



THE CASE FOR DATA PROTECTION AND PRIVACY LAWS FOR INDIA

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Abstract

- **The concept of Right to privacy** has always been considered as a very crucial topic of discussion. India, famed as the world's youngest and largest democracy, with a population of over 1.37 billion, is at the threshold of evolving into a sophisticated democracy.
- **Concept of privacy emergence** – since the inception of civilization on this planet human being was covered with his privacy, earlier confined to story of Goddess Parvati bath and In Islam burkha system privacy; women lived in premises with trees and all; people gave notice before entering so trespass and privacy”
- **Right to privacy is fundamental right guaranteed under Article 21 of Indian constitution** because Right to life includes Right to life with human dignity and term Human Dignity includes right to privacy.
- **In this era data can be leaked very easily, so there is threat to the life and liberty of the citizens.** data protection in this technological era is very important issue because peoples using social sites, applications. on internet without thinking about leakage of their data. which can use this data for telemarketing, making the life of the consumers/citizens hell by selling all sorts of products to them.
- The concept right to privacy has always been considered as a very crucial topic of discussion. And issue of data protection and right to privacy is correlated to each other.
- In this technological era, there is so much need of protection of our data because as we are using internet it is clear that we must have to keep safe our data because if the data leaked then it can be threat to life and personal liberty of human being.
- The meaning of Fundamental right is **Rights essentials for complete development of human being and complete development means Moral, Intellectual, Physical, Religious and Social, Economic and Political development** and if anyone violates these developments in anyway then it will be considering as violation of right to privacy under article 21 of Indian Constitution.
- The problem of protection of data is also a topic of debate because in security purpose this is very important and the present events can't be ignored that how much cybercrime is effective in this present time so we must have to be aware about the protection of our data and government have duty to protect the data of their citizens by using their legislative and executive power.
- Term data protection and privacy also related to each other because if data of individuals will be leaked then it will be considered as violation of right to privacy under article 21 of Indian Constitution.

Introduction



- Every people have to aware about his/her personal data and think once before providing your data to any person, company, etc.

removable devices such as pen drive and card readers if these removable devices have some malicious content then it can be harm the data of computer.

DATA PROTECTION

The data protection is very important to survive in this digital era so we have to be careful during sharing our data because in these days people gave their data easily to any company or organization.

There are some points which will clarify about data protection-

➤ **Technical data security threat to information system**

- **Absence of security structure**-there are some companies and organizations do not have an established security system due to insufficient appointment of I.T officers in their organization which results there is threat to leakage of data.
- **Internet websites**-there are some malicious codes which can be transferred to a computer through browser webpage that have not undergone security updates so there is chance to be downloaded of a malicious file which results there is threat to leakage of data.
- **Use of mobile devices**- use of mobile devices or laptops or handled devices including smartphones, tablets, the Data of the devices can be leaked in the way of device can be lost or stolen or their security can be compromised by malicious codes invading the operating system.
- **Use of removable devices** – at the time of using of personal computer we insert some

- **Unauthorized Application Use**- use of unauthorized applications also creates treat to leakage of data because their terms and conditions don't read by anyone which contains permission of reading data and delete data of using device.

These are some are the points which shows how much threat of leakage of data.

Huge number of data are also collected by private entities

- It is most humbly submitted that the present evolutionary change in cyber world by JIO and people in bulk purchased *Jio sim* by attaching their aadhaar card and wilfully gave their personal details to this private entity. This is the biggest example of data collection by a private company.

➤ **Effect of leakage of data**

- That the Present scenario shows that many crores data of citizens was leaked from database and now this data is in the hands of the private companies, which can use this data for telemarketing, making the life of the consumers/citizens hell by selling all sorts of products to them

- Ex- 1.Hacking of bank accounts.
- 2.Misappropriation of data.
- 3. Misuse of Passwords and Login/Logout Procedures



➤ **Steps taken by government of India for protection of data**

- No specific data is being maintained for cases of online harassment against women. However, as per the NCRB data under cybercrimes 589, 1203 and 758 cases of Publication/transmission of obscene, sexually explicit content (Under section 67 A, 67 B and 67 C of the Information Technology Act) has been registered during 2012, 2013 and 2014 respectively.
- After consultation on Cyber Crimes in India held on **23.07.2015, National Commission for Women** has submitted a report which inter-alia recommended for opening of more cyber cells, dedicated helpline numbers and imparting of proper legal, setting up forensic labs and technical training law enforcement agencies like police and judiciary to combat cybercrime.
- The **Information Technology Act, 2000** together with Indian Penal Code have adequate provisions to deal with prevailing Cyber Crimes. It provides punishment in the form of imprisonment ranging from two years to life imprisonment and fine / penalty depending on the type of Cyber Crime. However, the Government has taken following steps for prevention of Cybercrimes: -
 - (i) Cyber Crime Cells have been set up in States and Union Territories for reporting and investigation of Cyber Crime cases.
 - (ii) Government has set up cyber forensic training and investigation labs in the States of Kerala, Assam, Mizoram, Nagaland, Arunachal Pradesh, Tripura, Meghalaya, Manipur and Jammu & Kashmir for training

of Law Enforcement and Judiciary in these States

(iii) In collaboration with Data Security Council of India (DSCI), NASSCOM, Cyber Forensic Labs have been set up at Mumbai, Bengaluru, Pune and Kolkata for awareness creation and training

(iv) Programmes on Cyber Crime investigation. National Law School, Bangalore and NALSAR University of Law, Hyderabad are also engaged in conducting several awareness and training programmes on Cyber/Laws and Cybercrimes for judicial officers

(v) Training is imparted to Police Officers and Judicial officers in the Training Labs established by the Government.

(vi) The Scheme for Universalization of Women Helpline has been approved to provide 24-hour emergency and non-emergency response to all women affected by violence.

This information was given by the Minister of Women and Child Development, Smt Maneka Sanjay Gandhi in a written reply to an unstarred question in the Lok Sabha.

PRIVACY LAWS FOR INDIA

This is the very big topic of debate that whether right to privacy is a fundamental right or not but on the analysis of honourable court's judgement, now it is clear that right to privacy is fundamental right guaranteed under article 21 of Indian Constitution.



Answer of this debate have two faces including past and present judgements of honourable court.

Past judgements of honourable courts of India which shows that right to privacy is not a fundamental right.

➤ **The right to life under article 21 does not includes right to privacy**

- that the respondent argued in high court that there is no right to privacy provided in any provision of the constitution of India
- **The right to privacy is not a fundamental right** this statement is learned from the past judgements of hon'ble courts.
- In case of **Rajagopal vs. state of T.N.** the court stated an exception in this case where a person voluntarily involves himself into a controversy or invites one, that person would not fall under the right to privacy.
- that **right to privacy is not an absolute right.**
- In case of **Govind vs State of MP**, despite agreeing that right to privacy is the emanation of art.19 and 21 of the constitution, the top court held that right to privacy cannot be made an absolute right.
- In the judgement of **MP Sharma vs Satish Chandra**, the honorable court observed that right to privacy is not a fundamental right .

Thus, according to above judgements and other legal scenario shows that right to privacy is not a fundamental right.

Latest conclusion of honorable courts which shows that right to privacy is a fundamental right.

The right to life under article 21 includes right to privacy

Art. 21 of the Indian constitution says that:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”

Right to life includes right to life with human dignity and right to privacy is intrinsic part of human dignity.

- That term life mentioned in the art.21 doesn't means only right to breathe.
- Right to life includes right to life with human dignity.
- One can enjoy his life and liberty.
- In the judgement of **Maneka Gandhi v. Union of India** the Supreme Court observed that Art. 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity.
- In the judgement of **Francis Coralie v. Union Territory of Delhi** the Court observed that: “The right to live includes the right to live with human dignity and all that goes along with basic necessities of life.



- In the judgement of **Chandra Raja Kumari v. Police Commissioner Hyderabad**, it has been held that the right to live includes right to live with human dignity.

of perspicacity the impact of technology on the right to be let alone.

➤ **Origin of privacy**

Maneka Gandhi v. Union of Mandia AIR 1978 SC 594
Francis Coralie v. Union Territory of Delhi AIR 1981 SCR 746,
Chandra Raja Kumari v. Police Commissioner Hyderabad AIR 1998 AP 302.

- An evaluation of the origin of privacy is essential in order to understand whether (as the Union of Mandia postulates), the concept is so amorphous as to defy description.

- **The Greek philosopher Aristotle** spoke of a division between the public sphere of political affairs (which he termed the polis) and the personal sphere of human life (termed oikos). This dichotomy may provide an early recognition of “a confidential zone on behalf of the citizen”. Aristotle’s distinction between the public and private realms can be regarded as providing a basis for restricting governmental authority to activities falling within the public realm. On the other hand, activities in the private realm are more appropriately reserved for “private reflection, familiar relations and self-determination.

➤ **RIGHT TO PRIVACY IS A FUNDAMENTAL RIGHT**

- **Concept of privacy emergence** – Since the inception of civilization on this planet human being was covered with his privacy, earlier confined to private parts Goddess Parvati bath and In Islam burkha system privacy; women lived in premises with trees and all; people gave notice before entering so trespass and privacy”

- In an article published on **15 December 1890** in the Harvard Law Review, **Samuel D Warren and Louis Brandeis** adverted to the evolution of the law to incorporate within it, the right to life as “a recognition of man’s spiritual nature, of his feelings and his intellect”. As legal rights were broadened, the right to life had “come to mean the right to enjoy life – the right to be let alone”. Recognizing that “only a part of the pain, pleasure and profit of life lay in physical things” and that “thoughts, emotions, and sensations demanded legal recognition”, Warren and Brandeis revealed with a sense

Article of Samuel D Warren and Louis Brandeis 15 December 1890
Page no. 26 of judgment of JUSTICE K S PUTTASWAMY (RETD) case

- In the Latest case of **JUSTICE K S PUTTASWAMY (RETD.), AND ANR. V/S UNION OF MANDIA AND ORS17**, Hon’ble Supreme court held the following –

1. Kharak Singh has correctly held that the content of the expression ‘life’ under Article 21 means not merely the right to a person’s “animal existence” and that the expression ‘personal liberty’ is a guarantee against invasion into the sanctity of a person’s home or an intrusion into personal security. Kharak



Singh also correctly laid down that the dignity of the individual must lend content to the meaning of ‘personal liberty’.

The first part of the decision in Kharak Singh which invalidated domiciliary visits at night on the ground that they violated ordered liberty is an implicit recognition of the right to privacy

The Hon’ble Court also held that-

3. (A) Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Mandian Constitution;

(B) Life and personal liberty are not creations of the Constitution. These rights are recognized by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within;

(C) Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognized and guaranteed by the fundamental rights contained in Part III;

(D) Judicial recognition of the existence of a constitutional right of privacy is not an exercise amending the Constitution nor is the Court embarking on a constitutional

function of that nature which is entrusted to Parliament;

JUSTICE K S PUTTASWAMY (RETD.), AND ANR. Verses UNION OF MANDIA AND ORS.

Page no. 262 of judgment of JUSTICE K S PUTTASWAMY (RETD) case

(E) Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy, sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded.

(F) Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;

(H) Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal



liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them; and

(I) Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.

~~Page no. 263 and 264 of judgment of JUSTICE K S PUTTASWAMY (RETD) case~~

4. Informational privacy is a facet of the right to privacy. We commend to the Union Government the need to examine and put into place a robust regime for data protection. The creation of such a regime requires careful and sensitive balance between individual interests and legitimate concerns of the state. The legitimate aims of the state would include for instance protecting national security, preventing and investigating crime, encouraging innovation

and the spread of knowledge, and preventing the dissipation of social welfare benefits. These are matters of policy to be considered by the Union government while designing a carefully structured regime for the protection of the data. Since the Union government has informed the Court that it has constituted a Committee chaired by Hon'ble Shri Justice B N Srikrishna, former Judge of this Court, for that purpose, the matter shall be dealt with appropriately by the Union government having due regard to what has been set out in this judgment.

➤ **ORDER OF THE COURT**

- **The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.**
- **Court held that decision of Kharak Singh case is judicially correct.**

Thus, that according to latest judgements and other legal scenario shows that right to privacy is a fundamental right.

CONCLUSION

Thus, it is clearly shown in above statement that right to privacy is a fundamental right and protection of data is very important for the security purpose of citizen's life and personal liberty.

Government must have to make some rigid law for the protection of data because if this data will be leaked then it will be considered as violation of right to privacy under Article 21 of Indian Constitution.
