

**RIGHT TO INFORMATION VIS-À-VIS RIGHT TO PRIVACY IN THE CONTEXT OF  
RIGHT TO INFORMATION ACT, 2005**

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**ABSTRACT\*\***

*It is quite an interesting crossroad in the Indian legal scenario where two strands of approach securing two most cherished rights, though marked by constitutional reticence, yet vociferously claiming their legitimate position in the order of things and in the scheme of legalism, underpinned by robust moral and ethical undertones, creates the much-needed substratum for confrontation marked by belligerent interaction with a conspicuous claim of superiority and it is here where lies the rub. The rights that are being alluded to in the preceding texts are none other than the ‘right to know’ and the ‘right to privacy’ – standing at opposite poles, their demeanor typified by contradiction and antagonism somewhere and somehow demanding a trade off, a via media or for that matter a compromise in the interest of stability and order in the society. The Indian Constitution speaks explicitly neither of the right to know nor of the right to privacy. But the various landmark verdicts of the Apex Court have been quite quick to acknowledge the efficacy of the right to know and the right to privacy as rights forming part of a broader regime of equality and right to life and personal liberty contemplated under Article 14 and Article 21 of the Constitution of India, respectively, which are considered to be the kernel of democracy and central to good governance. In this paper, an attempt is has been made to underline the stand-alone significance of the private and public domains and then to draw a comparative analysis of the relative appeal of both the domains and the probable key to the apparently insoluble problem of irreconciliation and patent disagreement between right to know and right to privacy.*

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## 1. The Right to Information Act, 2005: A Prologue

The Right to Information (RTI) Act, 2005, a transparency law, is a watershed in the history of Indian democracy.<sup>1</sup> It is often held to be an appropriate tool to control corruption, hold government accountable and restrain the arbitrary use of power. The logic behind the RTI Act is simple. The government is run on public money and, therefore, it is quite plausible that the general public as tax payers and as an integral component of democracy will have the right to inquire as to the various activities of the government departments in order to be better informed about their functioning. The higher degree of access of citizens to the governmental affairs is directly related to the level of responsiveness of the government in power. Alternatively, the more restricted the public access to such facts and information, the higher is the chance of an opaque system and a concomitant sense of disempowerment and alienation of the common man from the democratic process. Though the Constitution of India quite emphatically upholds the tenets of justice, liberty, equality and fraternity as the core of the Indian democratic polity, it took nearly more than half a century since Independence for our country to enact such a law that is perhaps the only effective and potent tool to fructify the lofty constitutional aspirations of a truly democratic nation. The fundamental objective of such a legislative enactment is to animate the processual component of a vibrant functional democracy. The RTI Act empowers the citizens of this country to actualise their right to know or receive information which is construed as their right to life under the expanded and dynamic interpretation of Article 21 of the Constitution of India by the Apex Court of India. By virtue of this Act, a person can seek information with regard to various government processes and database maintained by it so long such information serves public interest. Therefore, a culture of sharing knowledge and information pertaining to virtually all the aspects of functioning by the public authorities has been encouraged by RTI. Such a culture may seem alien in the background of colonial rule in India when secrecy was meant to be the rule and transparency an exception. But when India freed itself from the yoke of foreign bondage, the idea of a welfare state seemed to be the dominant theme of the framers of

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<sup>1</sup> N. N. Mishra, Lisa Parker, V. L. Nimgaonkar, S. N. Deshpande, 'Privacy and the Right to Information Act, 2005' (2008) 5 (4) Indian Journal of Medical Ethics <<http://ijme.in/articles/privacy-and-the-right-to-information-act-2005/?galley=html>> accessed 5 July 2017.

the Constitution. True to its intent, the ‘Founding Fathers’ of the Constitution of India perceived the felt necessity of enhancing the social obligations of the state more like a benevolent ruler who has the onerous responsibility to set right the imperfections and inequities in the social structure that have kind of permeated every walk of our lives. The basic prerequisite of a welfare state is a climate of transparency, participation and engagement to give shape to the aspirations of a modern democratic India – all of which uphold the idea of participatory democracy. It is in tandem with such a spirit that RTI emerged as one of the most pragmatic piece of legislation having immense potential to mark the beginning of a new era of governance which celebrates the potency of transparency, interaction and participation as legitimate models of democratic governance.

## **2. Right to Privacy under the Indian Constitution and International Conventions– What does it Mean?**

Right to privacy is not an explicit right under the Indian Constitution. Rather, it is implicit in the ‘right to life’ under Article 21 of the Constitution of India. Every individual has a private side and right to privacy aims to identify and confer the right to a person to be left alone, to indulge in certain activities either alone or with someone whom he/she considers to be his/her confidante (spouse). Right to privacy is a universal concept that finds eloquent manifestation in various international covenants. Article 12 of Universal Declaration of Human Rights (1948) states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to unlawful attacks on his honor and reputation.” Article 8 of European Convention on Human Rights, 1950 states “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of the rights and freedoms of others.”<sup>2</sup> The Constitution, thus, recognizes the right to privacy as an implicit component of Article 21 and it has been further reiterated in Puttaswamy case that it is

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<sup>2</sup> Hinailiyas, ‘The Right to Privacy under Article 21 and the Related Conflicts’ (*Legal Services India*, 2014) <<http://www.legalservicesindia.com/article/article/right-to-privacy-under-article-21-and-the-related-conflicts-1630-1.html>> accessed 5 July 2017.

doubtless that right to privacy is clearly a fundamental right, an intrinsic constituent of human worth and dignity. It is further stated in Puttaswamy that privacy has two roles: normative and descriptive. Privacy in the normative sense affiliates to moral principles, eternal values and essentials pertaining to human dignity, autonomy and self worth. In the descriptive sense, it refers to a bunch of entitlements and claims vindicated on the normative basis and rendered implementable being supported by constitutional mandate. If the State denies it to any person, he/she may approach the highest court of the land to vindicate and enforce the right. The Supreme Court of India felt it increasingly imperative to accommodate right to privacy into the fold of right to life and the judicial journey towards such a regime commenced roughly when A. K. Gopalan came for pointed consideration in Kharak Singh and finally culminated into a well-structured perspective based on integrative approach linking Articles 14, 19 and 21 of the Indian Constitution (popularly called the Golden Triangle) in Maneka Gandhi owing to the growing consciousness and acceptance of the idea of self-development of every human being. The human rights consciousness further fortified the growing realisation that creativity is best nurtured and honed in an atmosphere of privacy and seclusion. This is the developmental aspect of privacy which more than justifies the quick incorporation of the right to privacy into the broader embrace of right to life under the Indian Constitution. But if we fathom the other end of the spectrum which deals with the protectionist approach justifying the right to privacy, the rationale for holding this right fundamental under the aegis of the Indian Constitution seems impressive. When I say protectionist approach to privacy, I mean a way of looking into this right to privacy as a right which is intrinsically riveted to an individual's personality and denying which impedes the spontaneous behavior or conduct of an individual thereby impairing his right to freedom. For instance, when we speak about sexual freedom or romantic verbal or gesticular exchanges which are intimate in nature and can at best be visualised in an atmosphere filled with candor, we cannot think of a public display of such behavior or conduct given the ethical and moral prescriptions in the context of India. It is true that the very concept of privacy is quite complex the content of which has a strong moral, ethical, psychological and social bearing and perhaps this is the reason that privacy as a whole is a culture-specific social phenomenon, the limits of which are most of the time determined by the moral and ethical considerations in the immediate context. That is why the Apex Court of India through a series of judgments upheld the right to

privacy as so very foundational to individual freedom that it was conferred the status of fundamental right, though not nominate yet implicit.

### **3. Right to Privacy under the RTI Act, 2005**

According to Section 8(1)(j) of the Right to Information Act, 2005, information which has been exempted from disclosure at the instance of a citizen of this country is defined as; ‘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 disclosure of such information’. The above statutory provision quite clearly lays down that private information respecting an individual which is lying with the government cannot be sought by a third party as such information is exempted from disclosure on the rationale of an individual’s right to privacy. However, the applicant who seeks such information from the government may be allowed access to such information if it can be proved that such information warrants disclosure on public interest. When a citizen is seeking his own information, there is no potential breach of privacy as there is no intrusion into his privacy and, hence, Section 8(1)(j) does not apply. But when a third party seeks information about a person under RTI, he may be denied access to it unless such an application is justified on the ground of a larger public interest. The Central Information Commission defined ‘Invasion of Privacy’ as “One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”<sup>3</sup> It is the most critical responsibility of the public authority receiving information regarding individuals to maintain a high degree of confidentiality and not to disclose such information unless such disclosure is warranted under exceptional circumstances owing to larger public interest. Personal information does not lose its privacy and confidentiality just because it has been shared with public authorities. But it becomes a matter of concern for if the public authorities share personal details of an individual with a third party

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<sup>3</sup> Mukesh Shukla, ‘What is Privacy under RTI’ (*Right to information Wiki*, 3 May 2017) <<http://www.righttoinformation.wiki/explanations/privacy>> accessed 5 July 2017.

when such details have no reasonable nexus with public interest and there is every likelihood of such information being manhandled by unscrupulous elements resulting in mischief, harassment, reputational risk of the owner of such information. Besides, data integrity in this digital world is a very crucial factor which calls for due circumspection from the government authorities as the Supreme Court of India is quite emphatic in *Puttaswamy* of the need to properly preserve private data of the citizens with utmost care coupled with robust technological infrastructure. The urgency of data protection in today's world has impelled the apex court to import the idea of 'informational privacy' as a significant dimension of privacy.

#### **4. The Right to Information and the Right to Privacy: The Paradox**

The right to information and the right to privacy are both essential human rights in the modern information society. In most of the cases, both the rights complement each other in holding governments accountable to individuals. But there is a zone of conflict which emerges when there is a demand for access to personal information stored in a government database. It is an established fact that RTI Act is a vital piece of legislation which guarantees one and all access to public data or data pertaining to any activities of various public authorities. There is no conflict of interest so far as information relating to various aspects of governance is concerned since it is considered essential to allow the citizens of this country to seek information and know facts and figures of various government departments. In some cases, the citizens may also claim access to information kept in the database of private agencies provided such agencies are involved in activities related to governance of the nation or outsourced to function at the instance of certain public authorities and public departments. The citizens of India are taken as partners in the functioning of the wheel of democracy and progression and this philosophy caters to the justification of participatory democracy where transparency in its functioning is the truest hallmark. But when the two rights confront each other, the government needs to develop strategies and mechanisms to limit conflicts and to reconcile the rights as far as possible. Some structural and legislative means and modalities need to be explored to harmonise right to information and right to privacy.<sup>4</sup> When the question of harmonising the apparently conflicting

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<sup>4</sup> David Banisar, 'The Right to Information and Privacy: Balancing Rights and Managing Conflicts' (The International Bank for Reconstruction and Development/ The World Bank, 2011)

rights is raised, a sense of compromise and accommodative culture needs to be promoted to ensure that the larger interest that needs to be nurtured under all circumstances is not compromised. It is quite understandable that so far as the genre of both the rights – the right to privacy and the right to information are concerned, they affiliate to the broader regime of human rights. The jurisprudence of human rights does not encourage implicit ordering or hierarchical stratum between two competing human rights.<sup>5</sup> But it is the doctrine of public policy which subsumes the idea of public interest that provides the enduring justification to consider one of the two rights as superior and the other as inferior under unfolding circumstances. There is no universal formula or mechanism to reconcile both the rights. Right to privacy is no doubt essential for an individual's satisfying sense of freedom which creates a conducive atmosphere for the fullest possible manifestation of one's personality but when public interest becomes a crying need, private interest must yield to the demands of public interest. Situational imperatives or urgency must determine the primacy of one right over the other.

### **5. Right to Information and Right to Privacy: The Managing of Conflict and Harmonisation Regime**

As already stated above, right to privacy is not expressly given to citizens, but is the result of judicial review and court decisions.<sup>6</sup> Privacy essentially connotes the right of an individual to control circumstances and situations based upon individual autonomy under which he is to share his personal information and the extent to which he intends to share it. Right to Information on the other hand guarantees to the citizens of a nation the right to seek information about government activities from appropriate government sources. At the first inspection, it may seem that the right to access information and right to privacy are irreconcilable. But privacy law and right to information law are like two sides of the same coin – acting as complementary rights that encourage individuals' right to protect them and to promote government accountability. The conflict between these two rights needs to be reconciled and harmonised. One way to do it is

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<<https://openknowledge.worldbank.org/bitstream/handle/10986/23022/The0right0to0i00information0program.pdf?sequence=1&isAllowed=y>> accessed 5 July 2017.

<sup>5</sup> *ibid.*

<sup>6</sup> Adv. Vishal K Vora, 'Fight between Right to Privacy and Right to Know: Who should win?' (*Legal Service India*) <[http://www.legalserviceindia.com/articles/pri\\_r.htm](http://www.legalserviceindia.com/articles/pri_r.htm)> accessed 5 July 2017.

through adoption of a legislative model, which enacts a single RTI and privacy law. Such a model ensures common definitions and internal consistency thereby limiting conflict and establishing a balance from the start. The other model that can be adopted is to have two discreet enactments so that they may be interpreted in such a way that there is balance and harmony so far as their relation with each other and their operation in their respective domains are concerned. If the objective of harmony is ignored at the very outset, the laws will resultantly come into conflict with each other which in turn will call for further legislative efforts. The very idea of harmonisation may seem to be a conflict resolution strategy or rather a *via media*. But the concept of balance and harmony to smoothen the thorny angularities of conflict between the two rights may sound simple in theory but is quite difficult in practice. The regime of harmonisation which in majority cases becomes a constitutional challenge and which needs to be reconciled through the instrumentality of judicial process and creativity, has to grapple with a host of subtleties and subjectivities. Though Section 8(1)(j) of the RTI Act quite explicitly grants exemption from disclosure of personal information, there is a conditionality attached to it, that is, public interest may warrant disclosure of such information to an applicant by the public authority thereby granting no exemption and, if need be, disregarding the right to privacy. However, the challenge lies with demarcating the extent or limit up to which private information may be disclosed. Though there is no pedantic and state-of-the-art method to mark the line of demarcation of disclosure and non-disclosure, some kind of weighing of circumstances and contextual priority is necessary to ascertain how much of private information of an individual needs to be disclosed having regard to the broader question of public interest for the good of the society at large. The working of the RTI Act in India has touched several professions and multiple aspects of a person's personality and things which he prefers to keep a secret as a right. Medical jurisprudence and medical ethics, for instance, looks into the RTI law in India with circumspection and in times when medical profiles and details of various patients are kept in public hospitals and clinics in retrievable databases, an applicant seeking to know the medical profile of an individual under the RTI Act needs to first justify the public benefit if the information is disclosed and secondly whether the public benefit or interest is of such a stature or magnitude so as to vindicate disclosure of such private information infringing upon another cherished right to privacy of the patient – individual. The very idea of privacy inheres in the philosophy of individual autonomy. Several academic disquisitions have hinted upon the

foundational character of privacy as a basis of individual freedom but not necessarily as an unqualified ethical right particularly in the context of health care and medical ethics. The RTI Act may threaten the privacy of various patients and research subjects in public medical institutions.<sup>7</sup> It is quite understandable that medical information of an individual is highly confidential as callous disclosure of such information from trusted government sources may malign the reputation or disparage his social identity and position (more so in a country such as India) if the ailment is one which attracts ridicule, embarrassment or social ostracism. For instance, the medical information of a HIV+ patient needs to be zealously protected from unwanted disclosure. This is because the concerned patient has allowed himself to be examined by a medical practitioner in a public hospital on the basis of a trust borne out of the fiduciary relationship that develops between a doctor and a patient. The medical information of such a patient is very sensitive as disclosure of such information may ruin the prestige and personality of the patient making him psychologically wreck and leaving him more diseased and depressed. But if the applicant who has sought such information of the patient turns out to be a prospective bride of the patient, it is morally as well as legally incumbent upon the public authority to disclose such medical information in the larger interest of the applicant even if such disclosure amounts to risking the right to privacy of the patient – individual. Thus, the rationale to disclose or not to disclose private information is public interest. The true litmus test in this case is the fact that if the information is denied to the applicant, her right to life and marital bliss is utterly jeopardised. It is basic morality that one interest cannot be safeguarded at the cost of other. In this case, the man is already infected with HIV virus and this cannot be undone. But the non-disclosure of such crucial information to the applicant (who is not HIV infected) may result in her contracting the HIV virus and, thus, her right to life and decent living may get compromised. Therefore, harmonisation or reconciliation of conflicting interests or rights may depend upon several variables or models as afore-stated but the simplest possible strategy and yet the most effective one can be gauging of the relative appeal of the competing rights, viz., right to privacy and right to information and thereafter on the basis of ratiocination according primacy to one over the other taking the contextual urgency or appropriateness into account.

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<sup>7</sup> Mishra, Parker, Nimgaonkar and Deshpande (n 1).

## 6. RTI and the Indian Judiciary

The RTI Act was enacted on 15 June 2005 and it came into force on 15 October 2005. The basic objective of this transparency statute is to bring about openness, transparency and accountability of the government functionaries. Various judicial decisions have been pronounced with regard to the RTI law in India to emphasise upon the significance of the RTI Act in bolstering the faith of the common masses in the right to know and receive information.<sup>8</sup> Right to information is the right of the general public to seek and receive information from government sources as to how decisions are taken, how the various expenditures are incurred by the various public authorities and as to the various aspects of functioning of the government departments. The very right to information draws inspiration from the constitutional basis derived from Article 19(1)(a) of the Constitution of India which states that ‘All citizens have the right to freedom of speech and expression’. The Apex Court of India held that the right to information is an integral element of the purpose of Article 19 of the Indian Constitution.<sup>9</sup> The majority opinion held that freedom of speech and expression takes within its fold the right of all the citizens of India to read and be informed. In another case<sup>10</sup> the Supreme Court of India stated, ‘In a government of responsibility like ours where the agents of the public must be responsible for the conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.’ The judgment in *Manubhai. D. Shah v Life Insurance Corporation*<sup>11</sup> reaffirmed this point. The fundamental purpose in the right to freedom of speech and expression is to enable every person of this country to form opinions and beliefs and share them freely with others. In essence, the foundational principle involved here is the right to know. The Supreme Court almost a quarter of a century ago in *S. P. Gupta & Others v. Union of India*,<sup>12</sup> which is popularly known as the Judges Case, made an observation, “Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage

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<sup>8</sup> Pawan Reley, ‘Expanding Right to Freedom of Speech and Expression: A Analysis in Relation to Right to Information’ <[http://www.academia.edu/11422466/EXPANDING\\_RIGHT\\_TO\\_FREEDOM\\_OF\\_SPEECH\\_AND\\_EXPRESSION\\_A\\_ANALYSIS\\_IN\\_RELATION\\_TO\\_RIGHT\\_TO\\_INFORMATION](http://www.academia.edu/11422466/EXPANDING_RIGHT_TO_FREEDOM_OF_SPEECH_AND_EXPRESSION_A_ANALYSIS_IN_RELATION_TO_RIGHT_TO_INFORMATION)> accessed 6 July 2017.

<sup>9</sup> *Bennett and Co v the Union Of India* AIR 1973 SC 106, 1973 SCR (2) 757.

<sup>10</sup> *State of U.P v Raj Narain* 1975 SCR (3) 333.

<sup>11</sup> *Manubhai .D. Shah v Life Insurance Corporation* AIR 1981Guj 15, (1981) GLR 206.

<sup>12</sup> *S. P .Gupta v Union of India* AIR 1982 SC 149.

oppression, corruption and misuse or abuse of authority for it would be all shrouded in the veil of secrecy without any public accountability.’ Unnecessary secrecy in government leads to arrogance in governance and defective decision making.<sup>13</sup> Open government always ensures greater transparency and efficiency in the matter of governance and administration. There is no gainsaying the fact that exposure to public scrutiny is the surest insignia of an efficient and effective government. It is truly said that open government is a clean government and a powerful shield against political and administrative opaqueness and incompetency.

### **7. ‘Private Right’ Yielding to ‘Public Interest’: A Pithy Analysis of the Rationale**

The two rights around which revolve all the discourses and deliberations of my thesis actually affiliate to two distinct categories or domains – one private and the other public. The public-private debate essentially germinates from public and private interest. The right to know may apparently seem to be a private right of an individual and the right is neatly with regard to governmental affairs since the idea of a welfare state, which mandates to promote social welfare along with economic development, rests heavily upon the rudiments of participatory democracy as the true engine for proliferation of democratic consciousness among the masses. If the practice or operational reality of the working of the RTI law in India were only and exclusively in this line of theory, today there would not have been any discussion on the question of reconciling the public-private conflict. But the ground reality is a bit different and it is here that the real conflict of interest emanates. A classic example will ease our understanding even further. When a citizen of this country intends to know from the government how the Public Distribution System is functioning in some definite part of the country or to what extent the mid-day meal programme in government schools are ultimately reaching the intended beneficiaries, there is no conflict of interest because the applicant has the fundamental right to know and the public authority is under a constitutional obligation to provide such information as desired by the applicant through the RTI route. Here, one party has a right to know and the other has a duty to inform and, thus, no conflict arises. But if a citizen wants to know about, say, the Aadhaar details of an individual which contains his personal identity, it comes under exemption under Section 8 and Section 11 of the RTI Act and the public authority is not duty bound to disseminate such information. The

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<sup>13</sup> John Macdonald & Cliven Jones, *The Culture of Secrecy Britain 1832-1998* (1st edn, OUP 2003) 3.

rationale for such exemption from disclosure of private information is the constitutional legitimacy and respect for the right to privacy. The exemption clause satisfies a particular legislative intent and that is protection of the right to privacy of one and all by denial of personal information kept in the government database. However, the legislature has been quick to anticipate the possible circumstances where one right may claim primacy over the other owing to a larger interest being involved and that is why it has come up with a proviso which says that personal information may at times be disclosed where a greater public interest will be hampered if such personal information is not disclosed. If we analyse the provisions of the statute, we can well comprehend that both the rights are equal but situational exigency may in exceptional circumstances attach priority to one of the rights and in such cases, the compelling justification shall decide which right should give way to the other. So the conflict as such is not a permanent feature of the rights. Rather they complement and supplement each other. The conflict is only situational.

## **8. Philosophical Vindication Refuting the ‘Right to Privacy’ Regime**

The nurturing of the cherished right to privacy is no doubt an ennobling task and should feature as a top-most priority in the agenda of any democratic nation. True to its object, even the Indian Constitution like the most other national constitutions of the world strongly supports and encourages the individual right to privacy. But philosophical discussions do not always follow the beaten track and always want to explore the untrodden path to find out what is best or optimum or ideal for a nation. This may seem a bit perplexing and weird to you for I intend to go against the sacrosanct right to privacy. All this while, in my discourse, I have been trying to assess the relative merits (or even demerits) of both the rights – right to privacy and the right to information. But now I intend to introduce an altogether different and unique strand of thought – how about refuting the very idea of right to privacy?<sup>14</sup> If we focus upon the flip side of right to privacy, we can find that along with upholding individual autonomy, it breeds hypocrisy.<sup>15</sup> I want to give a simple explanation which closely relates to human psychology. When right to

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<sup>14</sup> Raymond Wacks, *Privacy: A Very Short Introduction* (OUP 2010).

<sup>15</sup> All Answers Ltd, ‘The right to privacy’ (*Lawteacher.net*, April 2018) <<https://www.lawteacher.net?vref=1>> accessed 3 April 2018.

privacy is conferred upon us, we tend to demonstrate habits and conduct in public circle which we usually prefer not to follow in our private lives. According to Gabriel Garcia Marquez, we have three layers of personality – public, private and secret.<sup>16</sup> The moment one tries to establish a logic which breaks the barriers of conventional thinking, it immediately, more often than not, becomes a matter of disputation. The rhetoric against right to privacy may take away sleep of many social activists for it immediately seems to rob one of his natural right to privacy which inheres in him for being a human. But how many of us are aware of the fact that some degree of intrusive mechanism or encroachment into one's privacy may be salubrious? It may redefine democracy or support progressive authoritarianism for sure. For instance, the roads have CCTV surveillance cameras installed which enable the police to nab criminals or get an idea of any illegal or criminal activities being carried out in the open. Nowadays, the corporate offices in majority of the cases house CCTV cameras to keep a vigil over the working employees. The metro stations, the airports and the subways have cameras installed to check any criminal or aberrant behavior of persons among the commuters. In all these instances, privacy is compromised in the larger interest of security. Why is it that we need to breach privacy to keep a vigil over the wrong-minded persons? It is because intrusion is the best check to aberration. If I can extend this ratio to a level where virtually the state allows no privacy, it may no doubt help the state to create a much better, safer, crime-free society as all such acts which engender crimes will supposedly be regulated, if not, altogether stopped, administration will gain efficiency and governance will be more transparent and prompt. It is the veil of privacy which breeds crime, corruption and conflicts. Most often than not, we prefer to vociferously claim privacy so far as the precincts of marital home and relations are concerned and there is no fault in it. But it is my submission that if privacy both as a philosophy and as a practice is limited to the core area of bodily integrity without extending it to informational and decisional areas, in the long run, the government and the governed will definitely stand to gain out of such an arrangement. Even in the context of RTI law, communication is obstructed, free exchange of information is disrupted and right to know is to a certain extent vitiated under the shelter of the exemption from disclosure of information clause. The idea to attach conditionality to providing information under the RTI is not problematic since this alone seems to be the best possible scheme to ensure

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<sup>16</sup> Prerana, 'Right to Information (RTI) and Right to Privacy: Need for Harmony' (*Legal Parley*, 28 November 2015) <<http://legalparley.com/rti-and-right-to-privacy/>> accessed 6 July 2017.

harmonious co-existence of both the rights. However, the discretion to weigh the competing rights in times of exceptions do not follow any fixed or precise standards and it is this imprecision or flexibility to tinker with or alter the boundaries of disclosure which breeds corruption and a culture of bribery and nepotism equally among the government officials and the applicants. Hence, we should progress towards a policy of transparency with uniformity and try to accommodate all possible dynamics so that the discretionary space is reduced or rendered void giving more space to standardisation and rule-based approach. I am quite aware of the fact that formulation of such a policy is extremely difficult both at the theoretical and applicative stages but this idea can be taken as a legitimate guidepost to convince ourselves that privacy is ‘not’ always good for the society.

### **9. Right to Information and Right to Privacy: A Prognosis**

The entire discussion primarily has one motive - to decipher the relational dynamics between the two competing rights and to approach towards a regime of harmonising the patent incompatibility between them. Whatever models have been suggested in my discourse in the preceding paragraphs are aimed towards exploring mechanisms and strategies to bring about some kind of moderation so far as treating both the rights are concerned so that each right gets its legitimate dignity. When we try to understand both the rights, we have to think of the implicit constitutional limits up to which the rights can be extended. It is quite interesting that both the rights do exist but the Indian Constitution remains reticent with regard to these rights. It is my humble submission that the Parliament should make an explicit right to privacy enactment like the RTI Act and the provisions should be such that some kind of integration with the present RTI Act is feasible through terminological consistency or purposive harmonisation. The Law Commission and the Supreme Court of India have an onerous obligation to provide the much-needed philosophical justification for a discreet legislation on right to privacy rather than keeping it within the bracket of a larger and broader right to life. Time has come to accord separate importance to right to privacy owing to the growing complexities so that it can emerge as an independent and complete statute yet drafted in such a fashion so as to ensure a happy marriage between RTI Act and the right to privacy statute. Such an attempt may do away with lots of conflicts and may bring out the vital complementarity between the two laws. I am not

denying that a new statute weaned away from right to life and personal liberty will not face the heat of critics but it is also true that such weaning away of an implicit right from a broader nominate (explicit) constitutional provision will not rob it of its essential strength and vitality. What is more important which justifies and suggests such an arrangement or vision of an independent and complete statute on right to privacy is to substantiate and fortify the relative strength, efficacy and appeal of both the rights and to iron out differences and areas of disagreement between the two as much as possible and as far as practicable.