



International Journal of Research in Academic World



Received: 28/March/2024

IJRAW: 2024; 3(5):65-67

Accepted: 03/May/2024

An Evolution of Right to Privacy in the Era of Information Technology through the Lens of Judicial Pronouncements in India: An Analysis

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Abstract

The right to privacy stands as a fundamental pillar in the realm of human rights, ensuring individual autonomy and dignity in an increasingly interconnected world. This paper delves into the evolutionary trajectory of the right to privacy in India, primarily through the lens of judicial pronouncements. India, with its rich tapestry of legal precedents and constitutional framework, has witnessed a dynamic interplay between the right to privacy and emerging societal challenges. Beginning with seminal cases the Indian judiciary laid the groundwork for recognizing privacy as an inherent facet of personal liberty under Article 21 of the Constitution of India. The advent of the digital age ushered in new dimensions of privacy concerns, prompting the judiciary to reevaluate existing doctrines in light of technological advancements. Landmark judgments such as Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) marked a watershed moment, wherein the Supreme Court unequivocally affirmed the right to privacy as a fundamental right emanating from Article 21. This monumental decision not only affirmed privacy as intrinsic to human dignity but also acknowledged its dynamic nature, capable of adaptation to contemporary challenges.

Keywords: Privacy, information technology, government, surveillance

Introduction

History and religion both play a significant role in the acceptance of "Privacy." The value of privacy is emphasized in numerous religious writings, books, and historical narratives. Both the Quran and the sayings of the Prophet Mohammed respect individual privacy. The Bible and Jewish law provide several allusions to privacy and have long acknowledged the idea of "freedom from being watched". Fifty years ago, the English writer George Orwell imagined a totalitarian future in which advanced technology would be used to monitor every activity of the public. Orwell's worry about the loss of personal freedom dominated his works. "Big Brother' would be watching us and privacy would be a thing of the past". In this age of the Information and Communication Revolution, Orwell's concerns have come true.

The UN Declaration of Human Rights, the International Covenant on Civil and Political Rights, and numerous other international and regional accords recognize privacy as a fundamental human right. Privacy preserves human dignity together with other essential ideas like free speech and association. One of the largest human rights breaches in recorded history is occurring at the moment.

This pursuit has only grown in popularity as a result of the difficulties and complexity that contemporary living brings. There is growing consensus that privacy is a basic human right that should be legally safeguarded. The primary goal of

the right to privacy is to safeguard oneself and erect a wall that keeps others out.

It might be challenging to define the term "privacy." Every action has diverse meanings to different people when expressed in everyday language, such as the freedom of speech, the freedom of opinion, the freedom from surveillance, the protection of one's reputation, and the protection from the disclosure of personal information. Since privacy varies depending on the circumstance, it is defined differently in many nations and cultures.

The present environment has made the study of privacy legislation more important, owing to the rapid advancements in communication and technology. Thanks to technological breakthroughs, a vast network of surveillance is now possible, endangering our right to privacy. We can now monitor our phone calls, digital transactions, travel logs, and social media activities.

Two of the strongest forces driving the development of internet technology are governments and corporations. They have enormous databases containing personal data on each individual. Finding a balance between an individual's need for privacy and society's need for knowledge is crucial in light of these developments.

Computers and digital technology have helped the third industrial revolution by reducing the amount of labour required from humans, but the growth of data processing and surveillance systems has threatened our traditional ideas of

privacy. The right to privacy is getting increasing attention and its scope is being expanded in light of current concerns about privacy violation. In addition to giving us the ability to decide how we wish to interact with the outside world, it acts as a protection to keep outside influences out of our lives. It protects citizens from the arbitrary and unjustifiable abuse of power by companies and governments.

The right to privacy is now unequivocally recognised by the law. Reliefs and restrictions are still up for discussion. Regarding the requirement for biometric registration for anyone desiring to use government services in India, this is examined in another case, the Aadhar case.

The government may have the authority to make biometric registration mandatory, but it must also have the burden of convincing the people that the data they share with the government would be kept secure and only used by the government. Nobody else shall have access to the same.

Actually, the government must follow the rules set forth by the commercial service providers as well to guarantee that the data on individuals entrusted to them is precisely sufficient for the purpose for which it was provided, that it can only be accessed by the appropriate authorities, and that it cannot be abused.

The truth is that the present legislation for curbing the issue of Right to privacy is inadequate, despite all the constant or inconsistent efforts made and regulations developed by various authorities like the Government of India. In a world that is constantly evolving, we need laws or policies that can withstand the difficulties of the present while still being flexible enough to adapt to future developments.

The laws and regulations in place are primarily of a sectoral nature. Apart from various sector-specific laws, the Information Technology Act, 2000 and the rules* made under it currently control how "personal information" and "sensitive personal data or information"*** are collected, processed, and used by "bodies corporate" in India.

The Indian government established an expert group in the middle of 2017 to create the nation's legal framework for data protection, which was overseen by Justice BN Srikrishna, a former judge of the Supreme Court of India. The government instructed the committee to "make specific suggestions for the Central Government's consideration of principles to be considered for data protection in India."

However, over time, privacy has seen various changes and gained new dimensions. Development of the right to privacy in the Indian constitution in the following part with the use of case law and judicial interpretations.

Development of Right to Privacy in India

The right to privacy has been fiercely debated in India, because the constitution does not expressly protect it. The Indian Constitution's authors considered the Right to Life to be of utmost importance. Numerous interpretations of Article 21 of the Indian Constitution, which unambiguously guarantees everyone in India the right to life, have been provided by the Indian Supreme Court. As society has developed, the right to life has been given an excessively broad sphere of influence, and a significant number of other rights now fall under its scope.

The Indian Constitution has always been broad in the sense that it goes beyond just physical or animal existence. The issue of whether to recognise a right to privacy emerged in the case of *Kharak Singh v. State of U.P.****, when Justice Subbarao stated in his minority opinion that it was necessary to do so even if the Indian Constitution does not clearly give

such a right. However, the court declined to uphold the right to privacy, citing the Indian Constitution's explicit lack of acknowledgment of such a right as the justification. The Supreme Court expressed the same opinion in *M.P. Sharma v. Satish Chandra*.****

As long as it doesn't have a harmful effect on the overall populace, personal privacy must be protected. Law's primary objective is to uphold social order. Fundamental rights cannot be granted if the laws created to preserve social order are not present. Given the advancement of information technology and the arbitrary use of power by government officials, it is vital to recognise this right; nonetheless, privacy cannot be an unconditional right. Therefore, it is crucial to cite another Supreme Court finding in this case. In *Govind v. State of M.P***** the Court laid down the following observations:

- The Court cannot only rely on a right that the Constitution does not explicitly give. The public would be forced to doubt the legitimacy of the judiciary if the court took that action.
- The right to privacy cannot be an absolute right, and it must abide by the "State interest test".

The anti-social and anti-national elements occasionally participate in plots that result in losses to the nation in terms of resources or human life. The administration must rely on intelligence assessments to completely rule out the possibility of such activities. Incomplete intelligence reports might not exactly point to the conspirators. In such circumstances, the government is forced to conduct surveillance on a group that the conspirators may be a part of.

Because monitoring only applies to those who are under suspicion of committing a crime, it does not violate either the right to life or the right to privacy. To prevent other offences from being committed, this measure is necessary. Therefore, monitoring amounts to a reasonable restriction that supersedes the right to privacy. However, it is the responsibility of the authority to demonstrate the validity of the surveillance otherwise it will be regarded as a violation of the fundamental protection of the right to privacy.

It can be argued, however, that the court, like in many rulings before it, did not entirely reject the legitimacy of a right to privacy as the fundamental tenet of the aforementioned decision. Given the rising frequency of privacy invasion-related incidents, the Supreme Court's recognition of this right was inevitable.

In *R. Rajagopal v. State of T. N******, case involved the recognition of such a right was presented before the Supreme Court in 1995, and it concerned the publication of an inmate's memoirs. The highest court ruled in the aforementioned instance that the right to privacy is a distinct legal right for which tort law remedies are available.

In the case of *People's Union for Civil Liberties v. Union of India******, the court mentioned as follows – "we have; therefore, no hesitation in holding that the right to privacy is a part of the right to life and personal liberty enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right of privacy, Article 21 is attracted. The said right cannot be curtailed except according to procedure established by law."

*Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011.

***The term "sensitive personal data or information" of a person is defined to mean such personal information which consists of information relating to.

- i). Password;
 - ii). Financial information such as Bank account or credit card or debit card or other payment instrument details;
 - iii). Physical, physiological and mental health condition;
 - iv). Sexual orientation;
 - v). Medical records and history;
 - vi). Biometric information;
 - vii). Any detail relating to the above clauses as provided to body corporate for providing service; and
 - viii). Any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise: provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these regulations
- *** AIR 1963 SC 1295
 **** AIR 1954 SC 300
 ***** AIR 1975 SCC 148
 ***** 1995 AIR 264, 1994 SCC (6) 632
 ***** AIR 1997 SC 568
 ***** Writ petition (civil) no 494 of 2012

Conclusion

Law can never be stagnant. The law must adapt to the various changes in people's political, economic, and social lives. In a recent case called Justice K.S. Puttaswamy v. Union of India and Others,***** the Supreme Court of India ruled that the right to privacy is a basic right, which undoubtedly caused a stir.

After great debate, Article 21 of the Indian Constitution-which includes safeguards the right to life-finally accepted the right to privacy as a basic one.

Given the rising use of information technology across virtually all businesses, there is unquestionably a need to identify such a right. According to Article 21 of the Indian Constitution, new laws will henceforth be assessed using the same criteria as laws that limit personal freedom.

The right to privacy has now been officially recognised, but it is still unclear where those borders lie, necessitating the passage of extensive legislation in India to safeguard individuals' informational privacy.

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