



A BRIEF ANALYSIS ON WAY FORWARD TO RIGHT TO PRIVACY IN INDIA

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*“In the 21st Century, a government that
Cannot protect its citizens’ right to privacy
Cannot credibly maintain a democratic
Regime of equal treatment under the law.”*

Abstract:

This article is an attempt to bring how much importance we as an individual has a right to privacy. The debate arises even in the 21st century though we got privacy as a fundamental right, it has been fully protected or not. Privacy is equal to our heart and soul of the Indian Constitution as mentioned in Article 21 - Right to life and personal liberty. Every individual has a dignity and even state has no authority to violate and take away the right. The Author’s view is that if personal liberty has been violated or affected, then the state can involve to protect it or it is the duty of the individual to look on their own right. The main focus is the origin of privacy and how far it has been developed. In the present global era, the private and public businesses had brought various techniques in monitoring human activities. Is there any particular regulation if the privacy in the digital media has been violated? During this journey of transition, human had replaced from physical privacy to mental privacy to psychological privacy. Here the author tries to interpret on role of one’s right to be protected.

INTRODUCTION:

The design of privacy is not a new one. The right to privacy is a right that should be left alone which one possesses from birth itself. It cannot be denied as it is the status of a fundamental right. It is basically old as a common law because it is deeply embedded with liberty and dignity of an individual. Privacy is considered as supreme of all other rights because it is inalienable personality status of man to be shaped.

Privacy is a tension between what is advantageous for the individual and what is advantageous for the society. So, the privacy of the individual come down to the struggle between freedom and order. The reason people care about privacy is because they want to control the opinions that what others form about them. Privacy is the desire to have it, protect it and nurture it. However, we cannot assume the private rights only in a positive way.

DEFINITION OF PRIVACY:

A precise legal definition of privacy doesn’t exist. According to Mr. Joe Cannataci, define **“Privacy as a human right.”**¹ International charters, like the Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights, 1966.

“The above legally protect persons against “arbitrary interference” with one’s privacy, family, home, correspondence, honor and reputation.” India has ratified the ICCPR on April 10, 1979, without reservation. Privacy can mean range of things; the right to be left

¹ Black’s law dictionary



alone, freedom to dissent or protection from state surveillance.

RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT:

Looking onto the 50 to 60 years back, Supreme Court overruled the earlier eight-judge bench judgement in *M.P. Sharma and Others. v Satish Chandra, District Magistrate, Delhi and Others.*² and six-judge bench judgement in *Karaka Singh v state of Uttar Pradesh and Others.*³ In these both cases the court had ruled that the privacy is not consider as a fundamental Right. Why there was a need to bring the verdict at that time? The issue of privacy had emerged when the apex court was dealing with an array of petitions challenging the government's move to make biometric-based Aadhar card to be mandatory for availing the benefits of various social-welfare schemes.

There were fears the data could be misused by a government that argues Indians have no right to privacy. There were also periodical reports of Aadhar details being leaked. UIDAI has said that its data is secure. The bench has decided in favor of a fundamental right to privacy existing under the Indian Constitution. The bench did not mean only of Aadhar; it mentions the status of the right to privacy. This judgement has given a reason to celebrate the right of our privacy.

TO WAY FORWARD:

We live in an era where Right to Privacy is not absolute. Every day we use the Internet and other Technologies to great extent and all of us are part of the "Big Data" world. Technological advancement is required to cater to the growing demand for social,

financial and intellectual development of the society. Technology cannot advance without involvement of its users. Hence, although Right to Privacy is a very important part of our lives and should protect us from data thefts and deliberate spying by the state but, there should be some basic regulations to help the technological community thrive. The issue may arise here is,

Whether Aadhar need to be mandatory?

Does section 377 of Indian Penal Code is wholly decriminalized?

WhatsApp's new privacy policy would affect individual's rights?

Still there is a debate in dealing with the above mention questions. As logically speaking in the present scenario, Aadhar card is not mandatory for all covid related service. Any identity proof of the person is sufficient to check the identity of citizen. As far as section 377 of IPC, it has been decriminalized in 2018 itself. Though various laws have been introduced by the government in order to protect the rights of the trans people, even we are in the 21st century, they are not able to provide them their right to marry a legal sanction. Sometimes law acts a catalyst to the social acceptance. Now the major issue is still going on for the update in privacy policy of WhatsApp. The Government's views are very clear that this new privacy policy is a violation of IT [Indian Information Technology] laws and rules. WhatsApp contention is that not to affect the private. But the WhatsApp is still waiting for the PDP [personal data protection] Bill, 2019 which yet to be passed.

Data Protection laws in India:

² 1954 SCR 1077

³ (1964) 1 SCR 334



Justice *K.S. Puttaswamy (Retd) and Anr. v Union of India and Others.*⁴, in this case - privacy was established as a fundamental right.

India has not yet implemented the Personal Data Protection Bill, there is no idea and control over how user data will be processed by tech companies.

IT Act, 2000, and its amendment in 2008 deal with data protection to the same extent.

- *The infringement of data privacy is punishable* under Section 72-A of the IT Act. The act penalizes the offender for the three-year imprisonment or a maximum fine of Rs 5 lakh.
- *But this provision is applicable to corporate entities* not to individuals.
- *These Rules are restricted to some sensitive personal data* related to medical history, and sexual history, biometric information and other things.

DEVELOPMENT OF PRIVATE RIGHTS:

To have no privacy is to have no personality and the inability to differentiate ourselves from others, rather than uniqueness, rules. Privacy is the ability to oneself, and has the right and power to choose our thoughts and feelings to whom we share with or not. What we keep and what we share is make us desirable, popular or unpopular, funny, mysterious, charming, charismatic. It is what gives us personality.

The younger generation, has been ripped off, sold a bill of goods and cheated out of the experience of being individuals, responsible for themselves and on their brand and personality. However, the state has no power

to touch upon the individual right the state cannot prevent you from one's privacy. This clearly shows that the state is not at all responsible to the individual right.

WHY PRIVACY IS VITAL FOR A PEOPLE:

If we want freedom, we need freedom of speech. To possess freedom of speech, we must have freedom of thought. If we've got freedom of thought, then we could be able to hide those thoughts from others, so that we can develop, without outside interference.

Societies will solely perform if there is a definite quantity of ground (shared values & customs) that bind individuals along. Yet people have the freedom to think and do what they want, provided that they don't step on to the rights of others. It means that, if the majority of member in a society hold certain types of values, and a minority people holds different values, then minority might be shunned. Or worse, prosecuted. That prosecution can take the form of laws, for e.g., 'Jim Crow' laws that used to exist in the US, or the anti-gay laws that existed in a lot of Western European countries in the past. The race and sexual orientation are not thoughts, but opinions about them are. It seems to be in the form of often illegal and discrimination of those minorities, like firing or not hiring of gay people because of their sexual orientation, even this would be direct violation of anti-discrimination laws. So, in any free society there is tension between the upholding of shared values to promote the freedom of thought and actions of individuals that do not share one of more of those values. My view here is that truly free societies don't exist. If we want a true freedom to exist, we must be able to have any sort of opinion. The

⁴ (2017) 10 SCC 1



problem is that our surroundings will have individuals that non – socially accepted views. Some of the people opinions or actions might be viewed as harmless for e.g., being gay in any country, by the fact from certain people, those persons need to avoid problems specially in their religious family members. If such type of view shared by the majority in the society, then the many of us would understand.

But other views are more problematic. Has a pedophile the right to think and the sexual relations with minors should be permitted? If you answer to that question with “Pedophiles have no right to privacy” then the next question is: “Who are the paedophiles? How to find them?” To find the pedophiles, ought to leave none of the stone to be unturned. That includes your own. What level of privacy is enough to search out, say, all pedophiles while not exposing all of your secrets that would get you in trouble? Like what you really think of your family members? Or your opinion about your boss? Still, authorities need to fight against crime. To bust pedophile rings that enable child abuse. So, that the state has to stop on criminals, to tap phone lines, to read emails. Maintain some form of regulated, transparent access to information and communication with a suspect. But the privacy of others, the non-suspects, should be granted as much as possible. If any information about people which are found innocent must be kept confidential or destroyed. To have a free society, we must have freedom of speech and thought.

Some people thoughts may collide with the dominant views within a society. Yet, to maintain freedom, the majority of the member must not have the power to

prosecute the minority. This means, in this flawed world with imperfect people, that one must have the means to control the way others see them. This means a certain level of privacy.

PROS OF HAVING RIGHT TO PRIVACY:

- Only with privacy men can form a sense of individuality, by forming his own ideas, values and beliefs.
- privacy will give all the basic rights to the citizen which are, right to be left alone, right to freedom of thought, Right to Freedom of expression.
- It prevents the misuse of personal data by any firm or person.
- Through privacy people has the right to question the authority, and can ask what government is doing with their information.
- This will help the corporates to adopt better policies to safeguard their member privacy.
- It prevents the breach of security, which we saw in the Aadhar case these days.

CONS RELATING TO PRIVACY:

- Judiciary have already mentioned that Right to privacy is not an absolute right. If required it is subject to reasonable restriction.
- Privacy give rise to lack of accountability as people may or may not do wrong things and but no one will see them.
- Right to privacy may create misbehavior and lawlessness, then people may start committing crimes and it may get hard to prove them wrong in a proper way.
- If too much of privacy is given, may result in lack of exchange of ideas or leads to failure in learning from others, this will hinder intellectual growth.
- The non-restriction of privacy is given, can prevent media or policing agencies to show the private information of criminals or terrorists.



- Right to privacy can create a sense of alienation, people will be more info themselves.

SITUATION IN OTHER COUNTRIES:

- Germany has very strict privacy laws, in order to prevent their people's information. In recent years, these laws were troublesome to person like Facebook and google.
- The personal information Protection and Electronic Department Act governs the collection and usage of Canada.
- The European Union in 1995, has adopted by the data protection Directive, which shield the personal data within European Union.
- Even Sweden has the " Data Act " 1973, and its main aim to protect the privacy of personal data on computers.
- USA doesn't have privacy laws though its fourth Amendment has the clauses protecting the same.

CONCLUSION:

The strong men to appear in public, to organize or to protest, with reasonable expectations of protection from retaliation or harassment. That is a result of liberty. That liberty is enabled by the protection of a private life. Most people do not value their right to privacy as they do not understand and appreciated it's value- just look at the data people post on social media and networking sites. We don't need to make ourselves public, unless of course, we do not mind having the world knowing every detail about us. Somehow are the other there is liberty in one's rights to protected, yet to be fully obtained. It is within the hands of the individual to protect one's own rights. All of us must have the slogan in our mind that 'rights to privacy' is equal to that of 'right to life.

References

- [1] Mr. Jon cannataci referred in Black's law dictionary.
- [2] M.P Sharma and others. v Sathish Chandra, District magistrate, Delhi and other, 1954 SCR 1077
- [3] Karaka Singh v state of Uttar Pradesh and others, (1964) 1 SCR 334.
- [4] K.S Puttaswamy (Retd) and Anr. v union of India and others, (2017) 10 SCC 1
- [5] IT Act, 2000, and its amendment in 2008 (Data protection laws) <https://www.meity.gov.in>.
- [6] Indian Jurisprudence on Right to Privacy issues in India, www.train.gov.in/sites/default/directions
- [7] Privacy and Data protection laws in comparison to other countries, <https://www.expressvpn.com>
