



The Politicians' Right to Privacy Versus The People's Right to Know

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Abstract: This research paper is based on the implications of the recent historic verdict of the Supreme Court which declared Right to Privacy as a fundamental right. It raised doubt concerning the status of people's right to information. Due to the ambiguous nature of the term 'privacy', the term has been variously interpreted giving rise to questions as to whether politicians' right to privacy is hindered by the people's right to know or not. The article as such deals with the two concepts of 'privacy' and 'information' in detail in order to find out whether both can coexist or the exercise of one hinders the

enjoyment of other. The article presents a detailed analysis of the descriptive-cum comparative and empirical research on the extent of awareness, attitude and participation of the masses regarding 'Right to Privacy' and 'Right to Information' in order to test the hypothesis whether 'people's right to know hinders politician's right to privacy.

Keywords: Right to Privacy, Right to Information, Fundamental Right, Politicians, People, Aadhaar Card, PAN Card.

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Introduction :

'Privacy' and 'Information' seems to be like the two sides of the same coin and yet the fulfilment of one leads to the curtailment of the other. Right to Privacy means an individual's right to be free from the public glare whereas, the Right to Information means that the individual is given a legal entitlement to extract information from the government authorities that affect themselves. While the former talks about 'secrecy' the latter stands for 'openness'. Both 'secrecy' and 'openness' cannot go together. 'Openness' connotes people's right to information which directly or indirectly conflicts with politicians' right to privacy or 'secrecy'. This raises the question, does the right to privacy extend to the politicians for their official acts or does it only pertain to their personal spheres? In order to understand the relationship between right to privacy and right to information, one first needs to understand the two terminologies in detail. According to Daniel J. Solove,

privacy encompasses freedom of thought, control over one's body, solitude in one's home, control over information about oneself, freedom from surveillance, protection of one's reputation and protection from search and interrogations (Solove, 2008: 1) while Information means the facts or knowledge which is provided or learned (Soanes, 2015: 287). Posner (1977) deals with three aspects of privacy as secrecy, as ability to control dissemination and use of information about (or possessed by) oneself. But, Solove (2008) has talked about six aspects of privacy under six general headings as-

- right to be let alone
- limited access to the self – the ability to shield oneself from unwanted access by others
- secrecy – the concealment of certain matters from others
- control over personal information – the ability to exercise control over information about oneself
- personhood – the protection of one's personality, individuality and dignity
- intimacy – control over or limited access to, one's intimate relationships or aspects of life

An interesting feature of the term privacy is, different connotations assigned to it in different political systems. In Western countries, particularly in the United Kingdom and the United States of America, privacy is seen as protection against the invasion of one's privacy by the government. In British sense, the term 'privacy' means-

- the condition of being private or withdrawn or secluded
- the condition of being secret
- the condition of being restricted to a single person

Thus, one finds that one's private sphere is subjective and depends on one's culture, environment, and economic condition. Therefore, one finds different interpretations of right to privacy in different political systems.

As far as the status of Right to Privacy in India is concerned, it is not explicitly mentioned in the Indian Constitution, rather it has been implied from Article 21 which states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law" (Basu, 2008: 129). The Supreme

Court has asserted time and again that Article 21 is the heart of the Fundamental Rights (Hinailiyas, 2014) as it is "intrinsic to life".

Moreover, interpretations of the Right to Privacy in India is the result of a number of cases related to breach of privacy which occurred in the past, such as – Kharak Singh vs the State of Uttar Pradesh (AIR 1963) where the apex court for the first time declared the right to privacy under the purview of Article 21. Whereas in the Govind vs State of Madhya Pradesh (AIR 1975), the apex court held that privacy and fundamental rights are present in Regulation 855 and 856 (surveillance) of the Madhya Pradesh Police, Regulations made by the Government under the Police Act of 1961. Further, in the Maneka Gandhi vs the Union of India (1978), Supreme Court added that, 'personal liberty' in Article 21 that covers a variety of rights and some have the status of fundamental rights and additional protection under Article 19. In the Rajagopal vs the State of Tamil Nadu (SCC 1994), the court stated that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. The court stated an exception in this case when it pronounced that- where a person voluntarily involves himself into a controversy or invites one, that person would not fall under the Right to Privacy leading to the Supreme Court defining a general space of privacy as (Awasthi, 2017)-

- personal privacy which relates to the person's body or private space
- the ability to make intimate personal choices and
- the ability to control personal information that relates to the person

Another grey area discussed by the apex court in India has been whether telephone tapping and sting operations carried out to expose corruption violate individual's right to privacy. Certain cases where such methods were used for the politicians includes- the late president Giani Zail Singh who feared that many rooms in the Rashtrapati Bhavan were bugged, presumably under the instructions of the then Prime Minister Rajiv Gandhi, with whom he shared strained ties. Due to this, it is said that he used to meet journalists and his friends on the lawns of the presidential palace so that his conversations with them could not be monitored

(Nanjappa, 2013). Similarly, in 2013, a controversy emerged related to the phone-tapping case of the politician Arun Jaitley. In the charge sheet, the Special Cell of Delhi Police had said that alleged mastermind Anurag was obtaining call detail records (CDRs) of Jaitley and others, expecting that it could be “exploited” in rescuing himself from criminal proceedings going on against him for the phone tapping of Samajwadi Party leader Amar Singh. It had said Anurag, along with others, was arrested on December 30, 2005 in the Amar Singh case. The special cell had in December 2005 registered a case after allegations that Amar Singh’s phone was tapped by some “unscrupulous elements” and during the investigation Anurag was arrested along with others for allegedly forging letters of the then Joint Commissioner of Police and the Home Secretary of Delhi government to tap the phone of Amar Singh. The court freed the accused on bail on the ground that the charge sheet has already been filed and they are no more required for further investigations (The Indian Express, 2013). On the other hand, instances of sting operations include- the resignation of the Andhra Pradesh Governor N D Tiwari after a sting operation was done on him and telecasted by a Telugu channel, ABN Andhra Jyothi. In the video, he was seen with three ladies in a compromising position. (The Times of India, 2009) Whereas, a sting operation was done on 11 leaders of the Trinamool Congress, ahead of the West Bengal assembly elections. They were being allegedly bribed to help a fictitious Chennai-based company to get business in the state. Journalists Mathew Samuel and Angel Abraham of Narada News, a news website, set up a fictitious company called Impex Consultancy in 2014 and approached several leaders of the party “seeking favours” for this entity. The website claimed to have incurred expenses of upto Rs 1 Crore to bribe politicians and middlemen. Most of the conversations happened over two years between January 2014 and January 2016. But, Trinamool Congress accused the opposition parties of hatching a “political conspiracy” ahead of the assembly election and dubbing the sting operation by the news portal as “manufactured”. (The Indian Express, 2016)

Surveillance through the interception of messages and conversations may be necessary under certain circumstances, especially when terrorism is a live threat. However, the interception of telephone and message for personal gains has led to the Supreme Court framing guidelines in 1996 to regulate such surveillance. Observing that illegal phone tapping was “a serious violation of individual privacy”, the Court laid down the

following conditions: - orders for taps must originate at the Home Secretary level; such orders must apply only for a limited period; and they must be issued only when the required information cannot be collected by other means. (The Hindu, 2012)

Thus, one finds that the Supreme Court while defining what constitutes individual privacy has clearly laid down that an illegal act being committed by a public servant during his office hours and in abuse of spirit of his office are not worthy of protection under right to privacy laws (Goyal and Kumar, 2016: 125). Thus, it is misinterpreted that public authorities enjoy right to privacy for acts done in their official capacity. Moreover, it has also been argued that “state should be concerned about fiscal and other aspects of a citizen and not what he does every single day, who he worships, what does he wear, what does he eat, etc”. (Kumar and Goyal, 2016: 1) Thus, one needs to evaluate the Supreme Court judgement of 24th August 2017 pronouncing Right to Privacy as a fundamental right keeping the above mentioned facts in mind.

This verdict emerged due to the Government’s decision of linking of Aadhaar Card with the PAN Card which was challenged since the biometric information of the individuals (like fingerprints, iris scan, etc.), compromised individual’s bodily integrity. As persons are being identified on the basis of sensitive biometric information, the risk of being profiled, targeted and marginalised by the state on the basis of this sensitive information is very high. Therefore, the issue at stake was the invasion of individual’s privacy through the misuse of information contained in UID which the court has declared unconstitutional and not the linking of Aadhaar with PAN which has to be decided by a separate bench to be constituted for this purpose.

On the other hand, there is no such ambiguity concerning Right to Information as its provisions are clearly mentioned in the Right to Information Act. The Act mentions the procedure to file the Right to Information application and the stipulated time within which the public authorities have to answer the applicants. It has been derived from the fundamental right of freedom of speech and expression under Article 19 of the Constitution. The pre-requisite for enjoying this right is knowledge and information. So, while right to privacy states that man’s private life should not be the matter of public discussion as it impinges on the dignity of the individual, right to information gives in the hands of the individual, the power to seek answers from the public authorities for their acts of omission and commission.

The journey of erstwhile Freedom of Information Act to Right to Information, like Right to Privacy has been full of struggles in India. The demand for Right to Information emerged at the grassroot level by the Mazdoor Kisan Shakti Sangathan (it was founded by Aruna Roy and Nikhil Dey) in Rajasthan (Sharma, Sadana, Kaur, 2013: 704), which got strengthened by each passing day leading to the legislation of Right to Information Act and giving it the status of a legal right. It was enacted by the central government to provide for setting out the practical regime of right to information for citizens which came into force on 12 October, 2005. (Kumar, 2016) It strengthened the belief that democracy revolves around the basic idea of citizens being at the centre of governance.

Scholars like Roy, recognises the citizens' Right to information as an important instrument to promote openness. He even attributes accountability and transparency as the key ingredients of good governance (Roy, 2009: 97). Right to Information has brought out several scams and unscrupulous acts done by the public authorities such as, in the Bennett Coleman and Company versus the Union of India (1973), the court observed that the constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the people. The freedom of speech includes within its fold the right of all citizens to read and be informed (Natchiappan, 2014: 80).

A look at the various scams that have been exposed through the use of Right to Information makes one understand that Right to Information is not an inactive Act rather it has been used from time to time as per the needs. The importance of this right could be gauged from the fact that a number of countries that have passed Right to Information legislation – laws guaranteeing citizens the right to access information from government has risen dramatically in the last two decades, from approximately 13 to over 90, including many countries in Eastern Europe, Asia, Latin America, and most recently, Africa and Middle East (World Bank, 2012:4).

While analysing the concept of Right to Privacy and Right to Information, one found that the use of right to information does not erode one's right to privacy and that the declaration of right to privacy as a fundamental right by the Supreme Court doesn't conflict with the status of right to information as a legal right since privacy doesn't extend to public acts of officials. This means that privacy in the official acts come in the way of accountability as every public official can cite their privacy concerns for divulging any details, leading to

further complexities or loopholes and corruption in the whole administrative process, thereby infringing people's right to know. In order to test the above cited conclusions an empirical study was carried out with the objective of:

Objectives :

- Analysing the actual debate between the 'Right to Privacy V/S the People's Right to Know', the extent of the debate and its applicability.
- To find out whether the Supreme Court's verdict of making Right to Privacy as a fundamental right means that the politicians or public servants enjoy privacy in their official work?

Hypothesis and related Research Questions :

The objectives were studied to substantiate the given proposition that:

- people's right to know doesn't hinder a politician's right to privacy

While testing the above given hypothesis, certain research questions were also tested such as those listed below:

- Should Right to Information be a Fundamental Right?
- Should the politicians always be under the surveillance of the Right to Information Act?
- Has the Right to Information Act enhanced the awareness level among the citizens?

Methodology :

The methodology adopted for testing the hypothesis and the related research questions was comparative and deductive. The methods of Scheduled Interview and Empirical Study were used for the purpose of compiling Primary Data. The Secondary Data were compiled with the help of books, articles from journals, newspapers and internet. The number of respondents (N) was taken to be 50 and the questions asked were 17 close-ended questions. The area of study was S.K Puri, Boring Road, Patna, Bihar. The sections of the society which were taken into account were, teachers, lawyers, servicemen, students, doctors, farmers and electricians, for the purpose of compiling primary data. This was done to get a comprehensive idea of the recipients' perception of the two concepts 'Right to Privacy' and 'Right to Information'. The findings were analyzed with the help of Pie Charts.

Findings :

The findings are based on the answers received from the respondents while carrying the empirical research. The empirical study revealed a number of facts related to right to privacy and right to information apart from proving the hypothesis of the research which could be discussed under the following headings:

- While conducting the research we found that 100% of the people were aware of the terms 'Right to Information' and 'Right to Privacy' but 68% of them had no knowledge about its implementation process which suggests that while majority of the people were aware of the term privacy and information they lacked the knowledge of using it. Still, 96% of them were convinced that Right to Information would benefit them, so they wanted it to be made into a fundamental right. But, very surprisingly most of the farmers and electricians were not able to make a distinction between Fundamental Right and Legal Right.
- 86% of the respondents believed that Right to Information has made the public authorities more accountable which meant a transparent system and 96% of them agreed to the fact that it has made the public empowered as they can seek answers from the authorities.
- An interesting finding of the research was that 100% of the respondents felt that even politicians' have right to privacy. So, eventually none of the respondents seemed interested in the private lives of the politicians neither wanted their private lives to be made public.
- However, 58% of respondents said that politicians should not enjoy right to privacy in their official acts which meant that they didn't believe that acts of omission and commission done by politicians fell within the realm of privacy.
- Therefore, 62% of the respondents supported the linking up of Aadhaar Card with PAN Card as they didn't feel that disclosing of assets curb individual's right to privacy. Asset declaration nowhere hampers a politician's right to privacy, had been supported by 68% of the respondents while few of them disagreed with it.
- The above findings of the empirical research prove that people's right to know doesn't hinder a politician's right to privacy.

Suggestions :

During the course of the interviews, several suggestions emerged from the views of the respondents. These suggestions, if taken into consideration can help in striking a balance between the two concepts 'Right to Privacy' and 'Right to Information'-

- The debate started over the ambiguity of the term 'Right to Privacy' which has been declared as a fundamental right by the Supreme Court. The apex court should elaborately define the boundaries of right to privacy to avoid any chaos or confusion.
- An awareness drive should be carried out to make people aware about what constitutes privacy and how to exercise right to information to extract information from the public authorities.
- The process of Right to Information application, submission should be so designed as to suit the needs, aspirations and convenience of the citizens.
- The Right to Information should be made as a Fundamental Right which will improve its efficacy.
- The government should opt for another alternative for Aadhaar Card as it hampers one's bodily integrity (iris scan, fingerprint).

Conclusion :

In a world which is becoming more and more densely populated and moving towards the digital way, the width of personal liberty or privacy is decreasing day by day. But, one cannot deny the significance of privacy in one's development, which was realised by the Supreme Court while declaring Right to Privacy as a Fundamental Right. Moreover, the interpretation of the Right to Privacy under Article 21 affirms its value. But, one needs to understand that the politicians are public figures who are elected representatives of the people and any secrecy in their official acts can shake the roots of democracy as it impinges people's right to know which also happens to be the legal right of people. Moreover, the people are disinterested in knowing about the activities of the politicians within their personal sphere like their eating habits, married or sexual life. Apart from it, the Supreme Court's vagueness over the concept of 'privacy' has led to myriad interpretations where each and every individual is seeing the term 'privacy' as per their understanding and so it leaves enough room for manoeuvring. But, it is clear that economic aspect of man's life does not come within the sphere of privacy.

Moreover, an elaborately defined concept of the term 'privacy' is the need of the hour as privacy in the official acts will come in the way of accountability as every public official will cite their privacy concerns for divulging any details, leading to further complexities or loopholes and corruption in the whole administrative process.

Further, Right to Information is a tool in the hands of the people to make the public authorities more accountable. It is a democratic device to empower the common man in relation to the government. The Right to Information Act has raised high expectations in India. The ambitious charter of this central legislation, as spelt out in the Preamble, is "to provide an effective framework for effectuating the Right to Information recognized under Article 19 of the Constitution of India". The Act empowers every citizen in the country to call to account the custodians of record as well as the machinery involved in the process of decision-making. Moreover, all the public authorities of Government of India and all the state governments (Jammu and Kashmir in 2009) are subject to the mandate of the Right to Information Act. The Act vows three clear goals: transparency in the functioning of official institutions; the accountability of officials for their actions; and the empowerment of the public relation to governance (M, 2016). Thus, Right to Information strengthens the roots of democracy. In essence one can say that, both 'privacy' and 'information' is important with certain limits.

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