

Privacy Rights in the Digital Age: A Legal Tightrope Walk in India

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Abstract

Internet users are associated with technologies designed to undermine their privacy rights every day. In an era where digitization permeates every aspect of our lives, the right to privacy has become increasingly complex and contested. Interferences with an individual's privacy can result in many different types of harms, so, a good understanding of privacy rights and why it badly needs protection is key to ensuring human dignity, safety and self-determination. In India, this tension has become particularly acute, prompting a dynamic legal discourse to grapple with the evolving contours of privacy in the digital age. In 2020, when the COVID pandemic triggered governments across the globe to instate lockdowns, several Indian states adopted digital contact tracing and the use of drones to map and monitor their citizens. Although it was for social control through surveillance but rampant news about information leaks and breaches by apps, spy software and social media platforms have awakened Indian citizens to how their privacy is being persistently compromised.

This article is about the intricate legal situation that pertains to the right to privacy in India, that which pertains specifically to the situation of digitization. It addresses the history of the recognition of

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Anu Books

Social Issues: Trends and Analysis

DOI: <https://doi.org/10.31995/Book.AB348-O25.Chapter17>

Plagiarism Report: 17%

privacy, the judgment Puttaswamy, the current law, new challenges, and the future ahead in order to maintain a healthy regime of privacy.

Keywords

Privacy, Rights, Digital, legal, India

Introduction

It is derived from the Latin term 'Privatus', meaning separated from the rest. Privacy as a principle is intangible. Respect for privacy defines human dignity and that is why it has manifested as one of the deepest values of a civilised society. Right to privacy is a universal human right understood by the international law as well as codified in the national constitutions and legal codes.

The traditional notions of privacy are challenged in the computer age through rapid advances in technology and data-driven business practices. Internet usage rendered the privacy laws complicated and the law is also suspected to have lagged behind. There have been quite a number of times when cases pertaining to individuals who have raised concerns about privacy have been taken up. Despite the absence of any special article in the Constitution of India, the Supreme Court of India has expanded the scope of Article 21 and held that the Right to Privacy is a fundamental right as well.

Historical Recognition of Privacy

The highest court of India has, over time, traced the right to privacy from Part III of the Constitution even if the same is not directly enshrined in the Indian Constitution. Significantly, Article 21, which guards the right to life and personal liberty, has been read down as including the right to privacy through a chain of judgments. The technology is seen as value-neutral-neutral and the user alone determines if the same works towards good or ill. But that is not the case. The fact is that the popular online tools have been crafted to profile people and manipulate the users into giving out personal data.

The pivotal judgement was delivered in the case of Govind v. State of Madhya Pradesh (1975), where the Supreme Court recognized the Right to Privacy as one of the constituent elements of Article 21. This was further detailed in R. Rajagopal v. State of Tamil Nadu (1994)

and included the dimension of informational privacy, protecting the individual from information collection and transmission by the state.

But the law was quite uncertain until the pathbreaking case of Justice K.S. Puttaswamy (Retd.) Union of India (2017). This pathbreaking judgement derived the right to privacy as a fundamental right from Article 21. The judgment determined the various facets of privacy as follows:

1. Informational privacy
2. Bodily privacy
3. Privacy of the home
4. Decisional privacy

This judgement highlighted the important role of privacy in a democratic society, fostering individual autonomy and safeguarding human dignity. Moreover, it emphasized the need for a legal framework to effectively protect this fundamental right.

The Puttaswamy case: A catalyst for change

A nine-judge bench in the case unanimously declared the right to privacy as a fundamental right under the Constitution of India. This Judgment served as a catalyst for the development of legislation and regulations on the matter of privacy. It paved the way towards the creation of the Personal Data Protection Bill, 2019 (PDPB 2019). It indicates a framework of overarching data protection, comprising principles such as:

Consent: All individuals have the right that their personal data is collected, utilized and divulged under their control.

Notice: Organisations must transparently inform individuals about the data they collect and its intended purpose.

Data Minimisation: Data that is absolutely necessary for a specific purpose can be collected and retained by organisations.

Right to Access and Correct: Data subjects shall be entitled to access and correct their personal data.

Right to be Forgotten: There is also a provision that facilitates the erasure of individuals' personal information in specific

cases. PDPB 2019 is still not implemented, although the bill is the government's response to the privacy issues that have been raised through the Puttaswamy judgment. However, some issues have been raised about the bill's possible Loopholes as well as the bill's performance towards the protection of the right to privacy under the age of the internet.

The Existing Legal Framework

The presence of internet usage has complicated the laws pertaining to privacy and the law is reactive and is said to have lagged behind. Right to privacy is connected with a host of other rights such as freedom of expression, right to information, freedom of association and assembly etc. In the absence of a single data protection law, India today is governed by a patchwork of laws strewn across the statutes. They are:

The Information Technology Act, 2000 (IT ACT): This act pertains to cybercrimes and contains data privacy provisions. Section 72A gives the government the power to intercept, monitor or decrypt information in the "public interest", causing a concern about possible surveillance.

The Indian Penal Code, 1860: Some of the provisions under the IPC, e.g., the provisions relating to defamation and voyeurism, can be pressed into service in the protection of privacy interests. But these are not especially tailor-made for the information age.

Sector-specific laws: Some sectors like telecom and healthcare have sector-specific laws governing data privacy. But such protections are not comprehensive and uniform. The piecemeal legal framework also creates uncertainty and is averse to the effective enforcement of the rights of privacy effectively. Lack of a harmonizing data protection authority also dilutes the system.

Emerging Challenges

The interference with the privacy of any person can cause a wide variety of harms, so, a clear grasp of the significance of privacy and why it is badly in need of protection is the cornerstone that will ensure human dignity, safety and self-determination. Life is becoming

ever more digital, presenting new challenges everywhere in the protection of privacy. Tracking devices on our phones, our TVs, even our washing Machines; we have spies at home everywhere. In order to reclaim that power and democracy, we need the protection of our privacy. Some of the biggest challenges are:

Dataveillance and Surveillance: The increasing use of surveillance technologies by both state and non-state actors poses a significant threat to privacy.

Data leaks and breaches: With the increased amount of personal data being gathered and kept online, the data is ever more subject to leaks and breaches.

Targeted Advertising and Profiling: Companies collect massive amounts of user data in hopes of building very focused advertising profiles, which is considered manipulation as well as profiling.

Conclusion

The right to privacy remains a vital and evolving aspect of our legal framework in the era of digitization. The fight for privacy is a fight for Power that will determine what our future will look like, and whether it will remain fair and free. If we want to preserve our commitment to precious yet fragile human values, we will need strict privacy rules. Being a part of the society often overrides the very fact that we are individuals first. As technology continues to advance, policymakers, lawmakers, and society as a whole must grapple with the complexities of protecting privacy rights while enabling innovation and economic growth. By understanding the legal frameworks, landmark cases, and emerging trends discussed here, we can work towards a more informed and balanced approach to safeguarding privacy rights in the digital age. As Bill Nelson rightly puts it, “if we don’t actually know how to safeguard our privacy, we could all become victims of identity theft.”

References

1. Kumar, R., & Goel, G. (2016). *The right to privacy in India: Concept and evolution*. Lightning Source Publication.
2. Richards, N. (2022). *Why privacy matters*. OUP Publications.

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3. Goswami, D. (2005). Right to privacy: In the perspective of the Information Technology Act, 2000. *Gauhati Law Times*, 11.
4. Ministry of Law and Justice. (2019). *The Personal Data Protection Bill*. PRS Legislative Research.
5. Rath, D. K., & Kumar, A. (2021). Information privacy concerns at the individual, group, organisation and societal level. *Emerald insight*, 18.

Case Review

1. M.P. Sharma vs. Satish Chandra, AIR 1954 SC 300 (1954).
2. Kharak Singh vs. State of U.P., AIR 1963 SC 1295 (1963).
3. Govind vs. State of M.P., AIR 1975 SC 1378 (1975).
4. Justice K.S. Puttaswamy vs. Union of India, 2017 (10) SCC 1 (2017).