

Need to Protect Right to Privacy in Today's World of Digital Evidence: An Analysis

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Abstract: *Right to Privacy not a new concept in India, The Indian Constitution protect privacy under Article 21. The Protection of Privacy is very crucial on modern era of internet. Threat to the concept of privacy found in the new technology, hence that's why data protection becomes very important. Data privacy means when, how, and to exactly what extent the personal data of a consumer can be shared and communicated to others. The Court rejected admitting the evidence that is obtained on the cost of someone's privacy. The new Criminal laws are to come into force on July 1, 2024. If our personal information is stolen, it can be used to harm us.*

Keywords: Protection of Privacy

I. INTRODUCTION

Human being is asocial animal as well as brilliant community as compare to other animals. To live prestigious and decent life every individuals must have certain basic rights and inalienable right as a human beings. Such rights are called human rights, the word 'Human' means a member of homo sapient species and the word 'Right' means those postulates by using which we acquires freedoms because we are humans. In short we can says that these rights are nothing but a human rights. Thus the phenomena 'Human Rights' denotes certain basic rights and standard of human behavior and those rights must be protected by some machinery like, state. Fundamental rights are given and protected by The Constitution of India, like right to express our opinion, right to education, right to privacy. These rights are not to be interfering by anyone; otherwise the State would punish the wrongdoer. These rights and valuable freedoms should be protected in the sense of right in rem, because these are universal rights.

Meaning of Privacy

The word "Privacy" among other all rights is very complicated, difficult to define and describe briefly. Though The Constitutional Law of India put right to privacy concept under the part third means under the Fundamental Rights, it's not a new concept in India. The idea of freedom and liberty is an old concept which is available in the history of human being itself. This idea of freedom and liberty has various other postulates which changes according to with the changing needs of the society as well as the development of the community. Individual's entire life is established under the rules and statutes of his State and community.

Justice P. N. Bhagwati has also observed, "freedom to life as well as one's confidential freedom as provided by Article 21 of The Indian Constitution covers right to live with decency and honorability and all that includes basic requirement of life, Such as:-sufficient diet food, shield, costuming and other amenities such as ability for reading and writing, expressing ourselves, freely moving about, mixing and commingling or conjoining, or interfusing with fellow human beings. Every act which infringes or impairs decency respect or honor of anyone would constitute deprivation protanto of his right to life and it would have to be in accordance with rational fair and just established by statutory legislations which stands the test of other basic rights". Further in his statement, he says that "We struck down that provision of the Passport Act which vested complete unguided, unfettered power in the government," Bhagwati said. The Court held that Gandhi had a right to a passport under Article 21, which stated that no one shall be deprived of his liberty except by procedure established by law. In a decision Bhagwati delivered, the Court stated that such procedure must be "reasonable, fair and just," establishing procedural due process. 1.

Justice Chandrachud authored the majority decision in Justice K.S. Puttaswamy v Union of India speaking for himself and Khehar J, RK Agarwal J and Abdul Nazeer J. He recognized the right to privacy and dignity as an intrinsic part of

the right to life.² According to him, "nobility and self-respect could not be acquired beyond confidentiality and privacy which is the ultimate expression of the inviolability of an individual". Also right to private and family life encompasses a wide range and areas, privacy applied to wide spectrum ranging from phone tapping to sexual orientation, while prominent issues regarding Right to respect for family includes the right of parents to contact with their issues, remarriage and adaptation.³

Since the Protection of Privacy is very crucial object on the active media of Internet. We do not know the exact loss in the case of invasion by the wrong doers on the internet. The concept of bodily privacy now a days becomes a narrow concept, and now a days protection of the data of Author on the internet is becomes very important if you think right to privacy is crucial.

Technologies of Privacy Invasion

The technological advancement are developing day by day and making internet transaction of human beings very comfortable and quick. With the invent of internet it becoming an essential part of the lives of people and technology developing at jet-set speed, it has emerged as a lucrative center for transactions, and has grown into an area, where individuals from different countries of the world get to contact freely and cost effectively. Peoples and organizations transfer information-commercially, where a click of the mouse the desire message reaches its required destination. E-cards have changes cash and other documentation of identification and verification. There are sophisticated devices available for bugging, video surveillance and other monitoring activities. These technologies have great power to destroy privacy if used unscrupulously.⁴

Why data protection becomes very important? Basically when it involves rules governing the collection and handling of personal data, privacy becomes most important issue connected with digital social media.

Data Protection

Privacy has been a vital concept of concerns for all governments, commercial business and customers /citizens in the new era of e-commerce. The medical research and care, telecommunications, advance transportation systems and financial transfer have grammatically increased the level of information generated by each individual. Tremendous amount of personal information is held by various authorities, both public and private – The police, the income tax departments, bank, insurance agencies, credit rating agencies, stockbrokers, employers, doctors, lawyers, marriage bureaus, detective airlines, hotels and so on. ⁵

The information is stored in large databases and hard disks. Such data is processed by techniques such as data mining and data matching. Thus the Information in many databases can be crossed match to create "profiles" of individuals and even predict their behavior. ⁶

Data privacy means when, how, and to exactly what manner the personal data of a consumer can be shared and transferred to others. The individual's personal information can be name, address, ethnicity, phone number, marriage status, etc. With the increase in the use internet usage over the years, there is an urgent need to legislate data privacy regulations. Data protection, on the other hand, is the legal protection of data against any loss, damage or corruption. As data is now easily collected and communicated at an unprecedented rate, there is a serious issue of protecting the sensitive and confidential data collected from unauthorized sources. In the Indian context, privacy has been a matter of debate and very essential elements in the judicial courts, with some addressing privacy as a fundamental right and others not admitting it as a right under Article 21 of our Constitution. Finally, in 2017, the celebrated case of K.S. Puttaswamy v. Union of India (2018) pronounced the right to privacy a fundamental right safeguarded under Article 21 of The Indian Constitution of India. We already had some broken parts of the Information Technology Act (2000), the Indian Penal Code (1860), etc. that traced the concept with the right to privacy. Eventually, after seven years of making and three attempts to pass the privacy legislation, India adopted a full-fledged data protection and privacy law on August 9, 2023, but unfortunately it's application not yet to be enforced. In the year 2017, the government of India, through its Ministry of Information and Technologies, appointed a committee of ten members under the chairmanship of Justice B.R. Krishna (a retired Supreme Court judge). The committee finally submitted its report on the data protection framework on July 27, 2018.⁷

Right to privacy and admissibility of illegally obtained evidence

If we go through the 94th Indian Law commission report, discusses the scope of admissibility of illegally obtained evidence in India, the traditional approach and the need for change demanded drastically. It required the need for change in traditional approach of the fact that even if the evidence is obtained illegally it has no consequences on its admissibility in the court of law. Now a days the reports rejected the court's view of admitting the evidence that is obtained on the cost of someone's privacy and practical difficulties. The report concluded with the view that there is a need of reform and that section 166 A should be inserted in the Indian Evidence act which suggests that if any evidence is illegally obtained, the court may have the discretion to not admit it. Indian Courts like other foreign nations to admit illegally obtained evidence and the test of 'relevancy' is used, after the Puttaswamy judgement, and the right of privacy as part of Articles 14, 19 and 21 has given new dimension to the admissibility of illegally obtained evidence. But with the 2017 judgment, the Supreme court also ruled that this right to privacy is not an absolute right and the state can draw proper limitation, like reasonable restrictions for maintaining law, and protecting state interests. Collecting evidence and proving it in the court of law is an important aspect of new criminal law but collecting them, at cost of someone's privacy especially when it comes to phone tapping and search, seizure is an injustice to individual's fundamental Rights.⁸

So from the above example the judiciary rejects the electronic evidence if it is derived from the invasion of important right to privacy. So many times Supreme Court explain in number of cases that right to privacy is important and essential postulate in order to all round development of the individual.

E-evidence, new criminal law, its implementation

Some drastic and good changes have been made in the provisions relating to electronic evidence in the Bharatiya Sakshya Adhiniyam, which is to replace the Indian Evidence Act. The three newly-enacted criminal laws, the Bharatiya Nyay Sanhita (to replace the Indian Penal Code), the Bharatiya Nagarik Suraksha Sanhita (to replace the Code of Criminal Procedure) and the Bharatiya Sakshya Adhiniyam (to replace the Indian Evidence Act) are to come into force on July 1, 2024. The Ministry of Home Affairs (MHA), Central and State governments are preparing for a smooth transition. While some changes have been made in the Bharatiya Nagarik Suraksha Sanhita (BNSS) in connection with investigation and police functioning, by increasing police power during investigating a case, a few new offences and some changes introduced in the BNS, the contents of the Indian Evidence Act, 1872 have changed little as far as the Bharatiya Sakshya Adhiniyam (BSA) is concerned. The value of secondary evidence has been slightly broadened and some amendments have been created in the provisions relating to electronic evidence in the BSA.⁹

In *Amitabh Bagchi Vs. Ena Bagchi* (AIR 2005 Cal 11) sections 65A and 65B of Evidence Act, 1872 were critically analyzed. The court held that the physical body of the accused in Court may not be required for purpose of adducing evidence and the same can be done through a technical medium like video conferencing. Sections 65A and 65B provide provisions for evidences relating to electronic records and admissibility of electronic records, and that definition of electronic records includes video conferencing. *State of Maharashtra v Dr Praful B Desai* (AIR 2003 SC 2053) involved the question whether a witness can be examined by means of a video conference? The Supreme Court held that video conferencing is an development of science and a new technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present.¹⁰

In *M.P. Sharma v. Satish Chandra*, the Supreme Court held that the right to privacy is not guaranteed by the Indian Constitution. The bench was deciding if a search order allowed under Section 96(1) CrPC3 is in violation of Article 19(1)(f) of the constitution. The Supreme Court's dissenting opinion in *Kharak Singh v. State of Uttar Pradesh*, warrants special attention since it throws light on the right to privacy as a fundamental right is protected by Article 21 and 19(1)(d) of the Indian Constitution. The U.P. Police Regulations' provisions for continuous surveillance were under consideration by the Court in the present case. The accused was charged with dacoity but finally found not guilty. With the passage of time, the Supreme Court decided that the right to privacy included and protected issues relating to the families, the household, and other private affairs of the individuals, and subjected to "compelling state interest." While debating on the question of telephone tapping, the Supreme Court expanded widely the right to privacy to protect telecommunications and found that doing so constitutes a significant breach of one's individual's privacy rights. In addition, the Supreme Court allowed the demarcating line between physical and mental privacy. According to the

decision in Unique Identification Authority of India v. Central Bureau of Investigation, it is against the policy to share biometric data of an individual who has been assigned an Aadhaar number with any third entity in absence of express authorization.¹¹

The Supreme Court of India ruled in the case of State vs. Navjot Sandhu (2005) that electronic records, like emails and digital documents, can be used as evidence provided that they are examined in the appropriate and strictly in legal manner and they must be fit the standards of the Indian Evidence Act. This decision was made in the context of the case. It was within the context of the case that this decision was reached. In the case of Anvar P.V. vs. P.K. Basheer (2014), the court requires that electronic evidence be reviewed in line with the judgment, which says that proof must be presented in such a way that validates the legitimacy of the contents and the reliability of the source. Either way, the evidence must be checked.¹²

There is a relation between admissibility of electronic evidence and Right to Privacy and data protection are necessary. Privacy is necessary for our personal safety. If our personal information is publicly available, it can be used to harm us. For example, if someone knows my address, they can send me unwanted mail or make harassing phone calls. Second, privacy is necessary for our personal freedom.

Why Right to Privacy and Data Protection is necessary?

If individual's personal information is publicly available, it can be abused to control us. For example, if my employer or stranger knows my address, they can easily send me fraudulent work-related materials. Privacy is necessary for our individual's dignity. If our personal information is publicly available, it can be misused to humiliate us. For example, if my address is publicly available, people can post embarrassing pictures of me online. Privacy is also necessary for our personal relationships. If our personal information is publicly available, it can be misused to hurt our relationships. Privacy as well as data protection both are important for businesses. Employer must protect customer data to maintain customer loyalty and market share. The public sector needs to collect and use data to provide services to the public.¹³

In Vinit Kumar vs CBI and Ors case ¹⁴, it was alleged by Central Bureau of Investigation (CBI) that the petitioner had bribed to officer of a bank to obtain a credit-related favor. For the same, three orders were passed under Rule 419-A to intercept his telephone calls. The petitioner, in this case, challenged all these three orders and argued that the illegally and secretly recorded telephonic recordings in the charge-sheet and all material collected on its basis which is against right to privacy should be set aside. Dealing with this issue of admissibility of illegally obtained evidence for the first time post Puttaswamy case, Ranjit More, J.'s judgment departed from the established practice of ignoring concerns of privacy in relation to evidence, and instead adopted the three-pronged test of Puttaswamy case. Accordingly, the Court observed that, there were no circumstances or situations of "public safety" or "public emergency" in the matter at hand. Importantly, the Court also observed that sanctioning a violation of fundamental rights on the notion that in criminal law, the ends justify the means, would amount to manifest arbitrariness and contempt of the Supreme Court's directions in Puttaswamy case.¹⁵

II. CONCLUSION

The freedom and liberty to privacy was sanctioned by the superior courts in number of cases, and it gives full support and acknowledged as a basic essential freedom. The very pious idea of secrecy and confidentiality were protected in the postulate that a definite sphere is required in order to ascertain one's privacy. Right to privacy is a right which is to be free from un-warranted interference and publicity from the illegally publicizing of private activities of individuals which are outside the scope of public concern. Thus right to privacy is not an absolute right, so state can put limitations by the procedure established by the law, but that procedure should follow the due clause, means that procedure should be just, fair and reasonable like which is available under the American Constitution. In phone tapping cases, Supreme Court protected the privacy of the individual as a basic and Fundamental Right and Supreme Court questioned an important issue if we are not protecting these right to privacy then who will protect?

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