

## LEGAL STUDIES ON DEVELOPMENT OF RIGHT TO PRIVACY

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### ABSTRACT:

A nine-judge panel of the Supreme Court of India just proclaimed the Right to Privacy a Fundamental Right three years ago, although the idea of privacy has been debated and discussed for a long time in India. So, this essay tries to analyze the many discussions, deliberations, and arguments on Right to Privacy that have taken place in India over a long period of time and have contributed to the development of Right to Privacy in India over the years. To better understand the importance of the Right to Privacy in India, this article traces the evolution of the Right to Privacy in India through time. To begin with, there will be a short discussion on what privacy means, followed by a look at the development of the right to privacy in Indian society. India is one of the few nations that does not have privacy rights included in its constitution, thus the development of a new right to privacy is gaining national and worldwide attention. Let us examine the Right to Privacy in British times, as well as many debates and deliberations that took place in India's Constituent Assembly after independence over whether it should be included in the list of Fundamental Rights. An examination of all Supreme Court decisions dealing with Right to Privacy since the 1950s will conclude this article.

**Keywords:** Right to Privacy, Evolution, Debates and Discussions, Historical, Cases, Fundamental Right, Supreme Court, Constitution.

### INTRODUCTION:

As a natural human, privacy goes hand-in-hand with the idea of privacy. Some topics are off-limits to other individuals and the state in which he is a citizen, even if that person is part of society. privacy of private property, privacy as a proprietary, right to one's name and image, privacy as the keeping of one's problems to oneself, privacy as the keeping of one's internal affairs of a voluntary group or a commercial company, etc. However, the most fundamental definition of the right to privacy is the right to be left alone, regardless of one's viewpoint or context in which it will be used. In the beginning of time, there was a notion of privacy. A concept as difficult to comprehend as privacy, on the other hand, as privacy has been interpreted differently by different academics, and as society develops, it takes on different characteristics.

Intuitively, humans want to be protected from the prying eyes of others. A lot of people are concerned about the safety of their homes, possessions, and bodies from invaders. However, the idea and extent of privacy may differ from civilisation to civilization, based on factors such as geography, culture, religion, and so on. One study from the late 20th century shows a significant increase in public concern over privacy<sup>6</sup> that is just rising. Global attempts to recognize the right to privacy started after World War II. A number of member nations of the European Union have enacted laws that respect the right to privacy. People's houses were raided, wiretaps were made and correspondence were read. The notion of privacy was quite restricted in the previous century. This was the "golden age of seclusion" according to Shils. In America's earliest laws,

intellectual writings, and traditions, Konvitz says, the right to privacy is addressed. But new technologies, notably computer and internet, impacted the idea of privacy and its acceptance as a basic human right in the latter decades of the twentieth century. At first, the word "privacy" was ambiguous, leading American courts to interpret it as either a personal or property rights, says Ragland.

#### LITERATURE REVIEW:

**Ali Alibeigi(2019)** A privacy notion is more complex than it seems on the surface and has to be described rather than enumerated in order to make sense of it. In terms of what defines privacy, there is no legal or philosophical consensus. "Private" is derived from 'privo', which means 'to deprive' in Latin. The right to privacy is a natural and basic human right that should be protected. Because of this, it is not provided, but already existing in the form of an idea. A person's motivation for doing so must be appreciated. Privacy was defined by Thomas Cooley in *Olmstead v. United States*. "For example, "unjustifiable exploitation of one's personality or interference into one's personal behavior" is punishable under tort law and in certain instances constitutional law. A common right to privacy definition in India is based on this phrase "I have the right to be alone." When it comes to personal privacy, each individual has an inviolable core, but their autonomy is constrained by their relationships with the rest of society, according to *Gobind v. State of Madhya Pradesh*. All of these encounters have the potential to undermine a person's autonomy and freedom of choice, and they often do. Unique Identification Authority of India's (UIDAI) "Aadhar Scheme" violates people's right to privacy. For the Aadhar Scheme, the UIDAI works with a number of commercial companies. Because of this, Aadhar requires the gathering of both biometric data and personally identifiable information (PII).

While iris scans and finger prints are collected as part of the Aadhar scheme, there is no legal protection for this information.

**Abu Bakar Munir(2019)** Salmon defines rights as "interests" that are protected by "laws of right," which are moral or legal principles. Moral interests that need protection, regardless of whether a legal system exists or not, are called natural rights. Pound thus describes natural law as a theory of moral characteristics inherent in people, and natural rights as deductions from human nature proven by reason. I believe the right to privacy that we are debating qualifies as one of the most fundamental of natural rights. It is indissolubly connected to two moral ideals that are universally accepted: man's intrinsic dignity and autonomy. There are many legal systems that utilize the right to privacy as a way to restrict government and private activities that violate people's privacy. Communication through telephony has evolved at such a fast speed in the past decade, becoming an essential and inseparable part of the daily lives of the average person. If telephonic technology is not on hand to provide a helping hand, managing all business and personal issues seems to be tough. Telephonic talks, on the other hand, face a serious danger of privacy invasion as technology develops in the future. There is a section of 1885's Telegraph Act that may be traced as the company's genesis. Any public official legally authorized to execute the job may stop the transmission of a message while simultaneously holding and intercepting the message or information being sent, according to this provision.

**Md. Karim (2019)** As digital data is kept in large quantities and may be sold and disclosed simply, the extension of privacy regulatory standards to sophisticated media was essential. A growing number of individuals and companies are storing large quantities of data for a variety of purposes. Because there are

no regulations in place, users of mobile phone cameras are seldom aware of other people's privacy rights. A growing number of media tools have developed in recent years, and many are ignorant to their limits. Media technologies are abused in this article. It includes all of the study's goals, research hypothesis, study strategy, and research method in the present chapter. Before, the Indian legal system would only provide protection from bodily injury. To answer the public's worries, the custom-based edict developed in a way that made it obvious that both corporeal safety and protection of the otherworldly self and his emotions were important. As a result, the definition of "property" has expanded to include both material and intangible assets.

**GOUTAM SANGH PRIY (2017)** Because privacy guarantees freedom of speech and expression, freedom of association, and autonomy over one's own choices, "privacy principles" are essential foundations in our democratic society. Any human being would feel smothered without privacy. As a consequence of recent technological advancements, the notion of privacy has undergone a transformation. As a result, every governmental and private organization in today's global society has developed unrivaled methods for monitoring human beings. A person does not have to act in a predictable way since they are constantly being watched. You cannot think for yourself, create your own alliances, start a company, or talk without thinking. You cannot make your own decisions, and so on. To add insult to injury, every man and woman on the planet is carrying about a powerful camera on their mobile phone. In recent years, the usage and sharing of information via social networking sites has grown more widespread. There are more than 92 million Indians using Facebook, a social networking site, with 50 percent aged 18 or younger. On social media, individuals post personal information and photos that come

within the public domain and are available for everyone and anyone to see. Third-party Application Programming Interface (API) use by social networking sites threatens user privacy since this information may be exploited by a third party.

**Antani, Ravi (2015)** Even when employed in combination with the previously mentioned structure, "assent demonstrate" approach seldom produces a result. When Facebook gathers information, it generally has a reason for doing so, even if it is not for the reasons that have previously been mentioned. It is to "interact and provide with others throughout your life," according to its website. Therefore, the consumer agrees to give data, some of which is also classified as "personally sensitive information" under the Data Protection Act (DPA). But it is shown that the design is wide enough to cover nearly anything, from sharing such data with a partner to sharing data that affects the data to open to open, since the goal is to "connect." It is clear, however, that this is not what the assent is really for. In the past, Facebook has highlighted the need of ensuring that users consent to the usage of their data before signing up for an account. This was allowed by a US court in the *Daily Times Democrat v Graham* case. Die Entscheidung arose from a complex lawsuit against open-air photographing, which was brought before the court. Although the implicit permission to be photographed in public was upheld, the person was safeguarded from "disgusting and indecent interruption of his privilege of protection merely because hardship brings him to a public place" by refusing to provide consent to be photographed. Joining Facebook and going out in public are similar at this point in time. Despite consenting to the purpose for joining Facebook, as stated in the given judgment, the ability to revoke the authorization is nevertheless maintained by the mentioned judgement. However, this rule is of limited value since it

does not seem to have been reinforced by examples from other wards.

#### **CONSTITUENT ASSEMBLY DEBATE ON PRIVACY:**

A constitutional right to privacy does not exist in its purest form. Because it is not specifically stated in the Constitution, why is that? The Indian Constitution was established on 26 January 1950, and the right to privacy is nowhere to be seen. A right to privacy seems to have been considered by our founding fathers, but for some reason was not included in the Constitution.

#### **JUDICIAL INTERPRETATION OF RIGHT TO PRIVACY:**

The Indian Constitution does not expressly guarantee a right to privacy. The right to privacy is not included in the Constitution as a Fundamental Right. This right has been carved out of the Constitution by the Supreme Court. And a number of additional articles of the Constitution that are interpreted with the Directive Principles of State Policy (DPS). As a citizen, you have the right to protect your personal information, including your marital status, childbearing status and education. Anyone who publishes anything about the above without his permission, whether it is true or not, and whether it is laudatory or critical, is breaking the law.

#### **ANALYSIS OF THE RIGHT BASED APPROACH:**

The right-based approach to the "data protection" problem can only be assessed via a variety of legislation. As a result of this approach, we are able to look at India's data security policy from an entirely new angle. Thanks to the development of internet-enabled services, data processing, business process outsourcing, call-center services, accounting activities, and other corporate procedures have become more popular in recent years.

1. Because of the digital age's effect on the "Right to Privacy," new possibilities and problems are expected to arise in the digital world or digital community.

2. A dynamic and constant development process characterizes the digital age, therefore the legal framework must change at the same rate.

3. Many areas such as economics, military, health, finance, and other legal issues need research and study of new information technology solutions for preserving privacy.

4. Not just for India, but also for the rest of the globe, information and communication technology (ICT) plays a vital role in cyberspace. Individual and national interests should be safeguarded by establishing and developing a variety of appropriate legal processes to deal with increasing legal challenges.

5. Information technology is being researched, evaluated, and new legal frontiers are being discovered that are internationally mutually acceptable and offer a strong basis for different privacy problems.

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#### **"RIGHT TO PRIVACY VIS-À-VIS INTERNET SOCIAL MEDIA":**

India's democracy gives everyone the freedom to free speech. It is the media's duty to communicate all accurate information accessible to the public in today's society. To help people make choices, the media should present them with information that stimulates their thinking. This freedom should not be unfettered. This freedom should not be used in any way whatsoever. If this freedom is misused, they should be held responsible. In the case of web-based social networking, there is no

particular common law priority legislation that offers protection. Securing social media is no different from securing a physical location. Though the discussion and references I make are mainly centered on web-based social networking, I will explicitly cite Face book in this respect as an example. The terms "assent" and "open area" constitute the crux of the issue with internet networking. Since Confidentiality is a tort law, the Data Protection and IT Act evolves from tort law. A demonstration which would have otherwise violated the security section requires consent, which undermines the pertinence of both complicated and statutorily protected laws, as described in the previous sections.

#### **EVOLUTION OF RIGHT TO PRIVACY IN INDIA:**

Indian history does not exclude the idea of a supervening spirit of justice coming in various ways to heal the evils of the new era. Indian ancient and holy scriptures have a strong sense of isolation. As a Bollywood actor, Sanjay Kishan is no stranger to the genre. The opinions of Kaul J in a key privacy case.

Constructing the Constitution There were more than 500 pages of legalese and history in the Supreme Court's judgment in Puttaswamy, which proclaimed "Privacy" a basic right on August 24, 2017, indicating that India's decision to designate Privacy a fundamental right may have worldwide implications. A doctrine-based view of the relationship between Article 19 and 21 was taken in [on the basis of the majority's Gopalan decision]. The Cooper decision and the associated doctrinal statement contradict this perspective. Realistically, Justice Subba Rao's dissenting judgment in Kharak Singh was explicitly recognized by the Maneka decision as presenting the right constitutional approach. In constitutional law, the jurisprudential foundation developed by M P Sharma and Kharak Singh over six decades ago has given

way to what is today a widely accepted view. Starting with the fact that basic rights are drawn from fundamental concepts of liberty and dignity, including particular elements of liberty as clearly protected rights under Article 19 does not rob Article 21 of its wide scope. Zweitens: A legislation that violates fundamental rights should not be judged on the basis of the state's goal, but rather on the basis of its effect. As a third point, Article 14's demand that government actions not be arbitrary and must satisfy the norm of reasonableness provides weight to the constitutional safeguards in Part III of India's constitution Even the Supreme Court recognized that a person's right to privacy is one that is guaranteed by the constitution.

#### **PRIVACY CONCERNS AGAINST THE STATE:**

In 2013, Edward Snowden's disclosures about global surveillance shocked the globe. With the growth of global terrorism and public safety concerns, states are using technology in new ways that were not previously possible. States use a technique called "profiling." Data profiling is defined as "any form of automated processing of personal data involving the use of personal data to evaluate certain personal aspects relating to an individual, in particular to analyse or predict factors relating to the individual's performance at work, economic situation and health," according to the European Union's Regulation on Data Privacy from 2016 (EU-GDPR). As a consequence of such profiling, religion, ethnicity, and caste discrimination may occur. Profiles may, however, be used for the public good and national security. This is due to the security situation, not just in our country but also globally. We must balance individual and state security with private rights.

#### **CURRENT TECHNO-LEGAL PROTECTION, (PRIVACY):**

We have been asked by the Indian government to do research on data protection

problems in India and to provide specific recommendations on the principles that should guide a data protection law, after the Supreme Court's Putta Swami ruling. Goal: "support the development of the digital economy while maintaining the security and privacy of people's personal data" It is anticipated to pass, so there is nothing to worry about. Now Private life is protected by Article 21 of the Constitution which protects individuals' lives and liberty as well as the freedoms granted by Part III. A new privacy package was adopted in India in June 2011 that included many additional limitations requiring companies and consumers to get written permission from data owners. As a result of the Information Technology (Amendment) Act of 2008, two sections of the Information Technology Act of 2000 have been amended. Section 43A deals with the implementation of reasonable security practices for sensitive Personal data or information and provides compensation to the person harmed by wrongful loss or gain financial data or information and passwords are a few instances of sensitive personal data or information, there are a number of variables to examine, including physical, physiological or mental health, sexual orientation, medical records and history, and biometric data.

#### **CONCLUSION:**

Over time, the idea and meaning of privacy have changed due to a number of factors. As a result of culture, religion, and other factors, privacy limits may differ from one place to another. No one can agree on a single definition of privacy. It is a topic that has been discussed in many areas including sociology, psychology, law, and philosophy Despite its simplicity, it has a complex definition. It is clear that privacy is a natural human need to not be controlled or watched by others. As a result, an individual's physical and intangible borders are protected against others' intrusion. As a

doctrinal legal study, the present review combines a comparative and descriptive approach to the history, concept, limits, and legal evolution of privacy to offer a broad and comprehensible understanding of the right to privacy. Sun Microsystems' former CEO Scott McNealy said that "privacy has died." Unintentionally harming privacy is what Chester guy said in response. When it comes down to it however, he says that people do not care about privacy in principle and just click "I accept." The right to privacy is one of the most important human rights principles. People have valued privacy since the beginning of humanity. 3 German tribal law and the medieval Anglo-Saxon legal system offered some protection for a freeman's property and restitution for damage to it. In general, people want not to be encroached upon by others, and they expect their privacy to be respected.

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