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RIGHT TO PRIVACY AND ARTICLE 21: CONSTITUTIONAL SAFEGUARD AND ITS IMPLICATIONS

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Abstract- The right to privacy is a fundamental aspect of personal freedom. It is allowing people to make personal choices free without others interfering. It includes the right to keep personal information private, make decisions on your own, and keep things confidential. This right is essential as it helps protect a person's dignity and freedom. It lets people express themselves, build relationships, and live their lives without the fear of being watched or treated unfairly. The Constitution makers did not directly envisage the Right to Privacy in any article and it was not any Part III of the Constitution relating to Fundamental Rights. The judiciary has deliberated on the matter and interpreted privacy from the beginning.

Keywords- Privacy, Fundamental, Information, Confidentiality, Judiciary.

Introduction- “Each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication of themselves to others, in light of the environmental conditions and social norms set by the society in which they live.”

— Alan Westin, *Privacy and Freedom*, 1968

A definite legal definition of “privacy” is not available yet some legal experts tend to define privacy as a human right enjoyed by every human being by virtue of his or her existence. It depends on no instrument or charter. Privacy can also extend to other aspects, including bodily integrity, personal autonomy, informational self-determination, protection from state surveillance, dignity, confidentiality, compelled speech and freedom to dissent or move or think. In short, the right to privacy has to be determined on a case-by-case basis. Privacy enjoys a robust legal framework internationally. Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, legally protect persons against “arbitrary interference” with one's privacy,

family, home, correspondence, honor and reputation. (There is no clear legal definition of “privacy,” but many legal experts say it is a basic human right that Around the world, privacy is strongly protected by law. For example, Article 12 of the Universal Declaration of Human Rights (1948) and Article 17 of the International Covenant on Civil and Political Rights (1966) say that no one should face unfair interference in their private life, family, home, communication, or reputation.

(There is no clear legal definition of “privacy,” but many legal experts say it is a basic human right that every person has just by being alive. It doesn’t depend on any specific law or document. Privacy can include many things, such as control over your own body, making personal choices, keeping your information private, being protected from government spying, keeping your dignity, staying confidential, not being forced to say something, and having the freedom to think, move, or disagree. In simple terms, what counts as privacy can change depending on the situation.

Around the world, privacy is strongly protected by law. For example, Article 12 of the Universal Declaration of Human Rights (1948) and Article 17 of the International Covenant on Civil and Political Rights (1966) say that no one should face unfair interference in their private life, family, home, communication, or reputation.)

History of Right to Privacy- The right to privacy is a fundamental human right firmly grounded in international law. On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR); while the right to privacy does not appear in the document, Article 12 mentions privacy “No one shall be subjected to arbitrary interference with their privacy, family, home or correspondence nor to attacks upon his honor and reputation”. Everyone has the right to the protection of the law against such interference or attacks.

(The right to privacy is an important human right that is supported by international law. On December 10, 1948, the United Nations General Assembly created the Universal Declaration of Human Rights (UDHR). Even though the document doesn't directly use the word "privacy," Article 12 talks about it. It says that no one should be unfairly bothered in their private life, family, home, or personal communication. It also says that people should be protected from attacks on their honor and reputation. Everyone has the right to be protected by the law from

these kinds of interference or attacks.)

Universal Declaration of Human Rights (Article 12) - Privacy is later codified in successive (hard) international human rights treaties including the International Covenant on Civil and Political Rights-

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attack-
International Covenant on Civil and Political Rights (Article 17)

Existing Law on Privacy- In the absence of a specific law on privacy, this right is legally viewed under the **Information Technology Act, 2000**. The Act has some express provision guarding individuals against breach of privacy by corporate entities. The Act was amended in 2008 to insert Section 43A which made the Companies compromising sensitive personal data liable to pay compensation. Exercising its powers under Section 43A of the IT Act, 2000, the Government framed eight rules to protect privacy of an individual. These all relate to seeking permission by a company before accessing privacy data of individuals and fixing liabilities for violation of the same.

Domestic laws related to privacy- The Constitution of India does not specifically guarantee a right to privacy. However, through various judgments over the years the Courts of the country have interpreted the other rights in the Constitution to be giving rise to a (limited) right to privacy, primarily through Article 21 “The right to life and liberty.”

Right to Privacy and Role of Supreme Court - The Supreme Court of India held that the right to privacy is a fundamental right under Article 21 of the Constitution. The Supreme Court had upheld the Right to Privacy-

In the **MP Sharma Vs Satish Chandra**¹, the Supreme Court decided in favour of the practice of search and seizure when contrasted with privacy.

In 1962, while deciding the **Kharak Singh Vs State of UP**²- the Court examined the power of

¹ 1954 SCR 1077

² (AIR 1963 SC 1295)

police surveillance with respect to history sheeters and it ruled in favour of the police, saying that the right of privacy is not a guaranteed right under the Constitution.

It was 1975 that became a watershed year for the right to privacy in India. The Supreme Court while hearing the **Gobind Vs State of MP and Anr**³ case introduced the compelling state interest test from the American jurisprudence. The court stated that right to privacy of an individual would have to give way to larger state interest, the nature of which must be convincing. With time, the domain of privacy has expanded and it has come to incorporate personal sensitive data such as medical records and biometrics.

Kharak Singh Vs State of UP⁴- (SURVEILLANCE INTRUDES INTO PRIVACY) - This case is among the most cited cases in India when it comes to privacy. Here, a majority of a six-judge bench held that unlawful intrusion into the home violates personal liberty.

PUCL (People's Union for Civil Liberties) Vs Union of India⁵- (TELEPHONE TAPPING INVADES PRIVACY) - A division bench held that a telephone conversation is an exercise in freedom of expression, and that telephone tapping is an invasion of privacy.

It is commonly known as telephone tapping cases, the Supreme Court unequivocally held that individuals had a privacy interest in the content of their telephone communications. Thus, through a series of cases, it can be observed that the right to privacy was being recognised, but its exceptions were also given due place.

In the second decade of the 21st century, questions with respect to the right to privacy have centred around Aadhaar, a government scheme in which residents get a unique ID after giving their biometrics such as fingerprints and iris scan and demographic details. Aadhaar was challenged in court on the grounds of violation of privacy and its usage was limited by the Supreme Court through its order in September 2013, with Aadhaar being allowed in public distribution system and LPG subsidy only. However, in October 2015, it amended its order and said that Aadhaar can be used to deliver services such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), Pradhan Mantri Jan-Dhan Yojana, pension and provident fund schemes but no person should be deprived of any service in absence of Aadhaar.

³ 1975 SCC (2) 148

⁴ 1963 AIR SC 1295

⁵ AIR 1997 SC 568

Mr X Vs Hospital Z⁶- (PRIVACY IS NOT ABSOLUTE) - The case concerned revealing the HIV status of a patient by a doctor. A division bench held the right to privacy is not absolute. A doctor may disclose a patient's HIV status to the partner.

Hinsa Virodhak Sangh Vs Mirzapur Moti Kuresh Jamat⁷ (CHOICE OF FOOD PERSONAL) - A division bench upheld the closure of slaughterhouses in Ahmedabad during the Jain Paryushan festival. It also observed that what one eats is part of one's right to privacy.

Jamiruddin Ahmed Vs State of West Bengal⁸ - Raid without reason is not okay. A division bench ruled that search/seizure without recording valid reasons violates the right to privacy.

Ram Jethmalani and Others Vs Union of India⁹- (CAN NOT REVEAL BANK DETAILS WITHOUT VALID GROUNDS)- Popularly known as the "Black Money Case", here the Supreme Court held that revealing an individual's bank account details without establishing grounds to accuse them of wrongdoing violates their right to privacy.

RIGHT TO SLEEP IS PART OF RIGHT TO PRIVACY- (SUPREME COURT TAKES SUO MOTU NOTICE OF THE RAMLILA MAIDAN INCIDENT) The Supreme Court took suo motu cognizance of the crackdown on sleeping anticorruption protesters camping at Ramlila Maidan led by Baba Ramdev. Identifying Right to sleep as an aspect of the Right to Dignity and Privacy, the court refused to permit "illegitimate intrusion into a person's privacy as right to privacy is implicit in the right to life and liberty".

Justice K.S. Puttaswamy (Retd) and Another Vs Union of India and Others¹⁰- in the Supreme Court challenging the constitutionality of Aadhaar on the grounds that it violates the Right to Privacy. A nine-judge Constitution Bench headed by Chief Justice, J.S. Khehar on 24th August, 2017 gave a landmark decision on Right to Privacy. Supreme Court unanimously ruled that Right to Privacy is "intrinsic to life and personal liberty" and is inherently protected under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. Reading out the common conclusion arrived at by the nine-judge Bench, the

⁶ (1998 (8) SCC 296)

⁷ AIR 2008 SC 1892

⁸ Criminal Appeal No. 1535 of 2008

⁹ (2011) 8 SCC 1

¹⁰ Writ Petition Civil No. 494 of 2012

Chief Justice said the Court had overruled its own eight judge Bench and six-judge Bench judgments of M.P. Sharma and Kharak Singh cases delivered in 1954 and 1961 respectively that privacy is not protected under the Constitution. To overcome these two precedents, a five-judge Bench led by Chief Justice J.S. Khehar had referred the question whether privacy is a fundamental right or not to the numerically superior nine-judge Bench. The Bench also ruled that the right to privacy is not absolute, but is subject to reasonable restrictions (as is every other fundamental right).

Right to Privacy was not directly envisaged by the Constitution makers and as such does not find a mention in Part III of the Constitution relating to Fundamental Rights. The judiciary has deliberated upon the matter, and has interpreted privacy from the very beginning. However, it was in 1954, just four years after the Constitution came into being, that the Supreme Court had to deal with the question of privacy.

Key conclusion from the Judgment-

1. Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution;
2. Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the Court embarking on a constitutional function of that nature which is entrusted to Parliament;
3. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone.
4. Personal choices governing a way of life are intrinsic to privacy.
5. Privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being;
6. Technological change has given rise to concerns which were not present seven decades ago and the rapid growth of technology may render obsolescent many notions of the present. Hence the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features;

7. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights.
8. Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.
9. The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices.
10. The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity.
11. In a country like ours which prides itself on its diversity, privacy is one of the most important rights to be protected both against State and non-State actors and be recognized as a fundamental right.
12. Right of privacy cannot be denied, even if there is a miniscule fraction of the population which is affected. The majoritarian concept does not apply to Constitutional rights.
13. Let the right of privacy, an inherent right, be unequivocally a fundamental right embedded in part-III of the Constitution of India, but subject to the restrictions 10 specified, relating to that part. This is the call of today. The old order changed yielding place to new.

Right to Privacy and Challenges- The right to privacy in India is constantly in contention balancing individual privacy with other fundamental rights, security, and digital inclusivity. The challenging challenges arise in areas like prioritisation over other rights, digital awareness, and communications surveillance, often exposing gaps in regulatory and judicial clarity.

- **Conflict with Other Rights-** Prioritising the right to privacy over other fundamental rights is challenging. For example, during COVID-19, there was a clash between the right to life and the fundamental right to privacy, and therefore, it became of necessary importance and was prioritised.
- **Digital Divide-** Many individuals, especially in rural areas, lack awareness and resources to protect their privacy, leaving them vulnerable. For example, a limited understanding of online privacy settings leads to data misuse.

- **Communications Surveillance**- In modern times, surveillance is carried out via tapping or interception of telecommunication messages, etc. The two most important legislations in this context are the Indian Telegraph Act of 1885 and the Information and Technology Act of 2000.
- According to both of these Acts, the government can invade an individual's privacy based on national security, friendly relations with foreign states, and public order to prevent incitement and the commission of an offence.
- **Judicial Clarity**- Despite the landmark Puttaswamy Vs Union of India ruling affirming privacy as a fundamental right, clear legal frameworks for implementation and enforcement remain limited, complicating privacy protection measures.
- **Government Steps to Protect Privacy**- The Indian government has taken crucial steps to enhance privacy protections, focusing on legislative, regulatory, and surveillance oversight reforms. These initiatives aim to secure citizens' personal data, establish clear data protection laws, and ensure balanced privacy frameworks that align with digital age demands.

B N Srikrishna Committee and Data Protection- The government appointed the B.N. Srikrishna Committee, an expert group on data protection led by Justice B.N. Srikrishna. In July 2018, the committee submitted its report, proposing a Draft Data Protection Bill and recommending key principles to safeguard individuals' privacy and data rights in India.

Digital Personal Data Protection Act- Following the 2017 KS Puttaswamy judgment, a committee led by Justice BN Srikrishna was established to explore ways to safeguard the right to informational privacy. The committee's recommendations resulted in the passage of the Digital Personal Data Protection Act, which regulates the processing of digital personal data.

- **Applicability**- The DPDP Act applies to all data, whether originally online or offline and later digitised in India. Additionally, the Act applies to the processing of digital personal data beyond India's borders.
- **Alternate Disclosure Mechanism**- This mechanism will allow two parties to settle their complaints with the help of a mediator. Further, it provides for the establishment of a Data Protection Board.
- **Precedence in Case of Conflict**- The provisions of the DPDP Act are in addition to and do not supersede any other law currently in effect. However, in the event of any

conflict between a provision of this Act and a provision of any other law currently in effect, the provision of this Act shall take precedence to the extent of such conflict.

- **Penalties**- It provides for offences and penalties if anyone fails to comply with the provisions.
- **Exemptions under the DPDP Act**- The exemptions provided in the DPDP Act are as follows-
 - a) For notified agencies, in the interest of security, sovereignty, public order, etc.
 - b) For research, archiving, or statistical purposes.
 - c) For start-ups or other notified categories of data fiduciaries.
 - d) To enforce legal rights and claims.
 - e) To perform judicial or regulatory functions.
 - f) To prevent, detect, investigate, or prosecute offences.
 - g) To process non-residents' personal data under foreign contracts in India For approved mergers, demergers, etc.
 - h) To locate defaulters and their financial assets, etc.

Statutory Regulation- The government oversees surveillance practices under the Indian Telegraph Act (1885) and Information Technology Act (2000), which permit lawful interception with strict procedural safeguards to balance privacy with national security. Additionally, the National Cyber Security Policy and Indian Computer Emergency Response Team (CERT-In) promote privacy through guidelines on data protection, cyber security, and responses to data breaches.

Right to Privacy Way Forward- To protect the right to privacy in today's digital world, we need several important steps. These include-

- Courts keeping a check on privacy issues
- Making people more aware of their privacy rights
- Using modern technology to keep data safe
- Having clear laws about surveillance
- Making companies responsible for protecting people's personal data

Strengthening Judicial Oversight- It establish robust judicial oversight mechanisms for surveillance activities. It is ensuring they are authorized, proportionate, and essential, thus safeguarding citizens' privacy rights from misuse.

- **Public Awareness Campaigns**- Promote awareness about privacy rights through government and civil society initiatives, enabling citizens to understand data privacy risks and assert their rights in the digital age.
- **Technology and Privacy Innovation**- Encourage the development of privacy-centric technologies like end-to-end encryption and anonymisation techniques, which allow individuals and organizations to protect data without compromising usability.
- **Clear Surveillance Regulations**- Define specific legal frameworks for surveillance, balancing national security with individual privacy, specifying data retention limits, and ensuring transparency in government surveillance practices.
- **Private Sector Accountability**- Enforce accountability for private companies through strict regulations that prevent unauthorized data sharing and profiling and mandate transparency in data collection, storage, and processing practices.

Conclusion- By saying that privacy is a basic part of the right to life and liberty under Article 21, the Supreme Court has made it clear that not just Indian citizens, but anyone – even foreigners – can go to the constitutional courts (under Articles 32 and 226) to protect their privacy. The Court also said that privacy is a key part of all other fundamental rights in Part III of the Constitution. This means privacy is now an important part of rights like equality, freedom of speech, freedom of religion, and other rights needed to live with dignity. Of course, these rights can still have reasonable limits for things like public health, morality, and law and order.

References-

- <https://byjus.com/free-ias-prep/right-to-privacy/>
- <https://cic.gov.in/sites/default/files/2012/R2Privacy-Venkatesh.pdf>
- <https://articles.manupatra.com/article-details/From-Constitutional-Rights-to-Data-Protection-Article-21-and-Comparative-Perspectives-on-Privacy>
- <https://www.scobserver.in/cases/puttaswamy-v-union-of-india-fundamental-right-to-privacy-case-background/>
- <https://testbook.com/question-answer/right-to-privacy-is-protected-under--61629cea5a038b847db2297b>
- Information Technology Act, 2000
- Constitution of India, 1950
- Universal Declaration on Human Rights, 1948