
CONSTITUTIONAL PROTECTION OF PERSONAL INFORMATION IN INDIA: RECENT DEVELOPMENTS

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Abstract

This fundamental right has evolved dynamically throughout time, especially in recent years, demonstrating the adaptive capacity to balance the rights of citizens with the powers of the state. The right to be alone, as defined in Articles 14, 19, and 21, was already in the Indian Constitution before the 2017 judgment in Justice K. S. Puttaswamy (Retd.) versus Union of India. This established a turning point to set the stage for a strong legal regime of privacy in India. Subsequent evolution has also defined the areas of this right and how they adapt to new issues caused by new technology and surveillance by the state. Current debates surrounding the Personal Data Protection Bill, 2019, show how the conversation on privacy and the protection thereof continues to evolve with debates regarding privacy to constitute different societal values including; national security and public good. Moreover, decisions made in Aadhaar linked cases, social media regulations, and data localization cases has showed that judiciary is equally engaged in protection of privacy rights. Thus, this paper shall briefly review the jurisprudential history of the right to privacy in India based on significant case laws and the right's statutory provisions. It also discusses impact of modern change processes on civil liberties and state's power, pinpointing the key opportunities and problems seen ahead. In realizing this objective, the paper will hope to contribute to the understanding of the changing nature of privacy rights in India while notes the call for a proportionate approach towards the protection of the rights of its citizen's within context of a growing digital society.

Keywords: *Fundamental Right, Puttaswamy Judgment, Personal Data Protection Bill 2019, Privacy Facets, Technological Advancements, Judicial Interventions, Aadhaar Case, Data Localization*



Introduction

Whatever the case may be, it must not infringe upon Article 21's right to privacy or Article 22's right to free expression, particularly the right to disclose information that is in the public interest. This balance may be advanced with the help of a justifiable restriction, even if it restricts one right more than the other. The right to privacy may be waived if it would violate other rights or a significant public interest. Disclosure of information that is relevant to public interest, whistleblowing, or serves the public interest may, in some circumstances, justify an invasion of privacy, provided that it is reasonable and necessary. However, it is recognized that the Indian Supreme Court has a precedent for recognising the right to privacy even before the year 1958 since it has made oblique references to this right in its previous verdicts. In its subsequent decisions, however, it was the judiciary which started elaborating a more coherent understanding of privacy leading to the Puttaswamy judgment. The Puttaswamy case has provided definition to privacy in broad detail. Privacy was defined in the judgment as having different facets, that is, physical space, control of information, and the right to be granted liberty in the conduct of one's affairs without state interference. Such a broad meaning has provided a general framework in addressing the modern issues of privacy, more so those due to technological advancements. Over the years, the Indian government has made legislative attempts to address issues of privacy but, the recent attempt includes the Personal Data Protection Bill, 2019. Here, the objective of the current bill is to create legal regulation of the processing of personal data, preserving at the same time the right to personal data subjects and the legitimate interests of the State. Still, the bill is the subject to heated discussions, and the bill's opponents pointed to the fact that state authorities would receive interpretations and simply too much power, and the citizens' rights would be less protected. Privacy related interventions made by the judiciary have persisted for many years in India. From the decisions made by the Supreme Court in the context of Aadhaar case, social media regulation case, as well as the data localization case, one can see the attempts of defining the limits of private rights. The Aadhaar case specifically showed the conflict between privacy and paternalists' perception of this right as the state's interest in providing an effective indicator of the proper delivery of welfare services. This brings about the porous balance between the right to privacy and other contending interests that the court has demonstrated through declaring Aadhaar as conforming to the constitution while placing conditions on it. Right to privacy continues to be relevant especially when India faces various difficulties in a digital age. Privacy rights relative to state interests suggests that the legal framework has to adapt to the characteristics of data processing technologies. The following research objectives shall be achieved on the developments towards the right to privacy in India: This paper therefore seeks to provide a critical discussion on the legal precedents, legislative enactments, and judicial decisions regarding the right to Privacy in India. Thus, analyzing these facets, the paper aims at contributing to the understanding of the tendencies of the further evolution of privacy rights and the further actions of people in the struggle for their rights and freedoms within the framework of the advancing technologies.



Permissible Restrictions on the Right to Privacy

Privacy is an international human right although it is not an absolute right and may be breached under certain circumstances. Such invasion of the rights to privacy can be through legislative enactments, administrative or executive regulations, and the judicial process. Any invasion of the rights to privacy of individuals can only be allowed by the legislature after it passes the test of reasonableness as provided in the Constitution. The common law concerning privacy includes the ability of the courts to review the proportionality of such invasion to the end sought to be met. Also, this means that any legislation interfering with privacy must be appropriate and only for pursuing legitimate objective and must be reasonably necessary in addressing the stated objective and that the means employed must be the least intrusive possible. As to the issues connected with administrative or executive steps, these should also be reasonable, taking into account the circumstances of every individual case. The permissiveness of these actions is determined by factors that seek to verify whether the specific incursions are warranted by the circumstances so as not to be arbitrary or beyond the permissible measure. Warrants which include the search or seizure warrant, have to be supported by adequate belief by the court that the warrant is justified. The court needs to address whether the search or seizure which was conducted was appropriate in order to accommodate the particular state interest. Furthermore, under warrant-less circumstances, the common law allows few and limited exceptions such that they are made in bona fide, with the objective of preserving the items sought as evidence or to prevent imminent danger to persons or property. Consequently, the privacy is established as a constituent right but it is not an absolute right as the purview of the law to make or allow reasonable legislation, regulation, or adjudication. They should be reasonable, necessary, and done in a bona fide manner to make sure that the two interests do not collide. The Right to Privacy and the Constitution

The Right to Privacy and the Constitution

Articles 21 and 22 safeguard the right to privacy and the right to free expression, respectively, and it must not infringe on any of these rights, particularly the ability to publish issues of public importance. A fair restriction, even if it restricts one right more than the other, could help bring about this balance. If protecting one's privacy would violate other rights or a major public interest, then the right to privacy would be null and void. As long as it is reasonable and necessary, disclosure of information that is engaged with public interest, whistleblowing, or serves the public interest could, in some instances, justify an invasion of privacy.



Precedent in the law establishes that the right to privacy, often called the "right to life and liberty" and codified in the Fifth Amendment of the US Constitution, is a fundamental provision of that document. Everyone has the right to complete anonymity when it comes to personal information like their family, marriage status, children, and educational background. Indian citizens' right to privacy mostly originates from two sources: Two major branches of law may have some common ground in this matter: common law torts and constitutional law. Therefore, you have the right to pursue legal action under the common law tort if someone unjustly violates your privacy. Leaks of private information about subjects without their consent can result in legal repercussions for journalists, magazine editors, and book publishers. Two cases, nonetheless, defy this generalization: an official record or any publication made by a public official while performing official duties is entitled to the protection of truth.. Second, if the material is false, malicious, or posted recklessly, then the publisher will not be held liable. The Latin term *privatus* means "to be isolated from the rest," which, when translated into English, indicates the right of an individual or certain information about them to be kept secret or made accessible only to authorised individuals. Because of this, the notion of privacy is sacred, even if its boundaries varies among cultures and people. There is a connection between privacy and anonymity, or the desire to avoid detection in public places. The term "private" usually denotes anything unique, exclusive, or related to a person's personal circle of friends and family. Since it is fundamental that a person belongs to himself and not to other people or society as a whole, the concept of privacy has developed out of the belief that there is a part of people's lives that should be free from the control of most or even all governments. In his three-pronged definition of privacy, legal professor Gerety identifies the following as essential components of individual autonomy or control over one's identity: Intimacy, identity, and autonomy are the qualities that best characterise it. Consider the case of Justice K. S. Puttaswamy and others: the Indian Supreme Court asserted in the case of *KS Puttaswamy & Anr.* that Article 21 handles the right of people to life, liberty, and privacy. The writer takes it upon themselves to acquaint readers with the *Shailesh Gandhi vs. Union of India (2017)* case. A right to privacy was rejected by the Supreme Court in two landmark decisions that reversed previous rulings in *M P Sharma (1950)* and *Kharak Singh (1960)*, respectively, which had established that the privilege against self-incrimination did not constitute a constitutional right.

The right to privacy, as a component of the constitutional rights guaranteed by article 21 and upheld by Indian superior courts, does exist in India, but not with the same degree of clarity as in the United States. In an increasingly interconnected world, this right is crucial in the struggle for individual autonomy and the acknowledgment of unique abilities.



A Right to Privacy That Is Subject to Reasonable Limitations Rather Than Absolute None

Despite its indisputable status as a fundamental right, the right to privacy is not without its limitations. Any legislation pertaining to this right must meet the criteria for the permissible restriction on basic rights. Such legislation can only work if it is rational, fair, and reasonable. The three-fold requirement for justifiable infringement includes: These are: (i) the lawfulness which calls for the presence of a legal norm; (ii) the necessity which has an eligible purpose of the state; and (iii) the proportionality which checks the link between the objective and the measures taken. Justice Chelameshwar reiterated that on rights under Article 21, not only the law has to be fair depicting equality, it has to be fair and just and reasonable, but there are no claims of privacy which will invite an exhaustive, tight scrutiny unless it is made out that there is a special societal interest involved.

Justice Nariman, elaborating on the criteria for the justification of privacy constraints imposed by statute, said that such restrictions would be permissible so long as they serve the public interest and are reasonable in comparison to the claimed privacy. When it comes to social, moral, and compelling public interests, Justice Sapre believes that the state might legislate to limit people's right to privacy. According to Justice Kaul, there are exceptions to the right to privacy, such as when it comes to matters of public interest or national security, as well as the other reasons listed in the Constitution's provisos to Article 19..

In an assessment of a claim of privacy based on Article 21, the Court of law makes use of reasonable expectation of privacy test. This involves entering into the context of the privacy law, whether it concerns privacy of private or family life or in a circumstance of a confidential relationship, the severity of the claim and the probability of a material harm as a result of disclosure, and relative to the gravity and extent of the disclosure. Further reflection is made on which type of disclosure it concerns: identification or disclosure of personal and sensitive information or disclosure concerning data that has been willingly and unconditionally released to the public domain as e-commerce and social media platforms do.

To limit the state's discretion in infringing the right to privacy, the following conditions must be met: The degree of intervention must not surpass the level that is necessary for such interference; and finally, sufficient protection mechanisms against abuse of such interference have to be observed.

Right to Privacy and Search and Seizure: A Global Perspective

Strong disputes have raged in democracies that acknowledge ASPECT freedoms over the state's authority to search and confiscate private property and the right to privacy. This controversy has its roots in a series of precedent decisions, the first of which being Semayne's Case from 1603, in which the learned judges said, "every man's home is his fortress." In 1763, William Pitt used this theory to declare to the British Parliament that a homeless man in his hut could fight against the King's army.



John Wilkes's attacks against government policies and the King in his pamphlets demonstrate the persistence of tensions between governmental power and individual rights to privacy throughout history. With the use of general warrants, state officials searched the several residences around Wilkes. Entick, an acquaintance of Wilkes', was able to successfully sue the state authorities for forcibly destroying his door and stealing his goods. Lord Camden noted in the 1765 decision of *Entick v. Carrington* that it was very unpleasant to disrupt the social amenities and that the officers' actions and the warrants were in violation of English law, which required reasonable suspicion and seizure records. An essential principle of English liberties and the British Constitution, entick judgement came to light in the 1886 case *Boyd v. United States*. It gives the government the power to step in, but only when they believe it's necessary to safeguard the safety of the country, its citizens, its economy, its morals, their freedoms, and their health; it also allows them to prevent crime and maintain peace.

Conclusion

Citizens have the "right to be allowed alone" to protect the secrecy of their personal lives, including their relationships, families, education, procreation, and motherhood. To this end, it provides that no one can disclose information relating to these private matters unless the individual in question has agreed, even if the information is accurate and even if it is positive. If the information is published without the consent of the affected person, it amounts to invasion of their right to privacy thus the offender is liable for compensation. However it was established that this protection had its limitations in the following ways. This changes when a person makes him or herself available for the public domain or when the person puts him or herself in a position where s/he has to defend him or herself against controversy. Thus, although some information related to the individual may otherwise be classified as personal data, its disclosure may not be considered a violation of the individual's privacy if their expectation of privacy was low in that context. This progression of the recognition of the right to privacy illustrates the conflict of civil liberties against civil needs. This means that there is a need for the law to place reasonable and lawful restrictions to ensure that privacy of individuals is protected in equal measure to the needs of the states and the public interests. Privacy rights have evolved due to the continuation of discourse and constant changes in law due to growth and development of technology in the globalized world.



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