

PRIVACY – A GLOBAL RIGHT

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ABSTRACT

The privacy discussion in the twenty-first century was effectively sparked by the need for data privacy legislation and civil rights of privacy for every individual, regardless of sexual orientation. The right to one's privacy is one of the foundational rights that are safeguarded by the Constitution. It is an essential element of life and liberty. It exists in all individuals equally, regardless of class, strata, gender, or orientation. It contributes significantly to the growth of one's personality, integrity, and dignity. Although privacy is not an absolute right, an invasion must be based on legality, necessity, and proportionality to protect this cherished right, and it must be justified by law.

In this article, the writers examine the history of privacy and how it came to be enshrined in "Article 21 of the Indian Constitution". The article mainly discusses the development of the law regarding this privilege as a Fundamental one. The part about privacy becomes significant here because, although we live in the information age, not all the information we possess needs to be shared; some information needs to be kept confidential for various reasons. In today's highly connected and technologically sophisticated world, safeguarding such personal information is of the utmost importance.

1. INTRODUCTION

The "right to privacy" includes the freedom from clandestine surveillance as well as the ability to choose when, how, and to whom one's information is disclosed. The idea of privacy is centuries old, and over the course of history, it has evolved to work both to a person's advantage and against them.¹ The development of technology has broadened its scope so that it now encompasses a variety of domains, including the physical, the technological, the decisional, and the dispositional.²

To safeguard individual liberties and guarantee justice for all, the law needs to evolve alongside the rapid speed of technological progress. The evolution of the Indian judicial system has been assisted by a number of changes made to pre-existing statutes, as well as by the formulation and implementation of new statutes. The most recent ruling from the Supreme Court, which established personal privacy as a fundamental human right, has been hailed as a historic decision.

¹ Payal Thoeray, "Informational Privacy: Legal Introspection in India" ILI Law, Review Vol and II Winter Issue (2019) II 160.

² Graham Greenleaf, "Data Protection: A Necessary Part of India's Fundamental Inalienable Right of Privacy Submission on the White Paper of the Committee of Experts on a Data Protection Framework for India" (2018) SSRN Electronic Journal

“Freedom is what gives each individual value”, as mentioned by Justice Krishna Iyer. For this reason, privacy is essential to concepts like respect and liberty. Since the concept of privacy is at least as old as common law and is, in effect, an outgrowth of those laws, there is no need to introduce anything new to the discussion; instead, it simply needs a formal acknowledgement. You can't argue it out of the list of basic rights because it's so intrinsically linked to other rights, like the right to be treated with dignity and liberty. Arthur Miller and other lawyers say that “privacy is hard to define and pin down because it changes all the time”.

While Aristotle and William Blackstone try to describe privacy, they also make a distinction between private wrong and public wrong. A public wrong is wrong against society, and private wrong is wrong against a person. The Greeks were the first people to realize that there is a connection between a person and a state. They also gave an outline of how this connection is formed. Privacy is a human right that can't be taken away because it's part of who we are. It's also one of the most basic human rights. The “right to privacy” is something that everyone is born with. Privacy is just the right of a person to be left alone, which is protected by common law.

It is of the utmost significance to take into account the other point of view as well, and in accordance with this point of view, the “right to privacy” is regarded as a natural right. Natural rights are those heavenly rights that are regarded as being superior to all other rights. The proponents of the social contract theory, such as John Locke, who wrote a book called "Two Treatises on Civil Government," planted the roots for the “right to privacy” by supporting the “theory of natural rights”, which, in Locke's view, were unchangeable and inalienable rights. Locke's book was titled "Two Treatises on Civil Government." Therefore, the natural law doctrines are where the concept of private first emerged.

2. OUTLINING PRIVACY

In other words, privacy is the assurance that one's individuality will not be exploited in any way without consent. When it comes to personal issues over which the general public does not have a say and which do not directly or indirectly affect the general public, an individual has the “right to privacy” A individual has the “right to privacy” in things that are intimate or sensitive to them. The privilege of having one's private affairs left alone and free from covert monitoring.

There are four categories.

- A restriction that prevents someone else from experiencing a person or a setting.
- The imposition of a limit that only applies to an organization.
- The elimination of the need to explore for undiscovered information and
- The prevention of efforts to learn about a person's mental condition. It is a state in which no one is paying attention or bothering you. It is also the state of not being in the public eye.

The “right to privacy” has a long history. It is a common law principle that an invasion of privacy entitles the victim to claim tort-based damages. Semayne's Case was one of the earliest cases on the subject. (1604). “The Case involved the Sheriff of London entering a property in order to execute a valid writ.” While acknowledging a man's “right to privacy”, Sir Edward Coke famously stated that "every man's home is his castle and fortress, as much for his defence against injury and violence as for his repose." The concept of privacy flourished in England

during the 19th century and is well-established in the modern era. In “Campbell v. MGN”, the court ruled that if "an intrusion occurs in a situation where a person can reasonably expect his privacy to be respected, that intrusion may give rise to liability unless it is justified."

3. THE INTERNATIONAL CHARACTER - RIGHT TO PRIVACY

- **“Universal Declaration of Human Rights, - Article 12”³**

Several aspects of privacy are discussed in this article, but the primary focus is on an individual's “right to privacy”

There are many different parts to this article, including the following:

- Privacy for the Family
- Privacy of the Individual
- Home or correspondence Privacy
- Privacy pertains to one's integrity and reputation.

The “right to privacy” does not allow for "arbitrary interference." The law protects the “right to privacy” and its numerous components. There is particular protection afforded to individuals' rights to privacy against any interruption or assault that may be arbitrary. Within the context of this article, a significant focus has been placed on the privacy of individuals.

- **International covenant on civil and political rights 1966⁴- Article 17**

Article 17 follows the same pattern as Article 12 of the UDHR.

“The main difference between Article 12 (UDHR) and Article 17 (ICCPR) is that Article-17 has the word UNLAWFUL added to it, which makes it more specific than Article 12.”

Article 17 also puts a lot of weight on people's “right to privacy”.

Under ART 40, the Human Rights Committee has looked at a number of reports, and after reading them, the committee has pointed out areas of worry. Here are a few significant worries:

- Automated information systems make it hard to protect people's privacy.
- National espionage services make it hard to keep your information safe.

4. REGIONAL LAWS PROTECTING THE “RIGHT TO PRIVACY”

- **“The American Convention on Human Rights 1969”**

Article 11 addresses all other human rights in addition to the “right to privacy” as a civic and political freedom. In the first section of this document, the "honor" and "dignity" of every individual person are safeguarded. The most essential component of individual privacy is an individual's sense of dignity.⁵

- **“The African Charter on Human and Peoples’ Rights, 1981”**

Article 4⁶ of the charter can be interpreted to have a tangential bearing on the “right to privacy”.⁷

It is comprised of the following parts and pieces:

- Honour and regard for life

³ Hurst Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law” (1998) 3 Health & Human Rights 144

⁴ Martin Scheinin, “The International Covenant on Civil and Political Rights”, Making Treaties Work: Human Rights, Environment and Arms Control (2007) Cambridge University Press 323.

⁵ American Convention on Human Rights.’ (1987) Annual review of population law

⁶ African Charter on Human and Peoples’ Rights.’ (1987).

⁷ Michelo Hansungule, “The African Charter on Human and Peoples’ Rights”, The African Union: Legal and Institutional Framework: A Manual on the Pan-African Organization (2012) Brill 233.

- The unwavering honesty of an individual
- Prohibition of any form of unjustified infringement upon the exercise of this right.
- Inviolability to people

The idea of inviolability was derived from Warren Brandeis's concept of inviolate personality, which was first presented in 1942.⁸ This article establishes an individual's "right to privacy" in an informal manner by stating that inviolate personality is the primary component of a person's "right to privacy".⁹

- **“ASEAN Human Right Declaration 2012”**

Article 21 of the ASEAN Declaration on Human Rights asserts that every individual should be afforded the right to personal private. In compliance with document 12 of the UDHR¹⁰ and Article 17 of the ICCPR¹¹, this document has been drafted.¹²

5. INDIAN CONSTITUTIONAL - RIGHT TO PRIVACY

After the decision in the case of “K.S. Puttaswamy v. UOI”, Article 21 of the constitution of India finally gave the “right to privacy” the place it wanted.¹³ The case of “Maneka Gandhi v. UOI” gave rise to this “Article 21” extension. Through court action and interpretation, many human rights were added to Article 21.¹⁴

If we look at the preamble, we can see that the integrity of the individual has already been guaranteed, and it has already been observed and considered that the right to one's privacy is an inseparable and essential component of human dignity. Because of this, the preamble's recognition of human integrity has already paved the way for establishing and incorporating a “right to privacy” into the Indian Constitution. The right to exist with human dignity has gained significant power and weight since the “right to privacy” was elevated to the status of a foundational right in recent years.

When we delve deeper into the Indian Constitution, we are able to discover other Articles that provide the “right to privacy” and safeguard any violation against this right. One such article is “Article 23”, which makes it illegal to engage in activities such as exploitation and beggary. This article provides evidence for the concept that Warren and Brandeis outlined, which is known as inviolate personality. The concept of inviolable identity is also acknowledged in “Article 23”¹⁵.

Since the “right to privacy” has recently been elevated to the status of a fundamental human right, violations of this right can now be rectified through the use of writs filed under “Articles 32 and 226”¹⁶. The fact that privacy can now be legally protected as a result of its status as a foundational right has helped bring this right its long overdue acknowledgement.

When we speak about fundamental rights, “Article 13 of the Constitution”¹⁷ from 1986 is another important part of the discussion. This article makes it abundantly obvious that the state is prohibited from enacting or changing any laws that are subsequently discovered to be in

⁸ Samuel D Warren and others, “The Right to Privacy Today” (1929) 43 Harvard Law Review 297.

⁹ Ibid

¹⁰ Janet Zandy, “Universal Declaration of Human Rights” (2019) 113 Radical Teacher 54.

¹¹ “American Convention on Human Rights”, (1987) Annual review of population law

¹² ASEAN Secretariat, “ASEAN Human Rights Declaration and Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration”¹⁵.

¹³ Ralph F Fuchs and PB Gajendragadkar, “The Constitution of India” (1970) The American Journal of Comparative Law 331.

¹⁴ Ibid

¹⁵ A Berriedale Keith and GN Joshi, “The New Constitution of India”(1939) The University of Toronto Law Journal 676.

¹⁶ Michael C Dorf and Charles F Sabel, “A Constitution of Democratic Experimentalism” (1998) Columbia Law Review 205

¹⁷ KC Wheare, “The Constitution of India” (1951) International Affairs 403.

violation of fundamental rights. As a result, no individual's "right to privacy" can be violated by any act, legislation, or rule that is currently in place.

6. JUDICIAL DEVELOPMENT OF PRIVACY IN INDIA

1. "Kharak Singh v State of U. P."¹⁸

Ratio: The Constitution does not guarantee privacy. "Article 21" acknowledged the common law "right to privacy" and served as the depository for personal rights that had not been explicitly granted.

2. "Govind v State of M. P."¹⁹

Ratio: The "right to privacy" is a concept that needs to be negotiated on a case-by-case basis. We do not think the right to privacy is absolute, even if we grant that it is a byproduct of the freedoms of life, movement, and speech that are themselves basic rights in India.

3. "R. Rajagopal v State of Tamil Nadu"²⁰

Ratio: The guarantee made to the citizens of this nation in "Article 21" regarding their "right to life" and liberty includes an implication regarding their "right to privacy". It is a fundamental human freedom to be left alone.

4. "People's Union for Civil Liberties v U.O.I."²¹

Ratio: The "right to life and personal autonomy", including the "right to privacy", are safeguarded in the Constitution by Article 21, the 21st amendment. "Article 21" comes into play once the specifics of each case demonstrate a right to personal privacy. This freedom cannot be restricted unless it is done so in compliance with the due process of the law.

5. "District Registrar Collector, Hyderabad & Anr. v. Canara Bank & Anr."²²

Ratio: There is a difference between the "right to privacy" of an individual and the "right to privacy" of locations such as a person's home. The "right to privacy" cannot be exercised if anything that is part of the public record, including judicial paperwork, is presented as evidence.

6. "Selvi & Ors. v. State of Karnataka"²³

Ratio: There needs to be some differentiation between the limits imposed on people's "right to privacy". When considering the concept of the "right to privacy", it is necessary to make a distinction between an individual's corporeal privacy and the privacy of their cerebral activities.

7. "Unique Identification Authority of India & Anr. v. C.B. I."²⁴

Ratio: The Supreme Court of India ruled that the Unique Identification Authority of India is not permitted to transfer the biometric information of any individual given an Aadhaar number to any other agency without first obtaining the individual's written consent. This ruling was issued as part of a temporary ruling.

8. "Justice K S Puttaswamy (Retd.) v. U.O.I. & Ors."²⁵

Ratio: The Supreme Court upheld the legality of "the Aadhar Scheme" on the grounds that because limited biometric data are collected during the enrollment process, and the verification process is not open to the public, it did not violate the "right to privacy" of individuals. The

¹⁸ Kharak Singh v. The State of U. P. & Others, 1963 AIR 1295

¹⁹ Gobind v. State Of Madhya Pradesh And Anr. on 18 March, 1975, AIR 1975 SC 1378..

²⁰ R. Rajagopal and Ors. v. State of Tamil Nadu, 1994 SCC (6) 632.

²¹ People's Union Of Civil Liberties v. Union Of India AIR 1997 SC 568.

²² Distt. Registrar & Collector, Hyderabad & Anr v. Canara Bank, AIR 2005 SC 186.

²³ Selvi and Ors. v. State of Karnataka, A.I.R 2010 S.C. 1974.

²⁴ Justice K.S. Puttaswamy and Anr. v. Union of India (UOI) and Ors, (2019) 1 SCC 1.

²⁵ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

majority of the court upheld the constitutionality of “the Aadhaar Act, 2016”, with the exception of a few clauses concerning the disclosure of personal information by private businesses, the awareness of criminal activity, and the use of “the Aadhaar ecosystem”. In accordance with Puttaswamy's (2017) judgment, they concentrated on demonstrating that the proportionality test had been satisfied.

7. A WAY FORWARD –

After a period of more than a decade during which no legislative action was taken, India is getting ready to enact a series of adjustments to the laws governing data and information technology²⁶. Without a doubt, the shift will help India realize its full promise as one of the world's most effective data-driven economies. The Indian government may begin working on a new law to replace the "Information Technology Act of 2000" within the next few months. For this reason, the government may issue new data administration and hacking guidelines, draft a “Digital India Act” to replace the Information Technology Act and draft new legislation to replace “the Personal Data Protection Bill”. These bills are meant to replace “the Personal Data Protection Act”²⁷.

In order for the Indian government to successfully approve any new legislation, it is necessary to take into account a variety of important considerations. First, the law in India should require businesses and government agencies to implement a “privacy-by-design policy”. This means that the primary method for storing personal data is to empower data principals with complete control over data privacy, as well as a set of opt-out choices. Secondly, the law should mandate that individuals have the right to opt out of having their personal data stored.

Second, the commercialization of data should be contingent upon the implementation of stringent safety measures as a prerequisite. Elements such as the localization of data, the classification of data categories, international data movement and storing, and individual rights should all be controlled, bearing in mind the operations of companies and the rights of individuals. Aspects such as legislative procedures, logistics, data centres, and internet connectivity should be explained by complementary legislation.

India is one of the few nations in the world without a comprehensive and modern data security legal framework. The government of India needs to set up a structure that brings it in line with the organizing models used by other countries instantly if it wants to present India to the rest of the world as a digital economy with a flourishing data services industry. In contrast to other types of legislation, data protection laws cannot be implemented domestically in a vacuum; rather, they must be compatible with the international realm.

8. CONCLUSION

In this day and age of rapidly expanding information technology, Privacy is necessary to be foundational in nature. In this way, the ruling of the Honorable Supreme Court is right because it made privacy a right under “Part III of the Constitution of India”. In this case, the Honorable Supreme Court's decision is right because it made privacy a right under “Part III of the Constitution of India”. The “right to privacy”, which is fundamental in nature, will play an essential part in the enactment of the “Data Protection Act”, which is likely to be enacted soon and will serve to provide protection to online data and will provide for informational Privacy

²⁶ MA Yadugiri and Geetha Bhasker, “The Information Technology Act, 2000” (2011) English Law 482.

²⁷ Purushotham Kittane and others, “India Privacy and Data Protection 2020 Wrap” [2021] National Law Review

as well. This is because the “Data Protection Act” is likely to be enacted soon. Bentham provided the pain and enjoyment theories, which he also contributed to the field of law. As a result, the government has an obligation to take into consideration the satisfaction of a greater number of people and should strive to cause less suffering. When it comes to the people's private information; the government should not be able to exercise its authority in an arbitrary manner without being subject to some kind of legislation. Also, when it comes to the conflict between the invasion of an individual's “right to privacy” and the protection of the public interest, appropriate caution must be taken to choose which of the two is more important. The pursuit of one's own interests cannot triumph over the common good. In a democratic society, it is essential to uphold the dictum that “salus populi est suprema lex”, which translates to “the welfare of the people is the highest law”.