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Right to Privacy: Legal Scenario in India

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The notion and understanding of privacy have evolved, with several variables having an impact. The constraints of privacy may even vary from one location to another depending on factors like culture, religion, etc. "Privacy is a right that every individual has; it is not negotiable." Law is a normative science, which says it establishes guidelines for acceptable human conduct in certain scenarios and makes those guidelines enforced by governmental penalties. Despite the constitutional obligation, neither the Parliament nor the legislature of any State has managed to pass any legislation outlining the legal framework in this regard. In the middle ages, our judiciary, administration, and Indian citizens confronted the most tortuous and toilsome problem relating to the idea of privacy. However, what do we genuinely understand by the term "privacy" and in what context do we assert that we should have a right to privacy? Given that the right to privacy previously merely incorporated the "right to be left alone," it is pivotal to scrutinise this conception. Numerous academic domains, notably sociology, psychology, law, and philosophy, have monitored privacy. It is an interdisciplinary field with an easy notion but a challenging definition. The primary objective of this paper is to track the development of privacy, define it precisely, and examine how it changed as a result of numerous legal instances. The paper will provide a thorough analysis of the judgement rendered by the Supreme Court of India in the case of KS Puttaswamy v Union of India, which declared the right to privacy to be a fundamental freedom protected by Part 3 of the Indian Constitution and thus no longer a privilege. It would also look into the problems that people faced regarding privacy during the time of the pandemic. The study's projected results include a thorough understanding of the judiciary's perspective on the right to privacy and what more needs to be done nationally to protect that right.

Keywords: *privacy, pandemic, Indian constitution, judiciary, fundamental right.*

INTRODUCTION

The concept of privacy dates back to the dawn of time. Besides this, the idea of privacy is difficult to grasp. Privacy has numerous definitions according to different scholars, as well as diverse features that evolve as society changes. In the post-independence period of India, this right has grown via court decisions. It was acknowledged for the first time in the case of *Kharak Singh*¹. Privacy is vital to human beings, and there are different dimensions of privacy that have evolved. And there is a greater need to defend this freedom in today's digital age. Privacy is a basic human right that is protected by several international treaties. Being one of the pillars of a democratic state, it is necessary for preserving human dignity. By their being, all humans have the right to privacy. Various legislative systems that endeavour to restrict governmental and private acts that imperil people's privacy include this right to privacy as a cornerstone.²

In approximately 150 country constitutions, the right to privacy is mentioned. Privacy is the state of keeping one's private affairs and sensitive information hidden from the public while being alone or in a private setting. It is a person's natural urge to surround themselves with a peaceful atmosphere where they may live. An individual also hopes to work in a setting where he may fully express himself without fear. Similarly to this, a person desires to live his or her life to the fullest without outside influence. Almost everybody in the society in which they live has prestige. Everyday life requires a person to take on a variety of responsibilities, such as parent to his children, a leader of his family, an employee of an organisation, or a businessman. There are duties that he must fulfill in each capacity that he plays. Every ordinary citizen has needs and desires that may be connected to his or her mind, body, family, marital life, business secrets, sexual life, etc. at the same time that they are also human beings with human needs. The states are required by the acknowledgement of privacy as a basic right to defend citizens' privacy from unauthorised intrusion. Globalization, industrialisation, and technological advancement have all transformed how people live and work. They are employed in fields, large

¹ *Kharak Singh v State of Uttar Pradesh* AIR 1963 SC 1295

² *Ibid*

corporations, educational institutions, and other settings where they must interact with people and provide their data to their employers. The expansion of private organisations has had an impact on practically every aspect of human life. Private companies offer a variety of services, such as communication, entertainment, and marketing, for which they charge a fee and also collect personal information about the customers. If an organisation violates a person's privacy, there are several factors to consider, including jurisdiction and the determination of the wrongdoer's culpability. Examining the state of the right to privacy in India is crucial in light of the aforementioned concerns.

RIGHT TO PRIVACY

"The situation or state of not being subject to public notice to intrusion into or interference with one's conduct or decisions" is what privacy refers to.

Right to privacy means:

- right to individualism;
- A person's and their property's right to be shielded from unwelcome public attention or exposure.

Privacy is sometimes referred to as the "right to be alone," in contrast, a privacy breach is defined as "An unjustified exploitation of one's personality and interference into one's private activities." The right to privacy is regarded as a basic human right both internationally and locally, and it is included in several international treaties and accords. Examples of laws that have safeguarded it include the European Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights.

INDIA'S DEVELOPMENT OF THE RIGHT TO PRIVACY

A lengthy historical legal dispute over the previous 40–50 years had been waged over whether or not the right to privacy should be regarded as a basic right under the 1950 Indian Constitution. The Hindus' ancient writings contain the notion of seclusion. In the past, when someone claimed to have a right to privacy, they meant that they wanted to live in their own

home, be left alone there, and not have any intrusion from the outside world. According to the court's ruling in *MP Sharma v Satish Chandra*, which held that the constitution's writers did not include protection against document searches and seizures, the court rejects recognizing such a guarantee.

In the case of *Kharak Singh v State of Uttar Pradesh*,³ in which the unanimous decision said that the endeavour to find someone's location violates that person's right to privacy since that right is not one that the constitution grants invading privacy, is not a violation of a fundamental right, the recognition of this right then started. However, in this instance, Justice Subha Rao's opposing opinion brought up questions regarding whether the right to privacy should be safeguarded as a basic fundamental right.

In the same way that referring to the case in the case of *Govind v State of Madhya Pradesh*, "the right to privacy must encapsulate and safeguard the individual intimacies of the household, the family, relationship, motherhood, procreation, and child-rearing and is subject to constraints solely on the grounds of intriguing interest of the public." The case of *RM Malkani v State of Maharashtra*, in which the court acknowledged the necessity to respect an innocent person's right to privacy, furthered this shift in how courts viewed privacy as a right to be interpreted as a basic right. It would not, however, provide similar protection for anyone who has broken the law. There have since been several situations where the right to privacy in various contexts has been contested and discussed.

But in 2012, Justice KS Puttaswamy filed a writ petition in the Supreme Court challenging the government's Aadhar Project because it contravened the constitutionally protected right, and the nation witnessed a significant uproar or arguments about the right to privacy being read as a fundamental right. In this petition, it was argued that the government's intention to establish a surveillance state would violate everyone's right to personal liberty and freedom. It took five years for the Supreme Court of India's nine-judge bench to decide the most prestigious and anticipated case, *Puttaswamy v Union of India*⁴. Despite the text's omission, the court's

³ *Ibid*

⁴ *KS Puttaswamy & Anr v Union of India* (2017) 10 SCC 1

unanimous decision declared that Indian individuals had a basic right to privacy. Instead, it should be inferred from the context and the way the case was thought through.

SIGNIFICANCE OF PUTTASWAMY'S JUDGEMENT

- The right to privacy is now a fundamental right under Article 21 of the Indian Constitution.⁵ To challenge state oppression, one can file a case with the Supreme Court or the High Court.
- Guarantees protection from state interference in personal matters like sex, marriage, and household.
- It will aid in avoiding the circumstance of governmental surveillance.
- It would strengthen LGBT community rights, as demonstrated by the repeal of IPC Section 377.⁶
- The right to privacy safeguards the dignity and integrity of a person's body, intellect, and emotions.
- Furthermore, one can seek justice and hold the state responsible for any violations of his or her privacy or for conducting needless monitoring without permission.

Numerous laws from the 19th century recognised the notion of privacy without giving it a formal definition, such as Section 509 of the Indian Penal Code from 1860,⁷ which protects personal interests. In addition, the Code of Criminal Procedure, 1898's Sections 26,⁸ 163,⁹ and 164(3)¹⁰ allow for the preservation of the public interest. These fundamental rights include the freedoms of speech and expression as well as the right to private life and liberty. This decision protected people's right to their bodies, spaces, and information.

⁵ Constitution of India, art. 21

⁶ Indian Penal Code 1860, s 377

⁷ Indian Penal Code 1860, s 509

⁸ Code of Criminal Procedure 1898, s 26

⁹ Code of Criminal Procedure 1898, s 163

¹⁰ Code of Criminal Procedure 1898, s 164(3)

PRIVACY IN THE PANDEMIC ERA

While a "Covid-19" epidemic was threatening the whole planet, India's government has implemented technology at three levels to address the extraordinary scenario that had arisen.

- First, compiling a list of individuals with "Covid-19" infection symptoms;
- Secondly, in setting up geo-fencing and using drone images to keep abreast of isolated people.
- Thirdly, by utilising contact-tracking smartphone apps like "Aarogya Setu App."

The Epidemic Diseases Act of 1897¹¹ has been used by state governments to compile a list of affected people. However, this provision does not give the state the right to make such information public. Similar to the usage of drones, geo-fencing is not authorised. While the Indian Telegraph Act of 1885 may, in exceptional circumstances, permit mobile-phone-based monitoring. Additionally, there is no legal authorization for using drone images. It is illegal to use drones to do thermal photography, night-time reconnaissance, or to incorporate face recognition into already-existing databases like Aadhar. There were numerous worries over the "Aarogya Setu" app. These worries centred on the people's "right to privacy, liberty, and mobility."

CONCLUSION

Giving privacy its proper position in the constitution is urgently needed since privacy invasion has been a hot-button issue since the 1950s. Privacy is now a given of contemporary law, and the judgments are gradually changing to reflect this requirement. For a very long time, researchers have worked to define privacy. On the legal front, it did not change all that much. Finally, privacy regulations have been established and the law has been approved after many years of discussion across the whole world. These rules have been developed extremely gradually because even the judiciary was wary. The right to privacy is now a basic one on a case-by-case basis. Also with their worries and difficulties, people still need to be protected

¹¹ Epidemic Diseases Act 1897

urgently since modern life is founded on digital era realities. India is developing into a digitally advanced nation, and with that, the issues of identity theft, fraud, and mishandling of online information have grown to be serious concerns. As a result, the data-gathering system should take privacy risks into account and must have safeguards in place to protect such data and information.

According to writer Glenn Greenwald, who wrote the book, *NO PLACE TO HIDE*, "We only feel free - secure - to fully experiment, to push limits, to explore new ways of thinking and being, to examine what it means to be ourselves when we believe that nobody else is monitoring us. Because of this, the seeds of innovation, disagreement, and challenges to conventional wisdom are planted in the world of privacy. Both those qualities are gone in a society where everyone is aware that they are under the State's surveillance and where the private sphere is essentially abolished. Therefore, privacy should be regarded appropriately as a basic right of every citizen in a nation like India where it bears enormous sacredness.