

DIFFERENT FACETS OF ANALYSIS OF ARTICLE 21'S RIGHT TO PRIVACY IN DIGITAL ERA

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ABSTRACT

The right to privacy is a basic human right that is established in several international treaties. It is critical for the safeguarding of human dignity and is one of the fundamental tenets of a democratic state.

Right to privacy is declared as a fundamental right in *Puttaswamy v UOI*ⁱ. It is not only declared as a basic human right under the universal declaration of human rights act 1948 but it is also mentioned in the international convention on civil and political rights ,1966. The term privacy in its basic form means the rights to be left alone or the privilege of an individual to live his/her life without any unwarranted publicity. With the technology invading the day-to-day functioning of the people has completely changed the scope of right to privacy in India from mere right to property related matters. Dr Ambedkar has considered social democracy the most important over political democracy. The right to privacy includes myriad rights like medical privacy, the right to be forgotten, the right to be let alone, the privacy of sexual orientation and matrimonial privacy. The landmark judgement of Apex court in the case of *Putaswamy* in which SC has granted right to privacy the status of fundamental right and overruled its previous judgements of *MP Singh* and *Kharak Singh*ⁱⁱ to the extent that both the judgements held that there is no fundamental right to privacy.

INTRODUCTION

In 1890, Louis Brandeis and Samuel Warren attempted to define the right to privacy as the “right to be left aloneⁱⁱⁱ”. Non-state actors as well as the state are not allowed to meddle with an individual's private zone of conduct. As a result, the right has progressed from “simple personal sensitiveness” to a protected Fundamental Right under Article 21 of the Constitution of India. This case established an important premise of human dignity: privacy is an inherent right of every human being. Without it, life ceases to be human, according to the Supreme Court in *KS Puttaswamy vs Union of India*^{iv}. Noteworthy: The Supreme Court also noted that just because an individual has handed up his or her personal information does not mean that he or she forfeits his or her right to privacy.

The framing of the Right in such broad contours also includes the autonomy of an individual over the data he wants to put out in public sphere. The Right to be Forgotten etched as an integral part of the European Union’s General Data Protection Regulations (hereinafter referred to as GDPR) is still evolving in India. It is arguably one of the most crucial tenets of individual autonomy and privacy as held to be a part of Article 21^v. The right implies giving full control over the dissemination of personal data of an individual and the right to restrict the continued publication in public domain.

The Parliament in 2019 introduced the Personal Data Protection Bill which seeks to establish a data protection regime as a counterpart of GDPR in India. With the digital revolution booming and greater interconnectedness of applications heralded by Industrial Revolution 4.0, the possibilities of data being clubbed away from silos and the created of Big Data have increased now more than ever. This increases the susceptibility of sensitive personal data being exploited by commercial giants for various purposes like targeted advertising. Moreover, the increase in state mass surveillance for varied purposes like virus tracing (Arogya Setu App), criminal activity detection has brought us closer to establishment of an Orwellian state^{vi}.

EVOLUTION OF RIGHT TO BE FORGOTTEN IN INDIA

The right first came into focus vide judgement in *Dharmaraj Bhanushankar Dave v. State of Gujarat*. Here the applicant wanted to get his name removed from the search engine of Yahoo^{vii}. He sought to remove such information as he wanted to remove the particulars of a case in which

he was eventually acquitted. But such information was repeatedly showing up on popular engines thereby prejudicing his future employment. Hon'ble Court rejected the plea in view of absence of any legal constitutional right in this regard. In another conflicting judgement of Sri Vasunathan v. The Registrar, The applicant sought to remove the name of her daughter which propped up on popular engines concerning a matrimonial dispute though it was settled outside court. Here, the Court upheld the Right to be Forgotten and agreed to delete the same in view of trend in western countries.

Following this decision, the Delhi High Court granted the petitioner's plea to have all "MeToo" claims against him dismissed in Zulfiqar Ahman Khan v. Quintillion Business Media Private Limited. The court explicitly recognized the Right to be Forgotten as a 'integral aspect of privacy'[9] and mandated that material that has the potential to permanently damage a person's reputation must be removed.

THE RIGHT TO PRIVACY IN INDIA

Article 21's right to life is defined broadly, and so encompasses all aspects of life that contribute to a person's meaning, including the right to privacy. The Supreme Court held in Kharak Singh vs. the State of UP (1962) that Regulation 236 of the UP Police Regulations violated the Constitution by breaching Article 21. According to the Court, the right to privacy is a component of the right to life and personal liberty. In this case, the Court made a connection between privacy and personal liberty.

The Supreme Court specifically said in R. Rajagopal v. State of TN^{viii}, also referred to as the "Auto Shanker case", that the "right to privacy", or "the right to be alone", is guaranteed by Art. 21 of the Constitution. People have the right to privacy, including the right to privacy of their family, marriage, reproduction, pregnancy, childbirth as well as other things. Nobody may write anything about these subjects without his consent, whether it is accurate or not, positive or negative.

TELEPHONE TAPPING: AN INFRINGEMENT ON THE RIGHT TO PRIVACY

Taping his wife's conversations with others in order to get evidence in court violates her right to privacy under Art. 21." In *Rayala M. Bhuvaneswari v. Nagaphamender Rayal*^{ix}, the petitioner moved for divorce from his wife and demanded that she give a hard disc containing recordings of her conversations with others in the United States to bolster his case. She disapproved of portions of the discourse. The Court found that the husband's tapping of his wife's conversations with others without her knowledge were illegal and breached her right to privacy under Article 21 of the Constitution.

In a landmark decision in "*People's Union for Civil Liberties v. Union of India*"^x known colloquially as the "Phone Tapping Case". As part of the right to life and personal liberty" entrenched in the Constitution, Art.21, the Supreme Court has decided that telephone tapping is an infringement on an individual's right to privacy, and that the State should not employ it unless an emergency or the public's safety needs it.

THE PRIVACY BILL, 2011

The Bill safeguards people against identity theft, which includes criminal and financial identity theft. Without the authority of a Secretary-level official, the Bill prohibits intercepting communication lines. Additionally, the material gathered must be deleted within two months of the interception ceasing. It establishes a Central Communication Interception Analyze Committee to evaluate and review interception orders that have been issued. Additionally, it is included by the need to ensure that any intercept that violates Section 5 of the Telegraphs Act is destroyed immediately. Additionally, it precludes monitoring unless in particular circumstances specified by the protocol.

According to the law, no individual whose place of business or data equipment is located inside India is permitted to release any data on another person without their consent. The Privacy law establishes an Indian Data Protection Authority. India's Data Protection Authority is tasked with the responsibility of monitoring advancements in computer technology and data processing. This is done to assess the legislation and its impact on data protection. Additionally,

the authority is responsible for receiving suggestions and representing the public on all matters relating to data protection.

Additionally, the authority has the jurisdiction to investigate data breaches and impose directives to protect data security interests. The law stipulates that any interception that does not follow the bill's criteria may result in jail or a fine. The law also states that anyone who obtains any information on anyone from a government official or agency under false pretences can be punished by up to Rs. 5 Lacs.

DEVELOPMENTS IN THE RIGHT TO PRIVACY IN THE SUBSEQUENT DECADES

Right to Press vs Right to Privacy

With the growth of social networking sites and technology, establishing the right to privacy as a basic right becomes very challenging. However, a person's right to privacy includes the right to protect their personal information.

Nowadays, everyone can be a journalist, as seen by the growth of social networking sites and blogospheres. Frequently, the right to privacy conflicts with the right to free expression. Article 19 (1) establishes a right to freedom of expression (a). A person's right to expression may collide with another person's right to privacy. Thus, in such cases, the concepts of public morality and interest are invoked. Each situation is unique, and each right is unique.

Any right derived from Article 19 may also be derived from Article 21. This is feasible because the word 'personal liberty' has a broad connotation. While the Court normally uses the standard of public morality or public interest where two derived rights clashes, an alternative interpretation is nevertheless feasible. A right derived from Article 21 trumps a right derived from Article 19. This is because a state that enacts legislation in violation of such right may be rescued by applying the reasonable constraints set out in Article 19(2) to (5). Prior to Maneka, this stance was not taken since Article 21 was not understood as a substantive right.

Additionally, the right to privacy may collide with numerous facets of the police inquiry. Narco-analysis, brain mapping, and polygraph examinations all result in an unwarranted

invasion of an individual's right to privacy. The Supreme Court recognized the right to privacy when it declared these tests unlawful and cruel.

Aadhaar judgement and the Right to Privacy

Residents have the right to get an Aadhaar number under the Aadhaar Act by providing biometric and demographic information as part of the enrollment process.

The Supreme Court was entrusted with evaluating whether the requirements of the Aadhaar Act violated the right to privacy, which the Supreme Court proclaimed a fundamental right in 2017. It's worth mentioning in this respect that a lot of services provided by both private firms and the government need a person to connect their Aadhaar number for verification, essentially requiring the great majority of people to get an Aadhaar number. As a consequence, the issue was not so much whether this violated the right to privacy as it was whether it was a legal exception. Certain provisions of the Aadhaar Act have been struck down or amended by the Supreme Court for failing to fulfill the aforementioned proportionality test. Apart from these provisions, the Supreme Court determined that the Aadhaar Act as a whole accomplishes a valid state objective and is reasonable, making it a justified exemption to the right to privacy.

The Right to Privacy in United States of America

United States privacy law is comparable to Indian privacy jurisprudence in the lack of a specific right to privacy in the Bill of Rights and in Part III in India's constitution.

The United States Supreme Court has also established standards, such as the 'reasonable expectation of privacy' test, that have been utilized in other countries to analyse privacy invasions.

The right to privacy has been carved out of several rights in the United States, including the Fourth Amendment, the Fourteenth Amendment, and the Ninth Amendment. In *Boyd v. United States*, 1886, the US Supreme Court affirmed an unconstitutional search and seizure as a violation of the fundamental right to personal security, personal liberty, and private property.

Additionally, in the 2014 case *Riley v. California*, the examination of an individual's smartphone during an unwarranted arrest was declared an unlawful search and confiscation of digital material. The Court, in a majority ruling, emphasized the significance of privacy evolving in the digital age, concluding, "Modern mobile phones are not just another

technological convenience." With everything they contain and all they may expose, they represent "life's privacies" for many Americans... The fact that a person may now carry such knowledge in his hand does not diminish its deserving of the protection for which the Founders battled."

WAY FORWARD

In the digital era, there is an urgent need for a constitutional definition and assurance of the right to individuality, personal autonomy, and privacy. The state should also take a proactive role in this technologically sophisticated era by establishing a comprehensive personal data protection structure. Legislators must establish a compromise between privacy protection and national security. Finally, the right to privacy should not be restricted to the state, but should include private businesses that gather citizen data as well.

CONCLUSION

Being a member of society often takes precedence over the notion that we are first and foremost individuals. Each person needs their own private area for whatever activity they engage in. As a result, the state recognizes each individual's right to enjoy such private times. According to Clinton Rossiter, privacy may be defined as a unique kind of reasonable independence that can be seen as a test of securing autonomy while minimizing certain personal and spiritual concerns. This autonomy is the most unique quality that a person may possess. They are genuinely autonomous people there. Often, this is a right against the state, rather than against the earth.

Under Article 21, privacy rights are necessary components of life and personal freedom. The right to privacy is not an inalienable right. They are subject to sensible constraints in order to safeguard criminals, the underprivileged, morality, and other human rights. If the two derived rights are in conflict with one another. If one examines the Apex Court's subsequent decisions, one can see the court's desire to consider fundamental rights as watertight compartments. This was particularly evident in the case of *A.K. Gopalan v. the State of Madras*^{xi}, and the judgement of *Maneka Gandhi v. Union of India* may likely signal a softening of this harsh stance (1978).

The right to life was seen as more than the manifestation of animal existence; it was viewed as a guarantee of a complete and meaningful existence.

ENDNOTES

ⁱ MANU/CA/0204/2008

ⁱⁱ (MP Sharma and Kharak Singh's case: 'Privacy not a Fundamental Right,' Supreme Court had held decades ago-India News , Firstpost, 2022)

ⁱⁱⁱ Samuel Warren and Louis Brandeis, 'The Right to Privacy' [1890] 4(5) Harv L Rev 193.

^{iv} MANU/CA/0204/2008

^v Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data [1995] OJ L281/31.

^{vi} Singh, Shiv Shankar. "PRIVACY AND DATA PROTECTION IN INDIA: A CRITICAL ASSESSMENT." Journal of the Indian Law Institute, vol. 53, no. 4, 2011, pp. 663–77, <http://www.jstor.org/stable/45148583>. Accessed 17 Apr. 2022.

^{vii} Committee of Experts under the Chairmanship of Justice BN Srikrishna, 'A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians'

^{viii} MANU / SC / 0056 / 1995

^{ix} AIR 2008 AP 98, 2008 (2) ALD 311, 2008 (1) ALT 613

^x AIR 1997 SC 568, JT 1997 (1) SC 288, 1996 (9) SCALE 318, (1997) 1 SCC 301, 1996 Supp 10 SCR 321, 1997 (1) UJ 187 SC

^{xi} 1950 AIR 27, 1950 SCR 88