

## A NATIONAL VIEW OF INDIA'S EVOLUTION OF THE RIGHT TO PRIVACY

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### ABSTRACT

One of the most important rights includes the right to privacy. Regardless of the constitutional obligation, neither the Government nor the assembly of any State has passed any legislation outlining the rule of law addressing this matter. The increased use of technology for data analysis in the modern period has presented significant challenges to both the states and the general public. The Supreme Court of India has ruled that the right to privacy is guaranteed by the Indian Constitution and that it is implied in the fundamental rights to life and personal freedom, freedom of expression, and freedom of movement. However, a year after making its first ruling, the same court ruled that the Aadhaar Act 2016, which allows the state to collect some private information including iris scans and fingerprints, is constitutional. Without suitable standards, exchanging data through new technology tools is not particularly safe. The sufferer has no other appropriate venue to bring his claim than the regular courts, which are already overworked, in cases of duty violation by any official involved in data

collection and storage. The acknowledgement of the right to privacy as a fundamental right has also had an impact on other civil liberties that persons may assert in support of their right to privacy. It is important to note that the judicial system recognises the right to privacy as a fundamental right and that many governmental actions and legislation may be challenged because of grounds that they violate this right. In this article, the researcher seeks to explain the development of the right to privacy in India by comparing it to other nations' positions on the subject, as well as the problems and difficulties associated with putting it into practice.

**KEYWORDS:** Fundamental Rights, Personal Liberty, Right to Privacy and Data Protection

### I. INTRODUCTION

Being alone or keeping one's private affairs and sensitive information hidden from the public is the state of having privacy. It is a person's natural urge to surround themselves with a peaceful atmosphere where they may live. An individual also hopes to work in a setting where he may fully express himself without fear. Like this, a person desires to live his or her life to the fullest without outside influence. Everyone in the society in which they live has a reputation. An individual must fulfil a variety of responsibilities in daily life, such as parent to his children, a leader of his household, and an employee. There are duties that he must fulfil in each capacity that he plays. An individual has personal needs that may be connected to his or her mind, body, family, marital life, business secrets, sexual life, etc. at the same time that they are also human beings with human needs. They could hold certain secrets that they don't want to share since doing so could disrupt their lives and result in things like financial loss, public humiliation, emotional anguish, etc. An individual should be protected if they are operating within the bounds of the law. If a person commits an act that is legal but goes against morally acceptable social norms, that person may or may not be protected depending on the local judicial climate. For instance, while same-sex relationships and live-in

relationships were once illegal and frowned upon by society, they are now accepted by both the courts and society as a whole. In a similar vein, adultery used to be a crime but is no longer one and is solely used as a basis for divorce petitions. It demonstrates that the value of the right to privacy is growing each day, particularly following the Supreme Court's ruling in the Justice K.S. Puttaswamy<sup>296</sup> case, individuals have grown more aware of their right because that country recognised it as a basic right. The importance of the right to privacy cannot be understated because everyone values it greatly. The states are required by the acknowledgement of privacy as a basic right to defend citizen privacy from unauthorised intrusion. The living and working situations of individuals have altered as a result of technical advancement, industrialisation, and globalisation. Every individual as a resident demands protection for his privacy and other privacy-related rights from the state; but, the state seeks to impose ever-greater control over its inhabitants by collecting their data. The expansion of private organisations has had an impact on practically every aspect of human life. Private companies offer a variety of services, such as communication, entertainment, and marketing, for which they charge a fee and also collect personal information about the customers. If an organisation violates a person's privacy, there are several factors to consider, including jurisdiction and the determination of the wrongdoer's culpability.

Privacy protection has thus become quite challenging. These modifications have brought up fresh concerns for both the states and the general public. An individual as a citizen demands protection for his privacy and other privacy-related rights from the state; but, the state seeks to impose ever-greater control over its inhabitants by collecting their data. Due to the expansion of commercial organisations, practically every aspect of human existence has been impacted by private enterprises. Private enterprises offer a variety of services, such as communication, entertainment, and marketing, for which they charge a fee and also collect personal information

about the customers. If the event that an organisation violates a person's privacy, there are several factors to consider, including jurisdiction and the determination of the wrongdoer's culpability. Examining the state of the right to privacy in India is crucial in light of the aforementioned concerns.

## II. OBJECTIVE OF STUDY

- 1) To find out data threat concerns in this digital era
- 2) To understand the evolution of the Right to privacy in India

## III. RESEARCH METHODOLOGY

In the suggested research project, the researcher has done doctrinal research. The study has placed its early prominence on qualitative research, by using secondary research resources including books, e-books, academic publications, and legal reports that are pertinent to the study's issue. Moreover, the researcher examined sources that are available under applicable laws and jurisprudence.

## IV. REVIEW OF LITERATURE

(Jain, 2007)<sup>297</sup> discusses the numerous advances that have occurred in the field of Indian constitutional law in his book "Indian Constitutional law" After the constitutional legislation took effect, there were several case laws. Some of the court rulings have had a significant impact on constitutional law and served as turning points. By interpreting Art. 21, the court has inferred several rights for the populace, among them the right to privacy. To live a life of dignity, one must have the right to privacy. The researcher has concluded that even India's Supreme Court has recognised the right to privacy as one of the fundamental rights protected by the Indian Constitution.

(Sharma)<sup>298</sup> presented his ideas on privacy from both a national and international viewpoint in his book "Privacy law: A comparative analysis." He described privacy as the right to manage one's own bodily and fundamental

<sup>296</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC

<sup>297</sup> Jain, M. P. (2007). *Indian Constitutional Law*. Nagpur: Lexis Nexis.

<sup>298</sup> Sharma, S. K. (1994). *Privacy law: A comparative study*. New Delhi: Atalantic Publishers and Distributors.

information. He said that one of the fundamental democratic ideals protected by our constitution is privacy. This right and the idea of respect for persons go hand in hand. And in the light of the expanding internet and technology era, this has to be reinterpreted.

And other Acts and Articles are referred to by the researcher.

## V. LIMITATION OF STUDY

The Researchers used only secondary resources as the study is a review of the Act and study the only restrict to Indian laws.

## VI. PRIVACY

The phrase “privacy” can be used to describe a scenario in which an individual is not being monitored or bothered by someone who is not permitted to do so. It is the condition of solitude or the ability to keep one’s private affairs and romantic relationships private. According to Black’s Law Dictionary, privacy is the state or circumstance in which others do not interfere with an individual’s actions or decisions. Being a human, one has the right to be in charge of his or her actions and to make choices that will affect his or her life and liberty, free from any outside intervention. An individual also has the right to limit the scope of broadcast and to make decisions regarding the use of the information about his or her body, family, relationship, marriage, and other personal matters.

## VII. RIGHT TO PRIVACY

The right to privacy is described as a “right to personal autonomy” in Black’s Law Dictionary<sup>299</sup>. In this sense, the right to privacy can be equated with the ability to make one’s own decisions. One may exercise this right to stop others from utilising personal information about him, such as his name, portrait, etc. Any unwarranted intrusion into his personal life might cause him emotional suffering and

harm his relationships with his family, his reputation, and his mental well-being.

## VIII. EVOLUTION OF RIGHT TO PRIVACY

Privacy rights are regarded as a basic human right, and it is included in several international treaties and accords. For instance, the Universal Declaration of Human Rights<sup>300</sup>, the International Covenant on Civil and Political Rights<sup>301</sup>, the European Convention on Human Rights<sup>302</sup>, and others have all protected it.

It is quite challenging to comprehend how the right to privacy should be properly enforced in India in the lack of any explicit legislation on the subject. Although there have been some court rulings on this matter, they conflict with one another. The Supreme Court was asked to decide whether or not to recognise the right to privacy as a basic right under the Indian Constitution in the cases of *MP Sharma v. Satish Chandra*<sup>303</sup> and *Kharak Singh v. State of Uttar Pradesh*<sup>304</sup>. However, Justice Subba Rao acknowledged privacy as a significant aspect of the right to personal liberty under Article 21 of the Indian Constitution in his minority decision in the *Kharak Singh* case<sup>305</sup>. Subsequently, the Supreme Court acknowledged the right to privacy under Article 21 of the Indian Constitution in the cases of *Govind v. State of Madhya Pradesh*<sup>306</sup>, *R. Rajagopal v. State of Tamil Nadu*<sup>307</sup>, and *People’s Union for Civil Liberties (PUCL) v. Union of India*<sup>308</sup>.

Personal data is kept and processed digitally using computers and the internet in accordance with the Aadhaar (Targeted Delivery of Financial & other Subsidies, Benefits and Services) Act 2016. While using modern technology for data processing makes it very simple to store and process electronic data, there is also a risk of data leakage, which

<sup>300</sup> Article 12 of the Universal Declaration of Human Rights (UDHR 1948)

<sup>301</sup> Article 17 of the International Covenant on Civil and Political Rights (ICCPR 1966)

<sup>302</sup> Article 8 of the ECHR

<sup>303</sup> 1954 AIR 300, 1954 SCR 1077

<sup>304</sup> 1963 AIR 1295, 1964 SCR (1) 332

<sup>305</sup> 1963 AIR 1295, 1964 SCR (1) 332

<sup>306</sup> 1975 AIR 1378, 1975 SCR (3) 946

<sup>307</sup> 1995 AIR 264, 1994 SCC (6) 632

<sup>308</sup> 34 (1997) 1 SCC 301

<sup>299</sup>Black’s Law Dictionary 8th ed. South Asian Edition 2015, Braynan A. Garner, editor, ISBN 978-93-84746- 31-5 Sai Printo Pack (P) Ltd. New Delhi 110020

might have a negative impact on the right to privacy. Determining responsibility in the event of a privacy violation during the data processing stage is highly challenging. A thorough policy in the form of data protection legislation must be implemented in order to determine responsibility and give a prompt remedy in situations of privacy breach.

In the judgment of Justice K. S. Puttaswamy (Retd.) v. Union of India<sup>309</sup>, this question of whether or not the right to privacy is a fundamental right or not was once again challenged. In this instance, the Central Government claimed that the Indian Constitution does not protect the right to privacy since there is no particular language designating it as a basic right. However, the petitioners were happy to note that Article 21 of the Indian Constitution implicitly protects the right to privacy. By accepting the petitioner's argument, the Supreme Court determined that the right to privacy falls under the category of fundamental rights together with life, individual liberty, and speech, movement, and expression freedom. In this issue, the judge mandated the government to organise a committee to recommend policies for the collection, storage, and processing of personal data by both public and commercial enterprises. But in 2018, after having heard the case of Justice K.S. Puttaswamy (Retd) v. Union of India<sup>310</sup> regarding the constitutionality of the Aadhaar Act 2016, the Supreme Court ruled that the Aadhaar Act, that also permits the state to collect some individual information to provide the purpose of supplying some advantage under state programs, is constitutional. Ever since this ruling, a citizen who does not possess an Aadhaar number is not able to receive benefits under the government's subsidy programmes. It appears that as a result of the aforementioned ruling, everyone who wants to profit from the government's programmes by offering subsidies will have to forgo his fundamental privacy rights and give the government access to his personal data.

In the lack of a particular statute protecting privacy in India, the right to privacy is safeguarded by the Apex Court's rulings in various instances as well as certain other general laws like the Information Technology Act of 2000, the Law of Torts, and the Indian Penal Code. In India, several laws allow for the surveillance of a person whenever it is in the interest of the public. In the event of any national emergency, Section 5 of the Indian Telegraph Act allows the government to authorise the interception of messages. Similar to this, Section 6 of the Indian Post Office Act of 1898 gives the government the authority to intercept postal mail in the event of a national emergency. Under section 91 of the Criminal Procedure Code, courts or officials have the authority to issue a summons requiring a person to provide any documents or other material. These clauses provide Indian law enforcement officials with the ability to access data. One may say that India has a broad number of surveillance laws allowing the government to watch over citizens.

Post the Justice K.S. Puttaswamy case ruling, it is necessary to revisit these legislations in light of new technology advancements and to set limitations on government activities that invade an individual's privacy.

Privacy right was also impacted by new technology advancements. People's lives have been impacted by technology in practically every aspect. There are several social media websites nowadays, like Facebook, Whatsapp, Twitter, etc., that offer a platform for people to exchange information with one another. One must register on these social networking websites and supply personal information to profit from them. Users of the websites can access them by registering. Many social media networks' service suppliers are aliens. It may be quite challenging to determine who is responsible for taking corrective action when one of these providers violates someone's privacy. Hacking is another risk associated with utilising sites for social networking. In this case, hackers gain access to users' accounts and can then use those accounts to post news for their ends.

<sup>309</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC

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Following its ruling in the Justice K.S. Puttaswamy case<sup>311</sup>, the Supreme Court acknowledged the right to privacy as crucial personal freedom. It may be claimed that the acknowledgement of the right to privacy as a basic right paved the way for its advancement in India. But still, India is awaiting the exclusive law to protect the data and data privacy of an individual.

## IX. CONCLUSION

Regardless of the constitutional obligation, neither the Parliament nor the legislature of any State has passed any law establishing the rule governing this problem in the domain of the privacy right. The adoption of technology for processing data in the modern period has presented significant challenges to both the state and the public at large. The protection of one's privacy is a fundamental right guaranteed by the Indian Constitution, according to the Indian Supreme Court's 2017 ruling. However, one year after making its first ruling in the case of Justice K.S. Puttaswamy, the same court 2018 declared that the Aadhaar Act is constitutional and that the right to privacy is limited by reasonable constraints when necessary for the good of the country. Any law that limits a person's right to privacy is stated to need to meet three requirements. The first need is that it must be supported by law, the second that it has a valid governmental goal and the final that it be proportionate. There is no explanation of proportionality's foundation in the case. The state's decision to use the Aadhaar system to gather data has become legal as a result of these two judgements. However, the state's gathering of data in the absence of a sufficient data protection law has given rise to a new issue because the security of keeping digitally stored information is questionable and there is a risk of data leaking. Also, there is a danger that authorities would exploit the data for their personal gain. Data processing via new technical methods is unsafe in the absence of data protection legislation and agency. The victim has no other appropriate place to bring his complaint than the regular courts, which are already overworked if any authority collecting and retaining data has broken their

duty. When researching various aspects of Indian privacy legislation, one must consider whether the country's privacy laws are enough. Additionally, people might become more prominent, approachable, and linked because of the rising usage of technologies. The same technologies, on the other hand, give governments, businesses, and other organisations free access to information on the lives of the general people. Because the new technology instrument is so easily used to violate privacy, these innovations have both beneficial and bad effects on individual privacy. Because the right to privacy is only protected by judicial interpretation of the law, some legal certainty is needed to address this issue in light of the growth of this area of law in other nations and the enhancement of technological usage in nearly every aspect of human existence.

## X. REFERENCES

- 1) Jain, M. P. (2007). *Indian Constitutional Law*. Nagpur: Lexis Nexis.
- 2) Sharma, S. K. (1994). *Privacy law: A comparative study*. New Delhi: Atlantic Publishers and Distributors.
- 3) <https://privacyinternational.org>
- 4) <https://digitalindia.gov.in>
- 5) <https://academic.oup.com>
- 6) <https://www.researchgate.net/>
- 7) <https://papers.ssrn.com>
- 8) <https://www.prsindia.org>
- 9) Report of Justice B.S. Srikrishana Committee, 2018

<sup>311</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC