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# A COMPREHENSIVE ANALYSIS OF DATA PROTECTION AND RIGHT TO PRIVACY

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## Abstract

Today internet becomes a very basic necessity for human being, they depend on internet for everything from buying to make payment all actively is carried out among the internet. Every crucial information of user is open on this platform which become advantage for the intruder to interfere on their personal site and conceal their private information. The right to privacy is closely related to data protection, which in this technological and globalized world has become very difficult to achieve. Furthermore, the violation of the right to privacy by the ruling majority through discriminatory legislation has also been possible due to the lack of legal protection of this right. At the same time, numerous allegations of violation of the right to privacy have been raised in India by both the government and private commercial entities. Those allegations were also brought before the courts where the courts had issued landmark rulings that included guidelines and sentences. Therefore, it is very important to analyze all these legal developments related to the right to privacy and data protection to understand the degree of security that the Indian legal framework offers to the citizens with respect to the right to privacy.

However, it is found that the Indian legal regime has adequately recognized the right to privacy and therefore important measures have been taken to prevent data theft and misuse of sensitive information, but still needed to improve.

**Keywords:** Privacy; Data Protection; Personal Information; Sensitive Information; Confidentiality; and Public Interest

## **Introduction**

*This stakeholder report is a contribution from the Internet and Society India (CIS India) and Privacy International. CIS is a non-profit organization. organization that conducts interdisciplinary research on the Internet and digital technologies from a political and academic point of view. Through yours various initiatives, the CIS investigates, intervenes and promotes discourses and practices on the Internet and technology in various society of India, and in other places.*

## **The right to privacy is a Fundamental Right**

A fundamental human right, privacy is protected by a number of international laws. It is essential for the defence of human dignity and one of the instruments of human rights. and serves as the cornerstone of any democracy. It also works well with other rights that are strengthened, like the freedom of association, speech, and information. Activities that limit the right to privacy, such as surveillance and Censorship can only be justified when prescribed by law and necessary to achieve a legitimate objective that is proportional to the objective pursued. As innovations in information technology have previously allowed unimaginable ways to collect, store and share personal data. the The right to privacy has evolved to encompass the obligations of the State in this regard with the protection of personal data. Various international instruments establish data protection principles, and many national legislatures incorporated these principles into national legislation. All people are entitled to privacy just by virtue of their existence. It also extends to physical integrity, individual autonomy, freedom of expression and freedom of movement or thought. This means that privacy does not only refer to the body, but extends to integrity, personal autonomy, data, expression, consent, objections, movements, thoughts and the reputation. It is therefore a neutral relationship between an individual, a group and an individual which is not subject to unwanted interference, invasion or infringement of personal freedom. All modern societies recognize that privacy is essential and recognize this not only for humanitarian reasons but also from a legal point of view.

*The right to privacy was not mentioned in the respect of communications surveillance and data protection in the National Report presented by India. The right to privacy has not been raised as an issue of concern even by the United Nations, Member States or external stakeholders.*

### **Domestic laws related to privacy**

*The Indian Constitution does not specifically guarantee the right to privacy, However, through various rulings over the years, the Courts of The country interpreted that the other constitutional rights give rise to a (limited) right to privacy – mainly through article 21 – the right to life and freedom. In 2015 this interpretation was challenged and recalled in a court larger than the Supreme Court (the highest court in the country). The petition before the court, Justice K.S Puttaswamy & Another vs. Union of India and Others, the case is currently pending before the Federal Supreme Court. The constitutional right to privacy in India is subject to a number of of restrictions. These restrictions were eliminated by interpretation of various provisions and rulings of the Supreme Court in India: The right to privacy may be limited through the procedure established by law. Procedure should be fair, equitable and reasonable (Maneka Gandhi v. Union of India); Reasonable restrictions may be imposed on your right to privacy. Interests of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decorum or morality, nor in relation to contempt of court, defamation or incitement to a crime; (Article 19 (2) of the Constitution of India, 1950) . The right to privacy may be limited if a serious problem arises. higher compensatory interest (Gobind v. State of M.P.);*

### **International obligations**

India has ratified the "ICCPR," or International Covenant on Civil and Political Rights. No one "shall be subjected to arbitrary or illegal intrusions into your privacy, your family, your home or correspondence, nor to illegal attacks on his honour and reputation," according to Article 17 of the ICCPR. "Or The Human Rights Committee noted that States parties to the ICCPR have the positive obligation to “take legislative and other measures to give effect the prohibition of such interference and attacks, as well as the protection of this [right to privacy].”

### **Major case law**

**In Justice K.S. Puttaswamy (Retd.) and Anr. vs Union of India and Ors..**

*Right to privacy is a fundamental human right which is protected under article 21 of Indian constitution.*

**In Govind v State of Madhya Pradesh,** Mathew, J. accepted the right to privacy as an enactment of Articles 19(a), (d) and 21, but the right to privacy is not an absolute right. The

*concern of "people, not places" is the right to privacy.*

### **Smt. Maneka Gandhi v. Union of India & An**

In this case, there is seven bench of judge which talks about that the word personal liberty include numerous right which also include right to privacy.

### **Privacy law of 2021**

The legal plan establishes: "every person must respect privacy - the confidentiality of communications received from you - including personal correspondence, telephone conversations, telegram messages, ordinary mail, electronic mail and other mediums of communication; confidentiality of his private or family life; protection of his honor and good name; protection against the seizure, possession or exposure of legal communications between individuals; privacy of surveillance; confidentiality of your banking and financial transactions, medical and legal information and protection of data relating to physical persons".

**Telephone interception** *Interception constitutes a serious violation of the individual's right to intimacy. Is it constitutionally consented in India? If so, do I have to enter qualifying limits and qualifying guarantees? The question arises after the Supreme Court seriously examines the State in the case of Union per civil liberties v. Union of India. In this case, the dispute over the public interest is a natural suggestion to protest against the part of the CBI that corresponds to the CBI. Therefore, telephone interception represents a serious violation of privacy. The procedure must be "scientific, equal and regional".*

*In India, the Constitution does not explicitly recognize the right to privacy. However, after the case of Kharak Singh vs. State of UP, the Supreme Court first recognized the implicit right to privacy in the Constitution "article 21" Telephone interception Interception constitutes a serious violation of the individual's right to intimacy. Is it constitutionally consented in India? If so, do I have to enter qualifying limits and qualifying guarantees? The question arises after the Supreme Court seriously examines the State in the case of Union per civil liberties v. Union of India. In this case, the dispute over the public interest is a natural suggestion to protest against the part of the CBI that corresponds to the CBI.*

*"Telephone conversations are an important aspect of private life," the court has determined. The right to maintain a telephone conversation in the privacy of your home or office, without interfering, could undoubtedly be a "right to privacy". Therefore, telephone interception represents a serious violation of privacy. The procedure must be "scientific, equal*

*and regional". In India, the Constitution does not explicitly recognize the right to privacy. However, after the case of Kharak Singh vs. State of UP, the Supreme Court first recognized the implicit right to privacy in the Constitution "article 21*

### **Latest guidelines on "RIGHT TO PRIVACY"**

*Calcutta High Court rules that an adopted child's right to conduct a "root search" is subordinated to the biological parent's right to privacy.*

*The Calcutta High Court recently ruled that the right to privacy of a biological parent, particularly a single mother who gave up her child for adoption and subsequently became untraceable, would override the child's right to conduct an investigation." to discover its origins." . Judge Sabyasachi Bhattacharya rejected a Swiss citizen's request to trace his biological origins.*

*Calcutta High Court Declines Swiss Citizen's Plea Against Adoption Agency Which Failed To Preserve His Adoption Records From 1988 Srinjoy Das 6 Jan 2024 10:30 AM*

*The Calcutta High Court has dismissed a Swiss citizen's petition, passed in 1988, against the specialist adoption agency, through which he was placed for adoption. The petitioner argued that after reaching the age of majority, he began a "search for his roots" and wanted to trace his pre-adoption ties, but given the lack of record keeping of his records by the defendant authorities...*

### **Right to be forgotten: Kerala High Court seeks response from HC Registry, Google and Indian Kanoon on their request to mask identity during online trial**

The Kerala High Court on Monday considered an appeal filed by the petitioners who were listed as first and second accused in a criminal case which was later settled amicably between the parties. The appellants claimed that the FIR was quashed following a Court judgment in 2012. They claim that the Court judgment bearing their names was also available on the High Court website.

### **Seizure Of Journalists' Digital Devices A Serious Matter, Better Guidelines Needed To Protect Media Professionals: Supreme Court To Centre**

On Tuesday, November 7, the Supreme Court voiced concern about the arbitrary seizure of media workers' digital devices and emphasised the need for stronger regulations to safeguard their rights. A bench of Justices Sanjay Kishan Kaul and Sudhanshu Dhulia was hearing a public interest litigation (PIL) filed by the Foundation for Media Professionals.

### **Requirement For Disclosures In Criminal Trial Can't Step Over Right To Privacy: Supreme Court Acquits Woman Accused Of Killing new born**

In ruling on a criminal appeal, the Supreme Court recently addressed an important legal question: whether an accused woman is required to reveal aspects of her private life during a criminal trial. The court was hearing an appeal by a woman accused of murdering her own son and was found guilty of murder and sentenced to life in prison. In the context of article 313.

### **Punjab and Haryana High Court rejects plea to keep police officer's call logs, ruling that he cannot be violated in order to gather evidence.**

The Punjab and Haryana High Court recently dismissed a petition seeking to preserve call recordings of a police officer who arrested the appellant under the NDPS Act, observing that the possibility of creating evidence in favor of the accused cannot go to the point of violating privacy. of a police officer Justice Rajbir Sehrawat added that, just to give credence to the petitioner's hypothesis,.

### **Right to privacy and thermal imaging**

The Supreme Court of the Directorate of Revenue and Anr v. Mohammed Nisar Holia (2007) established that “thermal imaging”, an advanced technology, can improve the feeling of being locked away from home. It can detect if the prisoner has stored drugs. The person's rights and privacy are violated by the internal substance. The Court discourages any unnecessary violation of a person's right to privacy and holds that no unlimited power can be granted to violate a person's right to privacy. The court overturned the conviction and seizure that violated the law's registration requirements. Although the legal power to conduct separate searches and seizures cannot violate the right to privacy, in such a case the court can at least ensure that this right is not unnecessarily violated.

### **The Right to Privacy in the age of Facebook**

In its case, the Facebook-owned company argues that requiring intermediaries to identify the source of information on their platforms could put journalists and activists in India at risk of retaliation, as well as violate fundamental rights citizens to freedom of expression.

### **Government steps to protect privacy**

Information Technology Act, 2000: Provides protection against certain data breaches involving computer systems. It includes safeguards to prevent unwanted access to computers,

information systems and the data stored there.

## CONCLUSION

The right to intimacy is an essential component of the right to life and personal freedom in Article 21. The right to intimacy also forms part of the contract, arising from a specific relationship, more commercial, with a political dimension. The right to privacy is not an absolute right; it is, therefore, a regional restriction to prevent reactions or disorders, to protect health or morals, or to protect my rights and other freedoms. In cases of conflict over diritti derivati, the right that promotes public morality and public interest prevails.

### FUTURE RESEARCH:

*Parliament and the Supreme Court should conduct a thorough review of the Right to Liberty Act (RTBF) and devise a method to balance the competing rights to privacy and freedom of expression. Data is a valuable resource in the digital age that should not be left unregulated. In this scenario, the time has come for India to have a robust data protection regime.*

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