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# EXPANDING CONTOURS OF PRIVACY

## RIGHTS

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## Abstract

Earlier, one was not aware about his privacy right but today this concept of privacy has got wide currency. Privacy has been a concept which can be expanded widely and thereby give rise to multiple rights within its ambit, these rights can be Financial, bodily and other types of privacy which are equally important in its own way. As we are aware that data is the new oil of contemporary times, hence these personal data of an individual are highly prone to be misused by a third party. Involvement of intermediaries in the financial transaction may lead to tampering of crucial financial information , Similarly, the bodily tests in criminal investigations can also be an intrusion into the privacy of an individual and must be regulated and monitored through a robust legal mechanism. Data protection is a growing concern in different jurisdictions. Since we are advancing towards a digital world and all transactions are made online its highly important to monitor the privacy of individuals of their personal data which includes their medical records, financial transactions, identity proofs, address proofs, political ideologies, religion , caste , gender and place of birth etc. which can be misused for malicious purpose of a third person. In this paper we will try to explore the possible ambits of privacy right in various domains and will also suggest certain remedial measures so that the privacy of crucial information of an individual is not compromised.

**Keywords:** Privacy, Data Protection, Fundamental Rights, Constitution , Brain Mapping, Narco Analyses , Surveillance, Communication , Financial Privacy.

## **Introduction**

As privacy is an age old concept , earlier surveillance ,a way whereby the state keeps a check on its citizens activities to prevent crime, was not regulated by any law . So was the case with phone tapping by police. However, as the time changed and societies evolved, the idea of privacy widened. Any intrusion into the financial, bodily, informational privacy etc. of an individual is now unconstitutional. Because any misuse of personal information can lead to blackmailing and Coercion and other sort of crimes. The idea being that too much interference into a person's private life may also lead to breach of his privacy rights even if that intrusion is for some beneficial purpose of the state. When the constitution was being framed, there was discussion in what concepts to be adopted from other countries. In the light of America's Fourth Amendment, the right to privacy was suggested to be incorporated. Back in 1950s, an organization called NAACP whose goal was to protect the interest of black people in the USA , had appealed to the US supreme court that there is no point of having a right to assemble peacefully and free association without there being a certain guaranteed right to people from being protected from malicious prosecution as long as they are not engaging in illegal activities and sometimes the only way that can be guaranteed is by according them the right to privacy. All other rights guaranteed by the constitution are attached in some way or the other to right to privacy. In the beginning the right to privacy was not guaranteed in the late 1950s and it was initially linked to space meaning thereby that house as a private domain. Later, there was delinking linking of privacy from space. The American case of State of Connecticut , is a good example of how marriage is sacred institution which doesn't require any interference by the state. Hence, there was privacy of space i.e house and privacy of institution like marriage were two separate things. That's how privacy concept evolved with time and various spheres of life were all attached to privacy in some way or the other.

## **2.Bodily Privacy**

There are a lot of tests like polygraph, narco-analysis and brain-mapping that have been used in criminal investigations to find out the truth. <sup>1</sup>These have important clinical, scientific, ethical and legal implications. <sup>2</sup>Such tests can violate a person's right to privacy and all these tests cannot be conducted in India without the consent of the accused. Hence the human rights and other related rights of an individual are kept in mind by the law of the country. These are useful to know the concealed information related to crime.<sup>3</sup> These have been used widely by the investigating agencies. The investigation agencies claim that it is safer than 'third degree methods' used by some investigators. It will directly help the investigating agencies to gather evidences, and thereby increase the rate of prosecution of the guilty and the rate of acquittal of the innocent. In a landmark judgment, the apex court of India has clearly stated that these cannot be administered without consent.<sup>4</sup>

### **● Narco-Analysis:**

The search for effective aids for interrogation is as old as mans attempt to find out information from a totally uncooperative source. Narco analysis is one such tool to help investigators. The accused undergoes this test to extract information from him when he is in a hypnotic stage. Responsibility is on the doctors and forensics psychologists. The accused is taken consent of. The test cannot be conducted without his consent. Also known as truth serum is basically . The mental condition of the accused changes while giving him sodium pentothal, scopolamine and sodium amytal. However, this method is less painful and torturing to the accused. The truth is not cent per cent true but it is very effective and useful in criminal investigation. Certain level of consciousness is maintained so that the accused is able to answer the questions that are being asked to him. In case dosage exceeds nothing adverse happens only the accused may get sedated and later regains his consciousness . There is constant monitoring of blood pressure, pulse rate and

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<sup>1</sup> Abhyudaya Agarwal & Prithwiji Gangopadhyay, *use of modern scientific tests in investigation and evidence: mere desperation or justifiable in public interest?* Vol.2 NUJS LAW REVIEW , 31-54 (2009)

<sup>2</sup> Ibid

<sup>3</sup> Suresh Bada Math, *Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane,*

INDIAN JOURNAL OF MEDICAL RESEARCH (May29,2020,1PM)

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171915/>

<sup>4</sup> Dinesh Dalmia v. State. Dinesh Dalmia v. State, CriLJ 2006 2401

ECG pattern of heartbeat. This process can go on for two to three hours.

There are a lot of drawbacks under this method of investigating the crime to find out the truth . The drugs used do not guarantee that the subject will speak only the truth. The statements made in a hypnotic state are not voluntary and are also not in a clear state of mind; hence these have not been admitted as evidence in the court of law. Narco-analysis “without consent” raises certain issues such as a physical assault on the body of the accused by giving injections and also other type of techniques used to take out the truth form the mouth of the accused like slapping, pinching, pushing, hitting, etc .and then there is mental assault through the effect of the injection on his/her mind which infringes with his or her right to privacy. <sup>5</sup>

### ● **Polygraph Test:**

When a suspect makes a statement or an accused in a court of law, it is very essential to find out the truth behind that statement. In 1921 , John Larson developed a test to detect the same. In India forceful application of this test is illegal. Again the consent of the accused is required to conduct this test. The validity of this test is questionable as the results are not accurate. The result of these test is not admissible in the Court unless corroborated by other evidences.

This is also called a lie detector test. This test also has certain drawbacks like emotions such as nervousness, anxiety, fear, confusion, hypoglycaemia, psychosis, depression, substance induced (nicotine, stimulants), substance withdrawal state (alcohol withdrawal) or other emotion can lead to false statements and anserws to the questions which are being asked. This state has also been attributed to the way the questions are asked by the investigating officers. At the same time, it is not difficult to beat polygraph tests by a trained person, who is able to control or suppress his/her arousal symptoms through relaxation exercises, Yoga, meditation, *etc.* Hence, the reliability of the polygraph test has been repeatedly questioned in empirical studies.<sup>6</sup>

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<sup>5</sup> Supra Note 3

<sup>6</sup> Suresh Bada Math, *Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane*,  
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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3171915/>

### **3. Privacy Of The Home: Search And Seizure Provisions**

The first and foremost natural requirement of a person is to have a private home without any interference and unwanted intervention by others. One important aspect regarding invasion of privacy is police surveillance. This issue has come up before the court to determine in which case the right to privacy protects against the police surveillance and where the police surveillance would be permissible and the protection of the right would not be available.<sup>7</sup>

In *Francis Coralie vs. Union Territory of Delhi*<sup>8</sup> The Supreme Court was of the opinion that the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. Earlier in *Kharak Singh vs. State of UP*<sup>9</sup> dealt with the question whether the intrusion into the residence of a citizen and the knocking at his door with the disturbance to his sleep and ordinary comfort, which such action must necessarily involve, constitutes violation of the freedom guaranteed by Article 19(1)(d) or a deprivation of the personal liberty guaranteed by Article 21 of the Constitution, the Apex Court held that "personal liberty" in Article 21 is comprehensive to include all varieties of rights which go to make up the personal liberty of a man other than those dealt with in article 19(1)(d). According to the Court, while Article 19(1)(d) deals with the particular types of personal freedom, Article 21 takes in and deals with the residue. The Court in this case raised the following issue: "Is then the personal liberty to be construed as excluding from its purview an invasion on the part of the police, of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and dire necessity for human existence even as an animal."<sup>10</sup>

Similarly, in *Govind vs. State of M. P.*<sup>11</sup> it was observed that any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing. It was further said that there are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such harm is not constitutionally protectable by the state. The second is that individuals need a place of

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<sup>7</sup> Jajodia(Mozika), Jyoti. *Emerging right to privacy an Indian perspective*, SHODHGANGA@INFLIBNET (May 13, 2020 2PM)  
<https://shodhganga.inflibnet.ac.in/handle/10603/137097>

<sup>8</sup> In *Francis Coralie vs. Union Territory of Delhi*. AIR 1981 746

<sup>9</sup> *Kharak Singh vs. State of UP* AIR 1963 1295

<sup>10</sup> Jajodia(Mozika), Jyoti. *Emerging right to privacy an Indian perspective*, SHODHGANGA@INFLIBNET (May 13, 2020 2PM)  
<https://shodhganga.inflibnet.ac.in/handle/10603/137097>

<sup>11</sup> *Govind vs. state of MP*, AIR 1975 1378

sanctually where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their natures.<sup>12</sup>

## **4. Financial Privacy**

Financial privacy refers to the confidentiality of the customer information about the transactions and other information with the financial institutions. Such customer is entitled to a high level of privacy for his personal and transactional information. Such privacy is to be maintained to combat criminal activity , tax evasion ,money laundering as well as national security issues and also to stop financing of terrorist groups . This financial privacy also includes the financial institutions selling customer information to a third party for marketing purposes .The financial companies offering services like investment , banking and insurance have to be regulated and monitored by some legislation so that the privacy of customers is maintained. When the government seeks financial records of an individual from a financial institution, it has to keep in mind the privacy rights of that individual. The government can request for that information only for a reasonable purpose like an investigation or other appropriate request for such information. Also, the government must notify the individual whose records are requested. Any failure to do so, will result in penalties. Privacy is an important human right. It makes us who we are. Hence, we need to respect the privacy of one another. It is universal by definition. Financial privacy is one of the key aspects of privacy. In modern day world we make a number of payments and transactions that provide our personal information to companies. The financial privacy is protected by the following legislations namely :

The Negotiable Instruments Act, 1881 : This Act regulates commercial transactions (between banks and individuals as well as between individuals only. Section 131 states Non-liability of banker receiving payment of cheque.—A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.<sup>13</sup>

The Prevention of Money Laundering Act, 2002 : Preventive steps against money laundering

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<sup>12</sup> Jajodia(Mozika), Jyoti. *Emerging right to privacy an Indian perspective*, SHODHGANGA@INFLIBNET (May 13, 2020 2PM)  
<https://shodhganga.inflibnet.ac.in/handle/10603/137097>

<sup>13</sup> Negotiable Instruments Act , 1881 Sec.131

taken by governments include the monitoring of banking customers and their business relations/financial transactions, verification of new customers, and automatic tracking of suspicious transactions. Thus, the individual's interests in financial privacy compete with the interests of the government and investigative agencies in requiring the disclosure and monitoring of financial information.<sup>14</sup>

Other acts included The Bankers' Books Evidence Act, 1891, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Foreign Contribution Regulation Act, 2010 etc. which contain provisions regarding protection of financial privacy of an individual.

## **5. Conclusion**

As held in *Daryao vs. State of Uttar Pradesh*<sup>15</sup>, the Supreme Court considered it a solemn duty to protect the fundamental right zealously and vigilantly. Thus whenever a man's right to privacy is violated he can move the Supreme Court and the High Courts for getting appropriate remedy.

Privacy is not only limited to space that is to say privacy of home but it has shifted to other domains as well and it is important for the government to make sure that the privacy of its citizen are not compromised with as it has been declared to be a fundamental right in the *Puttaswamy* case which intensively talked about the need for a data protection law which would take care of the online transactions and data of the citizens of the country in the line of general data protection rules of the European Union. India has a potential to lead the world into a digital economy making use of its existing strengths in the field of information technology, demographic dividend, and its necessity of empowerment based on data-driven access to services and benefits, India has to find a balance so as to reap the benefits from a datadriven ecosystem as but with all reasonable restrictions. it is necessary to create a data protection framework which is based on accountability, better enforcement and penal deterrence.

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<sup>14</sup> The Prevention of Money Laundering ACT, 2002 Sec. 71

<sup>15</sup> AIR 1961 1457