

TAX PRIVACY, INFORMATION LAWS AND ETHICS

- **Theme:** Individual Rights and Information



- **Subtheme:** Taxation and Ethics

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PRIVACY

- 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
- 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).
- 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**").



RTI AND PRIVACY

- Section S. 8(1)(j) provides that no information should be disclosed if it creates an unwarranted invasion of the privacy of any individual .
- 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.

PUBLIC INTEREST

- In case of *Harish Jagtiani v State of Maharashtra* it was held that the exception of section 8(1)(j) would not apply in cases of larger public interest
- “Public interest” has not been defined in RTI Act so the courts have laid down some tests wherein personal information shall be disclosed
- “Public interest “ has been given a wide meaning cases like *Kharak Singh or Naz Foundation*

TESTS LAID DOWN BY COURTS

- In case of *UPSC v R K Jain* it was laid that
 - If the information sought does not qualify as personal information, the exemption would not apply;
 - It should relate to third person
 - The information should not have relation to to any public activity involving third person, or in public interest
- The case of *Vijay Prakash v Union of India* courts lay down situation where the personal information would not qualify for exemption . These situation can be enumerated as follows
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- if the information is deemed to comprise the individual's private details, unrelated to his position in the organization it shall not be disclosed ;
 - if the disclosure is with the aim of proper performance of the duties and tasks assigned to the public servant it would not be exempt and
 - if disclosure will furnish information required to establish accountability or transparency in the use of public resources.

Therefore we can see that exception have been carved out for public interest

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- In case of R Rajgopal v Union Of India, SC has provided three exceptions to the rule that a person's private information cannot be published. They can be enumerated as follows :
 - If person voluntarily raises or invites a controversy than no exemption
 - if publication is based on public records other than for sexual assault, kidnap and abduction than no exemptions ,
 - 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.

This raises controversy of “public records” and “public domain”

- It is possible that a document has been leaked in the public domain and it is not a matter of public record, Right to privacy can still be claimed in lieu of a breach of confidence remedy as in Ratan Tata's case in respect of the government's unauthorised disclosure of Niira Radia's intercepted communications)
- The Courts have thus concluded that there can be no blanket rule regarding what information can and cannot be disclosed, and it would depend upon the circumstances of each case. personal information should not be disclosed unless a larger public interest is served by the disclosure.



INFORMATION AND 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 and 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.

TAX AUTHORITIES AND USE/ABUSE OF INFORMATION

- Privacy has to be examined in the context of tax evasion. 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 strengthened, the government's role as a tax collector. Taxpayers use technology to avoid tax, and it also leads to erosion of privacy .
- Some sacrifice of equity, it is often argued, is unavoidable in a situation where tax-payers stop at nothing to evade tax

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- Taxation is a tool to achieve redistribution of income . High rates of tax reduce investment and makes it hard to generate sufficient total resources.
 - Tax culture is dominated by a mentality and practices of evasion and avoidance. This is constituted and legitimised through the social approval of non-compliant behaviour, knowledge of the politicisation of the tax bands etc. 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.



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- 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.) 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.
 - Tax administration brings together information from different sources and verify it. They require various private and public agencies to furnish information. It needs an efficient system of monitoring with easy access for retrieval and cross-checking..

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- 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. 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. Information reporting and withholding is an important task of tax administration

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- Adopting new technology carries with it potential pitfalls as well as potential gains. 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.
 - 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 their capacity to acquire information, countries also need to have adequate procedural safeguards for privacy protection. Countries need to balance the benefits of providing taxing authorities with resources, against the costs of invasion of privacy and potential for abuse by government officials

CONCLUSION

- 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. Parties may agree to regulate use of personal information by means of a “privacy clause” or a “confidentiality clause”. 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) etc Therefore, the right to privacy in India remains a de facto right.
- Though there has been a spate of rights-related legislations but this package of laws is incomplete without a fundamental right to participate



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- 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. This can help the abuse of power by International corporations, and the financial elite, to help Indians who need development. This would tackle the various forms of corruption specially taxation problems in India
 - Businesses need to be transparent about their tax planning. and above all they need to be open about it. Capitalist pursuits and societal imperatives need to be balanced . The future of Society is dependent on the capacity of the state to balance ethics privacy and transparency.

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- 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.
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 - Apart from companies, government and business should ensure that corporate tax contributions are a 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.





■ **THANK YOU**

