



Right to Privacy: A Major Issue of Current Politics

Somprity

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ABSTRACT:

The Indian democracy is surrounded with many debatable issues that have arise in from different quarters of human life. One of the most important challenges that the Indian welfare state is facing today is that of Right to Privacy, which has been an outcome of judicial activism and a derivation from Right to Life and Personal Liberty mentioned in Chapter III of Indian Constitution under the heading of Fundamental Rights.

Right to Privacy, as we deliberate on it, has been very defined. It is also a relative term and we cannot provide a universal application of this as it is not something that we possess but in actual practice it is what we give to others. Defining Right to Privacy is actually arduous task and is quite paradoxical to the situation of the story of an Elephant and seven blind men in a room because it is from the perspective of every human being as to what privacy according to him means?

We have seen many cases revolving around the privacy concerns of the citizens whether it is regarding UID Data Collection, revelation of marital documents, digital footprints or the most recent one regarding the Pegasus spyware application.

In this work, I want to highlight the various issues that privacy corners and try to find out the grey areas that a erodes away individual's Right to Privacy and also find an amicable solution to the issue.

Keywords:

Right to Privacy, Judicial activism, privacy concerns

Privacy as a concept that has been very vaguely defined and yet since its practice from time immemorial there has been no proper definition as to what comprises of individual's privacy or are there any rights related to its safeguard. Privacy defined by different agencies have different connotations, what actually comes under the premise of privacy varies from individual to individual. Looking over some of the definitions such as of UDHR or the Bill of Rights of US Constitution, they both define it as an integral part of Right to Life and Personal Liberty of individuals or as of Black's law dictionary defines it as right to be let alone are all references drawn from different aspects of human life.

Talking in the context of India, we can say that the Constitution as framed by the constituent assembly members did not carry right to privacy as a separate Fundamental Rights, it was the actions of judiciary that actually brought this sensitive issue into limelight. It has been derivation from the heading of Right to Freedom (Articles 19-22) and an important part of the Article 21 which mentions Right to Life and Personal Liberty of citizens which inferred numerous rights along with the Right to Privacy. Judicial activism has been a propounder of Right to Privacy in India, as we can see it reflected in various judgements since independence till now. This was seen for the first time in *Kharak Singh v. State of U.P.* (1962). In *Govind v. State of M.P.* case (1975) the Supreme Court recognized that the right to privacy is a fundamental right.

Building on the concept of privacy we can say that it is not something new or hasn't been in practice. Since ancient times this has been an issue always addressed to. For example ancient texts and the greatest mythological epics that is Ramayana and Mahabharata also mention like how Sita used to cover her face

with a twig while talking to Ravana or when Arjuna had to enter into the room where Yudhistira was with Draupadi the former had to go to exile. These evidences show as to how privacy was being respected in those times also.

Coming over to the present times we can say that there have been numerous cases dealing with the privacy of the citizens. One of the first being reported and highlighted the most was Menaka Gandhi v. Union of India case (1978) in which the Supreme Court of India inferred countless right from Article 21 and Right to Privacy being one of them. We have seen that since then judiciary has always been an active player in this field and has from time to time given judgements that protects the interests of the privacy of citizens and also creates an awareness among them that right to privacy is a part of their Fundamental Right. Judicial activism as a concept merged in the late 1970s and has since then a tool in the hands of judiciary to safeguard the rights and liberties of the citizens. Some of the cases where judiciary played an active role in protecting the Right to Privacy are People's Union for civil liberties v. Union of India (1985) popularly known as 'telephone tapping' case; LIC of India v. Consumer Education and Research Centre (1995); and many cases related to health and data protection that are difficult to enlist.

One of the glaring issues in the 1990s and 2000s was of the revelation of information regarding HIV status of patients suffering from HIV AIDS which resulted in serious repercussions on the families and societal relations of the patients once their data got revealed.

Another case where privacy became an active player was related to the data collected during the Adhaar identification which created an atmosphere of fear among the citizens regarding the revelation of data after the use of adhaar linking for various purposes such as SIM card verification, KYC updates, Bank accounts linkages data many other purposes in which the Adhaar or UID number used can remain protected or guaranteed the safeguard from use in any other purpose.

Yet different case was reported regarding the revelation of marital data of an individual in the light of some private data being revealed can cause serious implications on married couples if there arises some social issues or the data mishandling.

At present one of the most concerning issues is regarding the digitalisation and use of digital networking sites for various aspects of our daily lives be it commerce, marketing, services, facilities, businesses, and

with the pandemic taking up teaching, learning and education has also been digitalised. But what concerns us is the digital footprints that we are leaving behind and for most of us it remains unnoticed. It is something that most of the citizens while using smartphones or laptops or tablets or any other digital device don't know about what the privacy settings of their phones captures and transmits to their parent agencies. It has been a personal experience of mine when I have also not regarded how my phone captures every moment of my daily life and actually the footprints of it are printed into my digital account which I am unaware of.

Related to this the Government of India passed The Personal Data Protection Bill 2018. This bill provided for the establishment of a Data Protection Authority to oversee activities that involve processing of data. It was felt to recognize the need to protect personal data under the fundamental right to privacy. There was also a need to create a collective culture that foster a free and fair digital economy was to be taken into consideration, respecting the informational privacy of individuals, progress and innovation. Additionally, the objective behind the formulation of such a bill was to protect the autonomy of individuals in relation with their personal data. It should also specify about the flow and usage of personal data so as to create a relationship between persons and entities processing their personal data and also laid down norms for cross-border transfer of personal data, not only this, it also provided remedies for unauthorized and harmful processing and ensured the accountability of entities processing personal data

Recently in one of the most controversial case Ratan Tata went to Supreme Court against the publication of intercepts of his conversation with Neera Radia who handles the corporate communication for the group. Tata holds that as Radia's phones were tapped by government agencies especially for investigating a possible offence the recorded conversations should have been used for that purpose alone. Ratan Tata has submitted his petition before Supreme Court asking to protect his right to privacy. But given that freedom of information laws have at their core the purpose of disclosure, exemptions are strictly construed, and it has been said that the public right to know should prevail unless disclosure would publicise intimate details of a highly personal nature. The Radia tapes so far published public issues, but not personal life of Tata. These conversations would be available to every citizen under the RTI Act because the only objection that one could raise would be on the ground of 8(j) of RTI Act which says-information which relates to personal information, the disclosure of which has no relationship to any public activity on

interest. It also says “or which would cause unwarranted invasion of the privacy of the individual unless the public authority is satisfied, unless the information officer is satisfied that the larger public interest justifies the disclosure of such an information.”

A recent international collaborative research project has revealed in a report that Pegasus Spyware was used as an electronic tool of surveillance against at least 300 individuals in India. Pegasus is one of the most dangerous spywares, which gets entered into an electronic device, collects data, and transfers it to a third party without consent. It can even film without the user being aware of it. In this context, we can refer to Personal Data Protection Bill 2018, which was introduced but has not been enacted yet. The proposed legislation aims to safeguard citizen’s personal information and data and prohibits the data fiduciary from misusing data and compels the data processor to maintain transparency.

Till now we have seen so many evidences of violation of Right to Privacy and about the cases dealing with its protection. But the actual need of time is to define what right to privacy actually means. We have seen how Judiciary has been an over active role player in guiding right to privacy as a fundamental right in the famous justice put the Swami vs Union of India case in 2017 still there has been no effective definition of right to privacy as right to privacy actually has a connotation that means it is from the perspective of the person who sees it as a right and who wants to define in the way he likes. Likewise it is in similarity of the story of seven blind man with an elephant in the room and each man perceive the elephant as the part he touches for some its like a pillar and for another it's like a hairy structure while for yet another it it's like a tool used for sieving. Defining right to privacy is not an easy task while talking to many people I have found out that privacy for each one means different thing or different aspect of their life. When this has become such an important issue of Indian political system where everyone talks about what should come under right to privacy and what should be its basis there is a need for its mention in the constitution and despite the efforts of judiciary it is one of the right that has seen violations in every aspect and in every form unless we remain aware about it. Judicial activism has brought right to privacy of far long way deriving it from article 21 of the Indian Constitution and without hesitation conferred it as a fundamental right yet the demand of the time is to make the citizens aware and properly define what comes under right to privacy.

Conclusion

Though there have been issues and differences among citizens, Judiciary, political structures, and Constitution about defining right to privacy yet one thing becomes clear that right to privacy has a very broad aspect and covers many parts of citizen life. Since defining right to privacy has been an arduous task yet Judiciary like the Guardian of the Constitution has always been its interpreter and being the Protector of fundamental rights judiciary through judicial activism has always protected the derived rights as well as the legal rights among which right to privacy forms an important part.

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