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Right to Privacy

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ABSTRACT

The debate regarding the right to privacy has impeccably grown in the 21st century. Privacy is now one of the most important aspects of life and liberty and an integral part of the fundamental rights enshrined in the constitution under Article 21. The article states “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” This right is applicable to all individuals irrespective of their social status, gender etc. however, it is not an absolute right and laws must be made to safeguard the personal interest and be justified in the eyes of law.

The right to privacy is however one right that has emerged as a result of expanding the scope of Article 21. The right to privacy is not explicitly stated in the constitution. The Supreme Court, however, has derived such a right from Article 21 and numerous other constitutional articles, as well as the Directive Principles of State Policy. It is basically a multidisciplinary domain with a simple notion but a challenging definition. Privacy is a normal human desire to be free of others' control and surveillance.

I. INTRODUCTION

The right to privacy is actually a collection of rights. The right to be left alone; the right of a person to be free from any unwarranted publicity; the right to exist without any unwarranted involvement by the public in topics with which the public is not necessarily concerned. The right to privacy is a broad concept that incorporates a number of different rights. Almost every country's constitution expressly recognizes the right to privacy. Where this right is not officially addressed in the Constitution, as it is in the United States, Ireland, and India, it is implicit in other clauses.

II. RIGHT TO PRIVACY

Article 21 of this part states that “No person shall be deprived of his life or personal liberty except according to the procedure established by law”, and this is known as the Right to Life and Personal Liberty. As a result, this Article bans the state from infringing on a person's right to life and personal liberty. The term "state" refers to all entities with statutory authority, such as the federal and state governments, local governments, and so on. As a result, private entities'

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violations of the right are not covered.

The right to privacy appears to be a very basic and apparent right to have, but it was not recognized as a distinct right by the government for a long time because it was not explicitly specified by the drafters of the Indian Constitution. Over time, an increasing awareness of a person's autonomy over his or her own body, mind, and knowledge has emerged, which has been emphasized by the media. This freedom is granted to everyone in the country, not just individuals. According to this interpretation, the right to privacy also applies to corporations and artificial persons. In this context, the term "privacy" relates to the use and disclosure of personal information.

(A) Right to Privacy in ancient times

The concept of the right to privacy is not a new concept since it a very Asian topic and can be found in Hindu texts dating back to ancient India. Certain issues, including as family matters, worship, and sex, must be kept private, according to Hitopadesh. In ancient times, privacy was associated with good morality and consciousness regarding private topics. However, in ancient Indian writings, this concept was vague and hazy but it has evolved in the present times.

The right to privacy was debated for the first time in modern India during the Constituent Assembly debate, but it was not included in the Indian Constitution. Since the 1960s, the right to privacy has been debated as a constitutionally protected right as well as a common law right.

(B) Right of Privacy in Modern India explained with Case laws

- **M.P.Sharma v. Satish Chandra**²this case said that when it came to the ability to search and seize papers from the Dalmia Group, an eight-judge panel of the Supreme Court ruled that the right to privacy is not a basic right and is not recognized by the Indian Constitution. The main issue considered in this case was that if it violates Article 19 and 20 and opinionated that it was not inclusive of the fourth Amendment of the U.S.Constitution and found no justification to import the right of Privacy in cases of search and seizures³

- **Kharak Singh v. State of Uttar Pradesh**⁴ in this case a six-judge Supreme Court panel found that there is no basic right to privacy, the provision allowing night visitation was thrown down as an infringement of personal liberty. Kharak Singh was arrested on charges of dacoity but was later released as there was evidence. Kharak Singh challenged the constitutional validity of his fundamental rights under **Article 19 and 21**. The judgement was given on a

²M.P.Sharma v. Satish Chandra, AIR 1954 SCR 1077

³Supreme Court Observer, the living archive of Supreme Court of India.

⁴Kharak Singh v. State of Uttar Pradesh, AIR 1964 (1) SCR 332

majority of 5:1 as **Justice Subba Rao**⁵ expressed his dissenting opinion, stating that *'the right to privacy is a vital component of human liberty, despite the fact that it was not included as a basic right in the Indian Constitution.'*

- **Gobind v. State of Madhya Pradesh**⁶ In this case, the petitioner was accused in a number of crimes from 1960-1969 for crimes like trespass, house-breaking etc. Accordingly, the Regulations 855 and 856 were implemented for noting down the names of persons indulging in criminal activity. After this implementation, Gobind was treated as a habitual offender and was beaten and assaulted by police men. A three-judge bench of the Apex Court affirmed the existence of a basic right to privacy under Article 21 of the Indian Constitution after almost 11 years in this case. As a result, for the first time in the Indian Constitution; privacy received some legitimacy under personal liberty.

- The Supreme Court construed Article 21 broadly in **Maneka Gandhi v. Union of India**⁷. Soon after the lifting of the Emergency, Maneka received a letter from the Government of India to submit her passport, as they have the orders to seize it. She approached the Court against the confiscation of her passport. Then, both the rights of personal security and personal liberty were recognized by natural law and were enshrined in Article 21, as **Right to travel abroad** was a part of personal liberty and hence violates Article 21. Right to Life has a broad interpretation, which includes the right to privacy within its scope.

- **R Sukanya v. R Sridhar**⁸ In this case, a South Indian couple namely Sukanya and Sridhar approached the trial court over marital disputes. Sukanya was an actress and she requested the court to not have a media trial, and that media be restrained from telecasting the details of the case as she wants her privacy to be respected. The trial court rejected the request but the case was later moved to Madras High Court. The High Court pointed the law given in the Hindu Marriage Act in Section 22 which states that public is not permitted in the court room when case is being heard, but only when the judgement is given, it can get published. Hence, there was no media trial in this case, upholding the right to privacy of Sukanya.

(C) Landmark Judgement: **K.S. Puttaswamy v. Union of India**⁹

1. In this case, the right to privacy has indisputably been elevated to the status of a basic right, and as a result, it will continue to be included in the Golden Trinity of Article 14 (Right

⁵The ninth Chief Justice of India.

⁶Gobind v. State of Madhya Pradesh, 1975(2) SCC 14

⁷Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621

⁸R Sukanya v. R Sridhar, 2005, 1 MLJ 214

⁹ K.S. Puttaswamy v. Union of India, 2015 (8) SCALE 747

to Equality), Article 19 (Right to Freedom), and Article 21 (Right to Information) (Right to Life and personal liberty). Both of the previous judgments', M.P. Sharma and Kharak Singh, are overruled in this decision.

2. Puttaswamy, a retired judge from the High Court, questioned the government's proposed system for a common biometrics-based identity card that would be required for accessing government services and benefits.

3. The petitioner maintained that the right to privacy was a separate right granted by Article 21 of the Indian Constitution, which guarantees the right to a dignified existence. The respondent, on the other hand, claimed that the Indian Constitution only acknowledged personal liberty, which may include, but only to a limited extent, the right to privacy.

4. The Supreme Court's nine-judge bench unanimously found that the right to privacy was a constitutionally protected right in India, and that it was an integral aspect of Article 21's right to life and personal liberty. The right to privacy was bolstered by the judges' concurring opinions, which recognized that the right to privacy encompasses autonomy over personal decisions, such as beef consumption, bodily integrity, such as reproductive rights, and protection of personal information, such as health record privacy.

5. It was also acknowledged that, like all other rights, this one is not absolute, but that it can be limited where it is granted by law, corresponds to a legitimate goal of the state, and is commensurate to the goal it intends to achieve.

6. This case increases freedom of expression by recognizing the right to privacy as a separate right that may be enforced, rather than a right that is available only to the extent that it affects constitutionally protected freedoms. It protects freedom of expression through recognizing rights, such as the right to be free from arbitrary and unregulated government action.

7. The judgment given by the Supreme Court also strikes down the Section 57 of the Aadhar Act which cancelled the documentation of Aadhar details from a private entity or a Company.

8. By a 4:1 majority, the Supreme Court after reviewing a number of petitions upheld the country's biometric system and approved the passage of Aadhar law in 2018 by the Parliament.

III. RIGHT TO PRIVACY VIZ-A-VIZ SOCIAL MEDIA

- In the case of *Karmanya Singh vs. Union of India*¹⁰, revolves around the right to

¹⁰Karmanya Singh vs. Union of India, W.P.(C) 7663/2016

privacy laws and protection of them. This is more or less under the New Privacy Policy of 2016. The two petitioners claimed that the new policies are aiming to gather the third party details that can be used to fund activities and advertise their personal services. The basic facts of the case include the Constitutional scrutiny of two private parties i.e., WhatsApp and Facebook. WhatsApp is concerned of the fact, that since Facebook is now the parent company, it can share the personal details like the customer's number, location etc. to it. This would be an uncalled threat to their vulnerability as most of the aged people won't even know what damage they are being pushed into. The judgement given by the High Court of Delhi is that the proposed change of the WhatsApp Privacy Policy amounts to infringement of the Right to Privacy.

- In the case of *Shreya Singhal vs. Union of India*¹¹, the constitutional validity of Section 66A¹² of the Information Technology Act, 2000 was challenged. It strikes down the Section because it contained the punishment for sending vulgar and offensive messages through Internet and basically was an infringement of the Right to Privacy. In this case, the censorship laws were as a whole termed as illegitimate. The judgement held the following lines, “Any law seeking to impose a restriction on the freedom of speech can only pass muster”¹³. The Section was all in all derogative to the provisions of Article 19 thereby breaking the liberty of freedom of speech on the web.

- Recently Facebook owned WhatsApp sued the Indian Government and filed a case in the Delhi High Court seeking to block the new IT rules. The new IT rules requires the social media to trace the user's messages and keep an eye on every conversation happening among users. In the petition, WhatsApp stated that this was a ‘*Dangerous invasion of Privacy*’ and was breaking the basic norm of end-to-end encryption. The court in response to this stated that even if the messages remain encrypted, where no third party can have access, there will still be no restriction on the sharing of Meta-data¹⁴ enabling various business account features.

IV. TECHNOLOGY AS THREAT TO PRIVACY

In today's times, when technology plays such an important role in the role of privacy, the users must be a little aware of the cons of it. One's privacy can be leaked in the press of one button and people may never know, until there are evil comprehensions of the same. Below are the

¹¹Shreya Singhal v. Union of India, AIR 2015 SC 1523.

¹²This section deals with the basic ideals of the right to speak freely and articulation and isn't spared by the laws given in Article 19(2).

¹³Judgement by Justice Rohinton Fali Nariman

¹⁴Data that describes other data, serving as an informative label

kinds by which it proves as a threat.

- **Telephone Tapping:** This is a serious violation of one's right to privacy. Article 19 of the Constitution protects a person's right to freedom of speech and expression, which includes telephonic conversations (2). Section 5(2) of the Telegraph Act, 1885, allows for telephone tapping in India, but only in limited circumstances.

Phone tapping was the subject of **People's Union for Civil Liberties v. Union of India**¹⁵. The Supreme Court found that telephone conversations are frequently of a confidential nature, and that whether the right to privacy can be claimed or has been infringed in a given case is dependent on the facts of the case. Right to privacy was never clearly written in the Constitutional law but telephonic conversation in today's times is a confidential matter and tapping it is seen as a violation in the privacy laws.

- **Data Protection in telecom sector:** The right to privacy refers to an individual's ability to control how personal information is collected, used, and disclosed. Personal information can be found in a variety of places, including family records, educational records, medical records, communications, and financial data. The Information technology Act of 2000 was amended in the year 2008 bringing with it multiple provisions in the sector of data protection.

Recently in July 2021, a person namely Ashutosh Kaushik¹⁶ who was earlier a contestant in the reality show Big Boss sought the Delhi High Court to allow him to move to the Centre. He wanted to remove some of his photos, videos, articles, tweets etc. from his various social media platforms as according to him those were having a detrimental effect into his life. The petitioner was seeking this help under the '**Right to be forgotten**'¹⁷. This was done as a measure under *data protection* and to safeguard his personal dignity and reputation. The Honorable Court said that this right cannot be taken up as a separate expressing Right, but will come under the provisions of **Article 21**. The plea is yet to be decided and scheduled for a hearing in December 2021.

- **Real time Tracking:** GPS (Global Positioning System) tracking is now one of the most widely used methods for tracking automobiles. Although this is an excellent technology, it is probable that a person's right to privacy will be violated as a result of the procedure, as this technology offers a great deal of information after reviewing a person's behaviors. As a result, it is fair to argue that GPS tracking is a two-edged sword.

¹⁵People's Union for Civil Liberties v. Union of India, 1997 1 SCC 30

¹⁶Tribune India

¹⁷This Right reflects the claim of an individual to have certain data deleted so that third persons can no longer trace them and it enables a person to silence the past events of his life that are no longer occurring.

- **Surveillance and Privacy:** A person in general is kept under close observation on a doubt to protect the larger public. But this definitely raises a question on the laws of infringement of the right to privacy, as before keeping someone under continuous monitoring, it needs to be taken in consideration that – the background of the person is unhealthy and he may have committed it, the frequency and level at which they have committing.

India in general does not have a proper exhaustive law concerning the surveillance activities. But after the 2008 Mumbai Terrorism attack, the surveillance took a level up and introduced the National Intelligence Grid. The Grid demanded for stringent laws to ensure the privacy of every individual.

V. LIMITATIONS TO RIGHT TO PRIVACY

There are some aspects which need to be taken into consideration while dealing with a sensitive topic like Privacy in India. Because every provision, laws etc. must lie within the Constitutional principles and must not violate any fundamental rights to protect other rights.

- There should be adequate protection regarding illegal interference from the private and government entities. The law must ensure the protection of personal data amidst the modern-day technologies.

- Since the privacy laws in India is seen as a very sensitive topic, the identity of the individual must be protected at any cost. Because it is the matter of the dignity of the individual and if by any chance the person comes out to be non-guilty, then also our society will not leave a chance to treat him like a criminal.

- In matters regarding the security and protection of the nation or the state, where the sovereignty may be harmed and the peace and tranquility may be destroyed, anyone who is in suspicion of the offence must not be spared at any cost under the roof of Right to Privacy. For saving the national securities and interests, any law can be authorized.

- Similarly, the medical and financial records of any individual (even the suspicious ones) must be protected. Because this information can be misused. The medical documents may be sold off to somebody in biomedical department without the consent.

VI. CONCLUSION

With the rapid growth of technology in recent years, it has become increasingly important to ensure that the right to privacy is appropriately secured. Because social media has grown so pervasive in our lives, it is critical that everyone be protected in such a way that people's right to privacy is not jeopardized. There are two statutes in India which hold great importance in

this concept. They are **Article 21 and the Information Technology (Amendment) Act**. Even while privacy rules are extremely important, they should not be absolute, but rather fairly limited to avoid arbitrariness. The absence of any monitoring mechanism that secures individuals' private and personal information emphasizes the importance of enacting such a statute that protects their privacy.
