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Right to Privacy in India

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ABSTRACT

This article extensively covers the origin of the right to privacy as a fundamental right. It discusses the current legal developments that have made the right to privacy a fundamental right. The article discusses the various international treaties that recognise privacy as a basic human right. It sheds light on how privacy was dealt with before it was guaranteed the status of fundamental rights. The article further deals with the judicial pronouncements of the Indian courts that have recognised privacy as a fundamental right. It discusses the right to be forgotten as a facet of privacy rights. Therefore i chose this topic as it highlights the importance of right to privacy in our country.

I. INTRODUCTION

Privacy is a fundamental human right enshrined in many international treaties. It is important for the protection of human dignity and is one of the important pillars of a democratic country. It supports the rights of self and others.

Privacy is a right that all human beings enjoy by virtue of their existence. It also extends to physical integrity, individual autonomy, free speech, and freedom to move, or think. This means that privacy is not only about the body, but extends to integrity, personal autonomy, data, speech, consent, objections, movements, thoughts, and reputation. Therefore, it is a neutral relationship between an individual, group, and an individual who is not subject to interference or unwanted invasion or invasion of personal freedom. All modern societies recognize that privacy is essential and recognize it not only for humanitarian reasons but also from a legal point of view.

The terms of privacy and the right to privacy cannot be easily conceptualized. Privacy uses the theory of natural rights and often corresponds to new information and communication technologies. Privacy is our right to maintain the territory around us, including everything that belongs to us, including our bodies, homes, possessions, thoughts, feelings, secrets, identities, etc. Privacy gives us the power to choose our thoughts and feelings and who we share them with.

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Privacy protects our information we do not want shared publicly (such as health or personal finances).

Privacy helps protect our physical safety (if our real time location data is private).

Privacy helps protect us as individuals, and our businesses, against entities we depend on or that are more powerful than us.

Privacy enables people to manage their reputations. Being judged by others affects our opportunities, friendships, and overall well-being. Although we can't have complete control over our reputations, we must have some ability to protect our reputations from being unfairly harmed.

II. A BRIEF HISTORY OF RIGHT TO PRIVACY

The Right to Privacy was not directly envisaged by the Constitution makers and as such does not find a mention in Part III of the Constitution relating to Fundamental Rights. The judiciary has deliberated upon the matter, and has interpreted privacy from the very beginning. However, it was in 1954, just four years after the Constitution came into being, that the Supreme Court had to deal with the question of privacy. In the **MP Sharma vs Satish Chandra case**, the Supreme Court decided in favour of the practice of search and seizure when contrasted with privacy.

In 1962, while deciding the **Kharak Singh vs State of UP** (AIR 1963 SC 1295), the Court examined the power of police surveillance with respect to history- sheeters and it ruled in favour of the police, saying that the right of privacy is not a guaranteed right under the Constitution. It was 1975 that became a watershed year for the right to privacy in India.

The Supreme Court while hearing the **Gobind vs State of MP & ANR** [1975 SCC(2) 148] case introduced the compelling state interest test from the American jurisprudence. The court stated that right to privacy of an individual would have to give way to larger state interest, the nature of which must be convincing. With time, the domain of privacy has expanded and it has come to incorporate personal sensitive data such as medical records and biometrics.

In 1997 in the matter of **PUCL vs Union of India**, commonly known as telephone tapping cases, the Supreme Court unequivocally held that individuals had a privacy interest in the content of their telephone communications. Thus, through a series of cases, it can be observed that the right to privacy was being recognised, but its exceptions were also given due place.

In the second decade of the 21st century, questions with respect to the right to privacy have centred around Aadhaar, a government scheme in which residents get a unique ID after giving

their biometrics such as fingerprints and iris scan and demographic details. Aadhaar was challenged in court on the grounds of violation of privacy and its usage was limited by the Supreme Court through its order in September 2013, with Aadhaar being allowed in public distribution system and LPG subsidy only. However, in October 2015, it amended its order and said that Aadhaar can be used to deliver services such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), Pradhan Mantri Jan-Dhan Yojana, pension and provident fund schemes but no person should be deprived of any service in absence of Aadhaar.

III. DOMESTIC LAWS RELATED TO PRIVACY

The Personal Data Protection Bill of 2019 was a precursor to the right to privacy in India. The bill was proposed in response to the 2017 Supreme Court ruling that declared the right to privacy as a fundamental right.

- In addition to giving people certain rights such as the right to be informed, the right to access, the right to object, the right to be forgotten, and the right to data portability, the bill aims to regulate the collection, storage, and use of personal data by institutions.
- It also aims to set up an impartial regulator to control how the suggested framework is put into practice.
- The bill included provisions requiring consent, contractual necessity, and adherence to the law as well as a framework for safeguarding personal data in India.
- It also established rules for data controllers and processors to ensure the protection of personal data.
- The bill also recognises the right to privacy as a fundamental right and established the right of individuals to control their personal data as well as reasonable limitations on its collection and use.
- The proposed legislation called for the implementation of reasonable security measures to protect personal data, such as the use of encryption, and anonymization.
- It outlined the obligations of organisations to alert people to data breaches and grant them access to their personal data.
- A number of remedies were also included in the bill, such as monetary compensation for ignoring the recommended framework.

The Constitution of India does not specifically guarantee a right to privacy. However, through various judgements over the years the Courts of the country have interpreted the other rights in

the Constitution to be giving rise to a (limited) right to privacy – primarily through Article 21 – the right to life and liberty. In 2015, this interpretation was challenged and referred to a larger Bench of the Supreme Court in the writ petition of **Justice K.S Puttaswamy & Another vs. Union of India and Others** [Writ Petition (civil) No. 494 of 2012]⁴.

The Court in a landmark judgement on 24 August, 2017 unanimously ruled that privacy is a fundamental right, and that the right to privacy is protected as an intrinsic part of the right to life and personal liberty, as a part of the freedoms guaranteed by Part III of the Constitution. The Bench also ruled that the right to privacy is not absolute, but is subject to reasonable restrictions (as is every other fundamental right).

(A) The Two Cases That Casted Doubts on the Right to Privacy:

In 2012, Justice K.S. Puttaswamy (Retired) filed a petition in the Supreme Court challenging the constitutionality of Aadhaar on the grounds that it violates the right to privacy. During the hearings, the Central government opposed the classification of privacy as a fundamental right. The government's opposition to the right relied on two early decisions—MP Sharma vs Satish Chandra in 1954, and Kharak Singh vs State of Uttar Pradesh in 1962—which had held that privacy was not a fundamental right.

In M.P Sharma, the bench held that the drafters of the Constitution did not intend to subject the power of search and seizure to a fundamental right of privacy. They argued that the Indian Constitution does not include any language similar to the Fourth Amendment of the US Constitution, and therefore, questioned the existence of a protected right to privacy. The Supreme Court made clear that M.P Sharma did not decide other questions, such as “whether a constitutional right to privacy is protected by other provisions contained in the fundamental rights including among them, the right to life and personal liberty under Article 21.”

In Kharak Singh, the decision invalidated a Police Regulation that provided for nightly domiciliary visits, calling them an “unauthorized intrusion into a person’s home and a violation of ordered liberty.” However, it also upheld other clauses of the Regulation on the ground that the right of privacy was not guaranteed under the Constitution, and hence Article 21 of the Indian Constitution (the right to life and personal liberty) had no application. Justice Subbarao's dissenting opinion clarified that, although the right to privacy was not expressly recognized as a fundamental right, it was an essential ingredient of personal liberty under Article 21.

Over the next 40 years, the interpretation and scope of privacy as a right expanded, and was accepted as being constitutional in subsequent judgments. During the hearings of the Aadhaar challenge, the Attorney-General (AG) representing the Union of India questioned the

foundations of the right to privacy. The AG argued that the Constitution's framers never intended to incorporate a right to privacy, and therefore, to read such a right as intrinsic to the right to life and personal liberty under Article 21, or to the rights to various freedoms (such as the freedom of expression) guaranteed under Article 19, would amount to rewriting the Constitution. The government also pleaded that privacy was "too amorphous" for a precise definition and an elitist concept which should not be elevated to that of a fundamental right.

The AG based his claims on the M.P. Sharma and Kharak Singh judgments, arguing that since a larger bench had found privacy was not a fundamental right, subsequent smaller benches upholding the right were not applicable. Sensing the need for reconciliation of the divergence of opinions on privacy, the Court referred this technical clarification on constitutionality of the right to a larger bench. The bench would determine whether the reasoning applied in M.P. Sharma and Kharak Singh were correct and still relevant in present day. The bench was set up not to look into the constitutional validity of Aadhaar, but to consider a much larger question: whether right to privacy is a fundamental right and can be traced in the rights to life and personal liberty.

Aadhaar Card Case:

In 2012, the retired Justice K.S. Puttaswamy filed a writ petition in Supreme court which was against the mandatory of adhaar card for every citizen, citizens have to link their adhaar card every where and the biometric ID is also linked with adhaar card which was used in various govt. schemes. But on other hand it was also hurting citizens privacy.

In sept. 2013, Supreme court passed a interim order that no citizen should be forced to make adhaar card and no citizen should be suffered if he / she do not have adhaar card even if it is mandatory by the govt. for providing certain benefits.

On 24 march 2014, supreme court passed the another order which said that it is all the agencies in India should not have that rule which create a mandatory requirement of adhaar card for adhering any kind of benefits.

On March 2016, the supreme court's statement given in identity verification in the case of **Lokniti Foundation v. Union of India** was interpreted by the BJP govt. and the govt. made it mandatory that every adhaar card holder have to link his / her mobile no. to it.

The central govt. issued a new guideline on June 2016 to the state that adhaar card is to be linked with caste certificate and also a domicile.

On sept 2017, the constitutional bench upheld the hearing on the validity of the adhaar card and the bench held that the mandatory linkage of aadhaar card in school admission, link of personal mobile no. and linking with the bank account.

On Jan. 2018, the bench of five judges started the hearing of validity of aadhaar card again.

Final Judgement:

The High Court, in its last judgment on Aadhaar maintained its legitimacy and further expressed that the Aadhaar Act doesn't abuse the right to security when an individual consents to share his biometric information. In any case, the High Court banished the privately owned businesses from utilizing aadhaar card with the end goal of KYC validation. Simultaneously the zenith court held that aadhaar will in any case be being used for different purposes which would incorporate Skillet card and ITR recording.

Certain significant parts of the judgment on account of **K.S Puttaswamy VS Association of India** are to be seen from an itemized perspective, with the end goal of better comprehension of the decision of the court on the issue of right to protection concerning aadhaar.

While choosing the instance of K S Puttaswamy v. Association of India, a five established adjudicator seat which was going by the then boss equity of India Deepak Misra held that aadhaar would be required for documenting of personal expense forms and furthermore for the allocation of Super durable record number (Skillet). Henceforth, a citizen or an individual needing Skillet card can't disregard from the aadhaar.

The summit court decided that aadhaar is as of now not a necessity for the understudies showing up for CBSE, NEET and UGC tests. Furthermore, the court likewise held that schools are at this point not permitted to look for aadhaar with the end goal of confirmation.

With regards to benefiting of offices from the government assistance plans brought by the public authority aadhaar is an absolute necessity. Likewise, for making use government endowments aadhaar is an absolute necessity as the sponsorships plans are brought into impact for the actual motivation behind upliftment of poor people and individuals from the minimized areas.

The High Court, while conveying the judgment, felt free to strike down segment 57 of Aadhaar Act and named it illegal. By embraced this action, the High Court guaranteed that no private substance or organization would now be able to look for aadhaar subtleties from its workers.

While conveying the judgment, the top court additionally struck down the Public safety Exemption under Aadhaar Act. This specific demonstration was attempted by the public

authority to in a roundabout way give more prominent security to a person's aadhaar information and the equivalent was guaranteed via confining the public authority admittance to it.

The High Court while conveying the judgment made an uncommon exemption for youngsters and further held that no kid ought to be denied of the administrative plans on the off chance that the person doesn't have aadhaar.

There are several additional implications of this judgement on matters incidental to the principal issue decided by the Court:

1. By expressly recognising an individual's right to privacy regarding his sexual choices, the judgement is likely to have an impact on the petition pending before the Supreme Court on the de-criminalisation of homosexuality in India.
2. To the extent that the judgement has stated that the State cannot interfere in the food choices of an individual it will have an impact on the various cases protesting the ban on beef imposed by certain States.
3. The judgement has also made several observations on the complex relationship between personal privacy and big data, particularly in the context of how the judicious use of these technologies can result in the State achieving its legitimate interests with greater efficiencies.
4. It has also recognized the impact that non-State actors can have on personal privacy particularly in the context of informational privacy on the Internet. While fundamental rights are ordinarily only enforced against actions of the State, given the broad language of the judgement and the extent to which informational privacy has been referred to in the judgement, there is concern amongst certain experts that these principles will extend to the private sector as well.

The Personal Data Protection Bill was introduced 2019 and passed on 11 December 2019 in Lok Sabha, The Bill governs the processing of personal data by:

1. Government.
2. companies incorporated in India.
3. foreign companies dealing with personal data of individuals in India. Personal data is data which pertains to characteristics, traits or attributes of identity, which can be used to identify an individual. The Bill categorises certain personal data as sensitive personal data. This includes financial data, biometric data, caste, religious or political beliefs, or any other

category of data specified by the government, in consultation with the Authority and the concerned sectoral regulator.

This Bill gives rights to an individual are:

1. To obtain confirmation from the fiduciary on whether their personal data has been processed or not.
2. seek correction of inaccurate, incomplete, or out-of-date personal data.
3. have personal data transferred to any other data fiduciary in certain circumstances.
4. restrict continuing disclosure of their personal data by a fiduciary, if it is no longer necessary or consent is withdrawn.

The State provides benefits to an individual, legal proceedings, quick respond to medical emergency, prevent misuse of data, if the data is published then it should be deleted from every platform possible, protect the transfer of personal data outside of the country if the document contains national interest and if any person spreads the govt. personal information which can harm the nation then that person will be charged under UAPA act and get arrested without any legal protection.

In District Registrar and Collector, Hyderabad v. Canara Bank MANU/SC/0935/2004:

A bench of two judges of the supreme court considered the provisions of the Indian Stamp Act, 1899. Section 73, which was invalidated by the high court, empowered the collector to inspect registers, books and records, papers, documents and proceedings in the custody of any public officer 'to secure any duty or to prove or would lead to the discovery of a fraud or omission'.

In D.S. Nakara & ors. vs. Union of India [1983]2 SCR 165, the case referred to pension scheme looking to the goals for the attainment of which pension is paid and the welfare State proposed to be set up in the light of the Directive Principles of State Policy and Preamble to the Constitution it is indisputable that pensioners are for payment of pension from a class. The division which classified the pensioners into two classes on the basis of the specified date was devoid of any rational principle and was both arbitrary and unprincipled being unrelated to the object sought to be achieved by grant of liberalised pension and the guarantee of equal treatment contained in Art. 14 was violated as the pension rules which were statutory in character meted out differential and discriminatory treatment to equals in the matter of computation of pension from the dates specified in the impugned memoranda. The petitioners did not challenge but sought the benefit of the liberalised pension scheme. Their grievance for the denial to them of

the same by arbitrary introduction of words of limitation. There was nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date.

The court observed:

The absence of precedent does not deter the court. Every new norm of socio-economic justice, every new measure of social justice commenced for the first time at some point of time in history. If at that time it was rejected as being without a precedent, law as an instrument of social engineering would have long since been dead. "A statute is not properly called retroactive because a part of the requisites for its action is drawn from a time antecedent to its passing." "The date of retirement of each employee remaining as it is, there is no question of fresh commutation of pension of the pensioners who retired prior to 31st March 1979 and have already availed of the benefit of commutation.

It is not open to them to get that benefit at this late date because commutation has to be availed of within the specified time limit from the date of actual retirement." "The pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. Pension also has a broader significance in that it is a social-welfare measure rendering socio-economic justice by providing economic security in old age to those who toiled ceaselessly in the hey-day of their life."

IV. EVOLUTION OF RIGHT TO PRIVACY

The evolution of this right in India can be traced back to various judicial and legislative developments over the years.

Supreme Court Cases	Year	Subject Matter
Kharak Singh vs State of Uttar Pradesh	1963	Supreme Court decided that the right to privacy is an integral part of the right to personal liberty under Article 21 of the Indian Constitution

R. Rajagopal vs State of Tamil Nadu	1994	The Supreme Court ruled in this case that the right to privacy includes the right to live a private life and the right to be left alone. The Court acknowledged as well that the right to privacy is not an absolute right and may be subject to reasonable restrictions.
PUCL vs Union of India	1997	The Supreme Court ruled that telephone tapping is unlawful unless it is permitted by law and required in a democratic society to maintain public order or national security.
Naz Foundation vs Government of NCT of Delhi	2009	The Delhi High Court ruled that criminalizing homosexuality in this case violates people's rights to privacy and dignity.
Aadhaar judgment	2018	The Supreme Court ruled that the Aadhaar scheme violates the right to privacy because it recognizes it as a fundamental right protected by the Indian Constitution. The Court also established the proportionality test to judge the legality of any privacy rights violations.
Justice K.S. Puttaswamy (Retd.) vs Union of India	2017	The Supreme Court held that the right to privacy is a fundamental right under the Indian Constitution and is protected under Article 21 and Article 14 of the Constitution.

V. RIGHT TO PRIVACY IN OTHER COUNTRIES

The Right to Privacy has come into forefront of a number of controversies in various countries in the past few years, the explicit definition of it has remained unclear in most instances.

(A) Germany:

Germany remains one of the strictest countries to enforce privacy laws. In the recent past in fact, the privacy law in Germany has caused much discomfort to organisations like Facebook and Google which run on the basis of the freedom of the internet.

(B) United States:

While the US Constitution does not mention right to privacy explicitly, the Supreme Court has on various instances interpreted various amendments to state that the right does exist. In particular the 1974 Privacy Act was passed with the intention of protecting citizens from any federal agency using their records arbitrarily.

(C) Canada:

First brought into place in 1977 as part of the Canadian Human Rights Act, the privacy law in Canada has evolved over time. Initially, the law was introduced as a means of data protection. In 1983, the law was expanded to include a check on how the Government can access and disclose personal information. The last time the privacy law was redefined in 2012 when the Canada Government stated that the Common Law recognised the Right to personal privacy as a "tort of intrusion upon seclusion".

(D) Sweden:

Despite being one of the first countries of the world to give a personal identification number to its citizens, required to be used in every interaction with the State, Sweden is also one of the first countries to have a detailed statute on privacy laws online. The Data Act, 1973 protected the privacy of personal data on computers. The right to protection of personal data is also found in the Swedish constitution.

(E) European Union:

The Data Protection Directive adopted by the European Union in 1995 regulates the processing of personal data within the European Union. Article 8 of the European Convention on Human Rights (ECHR) provides a right to protection of one's private and family life subject to certain restrictions.

(F) Australia:

The country has its own 'Privacy Act' which came into being around 1988. It governs the handling of personal information of individuals.

(G) Japan:

In 2015, Japan adopted a system of citizen identification which united personal tax information, social security and disaster relief benefits. The law gave all Japanese citizens and foreign residents a 12 digit 'My Number'. The aim was to make administration more systematic and social welfare benefits more efficient, while also helping to cut down on tax evasion and benefit fraud. It will first be voluntary from 2018 but could become mandatory by 2021. Japanese law in itself does not explicitly provide for a right to privacy. But the right is read into Article 13 of the Japanese Constitution which provides for the right to "life, liberty, and the pursuit of happiness" and for the right for people to be "respected as individuals".

(H) Brazil:

The country's Constitution states, "The intimacy, private life, honor and image of the people are inviolable, with assured right to indemnization by material or moral damage resulting from its violation

VI. RESTRICTIONS TOWARDS THE RIGHT TO PRIVACY IN INDIA

- Numerous statutes and laws in India protect people's right to privacy. There are some limitations imposed on this right though.
- Under the Indian Penal Code, 1860, the right to privacy may be curtailed if it is necessary to safeguard India's sovereignty and integrity, the nation's security, friendly relations with other nations, the maintenance of public order, morality, or decency, or in cases involving judicial contempt, defamation, or incitement to commit an offense.
- According to the Supreme Court of India, the right to privacy is not absolute and may be restricted to protect the general welfare and for reasons of national security.
- The Court has also ruled in some instances that the right to privacy may be curtailed if it is necessary to stop a crime from being committed.
- The right to privacy may also be subject to restrictions by the government in the form of surveillance, electronic communication interception, or the gathering of biometric data.

- The government may also impose limitations on the right to privacy when dealing with foreign individuals, or groups or when the information is crucial for national security.
- Individuals may also waive their right to privacy in cases where they enter into contracts or agreements with a third party.
 - For example, individuals may agree to provide personal information to a company in order to receive a service or enter into a contract.

VII. CONCLUSION

The right to privacy is a fundamental aspect of individual autonomy and dignity. It's recognized in various international treaties and national constitutions, this right encompasses protection against unwarranted intrusion into personal matters. It serves as a safeguard for individuals to control their personal information, maintain confidentiality, and navigate life without undue interference. In an increasingly digital age, where data is constantly shared and accessed, the right to privacy gains even greater significance.

Balancing this right with societal interests, such as national security or public safety, remains a complex challenge. Striking the right equilibrium is crucial to avoid overreach by governments or corporations into the private lives of individuals. As technology evolves, the legal framework surrounding privacy must adapt to address emerging threats and challenges. Ultimately, the right to privacy is integral to the preservation of human dignity, fostering trust in institutions, and ensuring a free and open society where individuals can thrive without fear of unwarranted intrusion.
