



PROTECTION OF THE RIGHT TO PRIVACY IN THE CYBERSPACE, IN THE CONTEXT OF HUMAN RIGHT

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Abstract:

The ability to conceal certain aspects of one's life from the general public is known as the right to privacy. In the larger framework of international law, the right to privacy is regarded as a fundamental human right for each individual. It is now practically hard for an individual to maintain their anonymity or preserve their privacy in the era of state and commercial internet communications providers' surveillance.

This article explores the concept of the right to privacy as a fundamental human right, its historical development throughout time, legal foundations based on international and national instruments, and contemporary challenges. Human rights were recognized as a fundamental right under the legislation. The right to privacy has evolved according to technological advancements, societal changes, and legal interpretations. However, there is no proper definition that can be found relating to the privacy rights of an individual. But with various interpretations of different judgments, jurists, and philosophers. This article aims to provide a comprehensive study of the right to privacy by examining key historical developments, landmark cases, in India, and national legislation.

Keywords: Privacy, human rights, fundamental rights, national and international instrument.

1. Right to Privacy: Brief Introduction:

The word privacy has been derived from the Latin word “*Privatus*” which means separated from the rest. This has been part of human society since beginning of time. Its rooted back from the philosophical discussions of

ancient Greek¹. Thus, it is to be considered that this is not a new concept rather the recognition of privacy under fundamental rights are certainly modern. There were two spheres, in the Ancient Greek Society, i.e. *Polis* and *Oikos*, *Polis* is referred to as public sphere of political affairs such as city and *Oikos* is referred to household affairs which is private among the families. This distinction was made by Aristotle in the Book One of Politics². This, is significant to understand the modern concept of privacy. As the concept has been ever evolving since ancient times which has also made the hierarchy disappeared in families these days, an observation by Aristotle in Book One³. Furthermore, the right to privacy has gained protection under both constitutional and statutory law by the 19th century in USA.

Privacy is a state where one's personal information about their life and other conditions are kept beyond the reach and knowledge of others so that it can't go public. By this people can control the information that they want to share with others or put forth in the public domain. Privacy has been well-known throughout history, since the very beginning of mankind. Considering anything as private differs from person to person as well as the society. Privacy is to be considered the interest of the human personality. This safeguards a person's independence, personality, integrity, and dignity. The reason behind safeguarding one's privacy varies distinctively. As some individuals like to keep up with anonymity, others don't want anyone others to know some embarrassing facts about themselves so that is how it differs from person to person. So, this can be concluded that privacy carries three basic elements i.e. solitude, anonymity, and secrecy. The most significant step behind the creation of the modern notion of privacy, which has appeared for the first time in the study made by Louis Brandeis and Samuel Warren in 1890, for *The Right to Privacy*. Since then, the right to privacy has become acknowledged and widely known, then it has emerged to gain and become a fundamental human right internationally⁴.

1.1 The meaning and definition of the right to privacy:

Amongst all human rights, privacy stands to be the most difficult one to define for both national and international catalogs. There have been various attempts made by several jurists, theorists, and scholars to define privacy. Still, it has been very confusing to comprehend the true meaning of privacy and the scope of privacy. Although, the Oxford English Dictionary has defined "privacy" as "the state or condition of being free from being free from being observed or disturbed by other people" or "the state of being free from public attention." This definition is inspired by the definition given by Aristotle⁵. However, this term is full of distinctive connotations as there are new means and contexts for privacy violations developed.

Though there have been various attempts to define privacy still there is no universal definition yet to the date to describe it. However, privacy is universally claimed by everyone, still, its actual form differs based on the

¹ <https://doi.org/10.1093/oso/9780198870173.003.0003>

² Lessons from the Greeks: Privacy in Aristotelian Thought, BARENAKED FOODS,

³ Ibid.

⁴ AdriennLukács, WHAT IS PRIVACY? THE HISTORY AND DEFINITION OF PRIVACY.

⁵ History of Privacy: Past, Present & Predictions for the Future, <https://www.piiano.com/blog/history-of-privacy-and-future-predictions>

environment, economy, culture, and the societal characteristics⁶. This states that privacy needs to be reinterpreted under the light of the present era and should be examined in the present context.

Speaking of Privacy extensively, this is an individual's right to be left alone or not be intervened or intruded into their freedom. On the other hand, information privacy is something where individuals have the right to control their individual information from being used and collected⁷. Thus, it's very significant to understand that privacy is not only about confidentiality. Further, Richard B. Parker defined privacy as *"the control over whom and when various parts of us can be sensed by others."* Richard by stating 'various parts' meant to say about our parts of the body, products of, and our voice. This also includes those objects which are remotely associated and accessible to the individuals. Stating 'Sensed by others' means that it has been smelled, seen, tasted, touched, or heard by others⁸. According to the definition given by Black's Law Dictionary, Privacy is⁹ *"the right that determines non-intervention in secret surveillance and protecting an individual's information. It is of four categories.*

- *First, physical: an imposition whereby another individual is restricted from experiencing an individual or situation.*
- *Second, decisional: the imposition of an exclusive restriction on an entity.*
- *Third, informational: the prevention of searching unknown information.*
- *Fourth, dispositional: the prevention of attempts made to know the minds of individuals."*

Alan Westin, the American law professor has established three distinctive levels of privacy norms based on their effects which are as follows:

- i. The political level
- ii. The socio-cultural level
- iii. The personal level

Further, Westin has defined privacy as *"the claim of an individual to determine what information about himself or herself should be known to others."*

Julie Inness has stated that the discussions surrounding privacy can be divided into three categories: "a) *the skeptical debate about the conceptual and moral distinctness of privacy;*

b) the debate about the two components of a definition of privacy- the function of privacy and the content of privacy- the function of privacy and the content of privacy;

c) the debate about the value of privacy.¹⁰"

So, it can be articulated from above that privacy is essential as it enables individuals to create boundaries and manage the same to safeguard their lives from any unwarranted intrusions. The rules and laws that safeguard

⁶ ibid.

⁷ What is Privacy, <https://iapp.org/about/what-is-privacy/> (last visited Mar 31, 2024).

⁸ Richard B. Parker, A Definition of Privacy, in PRIVACY (2001).

⁹ PRIVACY Definition & Meaning - Black's Law Dictionary, THE LAW DICTIONARY (2013), <https://thelawdictionary.org/privacy>

¹⁰ JULIE INNESS, PRIVACY, INTIMACY, AND ISOLATION (1996).

privacy enable individuals to assert their rights in defiance of important power prejudice. The rights of privacy are fundamental rights that play a significant role in autonomy and in safeguarding human dignity.

1.2 The nature of the right to privacy:

This is a kind of right which safeguards the inner sphere of any person from any hindrances from outside actors which can be state or even the non-state actors. This is enjoyed by every individual by virtue of their existence in this. It is a fundamental human right which has wide recognition in every major international instruments namely which are based on human rights like, International Covenant on Civil and Political Rights, the European Convention on Human Rights and etc. Almost every country has recognised privacy rights as fundamental rights under their constitutional law implicitly or explicitly. Such as the constitution of South Africa and Hungary have specific rights to control and access individual's information's¹¹, this has been included most recently within their written constitution. On the other hand, there are some countries which don't have any explicit mention of right to privacy in their constitution, these countries include United States of America, India and Ireland, the courts have pronounced various judgements through which the right to privacy has been recognized and further it has been implicitly recognised by the constitutional laws. However, there are few countries which has adopted the international instruments which recognises the privacy rights there under for instance the European Convention on Human Rights¹². Further, privacy rights have been internationally recognised as fundamental human right by UN Declaration of Human Rights, the International Covenant on Civil and Political Rights (hereinafter ICCPR) and in various other international and regional instruments.

Privacy is referred to underpin human dignity and various fundamental values for instance the freedom of speech and association. Privacy has become one of the significant human rights in the modern era.

2. Historical development of the right to privacy:

Mostly, the right to privacy gained worldwide interest in the 1960s-1970s with the emergence of information technology, the right to privacy has cultural, religious, and historical connotations which fortify the perspective that the privacy of an individual is highly valued and preserved in varied cultures internationally. Thus, in the 1970s the countries started to adopt laws to protect the individual's privacy. Internationally there was a general movement for adopting exhaustive privacy laws that sought to safeguard one's privacy rights. These laws were solely introduced based on the models of the Organization for Economic Cooperation and Development and the Council of Europe¹³.

In the year of 1948 the international community has pinpointed the right to privacy as fundamental human right that has gained recognition by Universal Declaration of Human Rights (hereinafter UDHR). Later in 1966 the ICCPR has recognised the same. Article 17 of ICCPR and Article 12 of UDHR gives away legal safeguard to individuals against the 'arbitrary interference' with individual's family, privacy, home, honour, reputation and correspondence. Apart from these there are various special conventions for safeguarding the rights of special

¹¹ David Banisar & S. Davies, Privacy & Human Rights-an International Survey of Privacy Laws and Developments, THE JOHN MARSHALL JOURNAL OF COMPUTER & INFORMATION LAW (1999).

¹² <https://gilc.org/privacy/survey/intro.html>

¹³ Ibid Note 12

groups which as well recognize and safeguard the privacy rights of those communities. The Convention on the Rights of the Child, 1989¹⁴ under article 16 protects the children from any arbitrary or unlawful invasion of their privacy, family, correspondence and home, and even protect their reputation and honour from unlawful attacks. Further, under Article 14 of the International Convention on the Rights of All Migrant Workers and Members of Their Families, 1990¹⁵ migrant workers and their families are safeguarded against unlawful interference in their privacy and so on.

Further, in a similar vein, the regional blocs have accepted the right to privacy and protect their inhabitants. European Union, under Article 8 of the European Convention on Human Rights and Fundamental Freedom talks about the right to respect for individual's private and family life. However, this right has some limitations if doing, there would compromise national security, public health or morals, national welfare, or the rights and freedoms of others. Individual privacy and family matters are protected from arbitrary intrusion and attacks under Article 21 of the 2004 Arab Charter on Human Rights. Convicted individuals' security and privacy were protected in Article 16(8). The protection of the law from arbitrary or abusive intrusion in one's home or communication, family life, or honor or reputation is guaranteed by Article 11 of the American Convention on Human Rights.

Human rights and fundamental freedoms, including the right to privacy, are to be respected, according to Article 1 of the Convention for the Protection of Individuals concerning Automatic Processing of Personal Data. The Protection of informational privacy amidst the free flow of information in the region of Asia-Pacific is given under the Asia-Pacific Economic Cooperation Privacy Framework¹⁶.

2. International instruments:

The right to privacy was recognized as a first-generation fundamental human right by several international legal instruments in the latter half of the 20th century. The national laws of the nations that adopted these documents then incorporated this protection. The case law of the courts defending these laws establishes the precise meaning of privacy and the facets of life that can be deemed private; these papers do not provide more guidance on the subject. The question of whether the right to privacy could guarantee the protection of private life arose with the introduction of computers in the 1970s. This technological advancement gave rise to a new right, the right to data protection, whose subject matter is also the preservation of private life¹⁷.

Article 7 of the Charter of Fundamental Rights of the European Union (2000)¹⁸ state that the right to privacy is a fundamental human right and everyone has the right for his/her private and family life, home and correspondence to be respected, and they have the right to protect themselves against such unlawful interference.

¹⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990.

¹⁶ Oishika Banerji, Right to Privacy, IPLEADERS (Feb. 5, 2024), <https://blog.ipleaders.in/different-aspects-of-right-to-privacy-under-article-21>

¹⁷ Ibid Note 4

¹⁸ Charter of Fundamental Rights of the European Union.

The rights to life and personal liberty include the right to privacy. Therefore, this privilege is recognized by various clauses of the constitution of the United States the United Kingdom, and India, for instance, the First, fourth, fifth, and Ninth Amendments of the United States Constitution and Articles 19, and 21 of the Indian Constitution. Through the rulings in several cases, this right has grown and been enhanced. However, not all places have distinct legislation safeguarding the right to privacy, that ensures one's liberty¹⁹. In addition to the above-discussed specific features of the right to privacy, other aspects of the right to privacy must also be sufficiently safeguarded by statutory laws in each of these three countries.

By the United Nations Conference on Trade and Development (hereinafter UNCTAD)²⁰, out of 194 countries, 137 countries worldwide have adopted privacy and data protection laws. The countries within African and Asian Continent have shown high acceptance rates nearly about 57-61 percent, and concerning that they have enacted the legislations therein.

The first move was made by the European Union to enact the General Data Protection Regulation (GDPR), in 2018²¹ which has safeguarded the data of the citizens from unwarranted processing or any intrusion. This almost serves as the basis for all privacy and data laws around the globe, the countries are adopting it with various modifications to suit the situations. The data protection laws in Europe hold rigorous punishment and hefty penalties.

The US Constitution has granted the protection against the unwarranted lawful intrusion by Fourth Constitution Amendment. In the year 1972 California has amended its constitution in order to include privacy in the list of *inalienable rights*. In accordance with the amendment, there are several other legislatures has been enacted to safeguard the privacy of the netzines, i.e. the Privacy Rights for California Minors in the Digital World Act, 2013²², the Online Privacy Protection Act, and the California Consumer Privacy Act, 2020 (hereinafter CCPA). This provides robust privacy and data safeguarding mechanisms. This also gives away the rights to the citizens to file a suit if the data is accessed without authorization, theft, infiltration, or if there is violation of the duty to maintain and implement reasonable security and trials to safeguard one's personal information²³.

2.2 National Instruments:

Fundamental rights are basic rights in our country for every citizen. The right to privacy has traveled a prolonged journey for the attainment of the status fundamental right under the Indian Constitution and how this privacy right attained the status of fundamental right then elucidation of certain prominent case law is mandatory for substantiating the discussion and for providing a clear and unambiguous idea about the right to privacy.

The right to privacy was obtained from the protection of life and personal liberty. Under Article 21 of the Indian constitution some case laws are essential for a better understanding of this most significant right in the present

¹⁹ Dr. Surendra Kumar Nirala, Right To Privacy: A Comparative Study, 08 APLPR 24 (2022).

²⁰ <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>

²¹ General Data Protection Regulation (GDPR) – Official Legal Text, GENERAL DATA PROTECTION REGULATION (GDPR), <https://gdpr-info.eu/> (last visited Apr 5, 2024).

²² California Leads the Way on Children's Privacy Protection Laws, TRUSTARC,

²³ James C Harrison, 19-0017 (Consumer Privacy).

scenario case *Kharak Singh vs. state of Uttar Pradesh*²⁴. The appellant was harassed by the police officer under regulation 236(b) of UP regulation, which talks about the domiciliary visits at night. The SC held that regulation 236 is unconstitutional and a violation of Article 21. Also, the court resolved that Article 21 of the constitution

MP Sharma vs. Satish Chandra case²⁵

The Supreme Court held that they cannot bring privacy as a fundamental right. It is alien to the Indian constitution on the issue of "power of search and seizure." The constitutional right to privacy is a part of the right to protection of life and personal liberty.

Govind vs. State of Madhya Pradesh²⁶

In this case, the court discusses the scope of the right to privacy in detail. The Supreme Court went through jurisprudence which fulfilled the gaps of this case issue. The court held that the right to privacy will fall under the right to life and liberty which was discussed under Article 21 of the Indian constitution.

In the case of Maneka Gandhi vs. Union of India²⁷

The Supreme Court discussed Article 21 more broadly. under the 'natural law' by black stone recognized the right of personal security and liberty. This case provides the white interpretation of the right to life which held the right to privacy fall into the right to life under the Indian constitution.

R. Raja Gopal vs. State of Tamil Nadu²⁸

In this case, the court discusses the scope of the right to privacy in detail. The Supreme Court went through the jurisprudence which fulfilled the gaps of this case issues. The court held that the right to privacy will fall under the right to life and liberty which was discussed under Article 21 of the Indian constitution.

People's union for civil liberties (PUCL) vs. Union of India.²⁹

This case was related to phone tapping which is an infringement of the right to privacy under article 21. The Supreme Court said that the right to privacy can be cleaned or infringed depending upon the facts of the case.

Justice K.S. Puttaswamy vs. Union of India³⁰

holds the Right to privacy as a fundamental right under constitutional law under articles 14, 19, and 21 of the Indian Constitution. 9 judges provided their opinion on this case and this overruled the judgment of the case *Khadak Singh vs. State of U.P* and *M.P Sharma vs. Union of India* which said that there is no Right to privacy as a fundamental Right under Indian Constitution.

²⁴[1964] 1 SCR 332, AIR 1963 SC 1295

²⁵ (1954) 1 SCR 1077

²⁶ AIR 1975 SC 1378, (1975) 2 SCC 148

²⁷ .978 AIR 597, 1978 SCR (2) 621

²⁸ AIR 1995 SC 264, (1994) 6 SCC 632

²⁹ AIR 1997 SC 568, (1997) 1 SCC 301

³⁰ (2017) 10 SCC 1, AIR 2017 SC 4161

Conclusion

The Right to privacy is a very important right that allows individuals to keep their things private. The right to privacy is a debatable topic around how much privacy individuals should have or the limits of privacy. It helps to keep the people and society safe from crime and terrorism. The government takes the data from people to monitor their activities, but this can also fall as a violation of the right to privacy.

In this digital era, technology made privacy complicated. Through the internet, smart phones and artificial intelligence, governments and organisations collect the data or information from the people. Although the right to privacy is a natural right, through technology collection of data is very easy, but it creates difficulties for people to keep their data private.

The right to privacy includes freedom of speech and freedom of association, which comes under the Right to life and liberty under the Constitution of India. In the end, privacy rights should be protected and there should be some limitations regarding public safety and security. Strong laws must be needed to ensure people's privacy.

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