



**IS RIGHT TO PRIVACY A  
FUNDAMENTAL RIGHT IN INDIA:  
AN ANALYSIS**

By *Disha Sonkhiya*  
From *Indore Institute of Law*

Right to Privacy we get to know what is the history and origin. Finally, the paper calls for a constitutional amendment by the parliament adopting the judicially carved out right to privacy as a fundamental right under Part III of the Indian Constitution.<sup>2</sup>

“All human beings have three lives: public, private and secret”

~ Gabriel Garcia Marquez

✓ **ABSTRACT**

“Privacy” is one of the most nebulous term of the society has ever chanced upon. Right to Privacy be considered as bundle of rights.<sup>1</sup> Even in the recent years, there have been debate on Right to Privacy, whether it is to considered as fundamental right in India or we should not give it the enforcement priority to our constitution. Many Indian jurists have raised this question—while there is Right to life, there is Right to privacy? And this raises a very difficult problems as its matter is important collection and use of data is the risk of personal information falling into the hands of private players and service providers. Till today, there is no clear understanding that it will became a part or not. This paper tries to answer an issue that whether Right to Privacy is a fundamental right through analysis of cases and establish a relationship between Right to personal liberty under Article 21 and Right to Privacy. As Privacy be considered i.e., ‘personal liberty’. Through evolution and developments of

❖ **INTRODUCTION:**

Privacy is associate degree inherent right, and is needed for maintaining the human condition with respect and dignity. Article 12 of the Universal Declaration of Human Rights states that:

“No one shall be subjected to capricious interference along with his privacy, family, home or correspondence, nor to attacks upon his honour and name everybody has the right to the protection of the law against such interference or attacks.”<sup>3</sup>

The privacy of people is also termed because the right to see however data regarding the individual is communicated to others and the way that data is controlled.

Further, privacy has been determined to be the proper to be left alone; freedom from interruption, intrusion, embarrassment or accountability; management of the revealing of private information; protection of the individual's independence, dignity and integrity; secrecy, namelessness and solitude; the proper to protection from

<sup>1</sup>J. L. MILLS, THE LOST RIGHT 4 (Oxford University Press 2008).

<sup>2</sup>BLACK’S LAW DICTIONARY (Bryan Garner, ed.) 3783 (2004)

<sup>3</sup>J.N. Pandey, CONSTITUTIONAL LAW OF INDIA, 271,54<sup>th</sup> EDITION



intrusion into your personal life. the proper to privacy involves rules governing the gathering and handling of private knowledge (such as credit data and medical records), the protection of physical autonomy (including <sup>4</sup>the proper to regulate personal matters), the proper to limit access to oneself (for example, dominant communication and intrusion into domestic and work space) and therefore the right to regulate one's identity. Privacy conflicts with: freedom of speech; national security; police powers of surveillance; personal morality; freedom of data and electronic commerce.

#### ❖ EVOLUTION AND DEVELOPMENT

The changes in the above contentions and evolution of Right to Privacy started in the later years wherein cases;

- ✓ *MP Sharma vs Satish Chandra*<sup>5</sup>, District Magistrate Delhi, where, an investigation was ordered by the Union government under the Companies Act into the affairs of a company which was in liquidation on the ground that it had made an organized attempt to embezzle its funds and to conceal the true state of its affairs from the shareholders and on the allegation that the company had indulged in fraudulent transactions and falsified its records. Offences were registered and search warrants were issued during the course of which, records were seized. The challenge was that the searches violated the fundamental rights of the petitioners under Article 19(1) (f) and Article 20(3) of the Constitution and a nine-judge bench rejected the challenge

and question which addressed was whether there was a contravention of Article 20(3).

*In support of arguments reference was made to the judgment of the US Supreme Court that, illegal seizures and search violate of Fourth and Fifth Amendments of the American Constitution but disregarding that contention the court held that the seizure was for a temporary period of time and it doesn't violate Article 20 (3) of COI, and there isn't any enough justification to import privacy law of US in India.*

*Khara Singh vs State of UP*<sup>6</sup>, the Supreme Court had the occasion to consider the ambit and scope of this right when the power of surveillance conferred on the police by the provisions of the U.P. Police Regulations came to be challenged as violating of Articles 19(1) (d) and Article 21 of the Constitution.

*The Court repelled the argument of infringement of freedom guaranteed under Article 19(1) (d) of the Constitution, and the attempt to ascertain the movements of an individual was held not to be an infringement of any fundamental right. The minority judgment, however, emphasized the need for recognition of such a right as it was an essential ingredient of personal liberty.*

#### ❖ POSITION: RIGHT TO PRIVACY, IMPLICIT IN LIFE, PERSONAL LIBERTY AND FREEDOM

<sup>4</sup><https://www.legalbites.in>

<sup>5</sup>AIR 1954 AIR 300

<sup>6</sup>AIR 1963 SC 1295



*Govind v. state of M.P*<sup>7</sup> and *R. Rajagopal v. state of T.N*<sup>8</sup>, the word 'privacy' has been described as "right to be left on my own" and held that every citizen has a proper to protect the privacy of his very own, his circle of relatives, marriage, procreation, motherhood, child-bearing and training amongst other matters. no person can put up whatever concerning the above topics without his consent – whether truthful or otherwise and whether laudatory or critical.<sup>9</sup> On a similar note, *State of Maharashtra vs Madhukar Narayan Mardikar*<sup>10</sup>, the supreme courtroom held that even a "woman of easy distinctive feature" is entitled to her privacy and nobody has the authority to invade her privacy at their candy will.

- The issue Privacy has been raised again in the year 2011: RECENT CASES

Emanating from the Right to Privacy of an individual is the question of tapping of telephone. Telephone tapping constitutes a serious invasion of an individual's Rights to Privacy.

The Supreme court in *People's Union for Civil Liberties v. Union of India*<sup>11</sup>, held that telephonic conversations are non-public in nature and for that reason, telephone-tapping would be unconstitutional until conducted via a method set up through law. The court concluded by using saying that "we've, therefore, no hesitation in holding that the proper to privacy is part of the right to 'existence and private liberty' enshrined below article 21 of the charter as soon as the

information in every case constitute a proper to privacy, article 21 is attracted. The said proper can't be curtailed, besides consistent with process mounted by regulation.<sup>12</sup>

Currently, in *Ram Jethmalani v. Union of India*<sup>13</sup>, the Supreme Court has held that right to privateness is an crucial a part of existence that is a cherished constitutional price and it's far essential that human beings be allowed privateness, and be free of public scrutiny until they act in an illegal way.

However in Supreme Court *Justice K.S. Puttaswamy v. Union of India*<sup>14</sup>, Aadhar Scheme Case, Bench of 3 judges of this court, whilst thinking about the constitutional task to the Aadhar card scheme of the Union government referred to in its order that the norms for and compilation of demographic biometric statistics with the aid of authorities become wondered at the ground that it violates the right to privateness they referred the case to a 9 bench judge to addressed validity of MP Sharma and Kharak Singh instances, in which the questions raised were:

- ✓ whether or not there's a constitutionally blanketed right to privateness;
- ✓ If there may be a constitutionally protected right, whether this has the man or woman of an unbiased essential proper or whether or not it arises from inside the current guarantees of blanketed rights consisting of lifestyles and private liberty
- ✓ the doctrinal foundations of the claim to privateness

<sup>7</sup>AIR 1975 SC 1378

<sup>8</sup>AIR 1995 SC 264

<sup>9</sup>id

<sup>10</sup>AIR 1991 SC 207

<sup>11</sup>AIR 1997 SC 568

<sup>12</sup>M.P.Jain, INDIAN CONSTITUTIONAL LAW, 1328, 54<sup>TH</sup> EDITION

<sup>13</sup>(2011) 8 SCC 1

<sup>14</sup>(2014) 6 SCC 433



- ✓ the content of privateness; and
- ✓ the character of the regulatory power of the nation.<sup>15</sup>

**Justice Bobde and Justice Chelameshwar** have expressed situation over Aadhar forcing humans to registration who aren't capable of comprehend the consequences of registration on their rights. Justice Bobde has additionally expressed concerns over the already took place and future leaks of facts involved. The legal professional trendy, Mukul Rohatgi, mentioning the vintage and controversial view on right to privateness in M.P. Sharma and Kharak Singh, had argued that proper to privateness does not exist, pointing out that the problem ought to be mentioned a larger bench. However, the bench is but to be constituted.

Where, the nine bench choose in its 547-paged judgment had held that right to privacy is an inalienable intrinsic detail of the proper to life and personal liberty i.e. Article 21. Similarly, India's dedication to a global order based on admire for human rights has been noticed alongside the particular articles of the UDHR and the ICCPR which encompass the proper to privacy.<sup>16</sup>

Right to privacy has been postulated in each positive and negative content. The terrible content material restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its superb content material imposes an responsibility on the state to take all essential measures to guard the privateness of the individual.

#### ❖ CONCLUSION

Although the bench in M.P. Sharma and Kharak Singh had held art. 21 to not include proper to privateness and the problem is being cited a larger constitutional bench, that does not render all the subsequent selections via the very Supreme court recognizing its existence legally untenable. This position changed into noted in *Harbhajan Singh v. state of Punjab*<sup>17</sup> and *Ashok Sadarangani v. Union of India*<sup>18</sup>, in which the very Supreme court located that "the pendency of a reference to a bigger Bench, does not imply that each one different lawsuits related to the same problem would continue to be stayed until a choice was rendered in the reference.... until such time as the selections mentioned at the Bar are not changed or altered in any manner."<sup>19</sup> However, though right to privacy has been recognized by many judgments to be implicit under Part III of the Constitution, there is a need to explicitly adopt Right to Privacy as a fundamental right by the Parliament.

The Right to privacy broadly encompasses physical privateness, informational privacy and decisional autonomy. The interplay of technological advances and the right to privateness in the digital age wishes to be carefully scrutinized. The nine bench has rightly emphasized the need for statistics safety laws — a assignment now entrusted, at a preliminary degree, to the Justice Srikrishna Committee.

<sup>15</sup><https://thewire.in/law/supreme-court-aadhaar-right-to-privacy>

<sup>16</sup><http://iclqrq.in>

<sup>17</sup>(2009) 13 SCC 608

<sup>18</sup>AIR 2012 SC 1563

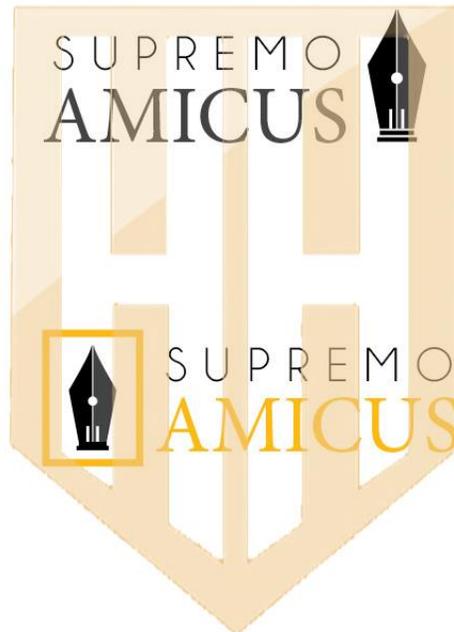
<sup>19</sup>Id., at 19



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However, regardless of any technological changes, the respect of the right of individuals to make a desire of how and wherein they need to live, work and pursue their character dreams ought to be included. nine judges of the best court docket have protected, for many years to come, the most crucial right emphasized with the aid of Justice Brandeis: The right to be left alone.<sup>20</sup>

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<sup>20</sup><http://www.rediff.com>