

## RIGHT TO PRIVACY

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### ABSTRACT

Right to privacy is a bundle of rights. According to Black's Law Dictionary 'right to privacy' is a general term consisting of several rights which are recognized as inherent in the concept of liberty, and further such rights which prevent government interference in personal activities or relationship's, freedoms of individual to make fundamental choices involving himself and his relationship with others. The right to privacy thus has been understood to protect a private space in which man may remain and become himself. Privacy has many aspects; some may come under as fundamental right, some may not. It may be interpreted as an epitome of liberty; however notion of privacy seems to larger than even liberty at some instances. Almost every country in the world identifies a right of privacy explicitly in their Constitution. In many of the countries where privacy is not explicitly identified in the Constitution, such as the United States, Ireland and India; the courts have found that right in some other provisions. Right to privacy gains importance in present scenario where the biometric or Adhaar ID removes duplicity or fake IDs and therefore, is a great instrument to benefit people who live on margins through government welfare related schemes. The present research paper explores the legitimacy and extent for right to privacy in changed technological scenario, at a time when biometrics and identity data is being stored for multipurpose uses including search and surveillance.

**Keywords:** Right to privacy, Right to life, constitution

## INTRODUCTION

The right to privacy is an element of various legal traditions and a human right which may prevent both government and private party actions that threatens the privacy of individuals.

*The right to privacy is conserved as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms which are guaranteed by Part III of the Constitution.*

Privacy also extends to other aspects, consisting bodily integrity, confidentiality, informational self-determination, personal autonomy, dignity, protection from state surveillance, compelled speech and freedom to resist or think or move.<sup>1</sup> The constitutional right to privacy protects the liberty of people to make certain vital decisions considering their well-being without government coercion, interference or intimidation. Such vital decisions may involve religious faith, political affiliation, moral values, marriage, procreation or death.

On contrary, this constitutional right to privacy does not protect all forms of conduct that are pursued behind closed doors. Adults have no constitutional right to inject intravenous drugs, solicit prostitutes or view Child Pornography. Nor do members of society have a right to be isolated from every potentially offensive activity.<sup>2</sup>

## BRIEF HISTORY OF THE RIGHT TO PRIVACY

The earliest reporting of ‘right to privacy’ in Indian jurisprudence happened in the late 1800s when a local British court upheld the privacy of a pardanashin woman to access her balcony without the fear of her neighborhood’s gazing. Ever since the jurisprudence has evolved and the right to privacy was added into ‘Article 21’ of our constitution by the Supreme Court of India (SCI) as a constituent part of ‘personal liberty’. Like most other freedoms, we took it for

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<sup>1</sup> Privacy rights, available at; <https://www.jstor.org/topic/privacy-rights/> last seen on 01/09/2018

<sup>2</sup> Constitutional law, available at; <https://legal-dictionary.thefreedictionary.com> last seen on 03/09/2018

granted, until our government mentioned that right to privacy is not a fundamental right after all.<sup>3</sup>

Privacy not being a fundamental right was first told by the Supreme Court in the year 1954. An eight-judge bench in *M.P. Sharma v. Satish Chandra case (1954)* while dealing with the power to seize and search documents discharged the continuation or existence of a right to privacy.

## **EXTENSION OF THE RIGHT TO PRIVACY**

Privacy is understood differently in many different countries. In western countries, particularly the UK and the USA it is regarded as protection against the intervention of one's privacy by the government, companies and other individuals as well. Some countries have assimilated these rights into their privacy laws and constitutions. Many other countries have laws which restrict privacy such as take the case of taxation law, which requires individuals to contribute their personal information regarding income and earnings with individual privacy laws and more specifically where some laws require public disclosure of matters which other cultures and countries acknowledge to be private.

“The evolution of a right to privacy goes hand in hand with the development of the humanist tradition. A right of privacy is anticipated on the belief that each human being has intrinsic value which is valuable in and of himself or herself. Respect for this belief becomes the fundamental origin of all human rights.”

Since the global surveillance disclosures of 2013 the, natural or inalienable human right to privacy has become a matter of international debate. Under the appearance of withstanding terrorists, controversial agencies such as the NSA (National Security Agency), Raw (The Research and Analysis Wing), GCHQ (The Government Communications Headquarters) and others have engaged in mass global surveillance, overthrowing the right to privacy.

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<sup>3</sup> History of right to privacy, available at; <https://www.theweek.in/content/archival/news/india> last seen on 04/-09/2018

***Justice K.S. Puttaswamy v. Union of India case***

On the 24<sup>th</sup> of August, a nine-judge bench of the Supreme Court of India (SCI) delivered its verdict in *Justice K.S. Puttaswamy v. Union of India*, differently asserting that the right to privacy is a fundamental right under the Indian Constitution. This consistent judgment by the Supreme Court is a producing victory for privacy. It impacts the interplay between privacy and transparency and between privacy and free speech; it impacts State surveillance, data collection and data protection, the legality of food bans, LGBT rights, the legal framework for regulating artificial intelligence as well as many other issues that we cannot foresee or anticipate for now.<sup>4</sup> The ruling is the outcome of a petition challenging the constitutional validity of the Indian biometric identity scheme of *Aadhar*. The judgment's ratification of the right to privacy as a fundamental right marks an important moment in the constitutional history of India. The one-page order signed by all nine judges declares;

*'The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.'*

The right to privacy in India has developed through a series of decisions over the past 60 years. Over the years, incompatible from two early judgments created a division of opinion on **whether the right to privacy is a fundamental right.**

***Highlights of this judgment***

- The apex court overruled previous judgments on the privacy issue
- It overruled an eight-judge bench judgment in the MP Sharma case and a six-judge bench judgment in Kharak Singh case
- Both earlier judgments ruled that privacy is not a fundamental right.<sup>5</sup>

Hence, India's Supreme Court on 24<sup>th</sup> of August 2017 announced that privacy is a fundamental right for each of its 1.3 billion citizens protected under the country's constitution. India, the

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<sup>4</sup> The SC's right to privacy judgment, Gautam Bhatia, available at; <https://www.livelaw.in/supreme-courts-judgment/foundation> last seen on 04/09/2018

<sup>5</sup> Highlights, Dhananjay Mahapatra, available at; <https://timesofindia.indiatimes.com> last seen on 04/09/2018

world's biggest democracy, joins the United States, South Africa, Canada, the European Union and the United Kingdom in recognizing that there is such a right.

In one sense, this judgment of the Supreme Court on right to privacy is quite genuine and straightforward. Just as it has examined our Fundamental Rights in the past to include the rights to education, to livelihood; to food, shelter, water; against custodial violence, reproductive rights, among many others, it has now interpreted to include them in the right to privacy.

*So, what happens if tomorrow we are told that the right to privacy is not a fundamental right?*

The right to privacy will miss its status amongst the Golden Trinity of Article 14 (Equality), Article 19 (Fundamental Rights) and Article 21 (Right to life). These rights can be taken away from us only by a just and reasonable law, which is the superior protection that our constitution provides us. If privacy is not a fundamental right, then this deep seated right can be taken away by our legal system. In the *Aadhar era*, where our right to life and liberty is linked to our identity in the form of Aadhar, the consequences could be alarming to say at least.<sup>6</sup>

## **RIGHT TO PRIVACY UNDER ARTICLE 21 AND RELATED CONFLICTS**

According to Black's Law Dictionary, '*privacy*' means, "right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted intervention by the public in matters with which the public is not obligatorily concerned."

Article 21 of the Constitution of India states that "No person shall be deprived of his life or personal of liberty except according to procedure established by law". After reading the Article 21, it has been deduced that the term 'life' includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

A very alluring development in the Indian Constitutional jurisprudence is the elongated dimension which is given to Article 21; that is (*right to life and personal liberty*) by the Supreme Court of India (SCI). The Supreme Court has cited Article 21 as the *heart of the*

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<sup>6</sup> *Supra 3*

*Fundamental Rights.* Now this Article 21 has proved to be very multi-faceted. The elongations or extensions in the dimensions of Article 21 have been made achievable by giving it an extended significance to the word ‘life’ and ‘liberty’ in Article 21. These two words in Article 21 are basic terms which are to be interpreted meaningfully.

The strategy approved by the Supreme Court with a view to broaden the boundaries of Article 21 and to involve certain right there from has been to interpret Art.21 along with international codes on *human rights*.

The Constitution of India provides Fundamental Rights under Chapter III. These rights are guaranteed by the Constitution. One of these rights is provided under Article 21 which reads as follows:-

**Article 21:** *Protection of Life and Personal Liberty; No person shall be deprived of this life or personal liberty except according to procedure established by law.*

It clearly means that this fundamental right has been provided against state only. If an act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other person then such violation would not fall under the parameters which are set for Article 21. So in such a case the remedy for aggrieved person would be either under Article 226 (Power of High Courts to issue certain writs) of the constitution or under general law.

But, where an act of private individual supported by the state infringes the personal liberty or life of another person, the act will certainly come under the boundary of Article 21. Article 21 of the Constitution deals with the prevention of encroachment upon personal liberty or deprivation of life of a person.<sup>7</sup>

## **PRIVACY IS A MEANS TO PRESERVE DEMOCRACY**

Calculating on the nature of privacy, the court realized that it “affirms the reservation of a private space for a person, distinguished as the right to be let alone. The concept exists on the

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<sup>7</sup> Art 21 expanding horizons, available at; <http://www.legalserviceindia.com/articles/art222.htm> last seen on 06/09/201

autonomy of the individual. The ability of an individual to make choices lies in human personality.” If the aim or purpose of privacy is *to preserve democracy*, then data protection laws must follow this purpose. The Supreme Court has done well to lay down the preparation, expounding that privacy must “enable individuals to conserve and defend their beliefs, thoughts, ideas, expressions, preferences and choices against demands of congruity and homogeneity.”<sup>8</sup>

***How does the sharing of personal data over the Internet threaten our society?***

Administrative, medical as well as legal data are mostly kept in digital form nowadays. And a plenty of personal data is now publically accessible, over the Internet. Such records being exposed to the digital world have fresh challenges as quickly as the Internet grows. At the same time, the propagation of new technologies such as smart phones and tablets threatens our privacy. Considering the persuasive influence of technology and the adverse impacts for democracy, it is clear that the principles of consent, notice and purpose limitation need to be reframed in order to take into account and limit the ability of companies and government to influence our norms, preferences and behavior.

***How have mobile technologies changed the situation the privacy protection?***

Cell phone companies must establish a subscriber's cell phone in order to channel communications via network antennas. However, locating our cell phone not only reveals our physical location, it also reveals when we are there, how long and even with whom. So far, this personal data is relatively well protected within the current legal framework.<sup>9</sup>

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<sup>8</sup> Privacy as a means to preserve democracy, available at; <https://thewire.in/economy/right-to-privacy> last seen on 05/09/2018

<sup>9</sup> Protecting privacy also means preserving democracy, available at; <https://phys.org/news/2014-09-privacy-democracy.html> last seen on 06/09/2018

## CONCLUSION

*"There is a sacred realm of privacy for every man and woman where he makes his choices and decisions-a realm of his own essential right and liberties in to which the law, generally speaking, must not intrude."<sup>10</sup>*

The concept of privacy is not a simple or segregated issue. On the most intimate and personal matters concerning an individual's life, each individual ought to be free to make his or her decisions without the government telling them as to what they can and cannot do. If their actions does not actually affect others, they should be free to affect themselves.

An Amendment for privacy would work to coordinate the law with these moral facts. A privacy Amendment would lessen and narrow the gap between what the law is, and what the law ought to be.

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<sup>10</sup> Geoffrey Fisher, available at; <http://shodhganga.inflibnet.ac.in/bitstream/10603/52364/> last seen on 06/09/2018