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From Privacy to Publicity

KANWALJIT SINGH¹

ABSTRACT

The concept of privacy has undergone a dramatic transformation in the digital era, evolving from a fundamental human right to a fragile and contested concept increasingly overshadowed by the rise of publicity and content-sharing. This paper explores the historical development of the right to privacy, tracing its evolution from classical legal thought to contemporary interpretations shaped by rapid technological change. It further delves into the international landscape, examining how various jurisdictions approach privacy in contrast to India's legal framework. A critical analysis of India's privacy laws highlights significant gaps and inconsistencies, especially in light of recent data breaches, surveillance practices, and the widespread use of social media. The paper also addresses emerging challenges posed by artificial intelligence, digital profiling, and content monetization, which blur the lines between personal and public information. In response, the study proposes actionable legal, policy-based, and ethical solutions aimed at strengthening individual privacy while balancing the legitimate interests of public information and digital innovation.

Keywords: Privacy, Publicity, Digital Content, Data Protection, Indian Privacy Law, International Law, social media, AI and Privacy, Cyber Law, Right to Privacy

I. INTRODUCTION

The right to privacy is the right to restrain or prevent government and private players from any actions that threaten the privacy of individuals. Privacy is also considered to be one of the basic human rights that is enjoyed by every human being by his or her own sense.² The concept of privacy in new world has extended its meaning to bodily integrity, personal autonomy, compelled speech and freedom to dissent or move or think. Since the global surveillance came into light in 2013 the right to privacy has become a subject to debate at international level.

In our constitution there is no specific provision that clearly defines right to privacy although from Article 21 i.e., a fundamental right talk about protection of life and personal liberty which also includes right to privacy. This is a result of judiciary's wide interpretation in People's

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² <http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html>

Union for Civil liberties vs union of India³ and Kharak Singh vs State of UP⁴ which held that right to privacy is a part of Article 21 which talks about right to protection of life and personal liberty.

In the present world the internet has emerged as a tool for connecting people globally with each other without any physical barrier. One can connect with other person sitting at the other corner of world through emails, WhatsApp calls, and by other various means. So, from the above discussion we can clearly see the importance of internet in our life. This leads to very important question of Data which is the core or basis of internet world Is it safe or Is data not misused?

Or Is privacy of users not leaked through data available?

Data is something from which we are surrounded everything we do on internet from ordering food to booking taxi's generate data. It has become a new form of asset for every nation. So, it becomes very important to secure data and make laws on data protection to avoid being misused by wrongdoers and prevent breach of privacy of individual from the data.

It is also state responsibility to protect privacy of individuals and to punish those who invades the right to privacy given under article 21 of our Indian constitution i.e., a fundamental right

Invasion of privacy can also be done by state like in cases of surveillance, phone tapping, disclosure of personal information of individual⁵.

In India there is rise in number of cases pertaining to breach of privacy of individual either by state action or by some government department or launching of schemes which lead to disclosure of personal information etc. so there is a need of the hour to frame rules or laws for protection of privacy in India. After so much hue and cry by human rights activists the Indian Government has introduced the personal Data protection Bill 2019.

II. EVOLUTION OF RIGHT TO PRIVACY

Before I start discussion, it is important to know about **Alan Turing** he was a British scientist and a great computer genius who during World War II broke the famous German "ENIGMA" Code. Which resulted in ending of World War II two years before and saved millions of lives and it was he because of whom Britain won the World War. But in 1952 Britain imposed charges of Indecency and Homosexuality because of which he comes under depression and he finally

³ 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

⁴ 1963 AIR 1295, 1964 SCR (1) 332

⁵ <https://www.legalserviceindia.com/legal/article-2705-a-critical-analysis-on-data-protection-and-privacy-issues-in-india.html>

committed suicide on 7th June 1954.

And from this point I start discussion on Right to Privacy. See in every state government has a lot of work to do but what you eat, drink, your bank balance, what religion you follow to know these things is not a work or duty of state. Now let's talk about questioning or accountability if you need any information or ask some question from government then we use Right to Information Act (2005) which is regulated. On the other hand, if individual wants to protect his privacy and prevent unnecessarily intervention, he uses Right to Privacy. This right can be availed against State, journalists, and even be used against your neighbors.

Now let's talk about the topic in the recent past the judgements of Supreme Court has become a headline of the newspaper. Supreme court not only protects rights of individual but also strengthen their rights for example judgement on homosexuality section 377, triple talaq judgement and famous Aadhaar Judgement.

Is there any existence of concept called Privacy in India? And the story behind introduction it as fundamental right. On this note my first case to discuss is of M.P. Sharma Vs Satish Chandra⁶ (1954) which relates to the investigation on Dalmia Group of Companies. In this case the Dalmia Group was accused of Money Laundering and its involvement in other Malpractices and to hide this they are submitting false balance sheet and other fraud document. So, government order investigation on this company and an FIR was registered and orders of search and seizure was issued against Dalmia group. On the other hand, Dalmia Group challenged this search and alleges that with investigation of documents their personal documents are also being searched which led to violation of our fundamental right to privacy.

The 8 judges' bench of Supreme Court held that **For the Security of the State was Provided Overriding Powers of Search and Seizure**. Bench also said that **There is No Concept to Privacy in the Indian Constitution**. Whereas on the other hand 4th amendment of the constitution of USA provides Right to Privacy to its citizens.

Second case I would discuss is of Kharak Singh Vs. State of UP⁷ (1962) this case relates to matter of surveillance in which Kharak Singh was arrested for charges under Dacoity but due to absence of substantially he was released. Now UP police to collect proves against him applies surveillance under UP police Regulation which says any person who visits the house of the accused can be treated as **suspect**, can also make **domiciliary visits** i.e., even go home and order to visit police station even at midnights, and moreover every movement, income or

⁶ 1954 AIR 300, 1954 SCR 1077

⁷ 1963 AIR 1295, 1964 SCR (1) 332

expense can be **tracked**. So, all these things can happen if surveillance is applied. After being fed-up from all these things Kharak Singh filled a writ petition challenging the imposition of surveillance and police regulations on him. He said all these things violates his right to movement and right to life and fundamental liberty.

The supreme court decision of 6 judges bench held that **Domiciliary visits were deemed unconstitutional. But other every other Regulation was Deemed Valid**. The court also said that **right to privacy is not valid in our constitution** and right to movement under article 19(1)(D) infringes with physical restriction. However, Justice Subba Rao who gave dissenting opinion was relevant because in future cases his minority opinion will become majority opinion. He said “Anybody can enjoy freedom of movement under article 19(1)(D) anywhere for personal purposes. If the movement is been tracked then how free is it?”. So, from here we can see that 8 judges’ bench in MP Sharma case and 6 judges’ bench in Kharak Singh case clarified that there is no concept of privacy in India. At the same time small benches like Govind Vs. Union of India⁸, R rajgopal Vs Union of India ⁹started recognizing Right to Privacy and started giving importance to it. On the same direction comes the next case PUCL vs. UOI¹⁰ (1997) famously known as Wire Tapping Case. In this case the former PM Chandra Shekhar allegations on government that their phone and 27 politicians’ phone are being tapped by government accusing them for phone tapping. The CBI Investigation was Conducted and it was disclosed that government was conducting wide spread phone tapping. So PUCL (People’s Union of Civil Liberties) filled a PIL in Supreme Court to give clarity to people on phone tapping laws in India and available of options against protection from phone tapping. In this case section 5(2) of Indian Telegraph Act was challenged this section give power to government for phone tapping in cases of public safety and security. Supreme court in this case gave clarification and guidelines for Phone Tapping like Right to privacy is covered under right to life & personal liberty (Article 21). Second court said telephonic conversation is of confidential and intimidation nature so telephonic conversation falls under the ambit of Right to privacy and is covered under Article 21. So, to incorporate all the guidelines given by court in this case codified and inserted in Rule 419(A) of Indian Telegraph Rules. This rule states that under sec 5 of Indian Telegraph Act which grants permission for phone Tapping now only under unavoidable circumstances Union Home secretary or State Home secretary can authorize phone tapping. But unfortunately, there was no respite from violation from phone tapping for example

⁸ AIR 1975 SC 1378, 1975 CriLJ 1111, (1975) 2 SCC 148, 1975 3 SCR 946

⁹ 1995 AIR 264, 1994 SCC (6) 632

¹⁰ 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

case of nirra Radia Tapes in which none of the guidelines laid was followed.

Now let's talk about landmark case of our topic's discussion Justice K.S. Puttaswamy vs. UOI¹¹ famously known as AADHAR Case. In this case India's national Identity program i.e., Aadhar Project was challenged on basis of infringement of right to privacy of the people. In an argument supporting this project Advocate General of India said that Indian citizen has No Fundamental Right to Privacy and supported his argument with M.P. Sharma Vs Satish Chandra and Kharak Singh Vs. State of UP by saying that in both the cases judiciary has said there is no concept of privacy in India. Now to change the stance of judiciary for privacy a 9 judges' bench on August 2017 in puttaswamy case unanimously held that **Indian citizen do have the right to Privacy** and they enjoy the right to privacy with support under Article 21. The court also said the to protect right to privacy there is no separate need for a declaration and is sufficiently protected under Art. 14, 19, and 21.

After puttaswamy in the year 2019 there was another case called Vineet Kumar case¹² (2019) in which phone of Vineet Kumar were tapped on charges of bribery to bank employee. Challenging the phone tapping the Bombay High Court said that phone tapping is permitted under sec 5(2) of Indian Telegraph Act in case of public emergency and safety. And the requirement of public safety and emergency is very high. So small level of economic offences cannot match such threshold. That's why in this case even economic charges you can't do phone tapping it will be illegal and clearly be infringement of Right to Privacy.

After puttaswamy judgement we can clearly see the right to privacy was started recognizing as fundamental right.

III. RIGHT TO PRIVACY & RIGHT TO BE FORGOTTEN

The right to be forgotten is the right to have private information of the individual to be removed from internet. The concept of right to be forgotten came to limelight few months ago when an actor Ashutosh Kaushik approached Delhi High Court with a plea referring that his videos and photographs should be removed from internet citing his right to be forgotten which is in relation with right to privacy and is integral part of Article 21 of our constitution.

It simply means right to have publicly available personal info removed from internet, search, databases, websites or other public platforms, once it's no longer relevant or necessary. The matter came to Delhi high court in Jorawer Singh Mundy Vs Union of India¹³. bench comprising

¹¹ (2017) 10 SCC 1, AIR 2017 SC 4161

¹² WRIT PETITION NO. 2367 OF 2019

¹³ 2021 SCC OnLine Del 2306

of justice Prathiba M Singh. Facts of the case is that jorawar singh mundy approached the HC claiming that the previous case of 2013 and its judgement appearing on google and Indian Kanoon has sullied his efforts to get a job. Delhi HC observed that there can be “irreparable prejudice” that may be caused to mundy’s “social life and his career prospects” despite him having been ultimately acquitted in 2013 case. Delhi HC asked google was asked to remove the judgement from its search results and Indian Kanoon was directed to block the judgement from accessed by using search engines such as Google and Yahoo.

Information in today’s global world has become as a Black Gold i.e., open to be mined. Information in public domain is like toothpaste out of tube e.g.

- Revenge Porn
- Fake information
- Fake case/#Me Too misuse
- Defamation/Slandering etc

In India there is no law that specifically provides for the right to be forgotten. However, the personal Data Protection Bill 2019 recognized this right.

Section 20 of this bill gives an individual the right to restrict or prevent the continuing disclosure of their personal data when such data

1. Has served the purpose for which it was collected, or is no longer necessary for said purpose.
2. Was made with the consent of individual, which consent has since been withdrawn
3. Was made contrary to the PDP bill or any law in force.

This provision is enforceable only on an order passed by the adjudicating officer appointed under the bill.

Indian judiciary Stand

In Dharamraj Bhanushankar Dave Vs State of Gujarat¹⁴ 2017 case Gujarat HC rejected demand of removal of a judgement acquitting him in a kidnapping and murder case passed by the same court.

In “X” Vs Registrar general 2017 case, Karnataka HC recognized the right to be forgotten ‘in sensitive cases involving women in general and highly sensitive cases involving rape or

¹⁴ C/SCA/1854/2015

affecting the modesty and reputation of the person concerned.

In *Subhranshu Rout Vs State of Odisha 2020* case, the Orissa High Court examined the right to be forgotten as a remedy for victims of sexually explicit videos/pictures often posted on social media platforms by spurned lovers to intimidate and harass women. The Odisha HC in this case focused on need of an hour to have right to privacy in India.

The supreme court also in its right to privacy judgement *Ks Puttaswamy Vs Union of India* case 2017 the SC clarified that the recognition of right to be forgotten “does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification”.

SC explained: If we were to recognize a similar right, it would only mean that individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant or is incorrect and serves no legitimate interest.”

INTERNATIONAL CONCEPT OF PRIVACY

Article 12 of UDHR – There should not be arbitrary inferences in anyone’s privacy, family, home, or correspondence nor there should be any attack upon the reputation and honor of any individual

Article 17 of ICCPR – There should be no arbitrary inference anybody’s privacy, family, or home.

Article 8 of European Convention on Human Rights – Every individual has a right to respect for his private & family life.

LIMITATIONS OF RIGHT TO PRIVACY

The right to privacy flows from Article 21 of Indian constitution, but is subjected to certain limitations –

1. National Security Interest
2. Public Interest
3. Scientific Historic Research
4. Criminal Offences, etc.

IV. PRIVACY LAWS AND ISSUES IN INDIA

Currently there is no proper law on privacy in India. It is only some part in Information Technology Act, 2000 which provides remedies to individual and provides right to

compensation for any unauthorized disclosure of personal information. There were some efforts were made by government of India after the historic judgement of apex court in *Ks puttaswamy* judgement in which right to privacy was considered as fundamental right of individual so the bill called personal Data Protection Bill, 2019 was introduced in Parliament but due to lapse of session and it is still pending with review committee and still not passed till date.

In the present time the Data privacy has become a new challenge but is one of the neglected areas under privacy as all the legislation of Indian constitution is silent on it. Data protection is simply meaning a process of protection of any important or crucial information from any form of corruption, compromise or loss. In more simple words Data means a huge bundle of information that is stored in a computer or any device¹⁵. As in today's world every information we want is online and internet connect us globally so it now becomes more seriously important to protect the data from any unauthorized used as it continues to grow and store at uncontrolled rate. The need for data protection also arises because According to Internet and mobile Association of India report 2019 there are around 504 million active web users in India which means It is second largest online market in the world after China. The collection of information about the individuals and their habits has become one of the major sources of growth in business of online e mart companies for profits. The companies simply collect information from data of individuals available online without their consent and it is clearly violating their right to privacy and is an invasion in the privacy of individual in his personal life.

As we know the case is not same across the globe like India the European Union has enacted regulation called General Data Protection Regulation (GDPR) which aims to provide individuals control over their personal Data. Similarly, US has also basic laws on matters dealing with digital privacy like US privacy act 1974, Gramm Leach Bliley Act etc.

But it is very sad that there is no law in our country which provide us with safeguards against any privacy issue which can arise¹⁶. The efforts made after the 2017 landmark judgement by apex court by Indian government inform of introducing Personal Data Protection Bill 2019 but due to its complex nature and conflicting stand it can't pass. According to the experts this bill is like two ways sword. On the one hand it protects the personal data of Indians by giving them data principal right and on other side it gives the central government the power of exemptions which are against the principle of processing Data. Not only this but the government can also process even sensitive personal data of individuals when needed without any explicit

¹⁵ <https://www.insightsonindia.com/wp-content/uploads/2017/08/Right-to-Privacy-in-India.pdf>

¹⁶ <https://www.civildaily.com/story/right-to-privacy/>

permission. The term privacy has still remained undefined and it is very difficult for judiciary to interpret the scope of privacy whenever any case arises.

Right to privacy is an important part of Universal Declaration on Human Rights and International covenant on civil and political rights 1966. The many countries like European Union have also enacted European convention on Human rights according to which article 8 recognizes the right to respect for private and family life. India though a signatory of all the international conventions which all favor right to privacy don't have enacted any law or regulation which define or protect individuals right to privacy.

There are certain serious implications if privacy of individual is violated for example there are cases reported are on rise of webcam scandal in south Korea where many women were the victims of webcam scandal in by their male counterpart. The problem begins when a woman when in private space most commonly in bathroom and near bed where she is not to be watched by anyone is filmed or watched through webcams. When these videos or films of women are released in public their image is destroyed and people looks them with suspicious eye and questions her moral character. The very famous case of webcam scandal exploiting women's freedom of women and abuse her rights came in south Korea when a very famous pop singer called Goo Hara her image was tarnished in the society when her ex-boyfriend leaked her intimate video with her boyfriend online after breakup this all was recorded by webcam and soon after the incident the pop singer was found dead in her apartment. This case was huge eye opener and now the large mass people are aware of these webcam scandal on women and now government is also taking steps to stop this business and to protect right to privacy of women'.

But it is important to make strict laws in south Korea for protecting right to privacy of women so that accused could be punished for stricter period of punishment.

So, from this we come to know why the issue of privacy is so important and its misuse can cost someone's life. The right to live with dignity which is inherent in part of life of individuals provided by our constitution is incomplete without right to privacy and reputation. All the activities or choices made freely like right to vote or freedom of religion from any external pressure all these are our reflection of our rights been preserved by rule of law. The basic rights given to us by our constitution like right to personal liberty is of no use if it is without proper protection of right to privacy. Moreover, in the age of modern technology tools used and made are a severe threat to invasion of privacy like many programs and welfare schemes launched by central government are using computerized data which is gathered from citizens and becomes most vulnerable to theft and misuse.

V. NEW AGE CHALLENGES

After the supreme court gave new life and meaning to Article 21 of Indian Constitution it led to the birth of several rights from Right to life which is a Fundamental Right one of such right born out is Right to privacy. With this comes new age challenges to right to privacy in India as we all know our country don't have any proper rules or law on privacy. So, it has become very difficult for individual to prove that their right to privacy is destroyed by certain actions of either by government schemes, policy or through any private person or any company. All the responsibility is on the judiciary to interpret the definition of term privacy in each case. Article 21 is mainly interpreted to the extend be in accordance with International Charter on Human Rights. If the issues of surveillance and data breach which is constantly on rise in India due to modern Technology invades privacy of citizen then it clearly amounts to an infringement of Article 21 and 19(1)(d) of our Indian constitution¹⁷.

There are some new age challenges to right to privacy like if we want to find the origin of WhatsApp message it is impossible without breaking the encryption which directly leads to many legal implications. The act of breaking encryption of WhatsApp messages leads to infringement of right to privacy of individual. So, privacy and traceability which is needed by authorities in investigation don't go on same track. If enforcing one other is violated i.e., when enforcing traceability, the right to privacy is definitely being infringed.

In the very famous case in recent few months ago was the case of Pegasus spyware a malware which when enters the devices like mobile phone, computer, or laptops actively reads the user's message, emails, can also hear or record calls and also track the search history which in simple language means controlling all the activities of individual in his digital world. In India some media reports have claimed that this spyware was 1st used to keep check and track on lawyers of infamous Bhima Koregaon Case¹⁸. There were some more cases of use of Pegasus on renowned politicians, journalists, and some eminent figures in India so it becomes more important to investigate the incidents of Pegasus and its official disclosure how this effected the privacy of some citizens in India. From these incidents we can clearly see that all the efforts or claims made till now by Indian Government on privacy laws and to prevent invasion of right to privacy of individual i.e., all the existing guidelines and IT Act fails to prevent such incidents. So, today our country desperately need law on Privacy to protect Right to privacy of its citizens given under Article 21 which is fundamental right and to tackle with new age challenges.

¹⁷http://visionias.in/beta/sites/all/themes/momentum/files/interview_issues_2016/The_AADHAR_Card_Controversy-Right_to_Privacy_Debate.pdf

¹⁸ <https://www.newslaundry.com/2021/01/02/bhima-koregaon-case-three-years-of-legal-and-rights-violations>

The current laws on surveillance in India is cause of concern after the recent incident.as per the government the communication surveillance in India takes place primarily under two laws one is Telegraph Act, 1885 and other one is Information Technology Act, 2000. While the telegraph Act 1885 deals with check and intercept of all types of calls in India. On the other hand, the IT act enacted to tackle with issues related to snooping and surveillance in all form of electronic communication. But still there is not law or rules which can handle case related to breach of data privacy.

Now let's talk about Sec 5 of Telegraph Act which gives power to the central government to check the messages between the individuals for the security and peace of the nation can also be intercepted and be disclosed to the government by an officer as per the orders. So, under this rule government can only use this in some special cases i.e., in the interest of the nation, security of the state, to prevent any incitement of any violence or any offence. After the intervention of supreme court in providing relief in matters pertain to privacy now it is duty of Government to frame guidelines for protection of privacy of individuals in every aspect. The consequences of unregulated access to data can also lead to suppression of decent and a censorship on journalists and human rights activists moreover they can be kept under control with censor on there rights and privacy. The government must keep check on unauthorized data privacy breach involving cybercrimes and frauds. Because one's data is leaked its implications are very high. Take for example when in past few years back many cases came in light connected with Aadhar data leak by a government website on internet and personal data of individuals like phone number, to their House address was leaked and was easily available publicly on internet. If suppose the data leaked is misused it can have a devastating impact on privacy of an individual. As we all are well aware with the famous case of Cambridge Analytica in which the big multinational Tech Giant like Facebook and WhatsApp used the data of its users to manipulate the opinion of voters in the American election. Data protection in country like India if protected by strict Law then it will improve banking transaction in India which future help in building confidence among individuals for more digital transaction.

In 2017 the government of India after Aadhaar Judgement formed a BN Srikrishna Committee for the formulation of draft on Data protection and preserving Privacy of people which now was fundamental right. It recommended to include the use of informal and meaningful consent of the users before sharing their information. It also emphasized on the role of the Data controller and its accountability for any activity which leads to sharing of data. There should also be established a high-power statutory authority for enforcement mechanism of the law. The provision of Penalties for any wrongdoing like sharing of data.

Right to privacy & search & seizure

In India right to privacy and power of search & seizure stand on two different paths as per the laws in our country when there is power of search and seizure then the right to privacy takes backseat. Our judiciary while hearing the case related to conflict of both these terms referred to American case laws of 4th amendment of US constitution¹⁹. The apex court also refers to some other international treaties like European union convention on human rights and held its decision that power given to the state for search and seizure cannot bypass the right to privacy of the individuals which is a fundamental right under Article 21. The court also held that the documents given by people in bank for verification and other purposes related to bank can't be made public so as to protect the privacy of individuals. In this case the collector under sec 73 of Indian stamp act 1899 is empowered to search and seize personal documents held with bank but matter reached court. The supreme court held that the personal document search and seized violated right to privacy of individual so the court struck down sec 73 of Indian stamp act.

Telephone tapping

The tapping of telephone is the form of grave breach of right to privacy of Individuals. The one of the most frequent question comes to our mind when we hear about phone tapping the Is it constitutional valid in India? And if so, then to what extent? What are the safeguards for against mala fide use of phone tapping? These questions are very well answered by Supreme Court in People's Union for civil Liberties Vs. Union of India. This case deals with increasing incidents phone tapping by government agencies on politician. So, the matter reached court by way of Public Interest Litigation. The court by deciding the matter held that telephonic conversation of any individual is most private and personal in his life hearing it or tapping it is most heinous breach of right to privacy of individual. For example, recently in 2018 In Uttar Pradesh farmers upset with decline in purchasing price of potatoes dumped the truck of potatoes in front of chief minister yogi Adityanath house. So, to catch the accuse as per UP police 10,000 phones were tapped. From this we can see to catch one accuse 10000 phones were tapped which ultimately leads to breach of right to privacy of almost 9,999 people in the state. The apex court in its many judgements has ruled that telephonic tapping amounts to infringement Article 21 unless it is permitted as per procedure established by law. The court laid some guidelines to regulate the power of search and seizure by state given under Section 5 of the Indian Telegraph Act. Which talks about phone tapping and interception of other messages in case pertain to national security and safeguarding public interest. According to sec 5(2) of the telegraph act phone tapping is

¹⁹ <https://blog.forumias.com/right-to-privacy-is-a-fundamental-right-now/>

only permitted according to the procedure established by law. With proviso of public safety demand and public emergency. The court has also defined public emergency i.e., situation or condition suddenly arrives which effects large mass of people and immediate action is required. So, the court ruled that neither the state government nor the central government can order phone tapping even if it is satisfied that to prevent commission of the crime it is necessary to tap phone or intercept messages unless in cases pertaining to public safety and in public interest.

The apex court laid down certain guidelines for procedural safeguard for exercise of power under sec 5(2) of Indian telegraph Act. Firstly, an order of phone tapping can only be issued by home secretary of central government or state government. In his absence the power can be transfer to another officer in home department but not below rank of Joint secretary. Moreover, the copy of the order passed shall be passed to review committee within one week. If the order passed in not renewed then it shall be deemed to be expire after the end of 2 months from its date of issued. Then the issuing authority shall maintain the record of all the inception of messages and phone calls tapped. Its use of material collected by interception must be limited and shall only be restricted to terms under sec 5(2) of the Act. The review committee has also had the power to check within the 2 months that the order for telephone tapping and message intercept are valid under sec 5(2) of Indian telegraph act. If after the investigation by review committee finds that order of telephone tapping violates any provision of sec 5(2) of the act then it can immediately set aside the order and can also order to destroy the copies of all the intercepted material.

Divorce petition: Husband Tapping phone of his wife

The court in *Rayala M. Bhuvneseswari Vs. Nagaphomender Rayala*²⁰ case held that producing of telephonic conversation of wife with others by husband in court for divorce violates her Right to Privacy. This case deals with petition for divorce against wife the petitioner in this case sought permission from the court to produce telephone recording tape of his wife with other individuals. But the court denied the permission and stated that any act of recording the conversation of his wife with others without her knowledge amounts to illegal infringement and invasion of privacy under sec 21 of Indian constitution. And moreover, this evidence of voice recording is not admissible as evidence under court of law. The also observed that the institution of marriage is based on trust and faith on each other but in this case as the husband is recording her phone calls and tapping messages of her own wife even with her parents this show that the trust and faith between them has totally broken so marriage is bound to be dissolved.

²⁰ AIR 2008 AP 98, 2008 (2) ALD 311, 2008 (1) ALT 613

Prisoner's Privacy Rights

The law behind the privacy i.e., right to privacy under article 21 is available to all even to convicts in jail. He shall not be deprived of his basic fundamental right i.e., right to life except procedure established by law. The case pertaining to prisons right to privacy came to court in R.Rajagopal Vs. State of Tamil Nadu in this case a prisoner had written his autobiography describing the condition in Indian jails he gave his autobiography for publish to his wife in an magazine however the magazine publisher refuse to publish his autobiography so the question arose was whether the prisoner has the right to be left alone. So, in this case the court recognized right to be left alone under article 21 of constitution i.e., court granted right to privacy to prisons.

Right to privacy and right to information

Our constitution when drafted doesn't have provision related to privacy. But after the supreme court judgement in Kharak Singh vs. State of U.P the concept of right to privacy was first started recognized under Article 21 i.e., forming integral part of right to life. But still it remained an unclear area and a topic of discussion. The court in this case based its conclusion on the other fundamental right given in constitution i.e., under 19(1)(a) right to freedom of speech and expression. The court held that infringement by the authorities violates freedom of expression by keeping check on movement of the petitioner.

The honorable court in Rajagopal vs. State of Tamil Nadu also held that the right to privacy also include right to be let alone. The court held that no one can publish anything concerning any person without his/her permission whether true or false or any critical statement without the consent. If he does so, he violates the right to privacy of individual and would be held liable to pay appropriate damages.

The right to information Act 2005 was introduced the concept of right to information in India Which empowered the citizens with power to know every information in public domain and made working authorities more accountable. But due to rising cases of RTI in India leads to concern about privacy of individuals. So, taking heap towards concerns raised the then Prime minister of India Manmohan Singh ordered that citizen right to know should be limited and there is need to make a balance between right to privacy and right to information and it steps to be taken so that RTI do not encroaches on privacy of individual. The citizens right to know should definitely be curtailed or limited if it encroaches upon the fundamental right to privacy of the citizens. In the past few years ago, there was very famous case came in limelight known as Radia tapes case. In this case ratan tata went to supreme court for recording his phone calls with neera radia who is manages corporate communication in Tata group. The allegation made

in the petition was that the phone calls of neera radia was tapped and intercepted for the purpose of investigation by authorities.²¹ The petitioner ratan tata requested court to protect the right to privacy of neera radia. But the court held that there should be clear construction should be made between personal information and other relevant information. If the personal information of related to individual is not shared it is a valid information under sec 8(j) if RTI Act shared in public even acquired through phone tapping or through other means. But if the information related to personal matter is shared then it clearly amounts to breach of right to privacy and violates sec 8(j) of RTI Act. But this act also talks about exception to this rule i.e., the invasion in privacy of individual has exception when the information is of public importance and is in public interest then the information will be shared in public domain even if it is private information relating to individual and is in interest of larger society. So according to experts the allowing of disclosure of information and conversation by supreme court between Ratan Tata and Nira Radia is justified by right.

The right to privacy which is now a fundamental right under article 21 i.e., right to life is very broad right. In today's world when internet is ruling the world the new social media apps and modern technology has been a threat to individuals right o privacy. The extent or till what limit the right to privacy of individual is? this is very debatable question. Even some provisions like sec 43 of Information Technology Act recognizes right to privacy of the people and makes unauthorized access into computer of other person a punishable offence.

In the recent times the media has now become very powerful and role played by media in transforming the society is significant and responsive by revealing truth in front of public. The media also help the common people in preserving their right to know i.e., what is happening in society. So, the media function to reveal the truthful information in front of common people²². The media's right to press which is enshrined under article 19(1)(a) of Indian constitution comes in direct conflict with right to privacy of individuals. Because some times in putting information in front of public some private information comes in public domain. But the answer is also given by constitution in form of two important concepts called pubic interest and pubic morality. In other words, the publication of information is justified even if it is private if needed in public interest and in larger interest then the right to privacy of individual takes back seat.

We have seen in many cases in India that right to privacy has come in direct conflict with certain techniques of investigation such as Narco-analysis test, polygraph test, and most important brain

²¹ <https://www.thehindu.com/news/national/the-lowdown-on-the-right-to-privacy/article19386366.ece>

²² <https://indianexpress.com/article/explained/project-pegasus-the-laws-for-surveillance-in-india-and-the-concerns-over-privacy-7417714/>

mapping test making invasion in privacy of individual. When hearing the pleas related to these matters the honorable supreme court in Directorate of revenue and others Vs. Mohammed Nisar Holia decided that such techniques of investigation violate right to privacy of individual and cannot be allowed in any circumstances. While deciding the above case the Supreme Court referred to Us case where the incident of thermal imaging was done on accused house technique to check any unwanted or illegal drug kept in house but the Us court ruled that anything which invades privacy of individuals is illegal and is bound to be struck down.

VI. CONCLUSION

The right to privacy is very important right in the life of any individual given under right to life i.e., Article 21 of the constitution. But one thing we must keep in mind that this right to privacy is not an absolute right and can be curtailed or limited in certain circumstances. Right to privacy is very broad right and has very vast scope for interpretation. Where our right to privacy comes with dispute with the duties performed by authorities then there is a need to maintain balance between the two. The judges in America have interpreted the direct link of happiness with the enjoyment of rights given to individual from law without interference from state.

So, from this we can say that right to privacy is evolving right and is evolving day by day and it need more time to have a stronger mechanism to resolve conflict between right to privacy and actions by state.

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