the Haitian interviewees identities "would be a significant invasion of their privacy because it would subject them to possible embarrassment and retaliatory action". Disclosure under the circumstances of the case could be regarded as "a special affront" to their privacy interests, he observed, and those interests "must be given great weight."[13]

Recently, in the case United States V. Jones[14], the Supreme Court of the United States ruled unanimously that government agents violated the constitution when they tracked a suspect for 28 days using a GPS device installed without a warrant.

In the United Kingdom, the Human Rights Act, 1998, incorporates into English law Article 8 of the European convention on Human Rights. Article 8(1) of the Convention provides for the protection of the right to respect for family life, home, and correspondence. Clause (2) of Article 8 carves out permissible restrictions, which are "necessary in a democratic society" in the interest of national security, for the prevention of crime etc.

In many countries, the privacy exemption is one of the most sought exemptions used in disclosing the information. In the united states, the exemptions for personal privacy and law enforcement records concerning individuals have consistently been the two most used exemptions. These data include the names of recipients of home loans, citizenship records, and criminal records. In Canada, the privacy exemption was used in 31 percent of all denials-far more than the next-most-used exemption- US Department of Justice (2010); Government of Canada (2002); and U.K. Ministry of justice (2009).

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According to the U.K. Ministry of Justice (2010), the privacy exemption is the most common one cited by public bodies. Many cases before the Information Commission, the Information Tribunal, and the Courts have focused on this subject and they have required balancing by those bodies. In 2008, a significant case occurred. Journalists had asked for detailed records of the expenditures of MPs− expenditures that not only related to their official office and travel expenses but also to subsidies they received for housing. Following a protracted series of decisions by the information commissioner, information tribunal, High Court and Court of Appeals much of the information was released, based on its public interest[14].

In India, the Supreme Court in Girish Ramachandra Despande V. Central Information Commissioner & others[15] has observed that information relating to Show Cause Notices, orders of punishment etc. relating to 3rd party, barred from disclosure u/s 8(1)(j) of the RTI Act, i.e. disclosure of personal information which may impede the privacy of an individual. The Delhi High Court in Paardarshita Public Welfare Foundation v. Union of India[16] has also observed that personal information which would cause unwarranted invasion of the privacy of the individual are not to be given u/s 8(1)(j) unless larger public interest justify the disclosure of such information.

Conflicts

There is no privacy law in India. In view of the absence of privacy law in India, the CIC faced with balancing the right to information of the requester with the right to privacy of the concerned parties, both in case of personal and business information. Controversy arises where exemption is claimed under limited protection provided under sub-clause (j) of section 8(1) and the information seeker requests for disclosure of the information but the PIO refuses to supply such information on the ground that information stands exempted. Section 8(1)(j) of the RTI Act, 2005 provides as under:

> 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 the Parliament or State Legislature shall not be denied to any person.

Thus, personal information which would be having no relationship with public activity or interest, or which would cause unwarranted invasion of the privacy of the individual, need not be supplied. It further provides that information which could not be denied to Parliament or a State Legislature cannot be denied to an individual also.[17]

No public authority can claim that any information held by it is “personal”. There is nothing “personal” about any information, or thing held by a public authority in relation to itself. The expression “personal information” used in section 8(1)(j) means information personal to any other “person”, that the public authority may hold. That other “person” may or may not be a juristic person, and may or may not be an individual. For instance, a public authority may, in connection with its functioning require any other person − whether a juristic person or an individual, to provide information which may be personal to that person. It is that information, pertaining to that person, which the public authority may refuse to disclose, if it satisfies the condition set out in clause (j) of section 8(1) of the Act, i.e. if such information has no relationship to any public activity, or which would cause unwarranted invasion of the privacy of the individual under clause (j) of section 8(1) of the Act. The use of the words “invasion of the privacy of the individual” instead of “an individual” shows that the legislative intent was to connect the expression “personal information” with “individual”. In the scheme of things as they exist, the expression “individual” has to be and understood as “person”, i.e. the juristic person as well as an individual[18].

An important and perhaps vital consideration, aside from privacy is the public interest element. Section 8(1)(j)’s explicit mention of that concept has to be viewed in the context. In the context of the right to privacy, Lord Denning in his What Next in Law, presciently said that :

> “English law should recognize a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognize a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the courts. As each case is decided, it will form a precedent for others. So a body of case law will be established.”[19]

The notion of the “public interest” is the basic principle in the RTI Act 2005. But this notion is not defined anywhere in the RTI Act. However, in the Indian context and especially in the context of the RTI Act, 2005, a significant judgment of Supreme Court can be taken note of in understanding the term ‘public interest’. In S.P. Gupta V. President of India,[20] Justice Bhagwati, in referring to ‘public interest’ maintained; “Redressing public injury, enforcing public duty, protecting social collective, ‘diffused’ rights and interests vindicate public interest…. [in the

enforcement of which] the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected." In another case, State of Gujraj V. Mirzapur Moti Kurashi Kasab Jamat & others[21], the Apex Court held "the interest of general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the constitution (i.e. Directive Principles of State Policy)". The Chief Information Commissioner (CIC) has also thrown light on this term in one of its decision that 'public interest' includes "disclosure of information that leads towards greater transparency and accountability" (in the working of public authority).[22]

Given the often complex relationship between privacy and RTI laws, the conflict frequently arises from misunderstandings about what is intended to be protected. Officials must deal with numerous issues: Should official's names and other details be considered private? Is information in public registers available for any use? Are court and criminal records public? Clarity in law, policy and practice to limit these problems is essential.

The possibility of 'Harmonious Construction' between the two conflicting fundamental rights exists to some extent. There are overlaps between the RTI and privacy rights that can lead to conflicts.

The core issue is as to what the relationship between privacy, transparency and security is and how much we shall, as individuals, have to give up as a part of new society, especially in the new digital age. Conflicts basically arise due to the misunderstanding about what information is intended to be protected. Several issues are to be dealt with such disclosures as personal details of the public officials to the third party, details of government contracts with the private bodies, details of persons who are in a fiduciary relationship with the public authorities (such as doctor-patient, lawyers-client, etc.), and whether court and criminal records are public.

On 18th April 2011, the Supreme Court dismissed a petition seeking a direction to the Census officer to disclose information on the "religion and faith" of Congress President Sonia Gandhi and her children Rahul Gandhi and Priyanka Gandhi. A Bench of Justices R. V. Raveendran and A. K. Patnaik dismissed the petition filed by the former DGP of Haryana, P.C., Wadhwa, Challenging a judgement of the Punjab and Haryana High Court that held personal information supplied to a census officer during the previous census could not be made public. The High Court had said, "It is evident that the petitioner is making efforts to make unjustified inroads into the privacy of individuals, even if they are public figures and consequently the information cannot be made public. Information supplied to the census officer cannot be made public in view of statutory bar imposed by section 15 of the census Act."

The appellant submitted that Section 22 of the RTI Act would have an over-riding effect and the word 'personal' under Section 8(1)(j) would have to be construed in the light of the fact that the information as sought was of public figures and therefore the same could not be denied. He further said that Section 15 of the census Act would have no effect on Section 22 of the RTI Act (the provisions of this Act shall have effect not withstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law of the time being in force). He sought quashing of the impinged and a direction for disclosure of the information sought.[23]

However, The Bombay High Court in Surupsingh Hrya Naik V. State of Maharashtra[24] has observed that the right to privacy now forms a part of right to life. It would therefore, be apparent on a reading of regulations 2.2 and 7.14 framed under the Medical Council of India Act that information about a patient in respect of his ailment normally cannot be disclosed because of the regulations, which is subordinate legislation except where the regulation provides for. The RTI Act, is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation, if there be a conflicts between the two. The exception from disclosure of information as contained in Section 8 has some important aspects. Section 8(1)(j) provides for disclosure if larger public interest justifies. Therefore, the regulations framed under the Indian Medical Council Act, will have to be read with Section 8(1)(j) of the RTI Act. So read it within the competence of the concerned PIO to disclose the information in larger public interest or where Parliament or State Legislature could not be denied the information. Thus, the information relating to medical report is liable to be disclosed as every person has right to know that patient is genuinely ill or not or admitted or not admitted in hospital and has tried to avoid punishment or custody.

The Delhi High Court also decided the matter pertaining to Section 8(1)(j) as exemption from disclosure of personal information in Vijay Prakash V. Union of India[25]. Court held that disclosure of service records of a public servant sought by her husband so as to establish his case in matrimonial proceeding is not permissible. Court elaborated the personal information of third party that a private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in discharge of his duties and is accountable for them. The character of protection, therefore, which is afforded to the two classes – public servant and private individuals, has to be viewed from his perspective. The nature of restriction on the right to privacy is therefore of a different order; in case of private individuals, the degree of protection afforded is greater, in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of the case, the protection afforded by Section 8(1)(j) may not be available. The onus of showing that disclosure should be made, is upon the

individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element.

In the above case court rejected the argument of the petitioner that his wife is a public servant, therefore, her service record is a matter of public interest. The CIC has held that there is no public interest element in the disclosure of the personal information in the possession of the information provider, i.e. the Indian Air Force. Court has agreed with the view of the CIC and expressed that the petitioner has not been able to justify how such disclosure would be in "public interest", the litigation is pure and simple, a private one. The basic protection afforded by virtue of the exemption (From disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed.

The issue becomes more important once the information is disclosed in the database format and over internet. Questions about the relevance of the data protection laws for the disclosure of personal information (even if it is publicly available) are important.

In most of the countries, including India, privacy has been one of the core exceptions used in the disclosure of information under the RTI. But as the time advances the need and the interpretation of privacy laws Vis-à-vis RTI would also change.

Need of Data Protection Law

With the advent of digital revolution, the personal information is increasingly collected, maintained and transmitted electronically. The important question that arises is about the right of individuals to control the way in which information about them is used. Basically, it is a private right but some countries in the world sought to protect such private rights also, by enacting data protection or privacy laws with the main object of avoiding adverse consequences by misuse or abuse of personal data. These laws or international agreements apply to records of individuals which are held by a variety of institutional record keepers, corporations, hospitals, research organizations and the government. However, these data protection laws and agreements usually arise in and among economically and technologically advanced democracies where the regular relationship among nations are premised on sharing roughly equivalent political and economic values.

At this time, there is a growing trend[26] towards passing a data protection law containing provisions authorizing restrictions on transborder flows of personal data. India cannot and should not lag behind for long. There is clearly a need to balance the security concerns as against invasion of individual privacy. Government of India must legislate a data protection law sooner than later. Websites must be mandated to follow strict guidelines on various issues concerning personal information. They must be required to follow the basic principles of data protection laws which are internationally accepted. Right to Information in India without adequate protection of privacy and personal information will not bear the desired fruits.

As the population, education and technology advances in our society so is our understanding of nearly every aspect of life, right from minutiae of our daily lives to more fundamental question about identity, relationship and our own security. Therefore, both rights i.e. right to privacy and right to information must be examined on a case by case basis with a view towards relative importance of various interests.

It is to be noted that both the rights are basically designed to ensure accountability of the State towards citizens at the same time protecting the privacy interests of the individual persons.

In India, there are some common type of information that are sought under the Right to Information Act, 2005 and the conflicts that arise thereto on the basis of privacy of the individual. Such cases open up several avenues for future work in understanding privacy as a matter of right Vis-à-vis Right to Information. Some of these common informations are as under :

1. Disclosure of contractual information between the Public Authority and Private Organizations.

   The disclosure of contractual information may be needed in the larger public interest, but this may discourage private organizations to form future agreements with the government bodies as it may disclose the trade secrets, commercial confidence or Intellectual Property of the Organizations. Dealing with each case separately may allow the disclosure of information, severing the necessary trade secrets, as the said disclosure can be crucial identifying the fraud/scame in the government contracts.

   For example, information received by single RTI applicant under MNREGA Scheme of the government disclosed fake identity cards were created and used, and previous social audits had not revealed the said fraud. In general, the organizations may have less of a private interest guarantee because the information may be related to their professional activities rather than to their personal opinions of lives.

2. Details of the persons (past records) who is in a fiduciary relationship with the public authority (such as doctors, lawyers, insurance agents etc.)

   Fiduciary relationship (such as doctor-patient, trustee-beneficiary, attorney-client, guardian-ward) refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. Fiduciary relationship described a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transactions. Thus fiduciary relationship which has a duty of care to act for the benefit of other on matter, related to the scope of the relationship, therefore, it requires the highest duty of care. The information should be disclosed under the circumstances which might not affect the interest of the public safety and security. Strong steps should be taken so that the privacy right exemption under the RTI Act

should not be misused and encourage the conflict arising between RTI and Privacy Rights.

3. Disclosure of information pertaining to departmental enquiries in respect of Disciplinary Action initiated against the Judicial Officers/Officials of the Subordinate Court or the High Court.

   In a recent decision in the Registrar General, High Court of Madras V. K. Elango and the Registrar, the Tamil Nadu Information Commission, the Madras High Court (dated 17 April, 2013) has observed that disclosures of such information (pertaining to departmental enquires) would effect the independent running of the administration of the High Court which is imperative part of an independent judiciary in India. Further, even the disclosure of statistical information pertaining to departmental enquiries in respect of disciplinary action initiated against the Judicial officers/officials of the subordinate court will affect the facile, smooth and independent running of the administration of the High Court, under the constitution of India.

   On the other hand, it is interesting to note the judiciary's stand here as the outcome of any disciplinary enquiry of any government official is allowed to be disclosed under the RTI Act but a similar disclosure in respect of the officers of the court would cause unwarranted invasion of the privacy of the individual.

4. Information about Annual Confidential Reports (ACRs) of the Public Officials by the Third Party.

   The information sought in such cases has a relationship to a public activity which is performed by the individual and is certainly not related to his/her personal or family life. At the same time an individual may not like any third party to know the evaluation done by his senior officer regarding individual's performance. The third party may ascertain the Annual Financial Report (balance sheet or Profit/ Loss Account) of the public authority as a whole to analyze its working.

5. Disclosure of the Answer-sheets of a particular student (topper) to the rest of the candidates taking the examination.

   Evaluated Answer-sheets of a candidate are his/her personal information but in the larger public interest the said disclosure (severing the name of the candidates and examiners) might rather help the other candidates to prepare better for the examination, once, the answer-sheet is disclosed. Also, such disclosure might not invade the individual's privacy or will hamper his intellectual property, as the examination is over and final results are declared.

   At the same time the privacy of the candidate is to be respected as the information originating from him and subsequently being evaluated by the examiner. Severing the name of the candidate, is itself, may not be a reason enough for the disclosure of his answer-sheets.

6. Disclosure of the medical records to the patient undergoing psychiatric treatment by the hospital.

   Information sought by the patient may pertain to him/her, however, disclosure of medical records may reveal the names of the persons, who made comments/were witness in respect to the diagnosis of patient's mental illness. This may impede their privacy/security. At the same time non-disclosure of the names would lead to partial disclosure of information to the patient, which might not be of material use to him.

Aim of the Study

Right to information and right to privacy are basically designed to ensure accountability of the state towards the citizens at the same time protecting the privacy interest of the individual person. The right to information often collides with the right to privacy : Despite the source being constitution both the laws have found colossal interpretation by Indian judiciary, but the outcome failed to develop a mechanism for identifying core issues limiting conflicts and balancing the respective rights. In this article author endeavours to dwell on the possibilities of juxtaposition of these two rights, their mutual proximity to each other as well as probable conflicts that can emerge in the process.

Conclusion

Right to information is not absolute and is subject to certain restrictions. One of them is right to privacy. Citizens do not have right to know about the personal matters or information of individual except when it becomes necessary in the interest of the public. Thus, right to privacy constitute an effective limitation on right to information. It also reflects the premise that individual privacy is not a purely personal affairs but it is attached to a social contract. The individual privacy is subject to public interest. This makes sense because what is in the public interest will change over time and will depend on the particular circumstances of each case. Because of this, public authorities more specifically the the PIOs (Public Information Officers) and departmental Appellate Authorities as well as Information Commissions will need to consider each case on its individual merits taking into consideration the specific facts whether any exemption applied and if so, whether it is overridden by more important "public interest" considerations such as the need to promote public accountability, the imperative to protect human rights or the facts that disclosure will expose an environmental or health and safety risks.

The questions involved in identifying public interest are complex. Therefore, there is an inherent tension between the objective of freedom of information and objective protecting personal privacy. These objective often conflict when an applicant seeks access for personal information of an individual and about third party. Thus, it is necessary to determine where the balance should be struck between these aims. To avoid contradiction, and to sustain the spirit of the Act, it would have to be seen from the angle of balance between the protected interest and the public interest involved in the disclosure. He cannot ignore the structural balance of the Act in its entirely, the public authority would have to balance the interest involved on both sides. Thus, there is every reason for the public authority to decide

such issues after due application of mind. The most important aspect of this issue is to analyse the information required under the background and circumstances attached to it. To find reasonability – is a sensitive issue which requires collective application of all senses together. Thus, the public authority will have to conduct this exercise of balancing of interests very carefully and both the rights must be examined on case by case basis with a view towards relative importance of various rights. At present there is no legislation in India to protect the right of privacy. Most issues can be mitigated through the enactment of clear definition in legislation. Therefore, the need of the hour appears to be to enact the necessary legislations to protect the right to privacy and private information on the lines of U.S.A.

Notes and References

1. The entire provisions of the RTI Act have come into force with effect from October 12, 2005.
2. Benette Coloman V. Union of India, AIR 1973 SC 60; State of U.P V. Raj Narain, AIR 1975 SC 865.
3. Reliance Petrochemicals Ltd. V. Proprietors of Indian Express Newspapers Bombay Ltd., AIR 1989 SC 190.
4. David Benisar and Simon Davies of Privacy International have chronicled privacy law in as many as 53 countries of the world. See Benisar, David and Davies, Simon (Fall 1999) Global Trends in Privacy Protection. An International Survey of Privacy, Data Protection and Surveillance Laws and Development's. The John Marshal Journal of Computer & Information Law, Volume XVIII, Number 1. Quoted by Naib Sudhir, The Right to Information Act, 2005 - A hand book, (2011) p. 175 & 193.
5. 277 US 438 (1928).
6. Kharak Singh V. State of U.P., AIR 1963 SC 1295; Gobind V. State of M.P., AIR 1975 SC 1378; R. Rajagopal V. State of Tamil Nadu, AIR 1995 SC 264 and District Registrar and Collector V. Canara Bank, AIR 2005, SC 186.
7. 14th December, 1946, Resolution No. 59(1).
8. Leander V. Sweden, 26th March, 1987, 9EHRR433; Gaskin V. U.K., 7th July, 1989, 12EHRR36; Guerra V. Italy, 19th February, 1998, App. No. 14967/89.
9. European Court of Human Rights, Judgement of 7th July, 1989.
10. European Court of Human Rights, Judgement of February 19, 1998.
11. 381 US 479 (1965).
12. 112 S. Ct. 541 (1991).
13. Id. at. Pp. 548-549.
14. Corporate officers of the House of Commons V. Information commissioner and others (2008) EWMC 1008(Admin.).
15. SLP (civil) No. 27734 of 2012.
16. AIR 2011 Delhi 82(DB).
17. Joint Registrar (Judicial-cum-Public Information officer, High Court of Judicature at Patna V. State Information Commission, Patna, AIR 2010 Pat 176.
18. Jamia Milia Islamia V. Sh. Ikramuddin, AIR 2012 Del. 39.
19. Vijay Parkash V. Union of India, AIR 2010 Del. 7.
20. The Hindu, April 19, 2011, p.8.
21. AIR 2007 Bombay 121 : (2008) 1 ID 185.
22. AIR 2010 Delhi 7.
23. European countries have passed data protection laws. These are Austria, Denmark, France, Germany, Ireland, Norway, Sweden, Iceland, Luxemberg and the United Kingdom. Israel also has such a law. Several more countries are on the verge of passing these laws. The United States, Canada and Australia also have data protection laws, although their scope and focus are somewhat different. Significantly, these laws do not include provisions limiting international transfers of personal data.