

RIGHT TO PRIVACY IN DIGITALIZED WORLD WITH REFERENCE TO INDIAN SCENARIO

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Abstract

Privacy has been a key element in human life since the inception of civilization. Privacy is a matter of right availed by the individuals irrespective of their country or nation. What an individual has wanted to keep with him against the whole world should be allowed to be kept unless it breaches public morality. Right to Privacy is not defined in a straitjacket way but it is vital for the development of individual and society. No one has the right to interfere in the enjoyment of other's rights. Right to Privacy is conceived with the self-respect and the respect of others. The era we are living in now is fully digitalized. On one click all consumptive commodities are easily available at our doors. It is impossible to keep ourselves out from clinging to the internet facilities. Day by day we are in the grip of internet and all the services providing agencies. While we are claiming our Right to Privacy against the digitalized world, earlier we were very happy with technology and all the things related to cyberworld. We are now realising that somehow this digitalized world is involved in violating our one most of valuable right i.e., Right to Privacy. Right to Privacy can be violated in two ways, firstly through the recorded data by the Government machinery and secondly, by private agencies on receiving the data from unauthorised means. To the author's view there should be stringent laws for dealing with such issues. Through this Paper the author desires to discuss, in detail, about the effect of digitalized world on Right to Privacy in context of Indian Scenario and will give some valuable suggestions by which existing problems can be eliminated.

Keywords: *Accountability, transparency, Fundamental Rights, Human Rights, Data in Digital World, Cybercrime, Banking Fraud, Hacker, encryption of data etc.*

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INTRODUCTION

Privacy is always an essence of human life. In today's world, maximum business transactions are being made via online mode. Without linking mail id and mobile number, we cannot be a subscriber or member of any company or group, whether Governmental or non-governmental entity. The Data that is given by subscriber to any private or public entity is for prescribed purpose and should not be used other than that specified purpose. Now a day, Data is being treated as source of information. In other words, we can say that Data is itself a bundle of information. As more Data is digitized and more information is communicated online, more importance is attached to Data Privacy. Data Privacy refers to how to manage Data based on its perceived significance. It's not just a company issue, when it comes to the Privacy of their information; people have a lot at stake.¹

India has no extensive Data Protection and Privacy Legislation. The current laws and policies are of a sectoral nature in essence. As of now, in addition to other sectoral Legislation, Information Technology Act, 2000(hereinafter called, I T Act) and its Regulations govern the collection, processing and use of private information and delicate Private Data or information by a corporate body in India.²

Section 43 of the IT Act clearly lays down that no person can take any Data or information from the computer, computer system, or computer network or computer resource without the permission of the owner of such device in which lot of Data or information has been kept for their private use.

Since India lacks an extensive Data Protection Mechanism, the Primary Act dealing with Data Protection is the IT Act and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Information) Rules, 2011(hereinafter Called IT Rules). Under the IT Act and the IT Rules, what is primarily intended to be protected are Personal Data and sensitive Personal Data or information, i.e., password-related information, financial information such as Bank Account or Credit Card or Debit Card or other payment tool details, physical, physiological, and mental health condition, sexual orientation, medical records, and history.³

¹ Available at: <https://blog.ipleaders.in/data-privacy-in-digital-age-indian-perspective>

² Ibid

³ Available at: <https://blog.ipleaders.in/data-privacy-in-digital-age-indian-perspective>

The information freely available in the public domain, however, is not considered within the scope of sensitive Personal Data or information. In addition, the Regulations deal only with a Corporate Body collecting and disseminating Data.

Rules 5 of the IT Rules stipulate that no Corporate Body or individual on its behalf shall gather delicate Private Data or information unless:

- (a) The information is obtained for a legitimate purpose related to the function or activity of the Corporate Body.
- (b) It is deemed appropriate to obtain such information for that purpose.

The person sharing the information must be made aware of the fact that the information is being collected, the purpose for which the information is being collected, the intended recipients of the information, the name and address of the Agency collecting the information and the Agency retaining the information and the collected information in no situation being disseminated to other entity or agency without informing the person who had given their information for specified purpose to recipient Company or Agency.

Any Company or persons holding sensitive Personal Data or information on their behalf cannot maintain it for longer than is necessary for the reasons for which the information may be legally used or is otherwise needed for the time being under any law and such information may only be used for the purpose for which it is gathered.

The Right of Privacy is a Fundamental Human Right recognised by United Nation Declaration of Human Rights, International covenant on Civil and Political Rights and the UN Convention on Migrant Workers.⁴

Privacy is the right to be left alone or free from character violence or misuse. The Right to Privacy is the right to be free of unwarranted advertising, to live a secluded life, and to live without unwarranted public interference in matters not necessarily concerned with by the public.⁵ The Supreme Court of India in the case of *R. Rajagopal v. State of Tamil Nadu*⁶, for the first time directly linked the Right to Privacy to Article 21 of the Constitution. In case of *PUCCL v. Union of India*⁷, the Supreme Court observed that telephone tapping would be a serious

⁴ A/RES/45/158 25 Feb.1991 Article 14

⁵ Ibid

⁶ (1994) 6 SCC 632

⁷ (1997) 1 SCC 20

invasion on an individual Privacy.⁸ In the case of *Selvi v. State of Karnataka*⁹, the Supreme held that an involuntary subsection of a person to Narco Analysis, Polygraph Examination and BEAP Test, is violative of Right to Privacy.

Article 21 of the Indian Constitution says that, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Supreme Court has interpreted the said Article and declared that Right to Privacy is a Fundamental Right, guaranteed by Part III of the Indian Constitution. The real legal battle for Right to Privacy started almost 7 years ago at the point when the Attorney-General of India had stood up amidst the test to the Aadhaar Scheme and announced that the Constitution did not ensure any basic security.

Finally, in the case of *K. S. Puttaswamy (Retd.) v. Union of India*¹⁰, the Aadhaar Card Scheme was questioned on the ground that the collection and compilation of population and biometric information of citizens of the nation to be used for different reasons infringed the basic Right to Privacy enshrined in Article 21 of the Indian Constitution. The Supreme Court’s decision in this case on the Legislation and Regulations will have far-reaching ramifications. New Regulations will now be tested on the same parameters on which the laws that violate personal freedom are tested in accordance with Article 21 of the Indian Constitution. The Right to Privacy is now unambiguously accessible—its contours and boundaries are the issue that remain exceptional. Earlier there were many cases pertaining to Right to Privacy which had been heard and decided by the Apex Court but the status of Fundamental Right being granted to Right to Privacy come in this famous case of Justice Puttuswamy. Now, it has been settled that Right to Privacy is sacrosanct and pious right that can be enjoyed by every citizen of the country and no private actors or Government actors have access to this Right of Privacy of an individual. There is no doubt over the enjoyment of guaranteed Fundamental Rights by the citizens of Nation, but citizens have not been granted absolute rights by any Statutory Laws. Some limitations can be imposed on grounds which are mentioned in paramount Law of the country i.e., Constitution of India by the State actors.

Further, the Apex Court ruled that Right to Privacy is basic Human Right. It is intrinsic and inherent in every human being. The said Right cannot be infringed by any Governmental or non-Governmental actors except pro bono public causes. In other words, Right to Privacy should not

⁸ (1997)1 SCC 20

⁹ AIR 2010 SC 1974

¹⁰ AIR 2017 SC 416

be kept in abeyance. It is the duty of all politically superior or inferior people to pay utmost respect towards the Right to Privacy of an individual.

It is true that we all are in the grip of technology and advancement of science. We do not want to spend time for purchasing or selling any commodities by going to market physically, even though through online mode every sort of order materializing in just a click on digitized equipment by feeding all the required personal information which turns automatically into Personal Data. In just a moment information is recorded for a long time as Data. Most of the subscribers to any service provider Company do not understand about the misuse of their information; they only care about the service of the subscribed Company. In no way the information tendered by the subscriber should be misused in another way or that information should not be transferred into the hands of another Company or any legal entity for their use.¹¹

Further, the body corporate or any person on its behalf collecting the information, prior to the collecting of information, is required to provide an option to the provider of the information to not to provide the Data or information sought to be collected. The Data supplier has the choice to withdraw its permission provided previously, whenever the services are available or otherwise.

The corporate body receiving the information may disclose sensitive Personal Data or information to any third party, provided that prior authorization has been received from the provider of such information, or such disclosure has been agreed to in the contract between the recipient and the information provider, or where disclosure is necessary to comply with a legal obligation.¹²

However, no such approval from the information supplier is needed if the information is shared with Government organizations, mandated by Legislation, to acquire information, including sensitive Private Data or information for identity verification purposes, or to prevent, detect, investigate, including cyber occurrences, prosecute, and punish offenses.

The Personal Data Protection Bill, 2019 got passed from Lower House of the Parliament and it has been sent to Joint Parliamentary Committee for scrutiny and perusal by all the Members. The Committee has got time extension six times since 2019. The Report of Committee is yet to be finalised and submitted to the House of the Parliament for further discussion. There has been a lot of deliberations and discussions on the issues of Personal Data and information amongst the

¹¹ Available at: <https://blog.ipleaders.in/data-privacy-in-digital-age-indian-perspective>

¹² Ibid

Members of the Committee. Sections 12 and 35 of the Bill are more controversial. Under Section 35, the Centre can exempt from the application of all provisions of the Act to any Agency of the Government when it is deemed to be in National and Public Interest. Section 12 (a)(i) provides space to exempt the Government from provisions of consent, allowing it to collect individual Data without individual approval.¹³ These two Sections need to be scrutinised in greater detail for protecting the Right to Privacy of the citizens. Adequate safeguard must be put in place to protect the said Right and prevent the misuse of personal information. There must be a balance and harmony between the interest, security, sovereignty and integrity of the Nation and their citizen's Privacy.

In conclusion, personal information protection is inextricably related to Privacy, i.e., every person's right to enjoy his life and freedom without arbitrary interference with his private life, family, home, or correspondence, etc. In contrast to the public, the term private must be grasped. Therefore, in the current obtrusive era of Information Technology, the right to be let alone and its security is highly essential. Since there is no single Law that governs Personal Data Protection in India comprehensively, it is necessary to derive the legal clauses regulating the same from multiple Legislative Acts.¹⁴ Pending Personal Data Protection Bill 2019 has adequate provisions to protect the personal information of the individual's Privacy but this Bill is in the womb of Parliament. The real application of the provisions of the said Bill will be observed by us in the future. Whatsoever is written in the Bill will be in the safeguard and protection of Right to Privacy of citizens in this digital age. Right to Privacy should not be infringed in modern digitalised world.

¹³ Indian Express: 24 November 2021, Delhi Edition

¹⁴ Ibid