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## Tracing the development of the Right to Privacy in India

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*Law is a subject that establishes rules and regulations for human behaviour in a particular situation or a set of conditions and makes those standards enforceable through the use of state sanctions. It is believed that the State must respect and maintain the dignity of its citizens, therefore, the Constitution of India in Part III imparts the citizens their Fundamental Rights to protect them against any unlawful activity and provide them with lawfully recognized freedoms. Privacy is every citizen's basic right, as it is every individual's right to be let alone without any external interference. But still, the country lacks legally codified rules on the right to privacy for its citizens. In the past, our judiciary, government, and Indian citizens have faced the most complex and challenging problem relating to the concept of privacy and its application, since the entire debate on having privacy laws emerged recently with the need for data privacy laws and rights of privacy for every person, irrespective of their sexual preferences, gender, class or orientation. Since the judiciary had remained silent on the presence and the effect of this right, and also because this is not an absolute right, any invasion must be justified by law and must be based on necessity, legality, and proportionality to protect this special right.*

**Keywords:** *right to privacy, constitution, fundamental right, right to information, evolution, judiciary.*

## INTRODUCTION

Privacy, as a concept and a law, can be observed back to the dawn of time. It is considered a fundamental right of human beings on this Earth, and multiple aspects of privacy, like the privacy of one's space, the privacy of the body, the privacy of information, and privacy of choice the evolution of this right traces back and has a long history. Privacy is one such right that is inalienable from the human personality and forms part of the primary human rights. The right to privacy is inherent in an individual's birth, as it is inseparable from one's personality from the day he is born. Privacy, in simple words, means the right of a person to be left alone, with no outside interference as recognized by common law. However, the concept of privacy is difficult to grasp. Privacy has different meanings according to different scholars and jurists, and it also has different aspects that change as society changes.

The author of this article has primarily focused on the evolution of this right as a Fundamental Right, by tracing down the various judicial pronouncements, thus recognizing privacy as a component and an important aspect of Article 21<sup>1</sup> of the Constitution of India. The article primarily deals with actually finding the status of the Right to Privacy in the current times, and nothing can be found without actually tracing its developments in the past, so the article goes back in time to find out the various stages of this right in India.

## UNDERSTANDING THE RIGHT TO PRIVACY

As per the Black Law Dictionary, Privacy is the *"Right to be let alone; right of a person to be free from unwarranted publicity; and right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned."* Privacy is a multi-dimensional and complex concept, which is hard to understand and examine. The right to privacy has been recognized in modern society, both legally and in common parlance. Article 21<sup>2</sup> safeguards its existence and promotes basic human dignity relating to every individual, widely accepted in Part III<sup>3</sup> containing the Fundamental Rights of the Constitution. It is a right that every individual enjoys by their mere

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<sup>1</sup> Constitution of India 1950, art. 21

<sup>2</sup> *Ibid*

<sup>3</sup> Constitution of India 1950, part III

existence. The application of this right extends to physical integrity, self-autonomy, free speech, and freedom to move or think freely.

It can be accurately said that it is a right to maintain the territory around every person's personal space, accepted by the law. Privacy is an important aspect of an individual's personal life and liberty, and it is a right guaranteed to the citizens under the purview of the Constitution. Article 21<sup>4</sup> of the Constitution safeguards the right to privacy as Liberty and dignity, as they are not independent of privacy. A person has full authority to be free from any intrusion into or publicity about personal matters. It deals with and declares the non-interference of external powers, such as secret surveillance authorities, and underscores the protection of an individual's information. It is everybody's right to preserve their surroundings, without any intrusion from outside.

### **TRACKING THE HISTORY AND EXPANSION OF THE RIGHT TO PRIVACY IN INDIA**

The idea of privacy is observed to be as old as humanity itself. Humans have felt the need for privacy protection since old times, but it was not well-defined and was not written down. If we go back to the Constituent Assembly's debates during the drafting phase, we can find some discussions about giving citizens their right to privacy and secrecy. The debates in the Constituent Assembly suggested that the authors of the Constitution purposefully left out the right to privacy in the list of rights guaranteed to the citizens. The purpose of the Assembly in enacting this is unknown. In India's post-independence era, the right to privacy is not explicitly recognized in the Constitution; rather, it has developed as a result of judicial precedents and has evolved with every case. Because it is still in its infancy, the privacy right enshrined in Part III of the Constitution may, depending on the particulars of the case, belong to one or the other. As a result, it may be subject to the restrictions placed on the exercise of that particular fundamental right.

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<sup>4</sup> Constitution of India 1950, art. 21

Pondering upon the judicial precedents regarding the Right to Privacy, The case of *M P Sharma v Satish Chandra*<sup>5</sup>, in which the warrant issued for search and seizure under Sections 94<sup>6</sup> of the Code of Criminal Procedure was challenged, was the first instance in which the Right to Privacy was recognized and brought before the Hon'ble Court to decide upon. In addition, after ten years, in the case of *Kharak Singh v State of Uttar Pradesh*<sup>7</sup>, the Hon'ble Supreme Court considered the question of whether it would be an abuse of the right to privacy guaranteed by Article 21 of the Indian Constitution to conduct nighttime domiciliary visits on an accused person. The Supreme Court affirmed that the Constitution did not guarantee the Right to Privacy in both cases. Till then, the Court did not accept the existence of this right under the ambit of Article 21. With the changing times and as people started questioning their right to privacy under Article 21, in the case of *Govind v State of Madhya Pradesh*<sup>8</sup>, the bench recognized the presence of the Right to Privacy and remarked that it has a limited scope and concluded that it is derived from Articles 19<sup>9</sup> and 21<sup>10</sup> of the Constitution.

Gradually, in the landmark case *Maneka Gandhi v Union Of India*<sup>11</sup>, the bench ruled that the Right to Privacy expanded the scope of personal liberty guaranteed by the fundamental Rights and was also linked to Articles 14<sup>12</sup>, 19, and 21. In addition, the Supreme Court also ruled in *Mr. X v Hospital Z*<sup>13</sup> that if there is a conflict between two Fundamental Rights, one of which is the Right to Privacy, the right that promotes public morality or interest will be upheld by law.

## JUDICIAL EXERTION IN THE RIGHT TO PRIVACY

In multiple stages and cases that have focused on various aspects of human life, the judiciary has recognized the right to privacy as a necessary component of the rights to life and personal liberty. A person has the right to protect his or her privacy, motherhood, family, childbearing,

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<sup>5</sup> *M P Sharma v Satish Chandra* (1954) SCR 1077

<sup>6</sup> Code of Criminal Procedure 1973, s 94

<sup>7</sup> *Kharak Singh v State of Uttar Pradesh* (1963) SC 1302

<sup>8</sup> *Govind v State of MP* (1975) SC 1378

<sup>9</sup> Constitution of India 1950, art. 19

<sup>10</sup> Constitution of India 1950, art. 21

<sup>11</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248

<sup>12</sup> Constitution of India 1950, art. 14

<sup>13</sup> *Mr X v Hospital Z* (1999) SC 495

and education, among other realms of his or her life in which he or she does not want any outside or external interference and is free to make his or her own choices, as per law.

Humans have a very personal right to reproduce, and no one else has to be involved in it. In the popular 1978 case *State of Maharashtra v Madhukar Narayan Markikar*<sup>14</sup>, the Hon'ble Court ruled that a prostitute has the right to privacy and that no one can invade their personal space, regardless of their sexual preferences or choices. Although the right to privacy is not explicitly spelled out in the Indian Constitution, the judiciary strived to uphold the basic rights of prostitutes including their right to privacy.

The Supreme Court's various decisions define privacy in different ways for different people. The desire to be alone and to act freely is said to be privacy. It is well established that the right to privacy is not absolute in nature and is subject to any legal measures taken to protect one's health, morals, or rights, as well as the rights and freedoms of others. In Indian households, testing a woman's virginity before marriage used to be a common practice. This violates her right to privacy. Therefore, the Punjab and Haryana High Court took serious note of the matter and ruled in *Surjit Singh v Kanwaljit Kaur*<sup>15</sup>, that a woman's right to privacy and personal liberty guaranteed under Article 21 are violated when she is subjected to a medical examination for testing her virginity.

The judiciary has also held that telephone tapping violates a person's Right to Privacy because calls are very private and personal information is shared. However, a person's phone can only be tapped in situations of public emergency or in the interest of public safety, for reasons that must be stated in writing, or hence it is violative of their liberty. As a result, the court in *People's Union for Civil Liberties v Union of India*<sup>16</sup> established several safeguards and measures before tapping a user's phone by Section 5(2) of the Indian Telegraph Act, of 1885. The wife's right to privacy is also violated when the husband listens in on her conversations.

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<sup>14</sup> *State of Maharashtra v Madhukar Narayan Markikar* (1991) SC 207

<sup>15</sup> *Surjit Singh v Kanwaljit Kaur* (2003) P&H 353

<sup>16</sup> *People's Union for Civil Liberties v Union of India* (2003) 4 SCC 399

Every person, whether they are a man or a woman, has a unique right to choose their sexual orientation. Decisions regarding one's sexual orientation are covered by the right to personal liberty. The Hon'ble Court in *Suchita Srivastava v Chandigarh Administration*<sup>17</sup> widened the scope of a woman's right to make sexual or reproductive choices with the goal of extending and strengthening her right to privacy in light of Article 21. The scope of the woman's right to make reproductive choices were deeply ignored and needed to be strengthened in the mentioned case.

Important family matters like marriage and the individual's right to live freely with anyone without interference from outsiders are also covered in the ambit of the Right to Privacy. In India, marriage is regarded as extremely pure and sacrosanct. Even though it violates individuals' Right to Privacy, the concept of live-in relationships has been frowned upon for a sufficient amount of time and continues to be so today. Justice S. N. Dhingra defined "live-in relationships" as "two adult persons living together of their free will." According to *Section 3 of The Indian Majority Act, of 1875*<sup>18</sup>, anyone over the age of 18 is considered a major. This means that under Article 21 of the Constitution, they have the right to travel anywhere with anyone and live with whomever they want. The Court likewise decided that Individual liberty under Article 21, had the most elevated place in our Constitution. The court in *R. Rajagopal v State Of Tamil Nadu (1994)*<sup>19</sup> unanimously ruled that the Right to Privacy is a right to be let alone and is protected by law.

Importantly, the Aadhar Judgment, which was handed down by a nine-member bench of the Hon'ble Court in the case of *Justice K S Puttaswamy v Union of India (2017)*<sup>20</sup>, was a landmark decision that upheld the Fundamental Right to Privacy was enshrined in the Constitution. The Supreme Court also made it clear that this right is not absolute and can be restricted in situations like criminal offences, scientific historical research, national security interests, and the public interest. In the most recent case, *Vineet Kumar v Central Bureau of Investigation*<sup>21</sup> the court

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<sup>17</sup> *Suchita Srivastava v Chandigarh Administration* (2009) 9 SCC 1

<sup>18</sup> *B.K. Parthasarathi v State of Andhra Pradesh* (2000) AP 156

<sup>19</sup> *R. Rajagopal v State of Tamil Nadu* (1995) SC 264

<sup>20</sup> *Justice KS Puttaswamy (Retd.) & Anr v Union of India & Ors* Writ Petition (Civil) No. 494/2012

<sup>21</sup> *Vineet Kumar v Central Bureau of Investigation* Writ Petition (Criminal) No. 2637/2019

ruled that tapping bank employees' phones on account of a charge of bribery violates their Right to Privacy.

### **RIGHT TO PRIVACY *v/s* RIGHT TO INFORMATION**

The right to information is a fundamental right in India, as stated in Article 19 (1). This means that citizens have the right to request any information from government officials that the government is allowed to reveal to the legislature. The right to privacy and the right to information are essential human rights in today's world, where technological information breaches are common. The majority of the time, these two rights work together to hold governments accountable to people. The fundamental right to access information held by government agencies is protected by the Right to Information. Privacy laws also give people the fundamental right to control how governments and private organizations collect, access, and use personal information about them.

The Right to Information encourages disclosure and transparency, whereas the Right to Privacy discourages disclosure and promotes secrecy. While RTI makes information available to the public, the Right to Privacy provides a set of rights such as the right to consent and the right to erase data. As a result, the two rights are at odds due to their divergent goals but are both important in today's era.

### **SUGGESTIONS**

Even though the judiciary through each case is trying to add a new perspective to the Right to Privacy and is making this right more inclusive, still there is a need to have established laws about the same. The author of this article thinks that, even though the Supreme Court of India has broadly acknowledged the existence of the Fundamental Right to Privacy, the term "Privacy" in the context of India still requires a concrete and precise definition. As the government's primary responsibility is to safeguard citizens' fundamental rights, cases of phone tapping still occur in offices and by political leaders. This demonstrates the need for stringent and clearly defined privacy regulations. In addition, reports indicate a low level of privacy awareness in

India; consequently, in the digital age of today, individuals must be made aware of their privacy and personal data online.

## CONCLUSION

Because it gives an individual control over the human element that is inseparable from their personality, privacy is a fundamental human right. It also lets the person make important decisions on their own and keep their ideas, thoughts, and beliefs. Also because it is the individual's right to choose how his or her liberty is best used, privacy is regarded as the foundation of all liberties. The personality's inviolability would be in question if an individual's freedom to choose was denied.

The present Chief Justice Of India, D Y Chandrachud, has always been supportive of the notion of individual rights to be let alone and make choices, without any external involvement, and it can also be shown in his remarks in the Aadhar Judgement- "*Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution and Life and personal liberty are not creations of the Constitution. These rights are recognized by the Constitution as inheriting in each individual as an intrinsic and inseparable part of the human element which dwells within.*"<sup>22</sup> The Constitution recognizes that each person inherits these rights as an inherent and inseparable part of the human spirit that lives within. Therefore, the Constitution recognizes the right to privacy, but the courts' discretion and the activism of the judiciary determine its expansion and development.

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<sup>22</sup> *Ibid*