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# Right to Privacy and Data Defence

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## ABSTRACT

*“There is a sacred realm of privacy for every man and women where he makes his choices and decisions—a realm of his own essential right and liberties into which the law, generally speaking must not intrude.”*

**-Geoffrey Fisher**

*This paper attempts to throw the light on data protection and Article 21 of the Indian Constitution. The Information Technology Act, 2000 is the statute that covers data protection. Though the term **privacy** is not defined in the constitution, it is an intrinsic part in personal liberty guaranteed under Article 21. In the digital world, there is always dispute between privacy and data collection. Information technology act does not cover all the loopholes regarding right to privacy. The act needs to establish standard methods to protect one's data. The effective balance between the personal liberty and privacy should be covered under the act. Right to privacy also has international obligations. It is guaranteed under Article 17 of ICCPR. The data protection includes financial details, health information, business information and other sensitive data, which comes under the ambit of The Information Technology Act, 2000. K.S.Puttuswamy v. Union of India case gathered consideration on how much the right to privacy is important in the modern era. People are still unaware of the impact when their privacy is breached. There is a high risk of hack in the digital network due to lack of data protection laws. There is somebody somewhere capable of intruding one's personal data. This paper emphasis on suggestions on the healthy data protection and right to privacy.*

**Keywords:** *Right to privacy, data protection, The Information Technology Act, 2000, K.S.Puttuswamy v. Union of India, data protection laws.*

## I. INTRODUCTION

The phrases privacy and right to privacy are difficult to grasp. Privacy is based on natural rights philosophy and reacts to emerging information and communication technology in general. The right to privacy has different perspective. In internet era privacy has been recognized both in eyes of law and in common idiom. Article 21 of the constitution protects right to privacy and

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dignity. In the concept of man can make mistake, every manual work is replaced by digital process. Every data collected are stored and processed by the computers. The right to privacy denotes to the precise right of an individual to control the gathering, use and expose of personal information. Third party intervention in any personal data may cause serious issues. This gradual development in the usage of personal data has many reimbursements but it could also tend to lead many glitches. Additional, Innovative technologies make personal data effortlessly available and communicable. There is an innate conflict between right to privacy and data protection. Data protection should principally join these conflicting interests to information. But, the data of individuals and organizations should be defended in a manner that their privacy rights are not negotiated. The right to privacy is our ability to maintain a domain around us that includes all of the things that are a part of us, such as our body, home, property, thoughts, feelings, secrets, and identity. The right to privacy allows us to choose which parts of this domain can be accessed by others and to control the extent, manner, and timing of the use of those parts we choose to disclose.

## **II. WHAT IS RIGHT TO PRIVACY?**

**“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”**

In India, the right to privacy is a weird combination of constitutional, customary, and common law rights distributed over many legal disciplines. The discussion of the right to privacy is not something that has lately arisen in the country. This dispute has been going on for a long time. Numerous international treaties and conventions recognise privacy as a fundamental human right. It is fundamental for the safeguarding of human dignity and is a pillar of a democratic nation. It defends one's own rights as well as the rights of others. A legal framework that gives individuals the legal right to preserve their or their data's private is known as the “right to privacy”. Article 21's right to life has been widely interpreted to entail more than simply survival, existence, or animal existence. As a result, it encompasses all aspects of life that make a man's existence more meaningful, complete, and worthwhile, and the right to privacy is one of them.

## **III. RIGHT TO PRIVACY FALL UNDER ARTICLE 21**

The right to privacy is an integral part of right to life and personal liberty. Right to privacy includes right to live with dignity. Privacy is a basic international right under Article 12 of Universal Declaration of Human Rights (**UDHR**), Article 17 of The United Nations International Covenant of Civil and Political Rights (**ICCPR**). India is signatory of both statute.

Article 8 of European Convention of Human Rights deals with the privacy rights.

A landmark judgment in the case *Kharak Singh v. state of U.P.*<sup>3</sup>, the Supreme Court held that privacy falls under the scope of article 21. On the other side of the coin, *Gobind v. state of M.P.*<sup>4</sup>, violation of privacy could be done by sanction of law. The right to privacy can be limited if there is an significant countervailing interest which is grander to it. There is also a right to be left under the scope of privacy, which is confirmed in *R. Rajagopalan v. state of TN.*<sup>5</sup>

Unique Identification Authority of India & Anr. v. Central Bureau of Investigation, in this case, the CBI required access to the database of the Unique Identity Authority of India for the purposes of examining a criminal offence. However, the Supreme Court in a temporary order held that the Unique Identity Authority of India should not transfer any biometric information of any individual who has been allotted an Aadhaar number to any other organization without the written accord of that person.

#### IV. LEGAL FRAME WORK

Various 19th century legislations recognised the concept of privacy without providing a precise definition, such as Section 509 of the Indian Penal Code, which safeguards personal interests. In addition, the Code of Criminal Procedure, 1898, Sections 26, 163, and 164(3) allow for the defense of the public interest.

Tort laws does not provide direct action for infringement of privacy. It provides defense against civil wrongs like defamation, trespass and breach of confidence but that is not adequate for the modern era. The Information Technology Rules provides rules for protection of personal data by imposing assured responsibilities on the entities that collect information. It provides punishment under civil and criminal liability. Indian Penal code does not specify about data protection. Section 403 of IPC, which deals with conversion of others property for one's own use. Intellectual Property rights protects from piracy of copyrighted matter. Telegraph Rules, 1951- Rule 419-A prescribes strict procedures for issuance of orders for seizure of communications. Under constitution right to privacy is accepted as a fundamental right under Part III of the Constitution in *Justice Puttuswamy*<sup>6</sup> case.

Section 92 of the CrPC (for all call records, etc. ), Rule 419A of the Telegraph Rules, and the rules under sections 69 and 69B of the IT Act are the current laws permitting interception and

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<sup>3</sup> (1964) 1 SCR 334.

<sup>4</sup> 1975 SCR (3) 946

<sup>5</sup> 1994 SCC (6) 632

monitoring of communications. Indeed, it's not apparent when the Telegraph Act comes into play. A small number of authorities have been given the authority to intercept and monitor. In *Shreya Singhal v. UOI*<sup>7</sup>, The Supreme Court was required to rule on the constitutionality of Section 66A of the IT Act. The Supreme Court's judgement was founded on three concepts: debate, advocacy, and incitement. It was pointed out that just debating or even campaigning for a topic, no matter how unpopular, is at the core of freedom of speech and expression. Section 66A was deemed to be capable of prohibiting all forms of communication, with no distinction made between simple advocacy or discussion on a particular subject that is disagreeable to some and incitement by such words leading to a causal relationship to public disorder, security, or health.

Right to privacy is infringed by new adoption to technologies. As of now, the privacy relating to one's information has become discussion topic due to the development in digital network, people often choose to use time consuming method to communicate any information like telephones, mails etc. There are certain situations under which the mails and conversations are tapped. According to section 26 (1) of the Indian telegraph act 1885, central or state government can intrude telephones or mails (post) on any emergency for ensuring public security. In *R.M.Malkani v. state of Maharashtra*,<sup>8</sup> Supreme Court held that intruding an individual's mail or tapping the telephone is violation of article 21 and 19(1) (a). Following it, a slew of cases involving the right to privacy in other sectors were argued and debated.

However, in the year 2012, when Justice KS Puttaswamy filed a writ petition in the Supreme Court challenging the government's Aadhar Project, the country witnessed a big uproar or debate about the right to privacy being read as a basic right. In this petition, the government's goal of establishing a surveillance state, which is in violation of one's right to be free and live one's own life, was challenged. In *Puttaswamy v Union of India*, a nine-judge bench of the Supreme Court of India unanimously ruled that citizens of India have a fundamental right to privacy, despite the fact that it is not expressly stated in the constitution. This right should be interpreted from the text and the thought process that the constitution makers would have used to draught the country's constitution.

## V. HACKING OF DATA

Hacking is an attempt to gain access to a computer system or a private network within a computer. Simply described, it is unauthorised access to or control of computer network

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<sup>7</sup> (2013) 12 SCC 73

<sup>8</sup> 1987 SC1748 (20)

security systems with the intention of committing a crime.

Hackers in India are stealing data and selling it on the black market, taking advantage of a booming digital economy and inadequate regulation. Regulation, according to experts, is not going quickly enough. Hacking is the serious issue in the data world. It is like a cancer which affects the society at its best. Cybercrime can take many forms, but they all have one common thread: a digital environment. An appropriate cybercrime definition might be: Offenses committed using computers and/or networks such as the Internet or mobile networks to ruin the victim's reputation or cause bodily or mental harm to the victim. The term hack is the combination of password hacks, network intrusion, cheat, software piracy, viruses, IP address spoofing and smuggling of files. Recently, India's Prime Minister Narendra Modi's twitter account was hacked. There are also top hacks happened in India and the worst side is that the hackers are tough to find. The hackers who are under the umbrella of dark web cannot be intruded with that ease. Dark web is the World Wide Web, which has overlay links that use the Internet but require specific software or authorization to access. Every data in the air is in peril.

## VI. COVID 19 AND DATA PRIVACY

COVID-19 is large global outbreak and is a chief public health issue. There are Six major pandemic swept the sphere between 2000 and 2019, viz. Severe Acute Respiratory Syndrome, H1N1 influenza, Middle East respiratory, the West-African Ebola virus, the Zika fever and Avian influenza. None of these, achieved the longitudinal and latitudinal extent and impacts that the coronavirus did. On the other side, DO WE HAVE OUR DATA PROTECTED? Government took number of measures to build the public strength against the virus which includes 'Arogya setu' application. 'Arogya setu' application access location and Bluetooth to identify the positive cases. Coming to the actual question 'whether accessing location and Bluetooth is breach of privacy?' It is 'however expected that the government will *inter alia* control the data access, maintain the anonymization of data, decentralize the data, refrain from processing the data for purpose other than fighting COVID-19 pandemic and destroy the data as and when the world survives this pandemic.'<sup>9</sup> This app is riddled with serious privacy risks. The first point of contention is the legality of making this app compulsory. Making it permissible under the Disaster Management Act has been widely deemed to be insufficient. Because something infringes on one of the fundamental rights, it must pass the proportionality

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<sup>9</sup> Monga, A., Goel, R. and Pal, P., 2021. *Unleash The Fight Against COVID-19: Is It Possible To Balance Right To Privacy And Public Interest? - Privacy - India*. [online] Mondaq.com. Available at: <<https://www.mondaq.com/india/data-protection/915778/unleash-the-fight-against-covid-19-is-it-possible-to-balance-right-to-privacy-and-public-interest>> [Accessed 15 October 2021].

and necessity test in order to be lawfully enforced. Furthermore, it has been alleged that it collects data relating to demographics, contact, self-assessment, and position via Bluetooth and GPS, and that it captures an excessive amount of personal data, but that the data is deleted. According to the new procedure, data is erased after 180 days and after 30 days if a question is raised, but there is no way to verify whether or not this occurs. Furthermore, several transparency demands have been made in response to this, questioning why the code of this public app is not made public for review and inspection.

## **VII. DATA PROTECTION BILL, 2019**

In *Puttaswamy vs Union of India*, the Supreme Court viewed 'informational privacy' as a basic right derived from Articles 14, 19, and 21 of the Indian Constitution. As a result, the Constitution, rather than the federal government, now guarantees personal data privacy. Hence, personal data protection is now guaranteed by the Constitution, not the central government.

Minister of electronics and technology established data Protection Bill on the table of Lok Shaba on December, 2019. According to the minister, the committee has brought out a draft Personal Data Protection Bill (PDPB) and wide-ranging discussions and consultations have been conducted on the recommendations and advice of the committee with a strong view to finalise the draft legislation. The Bill governs how the government and business entities incorporated in India and overseas process personal data of persons. If the individual gives consent, or if there is a medical emergency, or if the state is giving benefits, processing is permitted. The ultimate aim of the bill is to make advancements in data handling process. There is no standard authority to regulate data protection, Data Protection bill 2019 attempts to appoint separate authority for maintenance of data.

This bill also provides definition for personal data and its privacy, which will create no chaos. It is also customer friendly, it limits the data and one can edit his/ her own data which bounds to protect right to privacy. There is also positive restriction on transferring data outside India. Consent of individual is considered as the main objective in processing an information. The Bill amends the Information Technology Act, 2000 to remove the provisions related to compensation allocated by corporations for failure to guard personal data.

With the growing needs of our society and a technologically emerging world where a data breach is a real issue, the PDP bill is insufficient to address the privacy-related harms of our data economy in India, and thus it has become quite important.

## VIII. SUGGESTION

There is no inclusive legislation that protects privacy. It has been left to the hands of judiciary to interpret the privacy with existing legislations. A fine law which safe guards privacy is in urgent need to India. Right to privacy is regarded as a part of article 21, which is available only against state not against private persons. There should be legislation available against private person also. Harmonize India's legislative framework for communications surveillance to ensure that it is accessible and transparent, and that it complies with India's international human rights commitments. Establish an impartial and effective oversight structure with the mission of monitoring all stages of communications interceptions to guarantee compliance with India's domestic and international commitments to respect and preserve the right to privacy and other human rights.

Adopt and enforce a comprehensive data protection legal framework that meets international standards, applies to both the private and public sectors, and creates an independent data protection authority with adequate resources and the authority to investigate and order redress for data protection violations.

The public has very less awareness on privacy. Introducing statutes, which protects data, may build an awareness 'how important a data is' in the cyber world. Defining the terms like privacy, data, data defense, and breach of privacy in the legislations will avoid misperception. . The right to privacy is enjoyed as an intrinsic part of right to life and liberty should have the status of sovereign constitutional right.

Personal conversations protected under Telegraph Act of 1885, is violated by intelligence agency. Tapping an individual's phone call is highly breach of privacy. There should be guarantee to the privacy.

## IX. CONCLUSION

The world we wake up to is a smart world in a rectangle. Internet realm is something held with due care. Every data in the cyber world is at risk due to lack of enough privacy defending laws. The right to privacy assures a person's individuality. It is all about oneself, his feelings and emotion. Contravention of the right aches the inner self, destroys one's trust. Technology, policy, and education must work together to face important tasks forward. Let us hope that in the close future the Indian Judiciary and legislatures will be able to create the separate area for privacy and will keep a proper balance between the competing interest of individuals and public interest. As India becomes more digital and evolved, concerns about identity theft and fraud



have grown, and information on the internet is prone to being misused. As a result, the data gathering system should consider privacy issues and have mechanisms in place to secure such data and information.

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