



## RIGHT TO PRIVACY AS A FUNDAMENTAL & HUMAN RIGHT

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The right to privacy is, in fact, a bundle of rights. According to the Black's Law Dictionary, privacy means "the right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned". The right to privacy is a general term, which encompasses various rights in itself.

Mostly all the nations recognize the right to privacy explicitly in their Constitution. In countries like the United States, Ireland, and India, where this right is not explicitly mentioned in the Constitution, it is an inherent part of some other provisions.

### **Fundamental rights and Right to Privacy**

Fundamental rights are basic rights that every human being is entitled to, and such rights should be present with every citizen of the country along with appropriate remedies. Article 21 of the Constitution of India states that "No person shall be deprived of his life or personal liberty except according to the procedure established by law". The scope of Article 21 has been widened over the years to interpret that the term 'life' includes all aspects of life that make a person's life meaningful, complete as well as worth living.

### **International Instruments on Right to Privacy**

The constitutional right to privacy has come to be recognized by almost all democratic countries in the world. The other statutes that have a universal status also contain provisions relating to this right as well as recognizing it. Some of them are:

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
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### **Evolution of Right to Privacy**

In ancient India, the concept of the right to privacy could be traced out in the ancient text of the Hindus. Hitopadesh enumerates that certain matters such as family matters, worship and sex must be protected from disclosure. Privacy in ancient times was related to 'positive morality'. But this concept was vague in the ancient Indian texts.

In modern India, the issue of the right to privacy was discussed for the very first time in the debate of the Constituent Assembly, but it was not included in the Constitution of India. The issue of the right to privacy as a fundamental right under the Constitution and as a common law right has been dealt with since the 1960s.



In *M.P.Sharma v. Satish Chandra* [AIR 1954 SCR 1077] and eight Judge bench of the Supreme Court, while dealing with the power to search and seize documents from the Dalmia Group, held that right to privacy is not a fundamental right and it is alien to the Constitution of India.

Thereafter, in *Kharak Singh v. State of Uttar Pradesh* [AIR 1964(1) SCR 332], a six-Judge bench of the Supreme Court held that there is no fundamental right to privacy, but struck down the provision that allowed night visits, for violation of 'personal liberty'. However, Justice Subba Rao gave his dissenting view and stated that the right to privacy is an essential component of personal liberty though it was not incorporated as a fundamental right in the Constitution of India.

After a period of almost 11 years, in *Gobind v. State of Madhya Pradesh* [1975(2) SCC 14], a three-judge bench of the Apex Court held the existence of a fundamental right to privacy under Article 21 of the Indian Constitution. Hence, for the first time, privacy gained some recognition under personal liberty under the Indian Constitution.

In *Maneka Gandhi v. Union of India* [1978 AIR 597, 1978 SCR (2) 621], Article 21 was interpreted in a broad sense by the Supreme Court. It was held that both the rights of personal security and personal liberty recognized by 'natural law' are embodied in Article 21. A wide interpretation was attributed to Right to Life, also encompassing the right to privacy in its realm.

*People's Union for Civil Liberties v. Union of India* [(1997) 1 SCC 30], was related to phone tapping. It was held by the Apex Court that conversations on the telephone are often of a confidential nature, and whether the right to privacy

can be claimed or has been infringed in a particular case would actually depend on facts of the said case.

In a recent landmark judgment, *K.S.Puttaswamy v. Union of India* [2015 (8) SCALE 747], right to privacy undeniably attained the status of a fundamental right and hence, it will retain its status amongst the Golden Trinity of Article 14 (Right to Equality), Article 19 (Right to Freedom) as well as Article 21 (Right to Life and personal liberty). In this judgment, both the earlier judgments viz. *M.P.Sharma* and *Kharak Singh*, stand overruled.

**Landmark judgment:**  
***K.S.Puttaswamy v. Union of India***  
**[2015 (8) SCALE 747]**

This case was brought by a retired judge of the High Court, Puttaswamy, who challenged the proposed scheme of the government for a uniform biometrics-based identity card that would be mandatory for accessing government services and benefits.

The petitioner argued that the right to privacy was an independent right, guaranteed by the right to life with dignity under Article 21 of the Indian Constitution. On the other hand, the respondent argued that the Constitution of India only recognized personal liberties which may incorporate within their ambit, right to privacy, but only to a limited extent.

The nine-judge bench of the Supreme Court unanimously held that the right to privacy was a constitutionally protected right in India, and it was an intrinsic part of the right to life and personal liberty under Article 21. The right to privacy was reinforced by the concurring opinions of the judges who recognized that right to privacy includes autonomy over personal decisions, as in beef consumption; bodily integrity, as in



reproductive rights; and protection of personal information, as in the privacy of health records.

It was also recognized that this right is not absolute, as is the case with all the other rights as well, but allowed for restrictions where it was provided by law, corresponding to a legitimate aim of the State, and proportionate to the objective which it seeks to achieve.

This case expands freedom of expression by recognizing right to privacy as an independent right that can be enforced, as against a right that is available only as far as it impacts constitutionally guaranteed freedoms. It provides for the protection of freedom of expression by recognizing rights- e.g. right against arbitrary and unregulated State surveillance, the right to express one's sexual orientation, religious expressions, data protection, so on and so forth. This decision also has the effect of establishing a binding precedent within its jurisdiction.

#### **Technology as a threat to privacy:**

The technological era that we are presently in, has its own advantages as well as limitations. While on the positive side, the world has become more open in the sense of communication at the national as well as international level; the flipside is that this technological era has brought in new ethical and juridical problems.

Some challenges that pose as the greatest threat to the right to privacy in the present times are:

1. Telephone tapping- This constitutes a grave invasion to the right to privacy. Telephonic conversation amounts to the exercise of the right to freedom of speech and expression of a person, which is protected by Article 19(2). Telephone tapping is allowed in India in Section 5(2) of the Telegraph Act, 1885; but only under certain special circumstances.

2. Data protection in the telecom sector- The right to privacy refers to the specific right of an individual to control the collection, usage as well as disclosure of personal information. This personal information could be in any form- family records, educational records, medical records, communications, financial records, etc.

The Information Technology Act, 2000 was enacted to provide a comprehensive regulatory environment for e-commerce. Section 69 of the Act empowers the controller to direct any government agency to intercept any information that has been transmitted through any computer resource. It also requires that the users either disclose the encryption keys or face imprisonment for up to 7 years. Section 72 is the only express provision in the Act that is connected with privacy and breach of confidentiality.

3. Real-Time tracking- Nowadays the GPS (Global Positioning System) tracking is one of the most common ways for tracking vehicles. Although it is a great technology, it is quite possible that a person's right to privacy may be violated during the process, as this technology provides ample information after examining the activities of a person. Hence, it would not be wrong to say that GPS tracking is a double-edged sword, having both positive and negative aspects.

4. UIDAI-Unique Identification Authority of India (UIDAI) is a body of the government which works as an issuing authority of UID to every person. A UID (Unique Identity Card) is an identity issued by the UIDAI to provide a unique identity to every person after obtaining his personal information i.e. fingerprints, iris pattern, name, address, date of birth, etc. This includes a person's biometric information, hence it can be considered as the most private information of any



individual. A Bill was introduced in 2010 to lift the confidentiality of the biometrics information, allowing it to be shared in the interest of national security.

In the Unique Identification Authority of India and Anr. Central Bureau of Investigation, the C.B.I sought access to the huge database that was compiled by the Unique Identification Authority of India, in order to investigate a criminal offense. It was held by the Supreme Court that UIDAI was not supposed to transfer any bio-metrics without the consent of the person so involved.

### **Significant aspects of Right to Privacy**

There are a few significant aspects that are related to the right to privacy that need to be kept in mind by the Indian Legislature while enacting laws on the issue of privacy:

1. There should be adequate protection from the illegal and arbitrary interference by the private as well as government parties, in the form of a comprehensive law. The law must ensure that the use of modern-day technology in trespassing the privacy rights and personal data of people is prohibited.

2. Medical records of individuals must be protected, as this data can potentially be misused. It is imperative that such data is not collected and thereafter sold to researchers in the field of biomedical science, without the consent of the parties involved.

3. Similarly, financial records of individuals must also be protected from potential misuse. As the instances of fraud are on the rise, hence there is an urgent need to pass special guidelines to this effect. Financial records of individuals must not be shared with banks and financial companies without the knowledge as well as the consent of the

parties, except in accordance with the procedure established by law. The misuse of financial data of individuals can have a disastrous impact on the rate of increase in other crimes, for instance, kidnapping, extortion, etc.

4. The excessive surveillance of employees by their employers through electronic eyes is another issue of major concern, which must be addressed by a comprehensive law.

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#### END NOTES

1. See John Rawls - Theory of Justice (1973)
2. HLA Hart - The Concept of Law Oxford (1961)
3. The Core of the Constitutional Commitment to socio economic reconstruction lies in part-III and part IV, the Fundamental Rights and Directive Principles of the Constitution. Together they constitute the conscience of the constitution. Judicial review, Judicial activism, Judicial law making, evolution of various tools by the judiciary are to be understood in the light of this constitutional mandate.
4. Dr. S.N. Dyan - Fundamentals of Jurisprudence - The Indian approach (2002).
5. Prof. A. Lakshminath - Editorial Note, A.U Law Journal, Vol-3 (2002).
6. Supra note at Page 332
7. Kesavananda Bharathi versus State of Kerala A.I.R 1973 S.C. 1461.
8. Upendra Baxi - Kesavananda is not merely a reported case but it is the Indian constitution of the future. (1976) 9 JILI 323.
9. Menaka Gandhi Versus Union of India. A.I.R 1978 S.C. 597
10. The scope of life and personal liberty of Art. 21 was widened by The Indian Judiciary in post Menaka cases.