

SUB-THEME – RTI AND PROTECTION OF INDIVIDUAL PRIVACY
RTI Act, 2005 vis-à-vis the Right to Privacy

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The literal meaning of privacy is the freedom from intrusion by the public, specially as a right. Right to privacy is a part of Article 21 of the Indian Constitution, which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The safeguards are, therefore, provided that though the right to privacy is a part of fundamental right guaranteed under the Constitution, but specific laws can override this where larger public interest is involved. This means that no rights including the right to privacy are absolute rights. A law imposing reasonable restrictions upon it for compelling interest of State must be held to be valid. For example, the restriction imposed in Section 19-L of the Rajasthan Panchayat Raj Act, 1994 does not outrage the dignity of the individual. The object of this provision is to control population growth and family planning and such type of interference is necessary in a democratic society in the economic welfare of the country. The restrictions have, therefore, been laid down with a social purpose to fulfill the mandate given in the Directive Principles enshrined in the Constitution. If the population growth is not controlled and family planning is not observed, then looking to the limited sources available with the country, it would be difficult for the State to achieve these goals.

2. Privacy primarily concerns the individual. It, therefore, relates to overlap with the concept of liberty. The most serious advocates of privacy must confess that there are serious problems of defining the assails and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values. When there is a competition between the privacy of an individual and the right to information of the citizens, the former right has to be subordinated to the latter right as it serves the larger public interest.

3. The preamble of the RTI Act sets out that the citizens shall have the right to secure access to the information under the control of the public authorities, to promote transparency of information which are vital in the functioning of the public authorities, to contain corruption, to hold Governments and their instrumentalities accountable to the governed and thereby develop the participatory governance. However, few provisions have been incorporated in the Act exempting disclosure of certain categories of information with the mandate that whatever may be the provisions in the Official Secrets Act, 1923 or even the exemptions permissible under the Act, the public authorities may allow disclosure of such information if they are satisfied that the larger public interest justifies the disclosure of such information and such disclosure over weights the harm to the protected interests and further that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

4. Many public authorities tend to deny disclosure of information taking the shelter of the exemption provisions provided under the Act. In most of the cases, such denials were due to wrong interpretation of the exemptions permissible under the Act. The exemptions allowed under sections 8(1)(d), 8(1)(e), 8(1)(g), 8(1)(j) and Section 11 which deals with the third party information are also found to be mis-utilized with malafide intention to deny disclosure of information. Many public authorities are in the habit to deny disclosure of information if these are related to third party information without proper application of mind. Section 11(1) of the Act provides that if a SPIO intends to disclose any information or record or part thereof on a request made under the Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the SPIO, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the SPIO intends to disclose the information or record or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. This means that a public authority should not straightway reject a written request for information simply on the ground that it relates to a third party. If the public authority is satisfied that the information sought for should be disclosed, he

may obtain the submission of the third party and should take a decision keeping such submission in view.

5. In a Division Bench judgment reported at AIR 2007 Bom. (Surup Singh Hrya Naik V. State of Maharashtra), the Bombay High Court has expressed the procedural safeguards being required to be met before divulging third party information and on the effect of the proviso appearing in Section 8(1) of the RTI Act, 2005. The question that is required to be necessary is the right of an individual, to keep certain matters confidential on the one hand and the right of the public to be informed on the other, considering the provisions of the RTI Act, 2005. For example, does a person convicted for contempt of court during the period of his incarceration can claim privilege. For example, does a person convicted for contempt of court, during the period of his incarceration can claim privilege or confidentiality in respect of his medical records maintained by a public authority. The contention in this regard is that the larger public interest requires that these information to be disclosed, as persons in high office or high position or the life, in order to avoid serving their remand in jail / prison or orders of detention or remand to police custody or judicial remand with the connivance of officials get themselves admitted into hospitals. The public, therefore, has a right to know as to whether such a person was genuinely admitted or was attempted to avoid punishment / custody and thus defeat judicial orders. The public right in such case must prevail over the private interest of such third person as the objectives of the Right to Information Act is to make the public authorities accountable and their actions

open. The contention that the information could be misused is of no consequence, as the Parliament wherever it has chosen to deny such information has so specifically provided. The question then is what is the true import of the proviso, which sets out that the information, which cannot be denied to Parliament or a State Legislature shall not be denied to any person. Are the medical records maintained of a patient in a public hospital covered by the provisions of the Act. Can this information be withheld to either in Parliament or the State Legislature on the ground that such information is confidential. Generally, such information normally cannot be denied to Parliament or the State Legislature unless the person who opposes the release of information makes out a case that such information is not available to Parliament or State legislature under the Act. By its very Constitution and the Plenary powers which the Legislature enjoys, such information can not be denied to the Parliament or State Legislature by any public authority and, therefore, the public authorities shall be under obligation to make all such information readily available for their disclosure to a citizen on demand under the Act.

6. A written request made by a candidate seeking inspection and certified copies of her evaluated answer scripts of the Joint Entrance Examination including inspection of the tabulation sheets containing marks obtained by the candidates placed above her in the merit list was denied by the concerned public authority on the plea that such disclosure is exempted under section 8(1)(j) of the Act, which provides that the personal information the disclosure of which has no relationship of any public activity or

interest, or which would cause unwarranted invasion of the privacy of the individual shall not be disclosed unless the SPIO is satisfied that the larger public interest justifies the disclosure of such information. This exemption clause has protected the unwarranted invasion of privacy of an individual by disclosure of personal information. Therefore, the request of a candidate who has asked for inspection of her own evaluated answer scripts and the tabulation sheets cannot be treated as personal information of any other person, which could cause unwarranted invasion of privacy of that person, and, therefore, should not have been denied by the concerned public authority taking the shelter of Section 8(1)(j) of the Act. The Tripura Information Commission, therefore, held that such information should be disclosed in order to serve the larger public interest and, therefore, directed the concerned public authority for disclosure. In a recent judgment passed by the Calcutta High Court in the case of Pritam Rooj V. University of Calcutta and Others (WP No. 22176 of 2007) reported in AIR 2008 Calcutta 118 has observed that the right to information is the most basic empowerment of the individual - the right of an individual to the source of any knowledge required for him to educate himself in any area he may choose and that if inspection of answer scripts is denied to the examinee, the spirit of the Constitutional right to expression and information may be lost and, therefore, directed that the Calcutta University should proceed immediately to offer inspection of the answer scripts that the petitioner sought for.

7. Similarly, a written request of an IAS officer seeking inspection of his ACRs was also denied by the concerned public

authority with the observation that such disclosure was not covered under the provisions of the RTI Act. Although, the decision of the public authority did not disclose the specific provisions of the Act, but in course of hearing, the SPIO submitted that the information could not be disclosed since exempted under section 8(1)(j) of the Act. However, explanations offered by the SPIO were not found inconsonance with the provisions of the Act and the Tripura Right to Information Rules, 2008.

8. As regards inspection of ACRs-dossiers, the matter is regulated by the All India Services (Confidential Rolls) Rules, 1970 which provides that where the confidential report of a member of the service contains an adverse remark, it shall be communicated to him in writing together with a substance of the entire confidential report by the Government or such other authority as may be specified by the Government ordinarily within two months of the receipt of the confidential report and a certificate to this effect shall be recorded in the confidential report. The Department of Personnel and Training, Government of India vide communication no. 34/7/70-AIS(11) dated 09.07.1971 has clarified that it would meet the requirements of the AIS (Confidential Rolls) Rules, 1970 if the gist of the good points and the entire adverse remarks are communicated to the officer reported upon.

9. The service records of a public servant are maintained for his services rendered for the public administration in public interest and, therefore, cannot be termed to be in personal interest. The Supreme Court in a judgment passed in the case of Babu Ram

Verma Vs. State of Uttar Pradesh (1971) 2 Serv. L.R.659 has interpreted that the expression “public interest” in common parlance means an act beneficial to the general public and an action taken for public purpose. Though the word ‘personal’ has not been defined in the Act, but according to the Concise Oxford Dictionary (10th edition), the word ‘personal’ means affecting or belonging to a particular person, involving the presence or action of a particular individual or concerning a person’s private rather than professional life. Writing and maintenance of ACRs is a part of normal functioning of the Government. These records are created by the Government to be used for promotion, gradation, deputation, premature retirement etc. of Government servants, which are done always in public interest only. Therefore, the records of service including the ACRs, must be regarded as falling within the scope of the expression of public interest. So, the contention that the inspection of the ACR-dossiers could not be allowed for the sake of the larger public interest could not be accepted. On the contrary, it was held that the records pertaining to maintenance of ACRs are not personal in nature and, therefore, an employee has the right to inspect his ACRs-dossiers.

10. Therefore, in a second appeal preferred before the Tripura Information Commission, the concerned public authority was directed to allow the appellant for inspection of his ACRs-dossiers as was sought for by him.

11. The Hon’ble Supreme Court of India vide its judgment passed in Civil Appeal no. 7631 of 2002 between Dev Dutt and the Union

of India & Others opined that non-communication of the entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than military), certainly has civil consequence because it may affect his chances for promotion or get other benefits. The Apex Court by developing the principle of natural justice held that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or and other state service (except military), must be communicated to him within a reasonable period so that he can make a representation for its up-gradation. The Apex Court further held that when the entries in the Annual Confidential Report are communicated to the public servant, he should have a right to make a representation against the entry to the concerned authority and the concerned authority must decide the representation in a fair manner and within a reasonable period. It was also held that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar and Caesar. Therefore, such non-communication of ACRs would be arbitrary and as such violative of Article 14 of the Constitution.

12. To know the antecedents of a candidate is the fundamental right of a voter under Article 19(1)(a) of the Constitution of India. The reason to have the right to information with regard to the antecedents of the candidate is that the voter can judge and decide

in whose favour he should cast his vote. It is voter's discretion whether to vote in favour of illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. Disclosure of these information by the candidate would help a voter to exercise his right in favour of a clean and less polluted person who also satisfies his criterion of being elected as MP or MLA and thus to govern the country.

13. Normally, the medical report of a person suffering from AIDS is not supposed to be disclosed. But, the Supreme Court has held that if a prospective spouse has an apprehension that the other prospective spouse is suffering from AIDS, the former has a right to seek information about the latter's disease from the hospital whether blood reports of the latter are available. This right is part of the right to life and, therefore, guaranteed under Article 21 of the Constitution. Since "right to life" includes right to lead a healthy life as to enjoy all the faculties of the human body in their prime condition, the disclosure that the prospective spouse is a HIV (+) can not be said to have in any way either violated the rule of confidentiality or the right to privacy. Moreover, where there is a clash of two fundamental rights, namely the right to privacy which is part of the right to life and the right to live a healthy life which is a fundamental right guaranteed under Article 21 of the Constitution of India, the right which would advance the public

morality or public interest would alone be enforced for the reason that moral considerations can not be kept at bay and the persons deciding the issues shall have to be sensitive in disclosure of such issues.

14. Since no rights are absolute including the right to privacy, I would conclude with the observations that the public authorities should deal with the written requests for information under the Act with an applicant friendly attitude and when there would be a conflict between the privacy of an individual and the right to information of citizens, the latter should get proper importance as it serves larger public interest and, therefore, disclosure be made accordingly.

