

# PRIVACY, A FUNDAMENTAL RIGHT THE STATE MUST PROTECT

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

In an article in *The Hindu*, [Is a person's address public information?](#) (OpEd page, December 1, 2020), the writers, Shailesh Gandhi and Prashant Reddy T., raised a few issues over a recent [Bombay High Court order](#) directing the government to take down the address of a Right to Information (RTI) applicant from its website.

The writers had argued that no 'law or principle of law prevents the state from disclosing such information about the addresses of citizens' and placed the onus on keeping the address private on RTI Applicants by specifying a P.O. box. Our article attempts to point out why the framing of the initial question is misleading and looks at the problems in the December 1 article.

Explained | [The right to privacy](#)

First, the writers cite the example of public telephone directories and voter lists to point out how addresses are not always treated as private information. They further point to how disclosure of beneficiary addresses helps with transparency and accountability of social welfare programmes and serves public interest. The first example is a paraphrased version of the tired rhetoric on India's privacy culture, i.e., 'Indians don't care about their privacy.' A similar argument made by the state was [repelled by a unanimous nine-judge Bench of the Supreme Court of India](#) in [Justice K.S. Puttaswamy \(Retd\) ... vs Union Of India And Ors. \(9J, 2017\)](#). Further, none of these examples has been judicially tested, especially in the context of such information being available digitally, where the unforeseeability of extent of harms is aggravated: something which the nine-judge Bench decision also acknowledged.

But, more importantly, an assertion that addresses are sometimes published information or that disclosure of addresses may serve public interest in some cases is of little use to decide the question in any given case, such as disclosure of the addresses of RTI applicants.

Second, the writers may be correct in stating that the High Court decisions do not exposit their reasoning from first principles of transparency or privacy. However, they fail to see the line of reasoning that justifies the decision — from the recognition of citizens having an interest in guarding their addresses as private/personal information; unauthorised or mandatory disclosure of such personal information constituting an infringement; privacy being a fundamental right that the state must respect and protect; and any state action has to be justified based on the four-pronged test articulated in the nine judge Bench decision of *Puttaswamy*. The requirements of the backing of law; the law being in pursuance of a legitimate state purpose; the proposed action having a rational nexus to such purpose; and the extent of infringement being necessary and proportionate to purpose constitute that test.

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A useful framework for first-principles reasoning that the writers search for may come from a ruling of the Allahabad High Court earlier this year. Questions that relate to the publication of personal information, such as addresses, came up in a *suo motu* action against the Uttar Pradesh government for putting up posters with the personal details of people accused of allegedly destroying public property during the widespread protests against the [Citizenship](#)

[\(Amendment\) Act](#). These personal details included their photographs, names, and addresses. Following *Puttaswamy*, the Court found the action of State ‘nothing but an unwarranted interference in the privacy of people’. The High Court observed that neither was there a law which empowered the state to put up such posters with personal details nor was there any legitimate aim that a democratic state could pursue for which such action could be deemed necessary and proportionate. Therefore, the pertinent question is whether the state has lawful power to publish information that a citizen may consider private and not merely the somewhat self-fulfilling question that the writers pose.

Third, the writers refer to Section 8(1)(j) of the [RTI Act](#) to assert that there is an obligation to disclose personal information where such ‘information bears a nexus to public activity’. It is not immediately apparent the basis for the writers’ assertion that an RTI applicant’s address has any nexus to public activity. Perhaps, more significantly, the writers overlook the other limb of that Section that disallows disclosure that would cause an unwarranted invasion of privacy — which is a consequentialist test — the kind that the writers criticise the High Court decisions for. Section 8(1)(j) still allows disclosure subject to the public information officer making a case by case judgment on whether the larger public interest is served by disclosing such personal information. It is not clear what the writer’s idea of the larger public interest is in disclosing the addresses of RTI applicants.

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On the other hand, there is significant public interest in not disclosing the personal information of RTI applicants. In this case, it was not a mere publication of his address as part of some broader list containing addresses of all citizens of his area. The disclosure also easily brought out the association of his address with his application that made him the target of violence and retaliation.

Protection of privacy for individual citizens and transparency of public authorities are two sides of the same coin. An open and transparent government that also guarantees, respects, protects, promotes, and fulfils every citizen’s right to privacy is not a contradiction in terms. To insist that applicants must waive or make compromises on their right to privacy to exercise their rights under the transparency law is an unreasonable barrier that causes a chilling effect in exercise of those rights, quite significantly harming the very cause that is sought to be championed.

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