

Right To Privacy: An Analytical Study Under The Indian Constitution And Cyber World

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Abstract

Privacy is an important and basic human right which also includes human dignity and personal liberty. The concept of human rights protects the individual against oppression and injustice. Human rights have always been a part of our human conscience. Human rights have been added into the Indian Constitution in the form of fundamental rights. The written constitution guarantees some fundamental rights to the people and forbid the state to interfere with the same. Privacy has not only been described as essential in mythological and religious texts, but at present it has been incorporated as an immutable human right in international treaties and conventions also in the constitutions of many countries. This paper deals with right to privacy under the Indian Constitution and also focuses its status in present cyber world.

Keywords: Privacy, Data Protection, Cyber, Fundamental Right, Violation

Introduction

One of these rights which cannot be denied to the person is the 'Right to Privacy'. Recently a judgement was delivered by justice DY Chandrachud that over ruled the principles evolved in the Habeas Corpus case in the case of justice KS Puttaswamy and others versus Union of India^[1] which evolved as a landmark judgement in the history of India with regards right to privacy as a fundamental right under article 21 of the Indian Constitution.

The Constitution of India and other special laws protects the privacy of an individual by way of punishment in many forms. But that are not sufficient to deal with all kinds of technology-based violation of privacy rights. Therefore, the need of the hour is to bring forward a special law to deal with privacy related issues. Many other developed countries have already enacted the laws regarding this. The Indian Parliament has recently drafted the Personal Data Protection Bill, 2022. It can say that if it is being enacted and enforced as law then it will surely provide great relief for the internet users regarding their data protection, safety and cyber security.

The word privacy is a very crucial term and has emerged recently in the Indian Constitution. The concept of privacy is very multidimensional and cannot be defined in specific words. The word privacy has been derived from the Latin term 'privatus' which means separated from the rest, deprived of something, especially office, participation in the government and from 'privo' which means to deprive, is the ability of an individual or group to seclude themselves or information about themselves and there by reveal themselves selectively^[2]. Among all the Human Rights in the international catalogue privacy is perhaps the most difficult to define.

In *Govind versus State of Madhya Pradesh*^[3]. Privacy in its simplest sense allows each human being to be left alone in a core which is inviolable yet the autonomy of the individual is conditioned by her relationships with the rest of society.

Importance Of Right To Privacy

Privacy is a valuable aspect of personality sociologists and psychologists agree that a person has a fundamental need for privacy is also at the core of our democratic values. If we talk about the Ramayana or Mahabharata or Manu Smriti. They all have considered privacy to be an important aspect of an individual's life. Looking from the historical point of view, privacy can be considered to be civil liberty that is indispensable to the freedom and dignity of an individual. An individual has an interest in the protection of his or her privacy as preserving privacy encourages dignity, self-determination, individual autonomy and ultimately promotes a more robust and participatory citizenry. Privacy, a fundamental right of every person, also serves as basis of human dignity and freedom. The right to privacy has been accepted by many countries of the world. It's a person's own decision that he should reveal the things of his life to the society or not, this is his or her right to privacy. No one else has the right to interfere in the life of any person without his permission. Presently, as we read or hear almost every day in newspapers etc. that technologically development has greatly affected the privacy of each and every individual. This is a matter of great concern.

Many cases of the infringement of privacy can be seen on social media channels and sites in which cyber criminals hack person's personal information and data to commit heinous crimes that destroy a person's life. Many hackers to commit a burglary in social media and bank accounts and steal personal information and data of others and make it a means of earning money. That's why the fundamental right to privacy becomes very important in recent timing. Keeping this importance in mind the Supreme Court of India in the year 2017 in its landmark judgement of *K.S. Puttaswamy versus Union of India*, recognising privacy as a fundamental right under the Indian constitution and described its importance. The right to privacy is

protected under article 21 as an integral part of the right to life and personal liberty and also as a freedom guaranteed by part third of the constitution.

Inclusion As A Fundamental Right Under Indian Constitution

The formal proceeding of the constituent assembly started with the drafting in December 1946 and the constituent assembly constituted various committees whose main work was to provide reports to the drafting committee. It was at the committed stage that A sub-committee group did try to advocate the right to privacy to be a part of the fundamental rights^[4]. From the very beginning, there were strong differences of opinion related to the right to privacy in Constituent Assembly members. Finally, the Indian Constitution didn't recognise the right to privacy as a part of the fundamental rights to be conferred to the citizens of India but over a period of time none other than the Supreme Court of India has played an important role to address a number of cases that has dealt with right to privacy which has helped the right to privacy attain its rightful position as a part of Right to Life and Liberty under Article 21.

In one of the earliest cases, **M.P. Sharma v. Satish Chandra**^[5], where the Supreme Court on the issue of 'power of search and seizure' held that privacy cannot be brought under fundamental rights as it was something not related to the Indian Constitution. It was seen that the Supreme Court had a narrow interpretation here.

A decade later there was another important case, which was **Kharak Singh v. The State of U.P.**^[6], that dealt with the issue of surveillance and that whether the surveillance which was defined under the Regulation 236 of the U.P. Police Regulation led to the infringement of fundamental rights or not and that did right to privacy come under fundamental right or not. The verdict that was given by the Supreme Court denied that the right to privacy was a fundamental right and that it was not a guaranteed right under our Constitution and therefore the attempt to ascertain the movement of an individual merely in a way in which privacy is invaded is not an infringement of a fundamental right guaranteed under Part III of the Indian Constitution. And it however held that Article 21(right to life) was the repository of residuary personal rights and recognized the common law right to privacy. However, in this case Justice Subba Rao did say that privacy is a facet of Liberty.

The next case was **Govind v. State of M.P.**^[7], Even though this case was alike the Kharak Singh case the approach towards this case was very different. It upheld the validity of Madhya Pradesh Police Regulation Act of 1961, under reasonable restriction. The judicial approach was that there is an existence of right to privacy in terms of the different guarantees provided by Part III of the Indian Constitution. However, the Supreme Court also observed that in the absence of legislative enactment, the right to privacy will necessarily have to go

through a 'case-by-case development' because just one single case will be inadequate to see the exceptions and consequences of right to privacy. But one cannot deny the fact that this case did broaden the scope of Article 21 so that the right to privacy could fall into it.

In the case of **ADM Jabalpur v. Shivkant Shukla**^[8], the Supreme Court wanted to determine that whether the right to personal liberty is restricted by any restriction other than those which are contained in the Constitution and statute law and it establishes that the right to privacy may not be expressly guaranteed, but it may be implicit due to its inclusion in common law. Justice Khanna had observed: "Article 21 is not the sole repository of the right to personal liberty...no one shall be deprived of his life and personal liberty without the authority of laws follows not merely from common law, it flows equally from statutory law like the penal law in force in India."

Then it was the **Maneka Gandhi v. Union of India**^[9], case where the Supreme Court in a broader sense interpreted Article 21. The Supreme Court stated that the term 'natural law' which included the right to personal liberty and rights of personal security were incorporated in Article 21 of the Indian Constitution.

R. Rajagopal v. State of Tamil Nadu^[10], was one of the first cases which elaborated the development and the span of right to privacy in a detailed manner. The apex court had held that the right to privacy was implicit to the right to life and liberty which Article 21 guaranteed. It further recognized that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education amongst other matters. None can publish anything concerning the above matters without any consent and also that the right to privacy can be both an actionable claim and also a fundamental right.

Unique Identification Authority of India & Anr. v. Central Bureau of Investigation^[11]. This was a case that involved the Central Bureau of Investigation that had sought to access a huge database that had been compiled by the Unique Identity Authority of India for investigative purposes of criminal offences. However, the Supreme Court stated that the UIDAI should not be transferring any biometrics information who has been allotted the Aadhar number without the written consent of the individual person to any agency or third party. More so, the hon'ble Court also stated that no person shall be deprived of any kind of services for want of Aadhar number in case he/she is otherwise eligible/entitled. The various authorities would have to modify their circulars/forms etc. so that compulsory requirement of Aadhar Number is not required in order to meet the requirement of the interim order passed by the Court forthwith.

Justice K.S. Puttuswamy (Retd.) & Anr. V. Union Of India & Ors.

The verdict was the outcome of a petition challenging the constitutional validity of the Indian biometric identity scheme Aadhar. This was a case relating to the Unique Identity Scheme that was discussed along with the right to privacy. The question that was placed before the court was whether a right like right to privacy was guaranteed under the Constitution or not. The Attorney General of India had however argued that privacy did not have a place in the fundamental right guaranteed to Indian citizens. Eventually, the Court decided that the question related to the right to privacy should be left to be discussed by a larger constitutional basis because all those judgments that denied the existence of the right to privacy were declared by the larger benches than the cases where the right to privacy was accepted as a fundamental right. Due to this an unresolved controversy emerged, that compelled the Court to refer this issue to a larger bench so that it could be settled.

The unanimous judgment by the Supreme Court of India in Justice K.S. Putta swamy (Retd) vs. Union of India is a resounding victory for privacy. The 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. Finally, it was on 24th August 2017, that a historical judgement was made by the Supreme Court of India that stated the right to privacy to be a part of fundamental rights that was protected by the Indian Constitution. The Supreme Court declared that the right to privacy stems from the fundamental right to life and liberty and that it would be having a long-lasting consequence. The Nine- Judges bench of the Supreme Court was involved in the case of Putta swamy vs. Union of India that declared the right to privacy to be protected under Part III of the Constitution of India.

Right To Privacy In Cyber World

As, we all hear and know about the word 'cyber'. From the few last years, the internet has become the significant technology in our daily lives. Cyber is the way of providing information using computer internet and devices attached to it. In this way, any information we want reaches us passing through an imaginary space. This imaginary space is called 'cyber space'. In present timing, citizens have been mostly making use of the cyber space to seclude themselves from our social circle. There is a general belief that these people are private and want to secure their privacy. If we think in reality, it turns out that there is a serious threat of infringement of privacy of an individual in the cyber space. In order to recognize digital evidence and electronic records, the Information Technology Act, 2000 came into force on

and from 17th October, 2000. This act also recognized few forms of cybercrimes and provided for punishments for the same.

The Act also recognized few forms of cybercrimes and provided for punishments for the same. The cybercrimes made punishable under the Act are set out mainly from sections 65 to 85. The punishment prescribed thereunder, ranges from imprisonment upto three years to imprisonment to life and any fine amount could be imposed. An upper ceiling limit ranging from Rs.1,00,000/- to Rs.5,00,000 is also prescribed. The cybercrime is an evolving field and therefore with changing times, more and more crimes that emerge from violations committed in the cyber space is detected. The common forms of the cybercrimes have been broadly categorized into cybercrimes against person and cybercrimes against property^[12].

Steps To Protect Right To Privacy At National Level

In the last two decades, the use of internet has increased due to which a lot of data is generated. There is no permanent law or order regarding data protection in our country. Our day-to-day transactions and work, we have to give many types of information and data online, the fear of leakage always remains. After increasing the use of internet, consumers have been generating a lot of data, which has allowed companies to show them personalised advertisements based on their browsing patterns and other online behaviour. Companies began to store a lot of these datasets without taking the consent of the users and did not take responsibility when the data leaked. To hold such companies accountable, the government of India in 2019 tabled the Personal Data Protection Bill for the first time in our country, which was finally sent to the parliamentary panel. This bill was adopted by the Joint Parliamentary Committee after about 2 years. The joint parliamentary committee on the personal data protection bill of 2019 was said to have adopted the final draft. The personal data protection bill, 2019 stems from the 2017 judgement of the supreme court in the K.S. Putta Swamy versus Union of India case that recognised privacy as fundamental right protected by the Constitution. The committee which had been deliberation the bill since it was introduced in parliament in 2019 has made several recommendations for modifying the draft. Thus, this committee was continuously discussing about it since 2019.

Main Recommendation of Joint Parliament Committee in this bill as follows:

- One of the major changes that the final draft of the PDP bill is believed to have pushed for is to include non- personal data with in its ambit, which changes the nature of the bill from personal data protection to just data protection.

- The final draft is also said to have sought additional compliance for companies that deal exclusively with children's data, by asking them to register with the data protection authority.
- It should be a regulatory body that will have powers to decide on implementing the various provisions of laws.
- Forth key aspect is that the committee said to have pushed for is to consider all social media companies as publishers, and to hold them accountable for the content on their platform.
- It is said to have recommended that no social media companies be allowed to operate in India unless the parent company handling the technology sets up an office in India.

The committee has retained section 35 of the bill it gives the government the right to authorities any of its agencies to circumvent the provisions of the law if it finds it necessary to do so under public order, sovereignty, friendly relations with foreign states, and security of the state. Although there are many provisions in the Information Technology Act, 2000 for internet and social media, but there is still no legal framework regarding data protection. For this, the government had brought the Data Protection Bill 2019 in 2019, which has recently been withdrawn by the government^[13].

Digital Personal Data Bill, 2022

The Central Government released the draft of the Digital Personal Data Bill 2022 on 18th November, 2022, to curb companies using personal data of consumers without permission.

The major key points of this bill are as follows:

- To protect the personal data of individuals and prevent data transfer outside India. Along with this, the provision of penalty for data related violations was also made in this bill. The Bill provides that a breach of personal data of an individual would mean unauthorized data processing.
- Action will also be taken for tampering or harming the personal data of a person. If there is any kind of compromise with the privacy of the person through the data, then also action will be taken by the government.
- In this bill, it has been arranged that the data cannot be used without the consent of the consumer.
- Along with this, a provision has also been included in this bill to create a board for data security, according to which the board will act as an independent body and

digital office. The Board will have the right to decide the penalty and an appeal can be made against its decision in the High Court.

- Under this, it has been arranged that companies will have to give all the information in easy language to every citizen and at any time the customer can withdraw his content.
- The draft provides that companies collecting data must stop storing personal data or remove the means by which personal data can be linked to specific data. It also states that users' data should not be stored if it is not necessary for legal or business purposes.
- In this new bill, a provision has been made to impose a fine of up to Rs 150 crore on companies for not reporting a data breach and up to Rs 100 crore on companies for failing to protect personal data related to children. Whereas in the earlier bill, there was a provision of a fine of ₹ 150000000 or only 4% of the annual turnover for violation of the law.
- In this new bill, the focus is only on the protection of personal data. That is, data that cannot reveal the identity of a person has been exempted from the provisions of fines etc.
- In the earlier bill, the fine was not coming out effectively due to not being high. While the provisions of heavy fines in this new proposed bill, companies will have to pay serious attention towards data security.
- This provision has also been made for the first time that only the Central Government can transfer data to other countries or regions. Companies will have to take permission for this as per rules.
- Before withdrawing the Personal Data Protection Bill 2019, the Joint Parliamentary Committee had given 81 amendments in it and made 12 recommendations along with fixing the responsibility of social media.
- The earlier deadline for public opinion and comments on this bill was December 17, 2022. The Ministry of Electronics and IT had extended it till January 2, 2023. This draft can be uploaded through the website of the Ministry of IT^[14]

Conclusion And Suggestions

With time evolution of the right to privacy took place with precedents and judgements and now has a unique place in the Constitution. It is also found that each individual accessing the cyber space ought to be better informed about the advantages and disadvantages of using the

same. It is necessary to be a responsible user of the cyber space and awareness is the key. The law in respect to the right to privacy with respect to cyber space is still in its nascent stage and therefore, the individuals have a key role to ensure that their rights to privacy are not intruded due to ignorance.

EndNotes

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6. AIR 1963 SC 1295
7. Same as note 3
8. AIR 1975 SC 1378
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