



The Right to Privacy: Constitutional Perspective in India

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Abstract

A prominent and ever-changing element of constitutional law around the globe is the right to privacy, which is frequently portrayed as a protector of personal freedom and autonomy. The right to privacy has become an extremely important concept in India, a country that is well-known for its cultural diversity and diverse array of rights and freedoms. This paper examines the historical-legal basis, and current obstacles to the right to privacy in the Indian Constitution, illuminating how has it changed the social and legal environment. A democratic and rights-based society is laid forth in the Indian Constitution. Although not specifically stated, the right to privacy is enshrined in the Constitution's basic rights, especially Articles 19 and 21. The right to privacy is a fundamental human right, and this study follows its evolution through time by looking at the verdicts of the Court that helped establish this principle.

Keywords: Right to Privacy, Indian Constitution, Fundamental Rights, Digital Privacy.

Introduction

Amidst the complex web of liberties enshrined in India's founding document, the right to privacy stands tall, protecting the holy territory of personal independence and choice. How has the right to privacy developed over time and what does it mean now in the context of India's constitution. Its stated goal is to bring light on how this revered privilege has revolutionised India's legal and social fabric. With a constitution that incorporates the ideas of justice, liberty, equality, and fraternity, India set off on its constitutional journey in 1950. The country is known for its cultural variety and rich traditions. Without being specifically mentioned, the right to privacy is inextricably woven into the fabric of our constitution, since it is guaranteed under Articles 19 and 21 dealing with the evolution of the right to privacy in Indian law, including significant decisions that helped establish the right as an inherent and unalienable one. Many facets of privacy law and its basis in theory thoroughly investigate the structure that control privacy in India, including statutes, court rulings, and treaties. Particularly, it analyses seminal decisions made by India's highest court, such the Puttaswamy case, which dealt with the complex relationship between personal data protection in the digital era and firmly upheld the right to privacy as a basic human right. Modern privacy concerns are fuelled by the ever-present digital surveillance state, massive data collecting, and lightning-fast technology developments. these difficulties, elucidating the consequences for personal freedoms and privacy. At a time when the confidentiality of individual data is under grave danger, this incident highlights the critical need for strong legislative provisions and safeguards. The ever-changing notion of personal privacy guaranteed by the Indian Constitution—a notion that speaks to the hopes and dreams of a contemporary, digital India. Reiterating the Constitution's dedication to protecting individual rights, it encompasses the values of human autonomy, dignity, and liberty. As India navigates the complexities of the digital age, protecting personal privacy is of the utmost



importance—a dedication that is in line with the principles of justice, liberty, equality, and fraternity outlined in the constitution.

RIGHT TO PRIVACY

Despite the lack of a uniform legal definition, many legal experts view privacy as an inherent human right that every individual possesses. It is not contingent upon any charter or instrument. Additional dimensions of privacy include freedom of movement and thought, dignity, secrecy, protection from state monitoring, bodily integrity, personal autonomy, and informational self-determination. The right to privacy, in a nutshell, must be evaluated individually. On a global scale, privacy is protected by strong legislation. People are legally protected from "arbitrary interference" with their privacy, family, home, communication, honour, and reputation according to Article 12 of the Universal Declaration of Human Rights (1948) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (1966).

Right to Privacy: An Insight

Part III of the Constitution, which deals with Fundamental Rights, does not include the Right to Privacy since it was not specifically considered by the framers of the Constitution. Judgment has been handed down after much deliberation, and the concept of privacy has been defined. But the Supreme Court did not address the issue of privacy until 1954, a mere four years following the framing of the Constitution. The Supreme Court sided with the search and seizure procedure in the MP Sharma vs Satish Chandra case, which pitted it against the right to privacy. Although the right to privacy is not a constitutionally protected right, the Supreme Court sided with the police in 1962 in Kharak Singh vs. State of UP (AIR 1963 SC 1295), which dealt with the authority of police monitoring in relation to history sheeters.

In the history of the right to privacy in India, year 1975 was a turning point. In the case of Gobind vs. State of MP & ANR [1975 SCC(2) 148], the Supreme Court of India adopted the compelling state interest test, which originated in American law. A compelling broader state interest must supersede an individual's right to privacy, according to the court. The scope of privacy has grown over the years to encompass more types of personally identifiable information, including health records and biometric data. A person's right to privacy in relation to the substance of their telephone conversations was firmly established by the Supreme Court in the landmark 1997 decision of PUCL vs. Union of India, also referred to as the telephone tapping cases. It follows that the right to privacy was being acknowledged in a number of circumstances, with proper regard also given to its limitations. Aadhaar is a government programme that has been at the focus of privacy debates since the turn of the millennium. Under this plan, individuals are given unique identification cards after providing biometric data (such as fingerprints scan) and demographic information. The Supreme Court issued an order in September 2013 limiting the use of Aadhaar, saying that it should only be used in the public distribution system and for LPG subsidies after it was challenged in court for violating privacy. There was an amendment to the order in October 2015 that stated Aadhaar could be used to provide services like the Mahatma Gandhi National Rural Employment Guarantee Act (MNRGA), the Pradhan Mantri Jan-Dhan Yojana, pension and provident fund schemes, and that no one should be denied a service because they did not have Aadhaar.



Right to Privacy: Constitutional Aspect

The right to personal privacy is enshrined in the right to life and liberty as protected by Article 21 of the Constitution of India which has been taken to mean the right to privacy. Article 21 in context of right to privacy must be interpreted in conjunction with the freedom to publish any subject of public interest, within reasonable limits, as guaranteed by the Constitution. There is no explicit mention of the right to privacy in the Bill of Rights. Nevertheless, the right in question has been eroded by the Supreme Court, which has interpreted Art. 21 and other constitutional provisions in light of official policy directives. *Kharak Singh v. State of Uttar Pradesh and Others* was a watershed moment in the Indian legal system's shift towards protecting individuals' privacy, whereby the highest court in the land mark verdict held that the right to privacy is not explicitly stated as a basic right in our constitution, it is an integral part of individual liberty. This right has been completely integrated into the right to life and personal liberty through the humanistic expansion of Article 21 of the Constitution, following an extensive evaluation of it in *Gobind v. State of Madhya Pradesh and Another*. The right to privacy has recently been proclaimed by the Supreme Court in the case of *R. Rajagopal v. State of Tamil Nadu*. The right to privacy is seen as an inherent part of the right to life and liberty that citizens are granted by Art. 21. The Right to be let alone is at stake. A citizen has the right to privacy with regard to many things, including his or her own family, marriage, procreation, motherhood, education, and other related topics. Both constitutional law and the common law are the primary origins of the right to privacy in India. Unlawful breach of privacy can give rise to a private damage suit under common law. If a publication publishes information about an individual's private life without that person's agreement, the printer and publisher might face damages. First, if something is public knowledge, the right to privacy does not apply. Second, if the publication is related to a public servant's official responsibilities, an action cannot be maintained unless the publication is proven to be intentional, false, or recklessly disregards the truth. Private means isolated from the rest, deprived of something, especially office, participation in the government. The ability to selectively disclose oneself by isolating oneself or one's information is what we mean when we talk about privacy. Culture and individuality shape the extent and nature of what is deemed private, although there are universal aspects. Being anonymous, or preferring to be unrecognised by the general public, is often associated with privacy. If something is deemed private to an individual, it's likely because they hold some deeply held, sensitive belief or value. With the understanding that a certain private zone of individual liberty would be preserved substantially beyond the reach of Government and the recognition of the moral reality that a person belongs to himself and not to others nor to society as a whole, the idea of privacy is based on promise. An autonomy or control over the intimacies of personal identity is what means when talked about privacy. Within the legal notion of privacy, emphasis on three overarching concepts is relied upon: intimacy, autonomy, and identification. The three types of privacy that Bostwick uses are the privacy of rest, the privacy of sanctuary, and the privacy of intimate decision. Taking a realistic view, Solove determines what is required and optional to protect an individual's right to privacy.

He divides privacy into six comprehensive (though not mutually exclusive) rights:



- (I) The right to be let alone;
- (II) limited access to the self-the ability to shield oneself from others;
- (III) secrecy-concealing certain matters from others;
- (IV) Control over personal information;
- (V) Personhood-the protection of one's personality, individuality and dignity; and
- (VI) Intimacy-control over or limiting access to intimate relationships.

Can my right to privacy be regarded to have been violated if the government intervenes with my ability to publicly address a crowd? There is no positive response. The location is important to the right to privacy. If the layers of abstraction do not transfer into real specifics, then attempting to define privacy is pointless. The general principles of privacy law include the right to think freely, the right to control one's own body, the right to live in one's own home without interference, the right to control one's own information, the right to be free from unreasonable search and seizure, and the right to protect one's reputation. Article 21 of the Indian Constitution guarantees an individual's right to life, liberty, and privacy. It is quite difficult to intrude on someone's privacy without their explicit permission. When the greater good is at stake, as in marriage proceedings, and other similar situations, there are exceptions to this strict rule. The need of knowing a person's medical status, as it is likely to impact the lives of others as well, justifies subjecting them to a medical examination against their consent if they are suspected of having HIV. In a similar vein, investigations into the validity of marriages and the health of the parties involved might infringe upon people's right to privacy in the sake of determining whether a couple is fit to live together as husband and wife or parent to any children born of such unions. Finding out the health status of one of the married couple's members may be required in cases where the validity of the marriage is being contested. A DNA test can be conducted to determine the couple's gestational age. Equally important is the determination of the spouse's mental health status prior to the court granting custody of the kid to either parent. Medical examinations do not constitute invasions of privacy in any of these cases. The usual rule does not apply to these cases.

Right to Privacy not an Absolute Right, but is subject to reasonable restrictions

Right to privacy is an intrinsic part of Right to Life and Personal Liberty under Article 21 and entire Part III of the Constitution as the Constitutional Bench headed by Chief Justice J S Khehar ruled in the case of Justice K.S. Puttaswamy and Ors. Vs. Union of India (UOI) and Ors., MANU/SC/1044/2017. Unanimously, the nine-judge panel reversed the Supreme Court's two prior decisions in M P Sharma case of 1950 and the Kharak Singh of 1960, both of which had held that the right to privacy was not guaranteed by the Constitution. Any legislation that violates an individual's right to privacy must withstand the touchstone of permitted limits on fundamental rights before it can be considered constitutional. Only laws that are fair, just and reasonable can infringe upon people's right to privacy. Such a violation would need three things:

- (i) legality, which postulates the existence of law;
- (ii) need, defined in terms of a legitimate aim; and



(iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them

The court held that for privacy claims, there should be a need for a compelling state interest in addition to fulfilling the fair, just and reasonable standard under Article 21. It was observed that laws that violate people's right to privacy must meet the same criteria as laws that violate people's right to personal liberty, according to the verdict in *Maneka Gandhi v. Union of India*. This means that the laws in question must be fair, just and reasonable, not fanciful, oppressive or arbitrary. Justice Nariman has established that, in the event that the social or public interest and the reasonableness of the limits outweigh the particular component of privacy sought, then statutory constraints on privacy would prevail.

The right to privacy can be limited in view of the social, moral and compelling public interest that the state is permitted to impose by law. The right to privacy might be limited in reasonable ways due to considerations of public interest, national security, and the reasons listed in the provisos to Article 19 of the Constitution. Applying the reasonable expectation of privacy standard is necessary for the Court to include a claim of privacy in Article 21 of the Constitution of India. There ought to be:

- (i) What is the context in which a privacy law is set up?
- (ii) Does the claim relate to private or family life, or a confidential relationship?
- (iii) Is the claim serious one or is it trivial?
- (iv) Is the disclosure likely to result in any serious or significant injury and the nature and the extent of disclosure?
- (v) Is disclosure for identification purpose or relates to personal and sensitive information of an identified person?
- (vi) Does disclosure relate to information already disclosed publicly to third parties or several parties willingly and unconditionally?

The State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State:

- (i) The action must be sanctioned by law;
- (ii) The proposed action must be necessary in a democratic society for a legitimate aim;
- (iii) The extent of such interference must be proportionate to the need for such interference;
- (iv) There must be procedural guarantees against abuse of such interference.

Basic human rights include the freedom to life and movement. To live a decent life, one must have these rights. The fundamental principles of the Indian Constitution are human dignity, equality, and the pursuit of liberty. The Constitution does not establish the rights to life and personal freedom. According to the Constitution, these rights are inherent to every person since they are a component of what it is to be human. The fundamental right to life and personal liberty guaranteed in Article 21 of the Constitution gives rise to the right to privacy, which is a right guaranteed by the Constitution. The additional aspects of freedom and dignity recognised and safeguarded by the basic rights outlined in Part III also give rise, in different settings, to elements of privacy. Recognizing a right to privacy in the Constitution does not constitute an



attempt to change the Constitution or take on a role traditionally performed by Parliament; rather, it is a judicial activity. Having one's personal space protected is fundamental to human dignity. A person's right to privacy serves a descriptive and normative purpose. The normative principles that underpin the protections of life, liberty, and freedom are the inviolable ideals that privacy supports. At its most basic level, privacy is a description of a set of rights and interests that form the basis of organised liberty. Fundamental to the concept of privacy is the protection of one's most private aspects of one's identity, including one's sexual orientation, one's home, one's family, one's marriage, and one's reproduction. The right to one's own space is another meaning of privacy. Respect for one's privacy is a defence of one's independence and a recognition of one's capacity to direct one's own life. Integral to privacy are the individual decisions that determine one's manner of life. Respect for individual privacy safeguards cultural variety and multiplicity. It is vital to note that an individual's expectation of privacy does not change just because they are in a public arena. This expectation remains the same regardless of whether they are in the intimate zone, the private zone, or the public arena. An individual's right to privacy is intrinsic to their worth as a human being. Similar to other rights that are safeguarded under Part III are essential freedoms, such as the right to life and personal liberty. Article 21 states that the right to privacy is not inalienable. The standard for what constitutes a reasonable limitation on basic rights will determine whether or not a legislation infringes upon individual's right to privacy.

Conclusion

Article 21 of the Constitution guarantees all people the right to life and liberty, which includes the right to privacy. A "right to be allowed alone" governs this situation. The right to privacy extends to many aspects of a person's life, including but not limited to: marriage, procreation, motherhood, education, and personal relationships. Whether it's true or not, positive or negative, no one may write anything on the aforementioned topics without his permission. Doing so would constitute an invasion of privacy and put him at risk of a damage's lawsuit from the affected individual. But things could change if someone willingly gets into a disagreement, or even worse, if they solicit or initiate a scandal. A legislation that specifies a fair, reasonable, and just method is necessary to justify an invasion of privacy in the context of Article 21. Concerning the overreach of the law into people's lives and freedoms, it must also be legitimate as observed in Article 21. In order to violate someone's life or liberty, it must be proven that i. the law exists; ii there is a valid state goal that necessitates the invasion; and iii the measures to attain the ends must commensurate to them. There are pros and cons to privacy. Restricting the state from violating a citizen's life and personal liberty is the negative content. The positive substance of the law requires the state to ensure individual privacy by taking all necessary steps. A citizen's "right to privacy" is enshrined in the Part III of the Constitution of India, which guarantees fundamental rights. It is not, however, a right without limitations; rather, the State has the authority, under the law, to put reasonable restrictions on the right in order to protect social, moral, and compelling public interests. Sometimes, as members of a society, we forget that we are unique people. Everyone requires their own personal area to do



whatever it is that they want (assuming here that it shall be legal). Everyone has the right to spend personal moments with the people they desire, away from prying eyes. Every person wants to keep his ideas to himself and believes this right would help him do that. Our right is more important than ever in this modern day. Given that every aspect of our life is chronically documented by various forms of media, such as spy cameras and social media, it is imperative that we take necessary precautions to ensure our privacy and autonomy. After all, no one owes us an explanation but ourselves; in many countries, the right to privacy is a product of court interpretations rather than an explicit grant to citizens.

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