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The changing dynamics of the concept of right to privacy in digital world: A constitutional perspective

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Abstract
The demand for personal privacy has existed as long as human societies have, yet defining this concept remains challenging. Privacy discussions in the Constituent Assembly of India reveal that the right to privacy was deliberately excluded after extensive deliberation, with the reasons behind this decision unclear. Privacy fundamentally arises from the need to define personal space and restrict access to it, safeguarding life and liberty. It is a complex, evolving right, deeply intertwined with other fundamental rights. As technology advances, particularly in the digital age, privacy has gained increasing importance. With vast amounts of data being digitized, ensuring privacy has become more critical, as unauthorized use of data can threaten individual rights and public policy. This paper explores the changing dynamics of privacy rights in India, particularly in the context of digital technologies, and examines how legal frameworks and judicial pronouncements have evolved to address privacy concerns.

Keywords: Privacy rights, digital privacy, Indian Constitution, legal framework, judicial activism

Introduction

The term "privacy" is inherently complex, as it encompasses various interpretations depending on the context. For some, privacy may mean concealing personal details, such as one's educational background or intimate relationships. For others, privacy begins before birth and extends until death, involving a wide range of personal boundaries. Despite its significance, privacy cannot be absolute and often comes with limitations. Governments have enacted laws to safeguard individuals' privacy, but these protections are not without exceptions, especially when weighed against public interest or state security.

In today's digital world, as more data is digitized and exchanged online, privacy has taken on even greater importance. Data must be regulated based on its significance, as individuals' privacy is increasingly at stake. Privacy is recognized as a fundamental human right in the United Nations Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and numerous other international treaties. It underpins human dignity and supports other essential values, such as freedom of association and speech. In this digital era, privacy has become one of the most critical human rights issues, as it directly impacts how individuals interact with and navigate the world around them.

The modern global standard for privacy protection was established in the 1948 Universal Declaration of Human Rights, which safeguarded both territorial and communication privacy. Article 12 of the Declaration asserts that "no one shall be subjected to arbitrary interference with their privacy, family, home, or correspondence," emphasizing the importance of protecting individuals from unwarranted intrusion. Similarly, numerous international human rights covenants, including the ICCPR, the UN Convention on Migrant Workers, and the UN Convention on the Rights of the Child, specifically reference privacy as a fundamental right.

The Right to Privacy in India

The right to privacy is integral to exercising the right to free speech and expression, as it ensures the free flow of information, opinions, and ideas. This right is enshrined in international human rights instruments, including the UDHR and ICCPR. In India, the right to privacy encompasses various dimensions, including the right to control one's personal information and the emerging concept of the "right to be forgotten," which allows individuals to remove their data from online platforms.

The responsibility of protecting privacy falls on the government, in line with the principles of Locke's Social Contract Theory. The B.N. Srikrishna Committee, established to address data protection issues, played a pivotal role in shaping India's approach to privacy. The committee's recommendations emphasized the need for informed, specific, and clear consent before processing personal data. It also outlined circumstances where data processing could occur without consent, such as during emergencies, state functions, legal obligations, or employment contracts. The committee proposed penalties for non-compliance with these guidelines, including fines of up to ₹5 crore or 2% of global turnover for offenses related to data protection.

India's legislative framework for privacy includes the Information Technology Act, 2000, and the Census Act, 1948, which govern data sharing and protection. However, the country's legal landscape lacks comprehensive provisions for the right to erasure, unlike the European Union's Personal Data Protection Bill, 2018. Although the concept of the right to privacy is not explicitly mentioned in the Indian Constitution, the judiciary has interpreted it as an extension of Article 21, which guarantees the right to life and personal liberty.

The Supreme Court of India has played a crucial role in expanding the scope of privacy rights. In the landmark case Maneka Gandhi v. Union of India [1], the Court

broadened the interpretation of Article 21 to include various rights essential to personal liberty. Justice P.N. Bhagwati's judgment emphasized the wide amplitude of personal liberty under Article 21, which encompasses a range of rights, some of which are further protected under Article 19. The Court also established a triple test for laws that interfere with personal liberty: they must prescribe a procedure, withstand the scrutiny of applicable fundamental rights under Article 19, and be subject to judicial review under Article 14, which guarantees equality before the law.

Through judicial activism, privacy law has evolved in India, addressing issues such as protection from unreasonable search and seizure, control over personal information, and freedom from surveillance [2].

Privacy in Digital World

In the digital age, privacy is increasingly challenged by the proliferation of data generated both actively and passively. Every online action, from clicking on a website to using a mobile application, generates data that can reveal intimate details about an individual's life. Companies like Uber, Facebook, Amazon, and Google accumulate vast amounts of personal information, including location data, shopping habits, social connections, and more. As non-state actors, these companies hold significant power over individuals' privacy, necessitating robust legal frameworks to protect users' data.

The technological era we live in has ushered in a data-driven economy where information is a valuable asset. This transformation has led to new ethical and legal challenges, particularly concerning the right to privacy. Technology has redefined the way personal information is processed, stored, and shared, raising questions about the protection of individual rights in a world where data flows freely across borders.

Van Brakel's definition of technology as "the gathering, organizing, storage, and distribution of information in various formats by means of computer and telecommunications techniques based on micro-electronics" captures the essence of the digital age. As technology continues to advance, the need for clear and effective guidelines on data protection becomes increasingly urgent [3].

Judicial Pronouncements

The right to be forgotten, a critical aspect of privacy, has gained recognition in Indian jurisprudence through various judicial pronouncements. In the landmark case Justice K.S. Puttuswamy v. Union of India [4], the Supreme Court recognized the right to be forgotten as a component of the broader right to privacy. Justice Sanjay Kishan Kaul highlighted the importance of individuals exercising control over their personal data, both in tangible and intangible forms. This right allows individuals to determine the extent of their presence on the internet and to manage the publication of information related to them.

The right to be forgotten finds its roots in Articles 19 and 21 of the Indian Constitution, but it is not an unfettered right. It is subject to limitations, including the protection of other fundamental rights, legal obligations, public interest, and the defense of legal claims. Justice Kaul emphasized that past mistakes should not be used as weapons against individuals, and people should have the ability to prevent the digital footprint of their past from affecting their present and future lives [5].

Internationally, the right to erasure, as enshrined in Article 17 of the 2016 European Union General Data Protection Regulation (GDPR), has influenced Indian judicial thinking on the right to be forgotten. In Sri Vasunathan v. Registrar General [6], the Karnataka High Court recognized the right to be forgotten in sensitive cases, particularly those involving women and issues affecting their modesty and reputation. The court ordered the removal of the petitioner's name from online search results to protect her privacy and reputation.

However, judicial pronouncements on the right to be forgotten have not been uniform across India. In Dharamraj Dave v. State of Gujarat [7], the Gujarat High Court rejected a petition seeking the removal of the petitioner's name from online platforms, holding that publishing a non-reportable judgment did not violate Article 21 of the Constitution. The court reasoned that judgments are public records and that their publication does not infringe on an individual's privacy rights.

These divergent judicial approaches highlight the evolving nature of the right to privacy in India and the challenges of balancing individual rights with public interest. The Supreme Court's landmark judgment in Justice K.S. Puttuswamy v. Union of India [8] reaffirmed the fundamental status of the right to privacy, establishing it as an inherent part of the Indian Constitution. This decision has significant implications for data protection, surveillance, and the regulation of digital technologies in India.

The right to privacy in India has undergone significant transformation in recent years, particularly in response to the rapid digitalization of the nation. While advancements in cyber laws and the enforcement of cybercrime measures provide a robust framework for data protection, the potential threat of breaches especially involving sensitive information such as biometric data collected through the Aadhaar system—remains a valid concern. Despite these challenges, the government of India has taken substantial steps to safeguard the right to privacy, recognizing its critical importance in the digital age.

Privacy, in its essence, has been defined as the right of an individual to control the extent to which personal information is shared with others. However, this right is not always explicitly stated in the constitutions of many countries, including India. Instead, the right to privacy has been discovered and developed through judicial interpretations over time. The framers of the Indian Constitution may not have explicitly envisioned this right, given the vastly different technological landscape of their era. Yet, as technology has evolved, so too must the legal frameworks that protect individual rights in the digital sphere.

Conclusion

This necessitates a shift in approach, with solutions being re-engineered to address the unique challenges posed by modern technology. The processing and handling of information in the digital realm raise critical questions regarding privacy rights, making it imperative to establish practical guidelines that align with the principles of freedom, truth, and human rights. Therefore, continuous adaptation and reform in both policy and legal frameworks are essential to ensure that the right to privacy remains protected in an increasingly digital world. This perspective emphasizes the importance of viewing privacy as a dynamic and evolving right, one that must be continuously reassessed

and protected in the face of technological advancements. By doing so, the Indian legal system can uphold the delicate balance between national security and individual privacy, ensuring that citizens' rights are not compromised in the pursuit of progress.

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