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## RIGHT TO PRIVACY AND DATA PROTECTION ISSUES IN INDIA

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### ABSTRACT

The progress of technology and the dynamism of the legal universe in this latest age provide a perspective on privacy and data protection problems. Privacy is something that does not interfere with other people's interests. Due to technological development, privacy has become a priority of every person and it also places a narrow emphasis on information security. Data protection emphasizes the freedom of people and the freedom of these people is threatened by the stranger's interference. It is necessary to stop the interaction of the stranger to the operation of the individual by any means. Any fresh phenomenon can be validated through the constitution as a fundamental legal necessity. The purpose of this article is to start a severe discussion in the Indian view on the right to privacy and data security. Although privacy is not expressly given in accordance with the Constitution, it implies the right to privacy as guaranteed personal freedom under Article 21. There is an intrinsic dispute between data protection and the right to privacy. Data protection may include economic details, information on health, company suggestions, intellectual property, and delicate information. Data protection and privacy were dealt with in an exhaustive way but not in the Information Technology (Amendment) Act, 2008. In data protection, the IT Act is not adequate and a distinct legislation is therefore needed in this respect.

### INTRODUCTION

The concept of privacy is not old in India. The ancient Indian knowledge theory, based on all literature from Upanishad, prescribes meditation, which must be done without any external disruption. The estates and the 'Arthashastra' show sufficient concern and regard for the privacy of the individual. The use of curtains is defined in the Ramayana and other classical literatures are developed in a certain manner. Private life is the thing that everybody needs to limit to him and other feel crazy in earthing the same.

It is this private life which improves or decreases or in other words shapes the public life. Your commitment to the world would be a nullity, regardless of what endeavours and devotion you may have put for public, if you carry an awful private life-be it living in luxury with assets which are in excess of your known income or you are found spending night somewhere else. So, you are constantly under investigation for a life which is yours-own, personal and valuable, and in this manner you can conclude that there is no privacy. During the laissez-faire period, a person's relation with the government was inconsiderable. Yet, in a modern administrative state, one needs to manage the administration in practically different backgrounds. The separation between the public life and private life of an individual has diminished. At whatever point an individual enters into a relation with the administration he needs to present a ton of personal information. In specific cases the government itself may gather data with respect to people.<sup>1</sup>Data about individuals might be important for an administration for framing its policies in a democratic way<sup>2</sup>. The surveillance by government over its citizens is a key method for social control. When it gives welfare benefits, the administration may need to probe deep into society and accumulate data. Accumulation of Personal data becomes important additionally to scold present day organized criminals. People working in departments of the military section, foreign affairs and nuclear energy may have be watched by the administrations.

## CONCEPT OF RIGHT TO PRIVACY

According to the Duhaime's Law Dictionary<sup>3</sup> the privacy means "An individual's Right to control and access over his/her personal information". This definition is a layman translation to what privacy in simple sense means. It simply indicates that privacy right of an individual is his/her full control and uninterrupted access over his/her own personal information. The personal information here includes- his name, address, demographic data, his personal affairs, his private space etc.Gillian Black<sup>4</sup> in his book defines the privacy as "Privacy is a desire of an individual to be free from the other's intrusion". The definition states that every individual is having the right of enjoying his personal choices, his personal affairs free from the interference of other people into it.European Convention on Human Rights in Article 8<sup>5</sup> defines the privacy as "Every individual have the Right to respect for his family and private life, his home and his correspondence". This is a huge effort by the Human Right Convention on the international level to define the importance of privacy in an individual's life. The Article further stated that no Governmental Agency is allowed to intervene the privacy right of a person until and unless, the said intrusion is in accordance to the law and is necessary for the purpose of security of the state, public wellbeing, and essential for the economical wellbeing of the country.Justice Cory of the Canadian Supreme Court in a case<sup>6</sup> defined privacy as "Privacy is the situation of being alone, in a case of preferences or freedoms, uninterrupted and independent of government scrutiny; safe from

<sup>1</sup> M.C. Pramodan, "Right to Privacy" 14 CULR 6 (1990)

<sup>2</sup> *Ibid.*

<sup>3</sup> Available at <http://www.duhaime.org/LegalDictionary/Category/CriminalLawDictionary.aspx> ( Visited on 22/ 6/ 2019)

<sup>4</sup> Gillian Black, "Publicity Rights" 2 EPW 8 (2011)

<sup>5</sup> Available at <https://www.jus.uio.no/lm/coe.convention.on.human.rights.1950.and.protocols.to.1966.consolidated/landscape.letter.pdf> (Visited on 22/ 6/ 2019)

<sup>6</sup> R v. Edward (1996) 1 SCR 128

intervention or disturbance. The capacity to exclude anyone from the property is a significant element of privacy. A main aspect of privacy is the right to be free of intrusion or interference.”

According to Justice Dickson<sup>7</sup> is “The freedom of a man to ascertain when, how and to what degree he or she will disclose private data, can be characterized as privacy. A sensible idea of privacy requires a person to continue on the belief that the State may only infringe this right by capturing personal communications on a hidden basis if it has determined to the satisfaction of a judicial officer that, an offense has been performed or is being performed and that monitoring of communications provides proof of the crime.”

The Hon’ble Supreme Court of India in the case *J. K.S Puttaswamy v. Union of India*<sup>8</sup> held that “The privacy rights is guaranteed in accordance with Article 21 as an inherent component of the right to life and personal liberty and as portion of the rights provided by Part III of the Constitution.”

## RIGHT TO PRIVACY IN INDIAN CONSTITUTION

The Constitution of India in general does not have any express provision regarding the Fundamental Right to Privacy but still by the means of judicial decisions the right is said to be under Part III of the Constitution. Following are the provisions which are said to have the provisions related to the ‘right to privacy’:

- *Article 19: Freedom of Speech and Expression*-Article 19(1) (a) provides that "all citizens shall have the right to freedom of speech and expression." However, this is justified by Article 19(2), which says that it will not influence the implementation of any current law or stop the State from creating any law, insofar as such law imposes reasonable constraints on the practice of the right in the interests of India's sovereignty and integrity, state security, friendly ties with foreign countries, public order, decency or morality.<sup>9</sup>
- *Article 21: Right to Life and Personal Liberty*-Article 21 of India's constitution gives citizens and non-citizens the right to privacy<sup>10</sup>. This is not obviously stated in it, but as a statutory justification, the Supreme Court indicated the same. Article 21 of the Constitution states as follows: “No individual shall be denied of his lives or personal freedom except as provided by the procedure established by law.”<sup>11</sup> Article 21 is the heart of Indian people's freedom. The terms "procedure created by law" in this article have been the subject of debate since the Indian constitution was enacted. The right strategy that is needed is that, in the sphere of personal freedom, the significance of the operation created by law is not very distinct from that of the due process clause of the Fifth Amendment to the American Constitution.

<sup>7</sup> R v. Duarte (1990) 1 SCR 39

<sup>8</sup> (2015) 8 SCC 735

<sup>9</sup> HM Seervai, *The Constitutional Law in India : A Critical Commentary* 43 (Central book publication, New Delhi, 2003)

<sup>10</sup> *Ibid.*

<sup>11</sup> JN Pandey, *Constitutional Law of India* 92 (Central Law Agency, New Delhi, 2007)

## RIGHTS RELATED TO PRIVACY IN DATA PROTECTION LAWS

Information Technology Act, 2000 is the sole existing legislation in the country that keeps the privacy of an individual protected in the matters of Data and Information transactions. The Act has been amended in the year 2008 by the Indian legislature and added several provisions to the existing Act of 2000 to make them more effective in the field of protection. The Information technology Act and the Amendment Act 2008 have the following provisions that ensure the privacy in the Data related issues such as

- *Section 30-* Section 30 of the Information Technology Act, 2000 needs the certifying authority to conform to safety processes to guarantee electronic signatures ' secrecy and privacy.
- *Section 43-* Section 43 of the Information Technology Act, 2000 provides sufficient provision for the person concerned to receive compensation for unlawful access to his private and personal data.<sup>12</sup> Under this section intrusion of one's computer or computer framework amounts to compensation. Several clauses and explanations of this section were amended by the ITAA 2008 which are clause (a), clause (i), clause (j), and explanation (v).
- *Section 43A (by ITAA, 2008) -* This completely new section was added to the statute through the IT Amendment Act 2008. This section provides 'Compensation for inability to safeguard data- where an entity that possesses, distributes or handles any delicate private data or information in a computer resource that it possesses, monitors or works is negligent in applying and retaining appropriate safety practices and procedures and thus creates any individual unfair loss or unfair benefit, that entity is responsible to pay the losses by the way of compensation to the person who is affected.'
- *Section 66-* Section 66 of the Information Technology Act, 2000 also protects sensitive private information residing in a computer resource as it makes, among others, a punishable decrease in the value of information residing within a computer resource with imprisonment for up to three years.<sup>13</sup> Thus, if an attacker is hacking into the computer system and copying and transferring sensitive personal information to a rival that may be of very high utility or of very private nature or business importance to the proprietor, the said act results in a decrease in the amount of data located within a computer resource and thus infringement of privacy.
- *Section 72 -* Section 72 of the Information Technology Act, 2000 says about violation of confidentiality and privacy, i.e. a government officer can be fined if he transfers in his formal ability any digital information or data which he has obtained about a person.<sup>14</sup> There is only a limited implementation of this section. It is confined to the actions and omissions of those individuals who have been given authority under this Act, rules or laws produced under it, i.e. police, certification authorities and officials approved by particular notice.

<sup>12</sup> *Id* ; Section 43

<sup>13</sup> *Id*; Section 66

<sup>14</sup>*Id*; Section 72

- *Section 72A*- this section was also added to the statute through the ITAA 2008. The section says; Punishment for disclosure of information in contravention of a lawful contract- Save as otherwise provided for in this Act or any other law in force for the time being, any person, including an mediator, who, while offering services under a legal contract, has obtained access to any material containing information about another person with the intention of causing or knowing that he is ought to cause the unlawful damage or unlawful profit reveals, without the approval of the individual involved or in violation of a legitimate agreement, such work shall be punished with probation for a period of up to three years or a penalty of up to five lakh rupees or both.<sup>15</sup>

Further in accordance with the order of the Supreme Court in the case of Justice K.S. Puttaswamy, the Govt. of India has set up a committee of five members headed by former Supreme Court judge, Justice (Retd.) B.N. Srikrishna for drafting a Data Protection Bill. If the bill is passed, the Bill will be India's first inclusive legislation to safeguard the personal data of online users from abuses by state and non-state intruders. The Srikrishna Committee's office memorandum states that the govt is aware of India's increasing significance of data protection. It is of utmost significance to guarantee the development of the digital economy while maintaining individual's private information safe and secure.

The Committee published its final study and draft data protection law in July 2018, called the Personal Data Protection Bill, 2018. The Personal Data Protection Bill offers for the creation of a Data Protection Authority to supervise information handling operations. It also acknowledges the need to safeguard private information in the context of the fundamental right to privacy, as well as the need to develop a mutual culture that promotes a safe and honest digital economy, respects citizen's information privacy and ensures freedom, advancement and creativity.

Furthermore, the Bill stipulates that it seeks to protect the independence of individuals with regard to their personal data, to define where the flow and use of personal data is suitable, to establish a relationship of assurance between individuals and institutions processing their private data, to determine the rights of persons whose private information are processed, and to establish a framework for the implementation of organisational and technical steps in the handling of private information, establishing standards for the transmission of private information across borders, ensuring the responsibility of information handling organizations and providing remedies for unauthorized and dangerous processing.

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<sup>15</sup> *Id*; Section 72A



## EFFECTS OF DATA PROTECTION ON SOCIETY

“Change is the only constant”. As this proverb defines the only thing which keeps the mankind going is the evolution. Today’s age is the age of information and it is the only thing upon which people rely. Today the society is connected through a single thread of information by means of social internet platforms like facebook, skype, whatsapp, etc. people today are so dependent upon these social media platforms that they share every minute detail of their life over it with different people. These social media platforms have created a new dimension of world on which people from around the corners of the world share their data with each other. So, it is of great importance to protect the data from being misused by the people or the authorities by creating the efficient laws<sup>16</sup>.

In today’s era protection of data is the primary concern as data is available in the bulk everywhere and it is quiet easy to access a unknown persons data without getting him notified.<sup>17</sup> This creates the huge risk of offences like identity theft, cyber-crimes, hacking, etc. Data protection includes safeguarding information. People in the computer system have discovered methods of misusing / exploiting information for different purposes.

Social media is a type of communication depending on the Internet. There are also many other types of social media, including blogs, micro-blogs, wikis and websites, widgets and virtual worlds. In recent years, however, social networking sites including Facebook, Twitter, WhatsApp, etc have become much popular. But the individual must first generate a database to use a social media platform and to identify other accounts. This social media site is primarily intended to create a relationship in the digital world. Yet the consumers knew nothing that such a privilege is also followed by the crime.

## CONCLUSIONS

Privacy is an individual's or gathering's ability to detach or uncover information about themselves specifically. The boundaries and substance of what is perceived as personal varies between cultures and individuals, yet they share basic topics. Once in a while, privacy is identified with namelessness, the desire to remain in the open domain unnoticed or unidentified. When something is private to an individual, it mostly implies that something is seen as intrinsically extraordinary or by and by touchy inside them. How much private data is uncovered along these lines depends on how this information is obtained by the open, contrasting between places and after a while. Protection mostly transcends privacy, including, for example, ideas about the appropriate use of data as well as insurance. The privilege of not being subjected by the administration, organisations or individuals to unsanctioned attacks on privacy is a piece of the protection legislation of various countries, and now and again constitutions. Practically all nations have laws on privacy here and there; a case of this would be tax assessment law, which regularly requires the sharing of near-home wage or

<sup>16</sup> Rakesh Chandra , *Right to Privacy In India With Reference to Information Technology* 98 ( YS Book International, New Delhi, 2017)

<sup>17</sup> Rahul Mathan, *Privacy 3.0 : Unlocking Our Data Driven Future* 55 (Harper Collins, Lucknow, 2018)

profit data.<sup>18</sup>Singular privacy in some nations may struggle with the right to speak laws freely, and some laws may require open disclosure of data that would be viewed in different nations and societies as private. Privacy could be abandoned wilfully, usually in exchange for obvious benefits and with specific perils and misfortunes all the time, despite the reality that this is a crucial outlook on human links. Scholastics who are company analysts, development scientists, and study clinicians depict uncovering privacy as an 'deliberate penance,' for instance by prepared participants in sweepstakes or rivalries.

## SUGGESTIONS

From the above exchange the accompanying recommendations have been made as follows:

- 1) The need for a constitutional amendment: a protected change is required whereby privacy rights can be explicitly guaranteed by adding another agreement. Such a change is important to offer side recognition for protection. Individual freedom as guaranteed by Article can be increasingly essential at precisely that stage. Developing National Policy: India requires a comprehensive strategy to ensuring that individuals have the privilege of controlling their own information collection and transmission. An imperative aspect of this strategy is the enactment that fuses the vital precepts of sensible information rehearses.
- 2) In this way, the enactment would place constraints on the collection and use of individual information by individual data customers. Individual data clients would be required to educate people unequivocally when collecting individual data and how to use it. Implementation would require individual data clients to provide an opportunity for individuals to prevent further spread of their own data. As needed, the online production and accumulation of individual information would be adequately confined. Educational privacy interests and self-governance interests and information assurance intrigues should be shielded by appropriate legal systems to ensure the privacy of information and the trading of sensitive data on the Internet, whether categorized or individual.
- 3) Although such a comprehensive confidentiality arrangement is important to ensure the right of the person to control the accumulation and transmission of individual data, there is a requirement for those concerned to exercise this control. In any case, online customers will have to take responsibility for their electronic interchanges. They should be aware of the substance of these interchanges and use appropriate security attempts to safeguard their privacy, for instance, encryption. People will also have to choose how close it is to uncovering home data while enrolling in internet locations and taking an interest in business exchanges. By predicting the dangers of online use and using the recently illustrated legitimate insurance schemes, people will most likely exploit the numerous informative, social and business openings available through the internet now and later.

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<sup>18</sup> Gaurav Goel, *Right To Privacy In India: Concept & Evaluation* 26 (Partridge India, New Delhi, 2016)