

THE RIGHT TO PRIVACY: A THEORETICAL ANALYSIS

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ABSTRACT

Marriage is state of being connected with a person of opposite sex as a husband or as a wife, in a voluntary and contractual relationship recognized by law. In Hindu it is viewed as a holy bond. Partnership in Islam is based on mutual agreement. After becoming married, a couple is granted some protections from each other, which is accepted by almost all religious traditions. These privileges include the ability to live with one's spouse, to receive financial support from that person, to inherit the deceased spouse's possessions, and so on. Besides this marriage legitimate the sexual connections between husband and wife and the children born after marriage are legal heirs of their parents' property. Article 21 of the Indian Constitution guarantees each citizen the right to life and personal liberty. This includes the rights of a husband and wife. According to the aforementioned article, everyone has the right to privacy, which implies he or she has the authority to make personal choices without interference from others. The argument about the right to privacy and its limits on marital rights has resumed since the right to privacy was recognized as a basic right. Medical testing, phone tapping, virginity tests, reproductive freedom, women's sexual autonomy, and marital rape are just few of the many topics brought up in court. This article seeks to examine the impact of the right to privacy on marital status and the rights of spouses against each other in light of the current legal trend in this area.

Keywords: Privacy, Human rights, Common law, Information privacy, Tort Brandeis.

INTRODUCTION

The concept of personal space predates recorded human history. However, the idea of privacy is difficult to pin down. Privacy means many things to different academics, and it also evolves and develops in different ways as times and cultures do. When looking into its origins, we discover that the issue of privacy and secrecy was raised during deliberations in the Constituent Assembly. A right to privacy was not included into the Constitution, as can be seen from the debates held at the Constituent Assembly. No one knows the legislators' true motives here. In the post-independence age of India, the right to privacy has grown via legal precedents despite not being explicitly recognized by the Constitution. The case of Kharak Singh² was the first time it was officially acknowledged. Other laws, such as the Indian Evidence Act, the Information Technology Act, the Indian Penal Code, criminal law, the Indian Telegraph Act, the Indian Easement Act, and family law, all include provisions that pertain to personal privacy. This page provides a comprehensive analysis of these statutes. Privacy is essential to human beings and has grown through time to include a wide range of spheres, including physical, informational, and moral ones. This right is especially important in the modern, digital world. The article discusses the effects of social media on one's right to privacy in the modern digital age. The sanctity of the right to privacy in India will be discussed, as will the laws that defend it. Invasion of privacy is a concern, since it is a fundamental right protected by Article 21 of the Indian Constitution.

MEANING OF RIGHT TO PRIVACY

Talking about its meaning the phrases privacy can't be readily imagined. It has been interpreted in a variety of ways. According to Black's Law Dictionary, an individual has the "right to privacy" when the government does not intrude into his or her "intimate personal relationship's" or "activities," and when the individual is free to make "fundamental choices" about himself, his family, and his relationship with others. One definition of privacy is the right of a person to decide for himself how much of himself he wants to reveal with others, as well as when and where he wants to disclose that information. This implies that he has the option of not taking part or leaving at any time. Personal privacy refers to the individual's right to decide how his or her own information is shared with others. As opposed to this, the right to privacy is defined as "the right to be left alone; the right of a person to be free from undue exposure. The right to privacy is a catch-all phrase for a set of rights considered fundamental to the idea of "ordered liberty"¹². The right to privacy may be seen as related to the right to freedom of expression, assembly, and movement¹³.

Concept of Privacy

Each culture has its own norms, characteristics, and limits for what constitutes a private space. Proof of this may be seen in the many definitions put out by academics from various countries, legal systems, and fields of study. There is no one, universally recognized definition of privacy due to the wide variety of meanings provided by experts from various cultural backgrounds and academic fields. Therefore, "the concept of privacy is a nebulous one and hard to put into proper perspective," as stated in ¹³. ¹⁴ Post suggests that 'privacy' is a complicated value, contrary traits and diverse denotation, which I despond whether it can be handled successfully or not. "The notion of privacy is a hazy one and difficult to bring into a suitable perspective," says Shils. ¹⁶ Sociologist Shils¹⁷ defined privacy as the absence of any connection between individuals or organizations. Hence, we talk of the privacy of a person, two or many persons against other individuals. ¹⁹ He elaborated by saying that privacy emerges under circumstances of communication or awareness, and that it is vulnerable to both external intrusion and inward surrender. As a matter of fact, privacy problems arise whenever the confidentiality of a person or organization is threatened. When comparing disclosure with and without permission, ²¹ Shils advocated "sharing of the privacy," in which a person freely shares his information to others. However, privacy is not absolute and the maintenance of private is not an impediment for people and groups communication. ²² Post suggests that privacy is a complicated value, contrary traits and varied denotation which I despond if it can be dealt successfully or not. Therefore, privacy is seen to be nebulous and hard to define, as shown by the number ²³. ²⁴ Strangely, privacy may mean everything and nothing at the same moment. ²⁵ Dixon elaborates on the importance of privacy with the following widely held beliefs: "it is a universally recognized human right; a fundamental feature of a free society; a central element in the checks and balances which a democratic society places on the authority of institutions and individuals; and a critical component of any society which allows people to start anew without being forever shadowed by the mistakes they made in the past."

LITERATURE REVIEW

Sahil Goel (2021) "Law is a normative science, meaning it establishes rules and guidelines for how people should act in certain scenarios, and these rules and guidelines are enforced by the power of the state. In the past, the notion of privacy has been the most difficult and technical problem facing the Indian court, administration, and the general public. But what do we mean

when we talk about having a "right to privacy," and under what circumstances do we use that phrase? To fully appreciate the full breadth of the right to privacy, we must first critically examine its origins, when the "right to be left alone" was its only component. The purpose of this study is to investigate the development of the concept of privacy via a historical lens, examining how the concept has changed through time as a result of judicial decisions. In the case of *KS Putt swamy v. Union of India*, a 9-judge panel of the Supreme Court of India ruled that the right to privacy is a basic right under article 3 of the Constitution of India and is no longer an aristocratic phenomenon. This paper will critically assess the ruling and its ramifications. With this ruling, the scope of Article 21, which guarantees a person the right to life, personal liberty, and privacy, was expanded to encompass the latter. The article will also discuss other topics linked to privacy, such as governmental monitoring, phone tapping, and privacy in the era of pandemics. The study's hoped-for result is a firmer grasp of the judicial system's perspective on the right to privacy, as well as a better idea of what more the country may do to ensure its citizens' right to privacy, especially in the digital era.

Ajay Singh (2019) The abstract idea of privacy is difficult to express in simple language. It's common knowledge that personal space is a need for human beings; in fact, no one can survive for long without it. Privacy is, therefore, an incredibly important and significant component of one's individuality. Article 21 of the Constitution guarantees all citizens the right to life and personal liberty, and Section 3 of the Constitution guarantees all citizens the right to privacy. Over the course of the last 60 years, a succession of court rulings in India has expanded the scope of the right to privacy. India suffers from a lack of both a solid legal framework and a well-defined notion of privacy. The right to privacy is not a basic right in and of itself, but it is still a vital component of the right to life, liberty, and the pursuit of happiness. Part one of this article provides an overview of the notion, while Part two analyzes the constitutional and judicial applications of the concept.

Alibeigi (2019) The Concept and concept of the privacy has been modified over the time influenced by numerous reasons. Nonetheless, factors such as culture, religion, and ethnicity might influence how far individuals are allowed to maintain their own personal space. Nonetheless, there is not a distinct commonly agreed definition for the privacy. Many fields of study, including sociology, psychology, law, and philosophy, have given thought to the concept of privacy. It spans several disciplines and is conceptually straightforward yet terminologically confusing. By weighing the evidence from each perspective, however, we may arrive to the same conclusion: privacy is the desire and need of the person to be free from observation and interference. Furthermore, it is the concrete and abstract boundaries of a person who values autonomy and independence. In order to provide a comprehensive and comprehensible picture of the right to privacy, the current review is a doctrinal legal study of the history, concept, boundaries, and legal evolution of privacy using a comparative and descriptive method.

Alessandro Acquisti (2015) In this article, we will discuss and make links between many different lines of empirical study on individuals' privacy-related behaviors. We use three themes to tie together findings from the social and behavioral sciences: (1) people's lack of certainty about the consequences of their privacy-related behaviors and their preferences over those consequences; (2) people's sensitivity to, or lack thereof, in different contexts; and (3) the degree to which people's privacy concerns are malleable, i.e., susceptible to manipulation by commercial and governmental interests. Using these categories as a framework, we make some remarks on how government policy might help ensure people's privacy in the digital era. Assuming we really are living in the "information era," the problem we face now is how to protect our personal data. Even when we think we're doing something private, we're often

leaving digital footprints that may be used to reveal our personality, values, and goals. The internet has revolutionized nearly every aspect of human life: how we get in touch with one another, how we learn, how we find answers to both everyday and profound questions, how we consume information, how we get around, and how we commemorate life events (births We disclose information to one another, to business companies, and to governments via these and other means, sometimes intentionally and sometimes unintentionally. Personal data monitoring is pervasive, and data storage is so long-lasting that it effectively makes one's past unerasable (1). This is the digital equivalent of having a skeleton in one's closet. The capacity to aggregate, analyze, and make nuanced conclusions from individual data has also been steadily improving with the surge in data collecting (2).

Sangeeta Chatterjee (2017) As its earliest traces may be seen in animal societies, the concept of privacy has made its way into early human societies. Studies in anthropology have shown that the concept of privacy evolved differently in various prehistoric communities. In its current form, the concept of privacy is the product of many centuries of social change from prehistoric to classical to contemporary times. The evolution of human society from a more basic state to a more advanced one is a key turning point in the history of privacy and its protection. Physical and mental options for Privacy have grown as a result of society's evolution, and the successful translation of these gains into value decisions within the framework of contemporary social and political life is a testament to this trend. The evolution of society as a whole is to blame for the altered definition of privacy and the new forms of privacy invasion that have emerged between prehistoric and contemporary times. Protecting one's personal space has always been a part of India's culture. The Privacy Act of 1974 is the culmination of the contemporary era's development of Right to Privacy in the United States, which was in turn founded on the Warren-Brandeis article and the search and seizure cases under the Fourth Amendment of the United States Constitution. The law of breach of confidence replaced the absence of a legislation protecting individuals' privacy in the United Kingdom. The Data Protection Act, 1998 is the culmination of the Younger Committee Report, which was issued in 1972 and aided by a number of statutory reforms. Although India is significantly behind the United Kingdom and the United States in terms of protecting individuals' privacy in the modern era, the country has been enriched by a number of legislative and judicial developments that have led to the creation of the Privacy Bill, 2014 (formerly known as the Right to Privacy Bill, 2011). In today's society, everyone is concerned about the right to privacy, which is a fundamental component of Human Rights Law and a component of the Right to Life and Personal Liberty. Having privacy does not just mean avoiding having somebody pry into your personal affairs without your consent.

EVOLUTION TO RIGHT TO PRIVACY

Ancient India

The ancient Hindu literature also has a pragmatic understanding of the idea of seclusion. In light of the Hitopadesh, which specifies that topics pertaining to worship, sex, and family are to be kept private, it is clear that such information should be kept secret. Upendra Baxi is plainly disturbed with compassion, sympathy, humanity, or tenderness, which is an unrelenting interest; it is not about ill intent. The basic notion is not wholly foreign to Indian Culture, but certain jurists, like Sheetal Asrani-Dann, have specific questions regarding the right to privacy in India. History's 'Positive Morality' is so intertwined with the concept of privacy that even ancient secrecy was considered immoral. Despite this, the ancient Indian scripture was hazy on the subject of the right to privacy.

Modern India

Right to Privacy was first brought up in modern times during a discussion in India's Constituent Assembly, when K.S. Karimuddin proposed an amendment that received only lukewarm support from B.R. Ambedkar and ultimately was not included into the country's founding document. From the 1960s forward, the topic of privacy has been addressed as a constitutional right and as a common law right. The Supreme Court's first ruling that privacy is not a fundamental right came in 1954, when an eight-judge panel, hearing a case about the government's ability to search and seize documents from the Dalmia Group, ruled that there is no such thing as a right to privacy because it was not intended by the Constitution's authors.

After 10 years (about.), in the case of *Kharak Singh v. State of Uttar Pradesh*[9], we brought our request for privacy back before a six-judge panel of the Supreme Court, only to be refused again. Even while the Supreme Court ruled that people have no inherent right to privacy, it did rule that allowing visits at night was a breach of people's "personal liberty," and therefore void the clause. Justice Subba Rao wrote a dissenting opinion wherein he argued that the Right to Privacy should be recognized as a basic right under the Indian Constitution despite the fact that it is not explicitly guaranteed in the document.

Eleven years after a comparable case was heard (about), the Supreme Court issued its decision in *Gobind v. State of Madhya Pradesh*, holding that individuals have a fundamental right to privacy under Article 21. Despite Gobind's defeat, the case was the first time that individual privacy was ever acknowledged at all as a kind of personal liberty under the Indian Constitution.

Our right to privacy has long since been ingrained in our system of values. In 2017, it rejected the rulings of *M.P. Sharma* and *Kharak Singh* in *K.S. Puttaswamy v. Union of India* in front of a nine-judge panel, which posed the most serious challenge to its authority to that point. In light of the recent ruling issued in 2017, it is now abundantly obvious that the right to privacy is a basic right and will not be demoted from its place beside the "Golden Trinity" of Articles 14 (Right to Equality), 19 (Right to Freedom), and 21 (Right to Security) (Right to Life and Personal Liberty).

CONSTITUENT ASSEMBLY DEBATE ON PRIVACY

A right to privacy, in and of itself, does not exist under the Constitution. If it's so important, why doesn't the Constitution say so? India's Constitution was ratified on January 26, 1950; nonetheless, the right to personal privacy is not included in the document. The right to privacy seems to have been considered by the architects of our Constitution, but was ultimately left out of the document. Sub-Article (1) of Munshi's first draft articles on fundamental rights, presented on 17 March 1947, stated that every citizen, within the law of the Union, should have:

- (a) The right to be informed within twenty-four hours of his deprivation of liberty by what authority and on what grounds he is being so deprived;
- (b) The right to the inviolability of his home; and
- (c) The right to freedom from arbitrary arrest and detention. Right to maintain privacy about his written communications

(d) The protection of Union law against exploitation that goes against public decency or the law.

Similarly worded language may be found in Dr. B.R. Ambedkar's draft from 24 March 1947:

No warrants shall issue, however, unless there is probable cause, shown by an oath or affirmation, and the location to be searched, as well as a detailed description of the individuals or items that are to be seized, are specified. The right to privacy in one's written communications and protection against unlawful search and seizure were two of the topics discussed in the Draft Report of the Sub-Committee on Fundamental Rights from April 1947. Therefore, there is evidence that privacy is not protected by the Indian Constitution. That did not happen by chance; rather, it was the result of deliberate action.

RIGHT TO PRIVACY VIS-A-VIS MATRIMONIAL RIGHTS IN INDIA

Married people have certain protections under the law from third parties. These rights include right of cohabitation, maintenance, etc. The husband and wife are considered a family unit after they tie the knot. The years of a married couple's existence together may be broken down into several phases. The initial phase of a marriage consists of the husband and wife settling into shared housing and fulfilling their marital duties. If a husband is kind and considerate, his wife will have a wonderful, carefree existence. However, the risks of divorce increase if either partner is irresponsible and not fulfilling their marital duties. Most nations also understand the need of protecting the privacy of marital relationships. *Griswold v. State of Connecticut* challenged a statute that made it illegal for a couple to take contraceptives to avoid unintended pregnancies on the grounds that it violated their right to privacy. The Supreme Court of the United States ruled that a law prohibiting the use of contraception infringes on a couple's right to privacy in their marriage. Though after marriage couples receive certain rights against one other however it is commonly known that marital rights are subject to right of privacy.

The husband in *State v. Perez*¹³ recorded his wife while she was in the restroom. When the wife discovered the recordings, she took legal action against her husband for violating her privacy. The question before the court was asked whether a spouse has a reasonable expectation of privacy from being recorded covertly by the other spouse when alone in a shared, domestic bathroom? A person is guilty of a gross misdemeanor who secretly installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events through the window or other aperture of a place where a reasonable person would have an expectation of privacy," the court ruled after finding that the wife had a reasonable expectation of privacy from being surreptitiously videotaped by him while she was alone in their shared bathroom. Sexual intercourse is widespread among husband and wife throughout the subsistence of marriage. It is also the duty of couples to collaborate with one other. When engaging in a sexual act, one must have the approval of one's partner; failing to do so might lead to emotional and bodily distress. The Indian Penal Code made sexual acts without consent illegal under Section 375.

As a result, it's illegal to engage in sexual activity with a woman unless she gives her permission to do so. Marital rape is not a crime in India, hence a husband who commits an act of non-consensual sexuality with his wife is not subject to criminal prosecution. It violates women's right to sexual freedom. Further child birth is likewise an inevitable consequence of marriage. Of course, this is OK if the wife agrees to the pregnancy; but, if the husband or another family member pressures the wife into having a child, this violates the woman's reproductive

autonomy. Though there are several laws for the protection of rights of women, for example Domestic Violence Act, IPC etc., yet these laws cover certain particular rights only. They fail to protect women from all forms of harm, even in some cases torment women in the name of marriage duty. Many cultures force women to have sexual relations with their husbands and have children against their choice.

It's not uncommon for a woman to be coerced into having a son. Though marriage is a holy institution but in modern scenario the society has been transformed and different technological developments influenced the lives of the people in virtually all domains. The Supreme Court has just ruled that husbands do not have authority over their wives, and that instead, marriage is a partnership built on mutual respect, support, and trust between two people. Supreme Court in several instances dealt with the problems connected to marriage rights and right of wife to live the dignity. Since Justice K. S. Puttaswamy Case¹⁵, which established the right to privacy as a basic right under Article 21 of the Indian Constitution, the courts have been inundated with cases involving the marital rights and right to privacy of women. When one's privacy is invaded, it shakes up their thoughts, feelings, and self-assurance. Understanding the current standing of marriage rights and privacy protections requires a look at the current judicial approach.

CONCLUSIONS

A fresh topic of debate, relevant to marital rights, has been opened by the Supreme Court's recognition of the right to privacy. Even while marriage grants each partner some protections against the other, these privileges are subject to each partner's right to personal autonomy. Conversely, one's right to privacy is not inviolable. For reasons of public health, safety, public order, national security, etc., this freedom may be limited. Judiciary interpretations of Article 21 of the Indian Constitution have established the individual's right to privacy. The right to privacy should be used as a standard against which to measure any legislation affecting marital rights. In addition, people no longer hold to the archaic view that a woman is nothing more than the property of her husband. Since India's independence, there has been a dramatic shift in the position of married women in society. In today's marriages, the woman is an equal partner and not a commodity to be used and abused by her husband. However, there are still gaps in protection for women's rights. A law prohibiting rape inside a marriage has not yet been passed in India. It's not quite clear who has the legal power to launch a complaint for restoration of conjugal rights. Seemingly, this is only the beginning of the expansion of the right to privacy, and in the future, we may expect to see many other understandings of this right, some of which may even render the institution of marriage obsolete. The right to receive maintenance from the husband and the right to inherit from the other spouse may also be affected.

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