



A study of right to privacy law in India

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Abstract

One such right that has emerged as a result of expanding the scope of Article 21 is the right to privacy. Private life is not specifically protected by the constitution as a right. Yet, the Supreme Court has taken such a right from Article 21 and several other constitutional clauses when they are interpreted in conjunction with the Directive Principles of State Policy. In this research paper researcher has discussed about the Right to Privacy, a new aspect of Article 21, as well as the various difficulties new dimensions of it. For the purpose of the study, secondary data have been heavily studied. The right to privacy has been guaranteed to us by great judges who have separated it from other rights. Nowadays, this right needs to be exercised effectively. Even after passing away, a person's right to privacy still exists. Invasions of privacy must always be justified by necessity, need, and proportionality. The privacy of information is one part of fundamental right. State actors and non-state actors both pose risks to this. It's interesting to note that there is no general right to privacy recognized by common law, and the Indian Parliament has so far been hesitant to enact any law for it but many of the so-called Fundamental Rights protect it.

Keywords: rights to privacy, information technology, constitutional rights, fundamental right

Introduction

The right to privacy is the ability to maintain the secrecy of our personal information. Electronic communications, sexual orientation, occupations, and even emotions or intelligence are examples of personal information. The idea of privacy is not new. The public or political realm and the private or familial sphere were distinct in ancient Greece. The right to privacy, on the other hand, is a relatively contemporary concept. With the emergence of newspapers, television, and the internet, the concept of privacy has changed to focus more on informational privacy, even though the right to privacy can include both physical privacy and privacy connected to communications. Privacy is a right that is protected by the constitution as a result of Article 21's guarantee of life and freedom. In *Puttaswamy v. Union of India case, 2017*, the Right to Privacy was declared a fundamental right by the Supreme Court. 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. A right to privacy implies a right to privacy. It respects human autonomy and validates a person's ability to make crucial life decisions. Even if they are not always allowed, invasions of privacy must always be justified by necessity, need, and proportionality. The privacy of information is one part of this right. State actors and non-state actors both pose risks to this. The law merely determines which privacy-related circumstances will receive legal protection; it does not define what privacy is. It's interesting to note that there is no general right to privacy recognized by common law, and the Indian Parliament has so far been hesitant to enact any law for it. There hasn't been a specific privacy law passed yet.

Research methodology

For the purpose of the current study, secondary data from sources such books, journals, Supreme Court proceedings, gazetteers, the internet, and web sites have been heavily studied.

Objectives for the study

1. To be aware of India's laws governing the right to privacy.
2. To comprehend the Indian concept of the right to privacy.
3. To critically examine the significance of the right to privacy in India.

Legal perspective of right to privacy

The common law of torts and constitutional law are essentially the two sources from which India's right to privacy derives. A private action for damages for an unauthorized violation of privacy is maintainable under common law. If a journal, magazine, or book's printer or publisher publishes information about a person's private life without that person's agreement; they could be held financially responsible. There are two exceptions to this rule: first, the right to privacy is lost once the publication becomes public information, and second, when the publication relates to the performance of a public servant's official duties, a claim cannot be upheld unless it can be established that the publication was false, malicious, or made with reckless disregard for the truth.

The right to privacy is not explicitly recognized by the Indian Constitution. In the case of *Kharak Singh v. State of Uttar Pradesh*, which was decided in 1964, the idea of privacy as a fundamental right initially emerged (AIR 1963). For the first time, the Supreme Court acknowledged that Article 21 of the Indian Constitution implicitly protects a person's right to privacy. The Court ruled that the right to privacy is a crucial component of the right to life and invalidated a regulation that allowed for domiciliary visits while upholding the regulation's other surveillance elements. They came to the opinion that in order for a basic right to be violated, it must be directly and visibly done so. They also believed that a watch being kept on a suspect did not violate the freedom of speech and expression allowed by Article 19(1) (a). The right to privacy was not recognized by

the court at that time, but as there is no clear-cut legislation, it is still ambiguous now.

Although the Supreme Court upheld the relevant regulation authorizing domiciliary visits by security personnel in the surveillance case of *Gobind v. State of M.P. (AIR 1975)*, which involved the same issue, the court also made the following ruling: "It cannot be said that surveillance by domiciliary visits would always be an unreasonable restriction upon the right of privacy." The right to privacy must be subject to restrictions based on a compelling public interest if the fundamental rights that are explicitly guaranteed to a citizen contain penumbral zones and the right to privacy is also a basic right. Privacy invasions are only protected if the state, rather than a private company, is the culprit. If the offender is a private person, the only effective remedy is tort law, where one can only sue for damages for invasion of privacy. The Supreme Court ruled in *R. Rajagopal v. State of Tennessee (1994)* that the right to privacy involves a right to solitude. Without his permission, no one may write anything about the aforementioned topics, whether it is true or false, positive or negative. If he did, he would be infringing on the person's right to privacy and liable in a lawsuit for damages.

Various types of privacy

Domestic privacy

The common law principle that "a man's house is his castle" results in a number of personal rights being linked to well-guaranteed domestic peace. In the safe haven of his home, man engages in a great number of intimate activities that blossom there. The common law of trespass of property, particularly houses, safeguarded a number of additional interests in addition to personal seclusion. An integrated reading of Articles 19 and 21 was used in India to resolve the conflict between the right to domestic privacy and police surveillance of the homes of criminal suspects. Supreme Court in *Govind V State of M.P (AIR 1975)* applied both article 19(1)(d) and 21 to recognize right to privacy and also reasonable restrictions upon it through procedure established by law.

Right to privacy and right to reputation

An adequate resolution of the conflict between claims of privacy and those of free speech assumes a great deal of relevance because defamation is a scenario of speech with conduct or an action that attacks reputation. The law favors the right to privacy when ordinary people's private lives are the focus of irrational publicity or excessive curiosity. The Supreme Court declared in *R. Rajagopal V. State of T.N (AIR 1995)* that anyone who publishes anything about a citizen's life, family, marriage, reproduction, or motherhood without the citizen's consent, whether it is true or false, positive or negative, may be held accountable in an action for damages. However, if the representation is based on, and is in accordance with, information that is readily available in public records, the publishers are released from liability, while a depiction that goes beyond official record may result in liability for defamation.

Privacy and sexually transmitted diseases

Sexually transmitted diseases (STDs), or venereal illnesses as they were once known, have been marked by a fascinating contradiction in Western Europe since the late fourteenth century. STDs were and still are a Secret Malady

despite being endemic in Europe and North America. People have made an effort to hide their sexually transmitted illnesses from the public and to their families, communities, and sexual partners. In 1998, the Supreme Court of India was given the opportunity to rule on a privacy issue relating to sexually transmitted diseases (STDs). India has rules that safeguard patients from publication of their medical information, just like the USA. The Indian Medical Council Act governs medical education and codes of conduct. The statute gives the council the authority to set rules and an ethical code pertaining to it. One of the ethical rules is to avoid disclosing a patient's information to third parties without a court order.

Right to privacy and telephone tapping

In a landmark case, *People's Union for Civil Liberties V. Union of India (AIR 1997)*, the facts revealed egregious abuse of the power to intercept telephone conversations under the Indian Telegraph Act, 1885, lapses in the execution of orders, and a lack of adequate safeguards under the Act. Confidentiality in telephone conversations is recognized as an important aspect of the right to privacy. In accordance with Section 5(2) of the Act, the Central or State Government or any officer specially authorized in this regard may intercept messages in the event of a public emergency or in the interest of public safety if they are satisfied that doing so is in the country's best interests, including its sovereignty and integrity, security, friendly relations with foreign countries, public order, and the prevention of incitement to commit crimes. The Act did not provide a process for using the authority granted by section 5(2), and no rules governing the process were developed. The Supreme Court upheld the claim that the right to confidentiality in telephone conversations constituted a right based on Articles 19(1)(a) and 21, and that the right could not be protected in the absence of a reasonable system for controlling the use of authority.

Right against compulsion to disclose private facts

The right to privacy includes the ability to keep one's personal affairs private. According to the ruling in *Neera Mathur Vs. LIC (AIR 1992)*, it was unnecessary and arbitrary to require female employees to disclose intimate details of their personal lives, including whether or not their periods are regular or painful, the number of conceptions they have had, how many have been aborted, or how many have reached full term, etc.

Media and Sting operations

The traditional function of the media is to raise public awareness of crimes rather than to hold offenders accountable. As seen in a number of cases, from the Tehelka case to the Shakti Kapoor/Aman Verma exposure to the current Sales Tax and Tihar Jail bribery exposures, it is unacceptable to commit an offence in order to reveal another offence. A glaring instance of the electronic media aiding and abetting criminality was the issue of warrants against the President and Chief Justice of India. A person's name and dignity cannot be tarnished by the media's irrational and speculative reporting. Every person has a fundamental right to be treated with respect and dignity, and Article 21 of the Constitution guarantees that person a right to privacy. In *Kharak Singh v. State of UP*, the Supreme Court determined that Article 21 inherently protects the

right to privacy. The Delhi High Court noted that private entities may not be targeted by the right to privacy that results from Article 21. It is undeniable that maintaining a good balance between the fundamental right to expression and the right to one's privacy is crucial from a practical standpoint. Where "sting operations" have become the norm, it appears that the "Right to Privacy" no longer has any practical relevance. The right to privacy is a well-established human right that aims to regulate both public and private behaviors that put people's privacy in danger.

informational privacy and data protection

Informational privacy expresses a desire to limit exposure to private matters. It guards against forced disclosure of personal information about oneself or other people as well as unauthorized communication interceptions by the government or other entities. Inextricably linked to data protection is privacy. Information about a person, such as his name, address, phone number, occupation, family, and preferences, is frequently accessible at a number of locations, including schools, colleges, banks, directories, surveys, and numerous websites. Such data dissemination to interested parties may result in privacy invasions like persistent sales calls. The Information Technology Act, 2000 has addressed the issue of data protection and privacy. Data protection is a central topic, and only the central government has the authority to create laws pertaining to data protection. In reality, the first piece of law with safeguards for data protection was the Information Technology Act, 2000, passed by the Indian Parliament.

Conclusion and suggestions

Right to privacy is an essential component of right to life and personal liberty under Article 21. Right of privacy may, apart from contract, also arise out of a particular specific relationship, which may be commercial, matrimonial or even political. Right to privacy is not an absolute right; it is subject to reasonable restrictions for prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. Where there is a conflict between two derived rights, the right which advances public morality and public interest prevails. We have been granted the right to privacy by outstanding judges who have distinguished it from other rights in order to come to the definitive decision that it is not a direct right protected by our Constitution. The appropriate implementation of this right is now required, thus the government must act to protect it by adopting specific laws that not only achieve so but also prevent unlawful invasions on a person's private. A person's right to privacy continues even after death. Even after the impacted person has died away, nobody should speak about the deceased person or the deceased since it may damage a family member's reputation. In countries like the USA and the UK, specific legislation safeguards the right to privacy.

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