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## UNVEILING PRIVACY THROUGH RTI: ANALYZING AN EXEMPTION

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### Abstract:

Right to information is a powerful weapon that enables citizens to access information from the government, but at the same time it not exploited for obtaining personal information. Thereby it should not interfere into Privacy of any individual. Privacy is a crucial aspect of individual autonomy. In India, where transparency and accountability are cherished, RTI emerges as a pivotal instrument, however the unfettered implementation can pose challenges to privacy. The Right to Information (RTI) generally focuses on accessing information in charge of public authorities. When it comes to privacy, RTI Act in India have an exemptions to protect sensitive personal information. In many instances in India, personal information had been withheld if its disclosure would infringe upon personal privacy rights. This abstract is highlighting the exemption in RTI safeguarding the personal information.

### INTRODUCTION

The Right to Information is a fundamental right of an citizen as guaranteed under article 19 of Indian Constitution to access information from public authorities and made the government functionaries more accountable by promoting transparency in governmental operations. This RTI act as vital tool for preventing corruption and empowering citizen to seek any information from government regarding government works, documents, or any activities done by the government. But there are certain exceptions in this act that enables the public authorities to have the power to not disclose certain information on the grounds of being sensitive, personal or the prospect of being a threat to the security of Nation.

### WHAT IS RTI?

The Indian Parliament passed Right to information act in 2005 by succeeding the former freedom of Information Act,2002. The government enacted the act for citizens to have the Right to obtain government information and disseminate it. The "Right to know" expression was provided in the article 19 (1)(a) of the constitution of India i.e., right to freedom of speech and liberty and also in article 21 of the constitution of India i.e., right to life

Under the provision of the act, any citizen of India has the right to collect information from a public authority i.e., a government body or any instrumentality of state. RTI is the instrument that furnishes the public by enabling the right to know in the occurrence of government decision making process on behalf of citizen and thereby able to question the government. The citizen can seek any governmental information from the purview of RTI, subject to the exceptions that affect the sovereignty and integrity of the nation.

## ORIGIN OF RTI IN INDIA:

In India, The right to information movement was initiated at the grassroots level in an organization named Mazdoor Kisan Shakti in 1990 .in 1997 a committee was formed to broaden the scope of dissemination of information known as Shourie committee. In 2002 the freedom of information of act was passed by the draft primed by Shourie committee later in 2005 the parliament establish the current regime of people`s right to know and supersedes the former freedom of information act 2002 And Tamil Nadu is the first Indian state to pass RTI law in 1997.Thus RTI movement has been gradually developed in the India which results in incorporation of RTI in the realm of fundamental rights. This embodiment is kicked off in the landmark judgement of Raj Narain v state of Uttar Pradesh (1976).<sup>1</sup>

## EXEMPTION IN RTI:

Every right comes along with curtailment. article 19(1) (a) include right to receive information but at the same time the right should not affect any existing law or restrict the state from making any law in so far such law impose reasonable restriction to protect the interest of the state.

The main aim of RTI is to uphold the transparency in democracy. This act withholds any sensitive information which may cause harm to the state. Before disclosing such information the public officer must check whether that information may infringe upon other rights like right to privacy or any public interest or any disturbances to affect the sovereignty or integrity of the state. The RTI Act 2005 laid down section 8 to provides an elaborate grounds of exception by which certain Information are protected and non-disclosed,

The sub section 8(1) provides information which cannot be denies to the parliament or state legislature shall not be denied to any person.

Further the sub section (2) of section 8 of the act provides that notwithstanding anything in the official secrets act, applies if public interest in disclosure outweighs the harm to the protected interests.

Likewise sub section (3) subject to the provisions of clauses (a),(c),and (i) of sub section (1), any information relating to any occurrence ,event or matter which Has taken place ,occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under the section

These above exceptions are laid down to safeguard the sovereignty and security of the nation <sup>2</sup>

## Exemption of disclosure for invasion of privacy

Right to privacy and Right to seek information are both sides of the same coin and both plays integral role in democratic state. the article 19 of the constitution of India includes Right to privacy ,that any personal information that is not related to public interest or which would invade the privacy of the individual is barred from disclosure under section 8 (1)(j) of the RTI act 2005

The section 8(1) (J) of the RTI Act ,2005 enumerate that information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which could cause unwarranted invasion of the privacy of the individual unless the central pubic information officer or the state public information officer satisfied that the larger public interest justifies the disclosure of the information

Further that the provided information, which cannot be denied to the parliament or a state legislature shall not be denied to any person.<sup>3</sup>

It was noted that the exemption under the section 8 (1)(j) was claimed only when the information of the third party does not have any public interest resulted only in unwarranted invasion of their privacy

<sup>1</sup> <https://www.legalserviceindia.com/legal/article-323-evolution-and-development-of-the-right-to-information-act-in-india.html>

<sup>2</sup> S.8(1) of RIGHT TO INFORMATION ACT 2005

<sup>3</sup> S.8(1)(j) RIGHT TO INFORMATION ACT 2005

### THIRD -PARTY INFORMATION: PRIVACY CONSIDERATIONS:

The section 11 of RTI deals with third party information where a request is made to disclose third party information. The Public Information Officer (PIO) or any representative authority must have the consent of the third party before disclose the information and the consent is not required when the information is relate to public interest and the authority should follows the interpretative guidance in RTI Act. when it relates to information regarding privacy of an individual, the section 11 balancing the interest between applicant and third party to avoid any future conflicts.

### PUBLIC INTEREST v PRIVACY: FINDING THE BALANCE

One Of the important ingredients in the section 8 (1)(j) is to exempt the information which would cause unwarranted invasion of Privacy. the exception can be prevailed when the PIO justifies the disclosure of information related to public interest only .it is to be noted that it should only concerns about the privacy of the individual not any private body institution or organization. the preamble of the RTI sets out guidance to access the practical regime of right to information for citizen under the public authority to promote transparency and accountability.

In the case of **Subhash Chandra Agarwal v Supreme court of India**, The Central Information Commission (CIC) held that even supreme court and high court judges comes in the ambit of RTI and have been directed to disclose their assets to curb corruption. The disclosure of such information may conflict with right to privacy and the expression “privacy” and “Right to information” has not been defined in wider sense. It only depend on the interpretation and precedents.

The right to privacy is a sacrosanct facet of article 21 i.e., right to life of the constitution. The dissemination of personal information could cause incursion of an individual privacy unless the justification of the disclosure is in bonafide intention. Even though the RTI balanced the right to privacy there are certain loopholes where the section 8(1)(j) will not be applied, which relates to information obtained by public authority by using his discretionary power eg : telephone tapping To balancing the both RTI works as a due diligence mechanism for protection of private information and regulation of public information

### JUDICIAL PRECEDENTS : SHAPING PRIVACY EXEMPTION

In a rare case of **Paardarshita public welfare foundation v UOI**<sup>4</sup> , court has penalized abuse of RTI and dismissed the PIL filed by the general secretary of the NGO on common wealth games corruption, asking information about some officials regarding their sexual health like information about sexually transmitted diseases, DNA test between their surrogate mother and name of their biological father or step-father. The court held that it is the gross misuse of RTI the requested information look as in real of vengeance and this information would cause invasion into another person’s privacy.

The performance of an employee is esoteric between the employee and employer and are qualified under personal information. In this case **Ramachandra Deshpande V. Central information Commission**, the third party application also include details of investment, credits of the officials and also requested the details of gifts he received at his son marriage this information stipulated the section 8(1) (j) of the RTI act . The court dismissed the petition.

In another case **Union of India v. Association For Democratic Reforms** a petition is filled Delhi high court to implement certain recommendations in the electoral process for more transparent and fair elections following the petition certain recommendations is made such as disclose of the election candidates information such as criminal history, financial details, qualifications etc., In this circumstance the section 8(1)(J) is not applied because it is necessary to furnish all candidates information for Fair election.

<sup>4</sup> AIR 2011, Delhi 82(DB)

## THREAT TO SEC8(1)(J) OF RTI:

An upcoming amendment of RTI is set to remove the barrier of public authority disclose the personal information in public interest. The Lok Sabha introduced the digital personal data protection bill in 2023 and the bill is passed in both houses. The bill contains clause 30(2) which proposed to amend the RTI act especially it substantially narrow down the ambit of the section 8(1)(j) of RTI act. It abrades the act and states that even personal information can also be disclosed with certain conditions, when it satisfies PIO to disclose the information i.e discretion of PIO.

The new amendment of the RTI act proposes to increase the scope of public authority by giving them right to deny the information to public and impose limitations on public ability to access personal data .the data protection bill restricted the scope of the RTI act by proposing that sec 8(1) RTI act “information which cannot be denied to the parliament or state legislature shall not be denied to any person” will be only applicable to the sec 8(1)(j). Madhya Pradesh information commissioner and former journalist said “data protection is important but not at the cost of RTI” .In a developing nation, to secure the government fiduciaries, data protection is necessary but it should not affect the transparency and accountability of the government by weakening the RTI .For an example, if an public officer has two caste certificate and RTI was filed to know the condition it will be denied on the ground of “personal information”<sup>5</sup>

Many activist organisation like National campaign for people’s right to information (NCPRI) ,challenged the DPDP BILL which placing impediments and restrictions on RTI. Many countries had the concept of data protection for example European Union ,although it had many significant exemption and discretionary powers. but it will not applicable to India because it can be loophole for misusing the power of RTI<sup>6</sup>

## SUGGESTIONS:

The right to information act provides a practical regime to freedom of information for citizens to access the information from public authority. The main objective of RTI act is to provide transparency and accountability in government functionaries and at the same time it should not affect the right to privacy of any official or public servant under article 21 by giving personal or sensitive information that is expressed in the Section 8(1)(j). Even though this act works more efficiently, there are in many circumstances RTI act is misused. So to prevent this we have to make some changes in the RTI act some of them are:

- The government must have to take strong steps in educating the public about RTI act. because in many rural areas that citizens have not aware of the PIO, the procedure of paying fees, where to obtain information and the exceptions in RTI.
- The government have to clearly define the guidelines on handling personal data of official within RTI structure.
- The government has to check anew digital personal data protection bill. If it comes into force, it will affect the scope of RTI. So It have to be reconsider again to make it not vague and in the public interest.
- The authority must check firmly whether there is a necessity to disclose personal information if so they should provide a valid justification for why it is necessary to disclose such information this may improve the responsibilities of the authority.

<sup>5</sup> <https://www.newsclick.in/Garb-Data-Protection-Bill-Union-Govt-Attacking-RTI-Allege-Information-Commissioners>

<sup>6</sup> <https://thewire.in/rights/personal-data-protection-bill-will-severely-restrict-scope-of-rti-act-activists-write-to-mps>

## CONCLUSION :

Privacy is fundamental need for human being. No one can compel any individual to reveal their personal information which is not relevant to general interest. Section 8(1)(j) of the Right to Information (RTI) Act exempts the disclosure of personal information that can invade an individual's privacy unless the larger public interest justifies such disclosure. It strikes a balance between transparency and privacy, this provision underscores the significance of protecting personal information while allowing for exceptions in cases where disclosure serves a broader public purpose. The conclusion emphasizes that there is a need for careful consideration and case-by-case analysis to ensure responsible and ethical implementation of this provision, fostering a transparent and accountable governance system.

## REFERENCE:

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