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Privacy is practiced in diverse situations every day by everyone against people, society and the state. Indian privacy law is evolving in response to four types of privacy claims namely, against the press, against state surveillance, for decisional autonomy and in relation to personal information.¹ Privacy is an essential constituent of liberty, the deprivation of which prevents people from making fundamental choices. Right to privacy is not enumerated as a fundamental right in the Indian Constitution, but has been inferred so from Article 21(Privacy as Decisional Autonomy).

The freedom of information aims to provide every citizen right to obtain access to government records. This increases the accountability of the government and promotes fairness in administrative decision-making processes. The protection of privacy is based on the principle that information collected for one purpose should not be used for another purpose without the consent of the individual to whom the information pertains.² The right to information, being integral part of the right to freedom of speech, is subject to restrictions that can be imposed under Article 19(2).³ Some authors argue that privacy is the expectation that information about a person will be treated appropriately. This theory of "contextual integrity" believes that people do not want to control their information or become inaccessible but they want their information to be treated in accordance with their expectations⁴(Information Privacy).

The information privacy is relatively recent in India. Personal information can cause the identification of a person, used directly or in conjunction with other information.

¹ Acharya Bhairav, "Four Pillars of Privacy In India " Economic and Political Weekly"May 30,2015 Vol1 22 p35

² <http://blog.onlinerti.com/2015/01/04/right-to-information-vis-a-vis-right-to-privacy/> Last accessed on 18 Nov 2015

³ <http://cyfy.org/india-right-to-information-and-privacy-two-sides-of-the-same-coin/> Last accessed on 22 Nov 2015

⁴ ibid

Therefore information privacy law seeks to regulate the collection, use, storage, disclosure and destruction of personal information in order to protect the expectations of the individuals. State authorities collect personal information for the general purpose of governance, such as Census, identification documents, licences, passports, Aadhar cards etc. Right to receive information may lead to greater transparency in public life but it also might step upon right to privacy of certain people. There exists a certain conflict between the right to privacy and the right to information and the need to balance has been part of academic debates. In India, this conflict or potential infringement has been balanced under Section 8 of Right to Information Act, 2005 (the "**RTI Act**"). Section 8 provides that no information should be disclosed if it creates an unwarranted invasion of the privacy of any individual . The exception in S. 8(1)(j) prohibits the disclosure of personal information for two reasons

- (i) its disclosure does not relate to any public activity or interest or
- (ii) it would be an unwarranted invasion into privacy.

The above two conditions however get trumped if a larger public interest is satisfied by the disclosure of such information. The Bombay High Court⁵ has decided that the exceptions to disclosure other than the right to privacy are not restricted by this proviso. The interpretation given by the Court thus ensures that section 8(1)(j) still has some effect, in host of declarations and all sorts of information such as Income Tax Returns, etc. of both private and public individuals would have been liable to disclosure under the RTI Act.

The RTI Act defines the term information but does not define the term "personal information". The courts in India tried to draw a distinction between the term "private information" like, marriage, motherhood, procreation, child rearing etc and personal information" that pertains to an individual. It has been decided that all private information would be part of personal information but not the other way round. The term 'personal information' has been described as "identity particulars of public servants, i.e. details such as their dates of birth, personal identification numbers and as including tax returns, medical records etc.

The term larger public interest has also not been discussed or defined in the RTI Act. Courts have developed some tests to determine if in a given situation, personal information should be disclosed in the larger public interest. The term "public interest" denotes that the interest involved should serve a large section of the society and not

⁵ Haresh Jagtiani vs State of Maharashtra (2015).

just a small section of it.⁶ The term "larger public interest" cannot be given a narrow meaning, was suggested in many decided cases on the right to privacy. Beginning with *Kharak Singh*⁷ all the way to *Naz Foundation*⁸. (Privacy and Surveillance) a wider connotation has been provided. In light of the Section 8(1)(j), two different tests have been proposed by the Courts, which lay the same principle in different words:

1. The test laid down in the case of *Union Public Service Commission v. R.K. Jain*⁹ states

(i) If the information sought does not qualify as personal information, the exemption would not apply;

(ii) Such personal information should relate to a third person, AND

(iii) The information sought should not have a relation to any public activity involving third person, or in public interest.

2. The other test was laid down in the case of *Vijay Prakash v. Union of India*,¹⁰ in the specific circumstances of disclosure of personal information relating to a public officials. This test states that situation where the personal information would not qualify for exemption. These situation can be enumerated as follows

(i) if the information is deemed to comprise the individual's private details, unrelated to his position in the organization;

(ii) if the disclosure is with the aim of proper performance of the duties and tasks assigned to the public servant and

(iii) if disclosure will furnish information required to establish accountability or transparency in the use of public resources.

The constitutional right to privacy in India is also not an absolute right and various cases have carved out a number of exceptions to privacy in 'larger public interest'. Reasonable restrictions can be imposed on the right to privacy in the interests of the sovereignty and integrity of India, morality, decency etc. The right to privacy can be

⁶ *Union Public Service Commission v. R.K. Jain*, Delhi High Court W.P.(C) 1243/2011 & C.M. No. 2618/2011 (for stay), dated 13-07-2012.

⁷ AIR 1963 SC 129.

⁸ Delhi High Court, WP(C) No.7455/2001 dated 02-07-2009.

⁹ Delhi High Court W.P.(C) 1243/2011 & C.M. No. 2618/2011 (for stay), dated 13-07-2012. This ruling was overturned by a Division Bench of the High Court relying upon a subsequent Supreme Court ruling, however, it could be argued that the Division Bench did not per se disagree with the discussion and the principles laid down in this case, but only the way they were applied.

¹⁰ 2009 (82) AIC 583 (Del)

restricted by procedure established by law. This procedure would have to satisfy the test laid down in the *Maneka Gandhi case*.¹¹

Another decision in the *Rajagopal*¹² case lays down another test. It provides three exceptions to the rule that a person's private information cannot be published. They can be enumerated as follows :

- i) person voluntarily raises or invites a controversy,
- ii) if publication is based on public records other than for sexual assault, kidnap and abduction,
- iii) Right to privacy for public officials with respect to their acts and conduct relevant to the discharge of their official duties shall not qualify for exemption.

It must be noted that although the Court talks about public records, it does not use the term 'public domain' and thus it is possible that even if a document has been leaked in the public domain and is freely available, if it is not a matter of public record, the right to privacy can still be claimed in regard to it. Discord occurs when privacy is claimed in lieu of a breach of confidence remedy as in Ratan Tata's ongoing petition in the Supreme Court in respect of the government's unauthorised disclosure of Niira Radia's intercepted communications and their subsequent publication (Privacy and Press Freedom)¹³

The most Common problem arises regarding information of public officers. It is argued that income tax details, financial details, medical records, etc. of public officials should be disclosed. In case of some officers, it would serve the interests of transparency and cleaner government (hence serving a larger public interest). In fact it has sometimes been argued that public servants must waive the right to privacy in favour of transparency. However this argument has been repeatedly rejected by the Courts.

Distinction has been made between the information that is inherently personal or has connection with his/her public functions. The Courts have concluded that there can be no blanket rule regarding what information can and cannot be disclosed when it comes to a public servant, and it would depend upon the circumstances of each case. Supreme Court in *Girish Ramchandra Deshpande v. Central Information Commissioner*¹⁴ has

¹¹ *Maneka Gandhi v. Union of India*, Supreme Court of India, WP No. 231 of 1977, dated 25-01-1978. The test laid down in this case is universally considered to be that the procedure established by law which restricts the fundamental right should be just, fair and reasonable.

¹² *R. Rajagopal v. Union of India*, Supreme Court of India, dated 7-10-1994. These tests have been listed as one group since they are all applicable in the specific context of publication of private information.

¹³ *Ratan Tata v Union of India*(2010)

¹⁴ 2012 (119) AIC 105 (SC).

decided that personal information should not be disclosed unless a larger public interest is served by the disclosure.¹⁵

Presently, there is no specific legislation in India dealing with privacy. The protection of privacy and data can be derived from various laws pertaining to information technology, intellectual property, crimes and contractual relations. The Right to Privacy is further been encompassed in the field of torts which include the principles of nuisance, trespass, breach of confidence etc. Parties may agree to regulate use of personal information by means of a "privacy clause" or a "confidentiality clause". There are Privacy Obligations under Specific Relationships like doctor-patient, husband-wife, customer-insurance company or an attorney-client. The above principle also receives legal recognition in Ss. 123-126 of the Indian Evidence Act, 1871. Information Technology Act, 2000(Section 65 and 66), Indian Penal Code(Section 403), The Indian Copyright Act(Section 63 B) Credit Information Companies Regulation Act, 2005 ("CICRA") are a few legislations protecting Privacy. The Privacy Bill, 2011 has been introduced to regulate the collection, use and dissemination of their personal information and provide for penalization for violation of such rights. Therefore, the right to privacy in India remains a de facto right.

TAX AUTHORITIES AND USE/ABUSE OF INFORMATION

Privacy is primary issues in developing countries. Privacy has to be examined in the context of tax evasion. Our focus shall be on the abuse of information by tax authorities. The challenges and scope of privacy rights extend beyond the use of information by the government agencies. Use of technology has provided access to information and has made it possible for anyone to obtain any information. Improvements in technology have also made it easier for tax administrators to observe transactions and taxpayers. There has been an increase in ability to trace transactions and has thus strengthen, the government's role as a tax collector. Taxpayers use technology to avoid tax, and it also leads to erosion of privacy .

Tax is a social responsibility of multinational corporations also specially in circumstances when government is reducing its expense which is having an impact on everyday lives of people. Many multinational companies, operating very successfully are not paying

¹⁵ <http://cis-india.org/internet-governance/blog/white-paper-on-rti-and-privacy-v-1.2> Last accessed on 28 Oct 2015

corporation tax by window dressing their profits. Companies seek to minimise their tax liability through "tax planning", using legal mechanisms like allowances, deductions, rebates, exemptions, and so on. Though tax planning is a tax compliant behaviour but there is a grey area between "tax planning" and "tax avoidance". Tax avoidance, is legitimate but aggressive using financial instruments not intended for tax eg, the use of overseas tax havens. Avoiding tax can be seen as operating within the letter, but perhaps not the spirit of the law. Unlike tax evasion, tax avoidance does not involve concealing information or lying. Instead, it involves structuring business transactions to ensure that less tax is payable than one might otherwise expect. Tax avoidance works through compliance with the precise letter of the law, not through breaking the law.¹⁶ Tax evasion involves knowingly mis-reporting the facts. There is no ethical justification for tax evasion. Ethics on the other hand has three facets

- *Utilitarianism*, ie total happiness across the population aiming for maximum satisfaction of desires.
- *Deontology*, ie ethics based on the idea of duty.
- *Virtue ethics*, ie ethics which focus on the virtues we should have, and on what constitutes a virtuous life.

Taxation plus government spending are an obvious way to achieve redistribution of income to ensure that everybody gets something. Taxation and spending help to achieve wide resource distribution, but high rates of tax reduce investment and makes it hard to generate sufficient total resources. Unlike the utilitarian, the deontologist lays down absolute duties. One such common duty is to respect property rights of others . This could be interpreted to mean that there should be no tax at all, because tax is the forcible transfer of property away from taxpayers. On the other hand, the duty to respect property rights could be used to argue that any social resources one used should be paid for, even if one did not ask for those resources to be provided.

Virtue ethics can be a bit more helpful on the question of the justice of taxation. Several virtues seem more likely to be exercised if tax rates are moderate rather than being very high. There are also political arguments based on the fact that taxation is coercive. In *Anarchy, State, and Utopia* (1974), Robert Nozick argued that imposed taxation is a violation of our rights. He said that property was mainly shared out among

¹⁶ https://philosophynow.org/issues/90/The_Ethics_of_Taxation last accessed on 17 Nov 2015

people initially by a process of acquisitions and then by exchanges. He argues that it is not the question that the existing wealth should be distributed differently without a tax-levying state; it might be possible that the wealth may not exist. These arguments, though providing a different insight, are not enough to legitimise high levels of taxation by the state.

OBJECTIVE OF TAXATION

Tax can be used for all sorts of purposes like the distribution of incomes and wealth either by transferring cash from the rich to the poor, or by providing the same state services to everyone while taxing the rich more than the poor in order to pay for them. Greater equality may also be an accidental outcome of using the tax system for other functions of the state. It can also be a goal in itself. Taxation provides revenue for federal, state, and local governments to support services, infrastructure, and resources for the public good. The states also have a right to levy and collect taxes on goods and services sold within the state. Power of taxing the people and their property is essential to the very existence of government.

Some sacrifice of equity, it is often argued, is unavoidable in a situation where taxpayers stop at nothing to evade tax. The Tax law is reconciled to living with leakage—but steps can be taken to make it difficult to evade tax and to raise the cost of evasion. Countries of the world are more adept in taxing incomes without deductions in some way or the other.¹⁷ Tax culture is thus, dominated by a mentality and practices of evasion and avoidance. This kind of mentality is constituted and legitimised through the social approval of non-compliant behaviour, knowledge of the politicisation of the tax bands and the demonisation of the taxes department. Tax morality, unwillingness to pay on the part of taxpayers and unwillingness to collect on the part of tax officials are other reasons of accumulation of wealth. Tax avoidance is a universal feature of capitalism though avoiding tax does not necessarily result in an anti-tax culture. The state is caught in a contradiction. Not only is it the only body enforcing tax compliance but simultaneously it is also a body that creates formal institutions for tax avoidance and evasion. The compromised state has therefore not gained the necessary legitimacy or the capacity to implement its right to tax. This has profound distributional consequences. While corruption is the idiom in which the state is discussed, the much

¹⁷ "Perverting the tax system , The Direct Tax Amendment bill" Economic and Political Weekly , Jan 16 1988 p71

more fundamental problem is tax avoidance and evasion. Primitive accumulation and obligations to caste and kin are privileged over the public interest. As a direct result, those who do not pay tax struggle to gain access to public infrastructure and services. No culture, however, is unamenable to change. Tax relationships are not only the products of rules and voluntary compliance, they are regulated through coercion mediated by relationships of class, caste and faction, which are structures of accumulation mostly not regulated by the state¹⁸

Information reporting and withholding is an important task of tax administration. They bring together information from different sources and verify it. Tax laws in most countries already require various private and public agencies to furnish information. In some cases agencies are also supposed to withhold a part of the payment made by the agent to the potential taxpayer. An efficient system of monitoring is required to collate and store data with easy access for retrieval and cross-checking. From an administrative perspective, most taxes collected in developing countries come from a relatively small number of population. Accurate tracking of fiscal flows is critical to successful tax administration. Before devoting much effort to this difficult task, however, it is critical to ensure that tight control is maintained over the payments and liabilities of large taxpayers. Tax agencies used Information Technology T mostly to process tax returns and payments. Returns contain taxpayer identifying information, details on gross income received from various sources, etc . In many developing countries like India, large section of population does not file returns at all, because their income tax obligations are considered to be fully satisfied by the tax withheld by their employers. Even in developed countries like the United Kingdom most personal income taxpayers do not have to file returns because cumulative averaging results in the correct amount being withheld. Countries, such as Australia, are also considering "return free" systems that relieve most taxpayers from the obligation of filing a return. Such systems have obvious attractions for both taxpayers and the tax administration.

Adopting new technology carries with it potential pitfalls as well as potential gains. Conceptions of rights to privacy differ among societies. There have been developments which say that most of the information that tax authorities need is already

¹⁸ Amrita Jairaj and Barbara Harris White " Social structure, Tax culture and the State" Economic and Political Weekly Dec 13, 2006 p 5252.

contained in the central computer and should be correspondingly processed. This vision is already a reality in Singapore, where withholding has been taken to its logical limit so that the government can transfer funds directly from a person's bank account to the treasury to settle tax liabilities as calculated by the government. Therefore the real danger from new technology may not be the erosion of the tax base as taxpayers use technology to avoid tax, but the erosion of privacy as governments take defensive action. It is therefore a requirement that citizens should reach a consensus that permits access to private activities necessary for the sustenance of their public communities, without allowing such information to be misused. This may also be called "the transparent society" - one in which people are held accountable for their actions, including what they do with the information to which they have access. Countries around the world, developed or developing, need to balance the benefits of providing taxing authorities with additional tools and resources, against the costs of invasion of privacy and potential for abuse by government officials.¹⁹

To date, most privacy legislations in developed countries have focused on protecting the rights of individuals. EU Data Protection Directive provides rules for private-sector processing of personal information. The U.S. Privacy Act of 1974 sets forth guidance for the use individual data by the Federal government . There should be designs and methods in order to ensure institutional accountability. Legal and political institutions provide sufficient checks and balances to allow use of the information generated by improvements in technology without the likelihood of substantial abuses. Given the diversity of cultures and societal norms, there exists a wide range of tolerance and intolerance for measures that infringe on privacy. Many policy initiatives adopted by governments may challenge personal privacy. Such initiatives include many of the technologies that may be used to improve the tax system like the use of identity cards using fingerprint and iris scanning biometrics etc .

Countries with good tax administrations also score well in privacy rankings. On the whole, however, it seems probable that if tax administrators were to improve significantly their capacity to acquire information, countries also need to have adequate procedural safeguards to offer sufficient privacy protection. The costs of disclosure of information may also differ among developing countries. In Colombia, for example, one reason offered by some for the recent discontinuation of the long-standing wealth tax,

¹⁹ Richard M. Bird and Eric M. Zolt 'Technology and Taxation in Developing Countries: From Hand to Mouse', National Tax Journal, Vol. 61, No. 4, Part 2: Technology, Privacy, and the Future of Taxation (December, 2008), pp. 791-821 Published by: National Tax Association Stable URL: <http://www.jstor.org/>

in existence since 1935, was fear that the misuse of this tax information might increase the risk of kidnapping. In current environments when tax information is misused, the barriers against such misuse should clearly be very high. If it is not possible to erect and enforce adequately such barriers, then it may make sense not to collect the information, even if it prevents tax administrators from making distinctions among persons and the tax base that would theoretically improve the tax system.

CONCLUSION

The last few years has seen a spate of rights-related legislations related to information, employment, and education. But this package of laws is incomplete without a fundamental right to participate in decisions relating to development, welfare, and conservation.

Every citizen needs to have the right to be consulted in, and his/her opinion and judicious use of information to be part of the considerations for decisions in governance. This shall enable citizens to participate meaningfully, through proactive provision of information (taking forward the suo motu provisions of the Right to Information (RTI) Act). Links would need to be made between such legislation and the relevant existing policies and laws, such as the RTI Act, the panchayat laws, and others. Checks and balances would need to be built in to ensure against misuse and against indefinite stalling of decisions. This can help the abuse of power by International corporations, and the financial elite, and help the majority of Indians who desperately need meaningful development. This would tackle the various forms of corruption specially taxation problems in India.

Rather than hiding behind the business case for tax avoidance, businesses need to be transparent about their tax planning. Both companies and government need to pay more attention to communicating their position on this issue and their interpretation of the law – and above all they need to be open about it. This would restore public trust and bring more certainty for business.²⁰ Today there are no compartments in the world. Capitalist pursuits and societal imperatives need to be balanced. Indeed, through tax avoidance the corporation contributes significantly to an overall decline in government services, which ultimately degrades the operating environment and the very markets within which the corporation seeks to thrive. The future of Society is dependent on the

²⁰ <http://www.theguardian.com/sustainable-business/avoiding-tax-legal-but-ever-ethical> Last accessed on 22 Nov 2015

capacity of the state to balance ethics privacy and transparency. An interface between them directly affects the dignity of the population. Multinational corporations shielding profits from meaningful taxation have troubled governments and individual taxpayers alike. Corporate taxation is a worthy public goal that companies should do voluntarily. There should be an ethical framework within which corporate officers, boards of directors, shareholders, tax advisers, and stakeholders should operate. The higher ethical perspective demands that corporations rise above minimal compliance standards on taxation and work towards a transparent society. The Corporations should not blind eye to the larger issues affecting the livelihoods and dignity of ordinary people. International tax authorities are working towards create a common template for multinationals to report to tax authorities. It will help the developing countries to collect the taxes owed them, with access to the global tax information they need ²¹.

Countries need to balance the benefits of providing taxing authorities with costs of invasion of privacy and potential for abuse by government. However, the availability of different types of information may also result in government officials using information for financial gain, political gain or discrimination, or simply for the thrill of invading the privacy of well-known individuals. Government officials could also use information not for personal gain, but in a manner in consistent with the laws governing privacy in order to achieve what they believe is good government policy.

State leaders believe that a technology solution can be found to make the tax system more balanced and fair. Tax policies should be underpinned by the guiding ethical principles of accountability, transparency and consistency. Tax planning arrangements that go beyond the intent of the law are not ethical. Apart from companies, government and business should ensure that corporate tax contributions are a

²¹ Organisation of Economic Co-operation and Development (OECD), reflecting concerns among the major economic powers, has become particularly focused on the problem of tax avoidance, especially the issues of base erosion and profit shifting (the basic tools of tax avoidance), as prominently demonstrated in a February 2013 report, which was followed a few months later by a statement of recommendations. At their June 2013 summit in Northern Ireland, the leaders of the G20 affirmed their support for the OECD's work in this area publish national Action Plans to make information on who really owns and profits from companies and trusts available to tax collection and law enforcement agencies." In mid-July 2013 the finance chiefs of the Group of Twenty nations fully endorsed "the ambitious and comprehensive" plan set forth in the OECD's report on corporate tax avoidance, Action Plan on Base Erosion and Profit Sharing, and recommended that G-20 leaders approve the Action Plan during their September 6 2013 summit. On September 6,2013 the G20 leaders, meeting in Saint Petersburg, Russia, followed with full endorsement of "the ambitious and comprehensive Action Plan—originated in the OECD

demonstrably fair return to society. Citizens on the other hand should permit access to private activities for the sustenance of public communities, without allowing such information to be misused. People should be accountable for what they do to the information to which they have access.