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# NAVIGATING THE NEXUS: EXPLORING THE INTERPLAY OF RIGHT TO PRIVACY AND DATA PROTECTION IN THE DIGITAL AGE

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## ABSTRACT

This Research paper attempts to derive the intricate relationship between Right to Privacy and Data Protection in the contemporary World. As Our country India is a multilinguistic and multicultural society so there is always clashes among people regarding what is considered private . Today world is highly technological and globalized mainly due to policy of LPG [ Liberalisation , privatization and globalization ] and abolition of laissez faire . Although there are many Pros of this technical developed world but on the negative side it works as a sword on one's Right to privacy by disclosing and misutilization of data . Data Protection may include economic details, information on health, company suggestions , intellectual property and delicate information. This Paper Examines The Meaning Of Privacy and its recognition at various human rights treaties. It also illustrate how judicial interpretations plays an indispensable role in enshrining Right TO privacy as a Fundamental Right under Article 21 of Indian constitution .This Paper analyze various legal framework dealing with Data protection laws in India and also discuss latest cases of violation of Right To Privacy . Right to privacy is not absolute and reasonable restrictions can be imposed on this right . Significant Steps were taken in the Indian legal regime to prevent data theft , misutilization of data and secure applicability of right to be forgotten so individual Right to privacy can be properly maintained. Although one can appreciate legislation regarding data protection laws yet a major extent of progressive development is still needed to enhance the scope of data protection laws in contemporary times for securing the Right To Privacy of Indians citizens thus thereby this will a great step towards provide justice to all people of india .

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## INTRODUCTION

Right to privacy is of ancient origin . It is a part of human rights which is within the human since birth . With the advancement of technology, the importance of privacy as a key element in the individual freedom and respect for human dignity remains steadfast. Due to recognition of democratic government and abolition of laissez faire our ties with government becomes stronger but on the other hand with the objective of welfare state government needs to probe deep into society and accumulate data like name , address, unique identification id ,etc. This paper explores how advancements in technology are increasingly challenging the distinctions between what is considered private and public, by delving into the ever changing realm of privacy rights.It investigates the legal basis of privacy rights, current obstacles and consequences of these developments.

## CONCEPT OF RIGHT TO PRIVACY

According to Black law dictionary<sup>2</sup> right to be let alone, the right of a person to be free from any unwarranted publicity ;the right to be live without any unwarranted interference by the public in matters with which the public is not necessarily concerned. Privacy means the capability of person or a group of persons to hide information from others as well as to seclude themselves.<sup>3</sup> Right to privacy is recognized at international level also . Article 12 of UDHR<sup>4</sup> which provides that everyone has a liberty not to get intergered with his privacy , correspondence, family,and also not to be permitted to defame its reputation or honor. Privacy is also recognized under various Human Rights treaties such as in ICCPR<sup>5</sup>, ICPRAMW<sup>6</sup> and the UNHRC<sup>7</sup>. Data protection Law is necessary for prevention of encroachment on right to privacy. Personal data means means as any data about an individual that can identify him. Information such as the name , location, identification number mental ,economic and cultural and social physical identity of a person.

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<sup>2</sup> (Aabhinavagrawal, Right to privacy : A Comphrensive Review)( 11 march 2024)

<sup>3</sup> Dr Payal Jain & Mrs Kanika Arora,” Invasion Of Aadhar on right to privacy ;Huge concerns of issues and challenges.

<sup>4</sup> Universal Declaration of Human Rights ,1948

<sup>5</sup> International Covenant on Civil and Political Rights ,1966

<sup>6</sup> International Covention on Protection of Rights of All Migration Workers,1990

<sup>7</sup> United Nation convention on the Rights of child,1989

# EVOLUTION OF RIGHT TO PRIVACY AS FUNDAMENTAL RIGHT IN INDIA

Constitution of India does not expressly provides right to privacy but Indian judiciary through various landmark judgements made the 'Right to Privacy' as a Fundamental Right under Article 21 of Part III of Indian constitution. Following were the series of cases that dealt with the Right to privacy. It has been held in *MP Sharma v Satish Chandra*<sup>8</sup>, *Kharak Singh v. The State of UP*<sup>9</sup> that Right to privacy is not a fundamental right and power of search and seizure and surveillance is not violative of fundamental rights granted under part III of Indian constitution. In the case of *Govind v. State of Madhya Pradesh*<sup>10</sup> It was held that right to privacy cannot be enjoyed in toto. In case of *R.Rajagopalan v. State of Tamil Nadu*<sup>11</sup> it was held that every Indian citizen has liberty to safeguard his or her privacy whether it may be related to education of child, reproduction, marriage. No one can disclose any information on these matters without the consent of the individuals involved. In case of *People's Union for civil liberty v. Union of India*<sup>12</sup> Judiciary ruled that "once a person becomes a candidate to acquire public office" declaration about his criminal antecedents as also about his assets and liabilities would not affect his right of privacy. In case of *KS Puttaswamy v. Union of India*<sup>13</sup> the petitioner attacking the Aadhar card Scheme contended that collecting and compiling the demographic and biometric data of the residents in India was violative of right to privacy. In case of *Suchita Srivastava v. Chandigarh Administration*<sup>14</sup> SC held that women's right to make reproductive choices in view of the right to privacy is secured as an important facet of right to personal liberty under article 21 as also constitutionality of the Medical Termination of Pregnancy Act, 1971. In case of *Harminder Kaur v. Harminder Singh*<sup>15</sup> held that object of restitution decree was to bring about cohabitation between the estranged parties so that they could live together in the matrimonial home in amity. It was to preserve the marriage. Hence it does not violate Right to Privacy.

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<sup>8</sup> AIR 1954 SC 300

<sup>9</sup> AIR 1964 SC 1295

<sup>10</sup> AIR 1975 SC 1378

<sup>11</sup> AIR 1995 SC 264

<sup>12</sup> AIR 2003 SC 2363

<sup>13</sup> AIR 2015 SC 3081

<sup>14</sup> AIR 2010 SC 235

<sup>15</sup> AIR 1984 SC 235

# INDIAN LEGAL FRAMEWORK ON RIGHT TO PRIVACY

## CONSTITUTIONAL PROVISION

The constitution of India does not expressly talk about right to privacy but through various landmark judgements it is implied under article 21 of constitution<sup>16</sup>. Right to privacy is not absolute and reasonable restrictions can be imposed in interest of public interest, sovereignty, and integrity of nation.

## STATUTORY PROVISION

Information Technology Act, 2008 is the main legislation that keeps the privacy of an individual protected in the matters of Data and information transactions. It has been amended in the year 2008.

- SECTION 30- It imposes a statutory duty on certifying Authority to use such hardware and software and protocols to prevent unauthorized access and misuse. It also ensure a satisfactory level of reliability in services that are appropriate and also follow security protocols to guarantee the confidentiality and privacy of electronic signatures.
- SECTION 43- It provides sufficient provision for the person concerned to receive compensation for unlawful access to his private and personal data.
- SECTION 43A- This section was added by Information Technology Act 2008. This section hold entities accountable if they are careless in handling sensitive personal data or information on a computer system and cause harm to an individual. It requires them to compensate the affected person for any losses incurred.
- SECTION 66- It safeguards the confidential information stored in a computer resource by penalizing any unauthorized access or transfer of data with imprisonment for up to 3 years. This means that if a hacker steals sensitive data from a computer system, it is a punishable offence that results in a decrease in the amount of data within the system constituting an infringement of the law.
- SECTION 72 - It addresses the breaches of confidentiality and privacy stating that government official can face a penalty if they disclose any digital data or information about an

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<sup>16</sup> No person shall be deprived of his life or personal liberty except according to procedure established by law

individual that they have acquired during their official duties. However the enforcement of this section is limited to authorized individuals such as police , certification authorities

- SECTION 72A – This section was added by Information Technology Amendment Act 2008. . This section states that anyone including a mediator who accesses information about someone else under a legal contract and disclose it with the intent to cause harm or make a profit without consent of other individual or in violation of contract can be punished with up to 3 years or a fine of up to 5 lakhs or both .
- SECTION 66A- IT criminalizes the sending of offensive messages through a computer or other communication devices.

## **INDIAN PENAL CODE 1860**

It is the primary criminal law of the country .It also contains some provisions for various offences regarding right to privacy such as offence of hacking [ section 66] , offence of identity theft[ section 66c] and also provision regarding offences dealing with unauthorized disclosure of ;personal information .[section 72]

## **RIGHT TO INFORMATION ACT 2005**

Through right to information Act 2005 individuals can get any information from public authorities but there are certain type of information that are exempted such as disclosing personal information which leads to harm to individual .

## **INDIAN CONTRACT ACT 1872**

Section 72 of Indian contract Act 1872 provides for the protection of privy of contracts . it means that if any person receives information in a contract then that person must not disclose information which he obtained under a contract to third party person without approval of person concerned .

## **RECENT ISSUES AFFECTING RIGHT TO PRIVACY**

### **PEGASUS SPYWARE INCIDENT**

Some 300 indians including journalists, activists , politicians were reportedly potential targets of the malware in jul<sup>17</sup>y 2021. Without the owner knowledge spyware is capable of infecting a person phone and removing all of its data and communications.

### **BAN ON CHINESE APPS**

In 2020 the indian government bans Chinese mobile apps as it it may endanger national security and violative of right to privacy . The ban included apps such as Tik tok . The ban highlighted the need for stronger data protection law in india .

### **THE GOVERNMENT RESPONSE TO WHATSAPP POLICY UPDATE**

In January 2021 , whatsapp announced a update to its private policy which mandated that users of whatsapp have to share their data with facebook , whatsapp's parent company. In response , The government of india sent a notice to whatsapp to withdraw their policy or to clarify its position on their policy .

### **REPORTS OF IMF REGARDING BREACHES OF DATA**

According to reports , more than 80 million indian users were affected by data breaches in 2021. In fact in 2021 India was ranked third in terms of global data breaches.<sup>18</sup> . The average cost of a data breach in 2021 in india amounted to \$2.2 million. For comparison , the average cost around the world was estimated at \$4.24 million per incident .

## **RECENT DATA PROTECTION LAW IN INDIA**

- Digital data protection Act 2023 provides different definitions such as data fiduciary – for business entities , data principal – for a person to whom personal data relates.
- This data protection Act applies only to personal data only if it is in digitalized form or in non digitalized form but later convert to digital form .

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<sup>17</sup> (NEPTUNE) , India Right to Privacy in the light of the Recent pegasus Spyware incident

<sup>18</sup> The wire staff [ Without Data Protection Law , India Puts privacy Rights of Users at Risk : IMF]

- This Act has also a provision for sending of notice to data principal to inform about the manner in which his data is used.<sup>19</sup>
- The data principal must provide his consent unconditional and agree freely to using her data for any purpose. If the consent is taken by contravention of provisions of the act then the consent will be invalid.<sup>20</sup>
- It imposes a huge obligations on data fiduciaries and data processors working on behalf of data fiduciaries in terms of serving notice , taking consent and appropriate use of personal data .
- Rights and duties of data principal – chapter 3 of digital data protection Act 2023 provides for various rights of data principal such as right to access his digital information , right to correct and erase his data , right to file a complaint with an appropriate authority , right to nominate and also provides for duties of data principal such as not to commkt any kind of fraud or legal mistake .
- Punishments – It also make the provisions for punishments . for example if a data fiduciary violates his obligations as per the Act he will be liable for a fine of 250 crore.

## **ESTABLISHMENT OF NATIONAL CYBER SECURITY COORDINATOR**

In 2020 The indian government established National cyber Security Coordinator to look the country cybersecurity issues and to coordinate efforts between various govrnment agencies .

## **MEASURES TO PROTECT RIGHT TO PRIVACY**

- IMPROVING THE LEGAL STRUCTURE - Indian government can protect right to privacy by making a legal framework that prescribes duties of data fiduciaries , penalties for breach of data . for example india already enacted a legal framework [ Digital Data Protectiin Act 2023 which is a god initiative for protecting person right to privacy .
- IMPROVE TRANSPARENCY – The government should make its surveillance practices more transparent .

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<sup>19</sup> Digital Data Protection Act ,2023 &5 , No.22, Acts of parliament , 2023[ India]

<sup>20</sup> Digital data protection act& 6 , No.22 [ Acts of parliament 2023]

- PROMOTE DIGITAL LITERACY – The government needs to educate the general masses regarding digital knowledge .people automatically defend their right to privacy when they knew how data is processed , collected , used and safeguarded .
- INTENSIFY INTERNATIONAL COLLABORATION – The indian government has to collaborate with other nations to create global norms for privacy protection.

## DIFFERENT FACETS OF RIGHT TO PRIVACY

- RIGHT TO PRIVACY AND TELEPHONE TAPPING - Suoreme court in case of People's Union of civil liberties v. Union of India <sup>21</sup> Held that certain procedural safeguards to be observed before resorting to telephone tapping under section 5 (2) Of Indian telegraph Act 1885.
- RIGHT TO PRIVACY AND DISCLOSURE OF DREADFUL DISEASES – The question before the supreme court was whether the disclosure by the doctor that his patient who was to get married had tested HIV positive would be violative of right to privacy and court held that disclosure of dreadful disease would not infringe right to privacy .
- SUBJECTING A PERSON TO MEDICAL TEST – In case of Surjit Singh v. Kanwaljit kaur <sup>22</sup> The Punjab and Haryana high court held that allowing medical examination of a women for her virginity amounts to violation of her right to privacy and personal liberty enshrined under article 21 of indian constitution .
- RIGHT TO PRIVACY AND RIGHT TO BE FORGOTTEN

The right to be forgotten is a part of the right to privacy . Right to privacy deals with the prevention of publication of information , the right to be forgotten requires the removal of information from the public resources . The right to be forgotten calls for the ability of individual to get the information removed from the databases such as right of accused to get his name struck from the list in case he is not convicted . The right to be forgotten has been recognized in case of Google v. Agencia Espanola de Protection de Datos , Costeja Gonzalez [ 2014] by the European court of justice .

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<sup>21</sup> AIR 1997 SC 568

<sup>22</sup> AIR 2003P&H 353

## CONCLUSION

Right to privacy has evolved as a fundamental right in India through interpretations made by the judiciary. Today's era is a globalized era and technological advancement is at its peak. So the question arises whether we have a right to privacy in our life? Privacy is the essence of all human rights. The technological world has many pros and cons. On the one hand, highly advanced work is linked us with many international countries and it makes our task so easy whether to connect foreign relatives, for education purpose or any but on the other hand many problems like cybercrimes, data theft, misuse of data came into picture. When we want to avail any government welfare facility we have to disclose or share our personal details so there is huge risk of breach of privacy. Though India adopted many legal frameworks like Information Technology Act 2000; Digital Data Protection Act 2023 but still there are many loopholes present in the existing legislations like for internet service provider, data processors are not answerable for any infraction of data processing if they proved that such data was processed without their knowledge. So we need a stringent data protection law in the country to prevent breach of right to privacy.

## SUGGESTIONS

Though privacy is recognized as a basic and fundamental right of an individual, India definitely cannot lag behind. Though parliament enacted many laws dealing with right to privacy but they are not so stringent and lack in their enforceability. When it comes to conflict between private and public interest reasonable care must be taken to choose as to what is more important. Individual interest cannot override public interest as preamble of our Indian constitution expressly says that India is a socialist country and hence more attention must be given to public interest.

Right to privacy can also be protected through robust data encryption, strict data access controls, transparent privacy policies and legal framework ensuring accountability for data breaches. Additionally promoting digital literacy and raising awareness about privacy practices can empower individuals to safeguard their personal information.