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# **RIGHT TO PRIVACY**

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## **ABSTRACT**

The right to privacy is recognized as a basic human rights under Article 12 of the Universal Declaration of Human Rights Act, 1948, which states that : “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honour and reputation. Right to privacy is a basic fundamental right as well it comes under article 21 and article 19.

## **INTRODUCTION**

Privacy can be defined as a fundamental human right. It is the ability of an individual or group to seclude themselves or information about themselves and thereby express themselves selectively. It is the right to keep our personal matters and relationships secret. It's the state of being free from another party's unwanted surveillance or visitation. <sup>1</sup>The right of a person to be free from intrusion into or publicity concerning matters of a personal nature.

<sup>2</sup>Information privacy, which involves the establishment of rules governing the collection and handling of personal data such as credit information, and medical and government records. It is also known as ‘data protection’; Bodily privacy, which concerns the protection of people's physical selves against invasive procedures such as genetic tests, drug testing and cavity searches; Privacy of communications, which covers the security and privacy of mail, telephones, e-mail and other forms of communication; and Territorial privacy, which concerns the setting of limits on intrusion into the domestic and other environments such as the workplace or public space. This includes searches, video surveillance and ID checks .<sup>3</sup>The

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<sup>1</sup> <https://www.merriam-webster.com/legal/right%20of%20privacy>

<sup>2</sup> <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/1-introduction-to-the-inquiry-5/the-meaning-of-privacy/>

<sup>3</sup> <https://thelawdictionary.org/privacy/>

right that determines the nonintervention of secret surveillance and the protection of an individual's information. It is split into 4 categories

- (1) Physical: An imposition whereby another individual is restricted from experiencing an individual or a situation.
- (2) Decisional: The imposition of a restriction that is exclusive to an entity.
- (3) Informational: The prevention of searching for unknown information and
- (4) Dispositional: The prevention of attempts made to get to know the state of mind of an individual.

From this we understand what is meant by data privacy which is the ability of a person to determine for themselves as to what extent their personal information about them is shared or communicated with. Data privacy becomes an important thing because it is a part of fundamental human right and we have the laws to guard the said right. For individuals to be willing to engage online they should have to trust that their personal data is handled with care. Organizations use this data protection policy to make their customers believe that their personal data can be protected with. Personal data become a means for criminals to harass the users, the users can get unwanted marketing advertisement too

## **RIGHT TO PRIVACY IN INDIA**

Article 21 includes right to life as one of the very important of all the fundamental rights . The right to privacy includes the right to life as well.

In the case of *Kharak Singh Vs State OF U.P*

Justice SUBBARAO had held that right of privacy was definitely one of the fundamanetal right even though it is not expressly mentioned . He further mentioned that supervision of one 's private life shows that the regulations were made to violate the right. Since regulations were not law it did not have the power to prevent the individual from enjoying his or her fundamental rights.

In the case of *Maneka Gandhi Vs UOI*

Any law can interfere with the personal liberty if and only if it has a proper procedure to deal with, the procedure should abide by the article 19 which is the fundamental right and should also confer with article 14 which is the right to equality

# DIGITAL PERSONAL DATA PROTECTION BILL, 2022

<sup>4</sup>Personal data is information that relates to an identified or identifiable individual. Businesses as well as government entities process personal data for delivery of goods and services. Processing of personal data allows understanding preferences of individuals, which may be useful for customisation, targeted advertising, and developing recommendations. Processing of personal data may also aid law enforcement. Unchecked processing may have adverse implications for the privacy of individuals, which has been recognised as a fundamental right. It may subject individuals to harm such as financial loss, loss of reputation, and profiling.

Currently, India does not have a standalone law on data protection. The usage of personal data is regulated under the Information Technology (IT) Act, 2000. It has been observed that this framework is not adequate to ensure the protection of personal data.<sup>1</sup> In 2017, the central government constituted a Committee of Experts on Data Protection chaired by Justice B. N. Srikrishna to examine issues relating to data protection in the country. The Committee submitted its report in July 2018. Based on the recommendations of the Committee, the Personal Data Protection Bill, 2019 was introduced in Lok Sabha in December 2019. The Bill was referred to a Joint Parliamentary Committee which submitted its report in December 2021.<sup>2</sup> In August 2022, the Bill was withdrawn from Parliament. In November 2022, the Ministry of Electronics and Information Technology released the Draft Digital Personal Data Protection Bill, 2022 for public feedback.

The bill was introduced after the first personal data protection bill, 2019 was withdrawn. There are various principles are

1. The organizations should use the personal datas properly in a lawful and legal manner
2. The personal data should not be used for unwanted purposes
3. The data collection should be very minimal
4. The data should be very accurate
5. The personal data should not be collected by default and only during a fixed duration
6. Whoever processes such data should be accountable for the data that he is processing.

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<sup>4</sup> <https://prsindia.org/billtrack/draft-the-digital-personal-data-protection-bill-2022>

This bill will apply to processing of digital personal data where the data is collected online , offline and digitized. It also applies outside India where goods are offered and individuals are profiled . Consent should always be given where processing is necessary for

1. Law related functions
2. Benefits given by state
3. Medical emergency
4. Employment matters
5. Issues like national security , fraud prevention and information security.

There are various rights and duties of a data principal

1. Obtain information about processing
2. Correction and erasure of personal data
3. Nominate another person to exercise rights for the event of death
4. They should not give false complaints
5. They should not impersonate any person

The data protection board of India

There are various key functions of the board

first one being monitoring compliance and imposing the penalties

the second being if there is any data breach then the data fiduciaries will take the necessary steps to hear the grievances made by the affected people

the central government will prescribe to the composition of the board selection process and the terms and conditions of the appointment and service

There are various issues regarding data protection bill the bill has the right to enable unchecked data processing by the state such a right will violate the right to privacy Under article 12 of the constitution the state includes the central government, the state government, the local bodies, authorities and the company set up by the government. The central government can go ahead with exemptions if it is in the interest and the security of the state and the maintenance of public order. For example under national security the government agency can collect the data about a particular citizen and do author profile for their surveillance it can also make use of data which is retained by various government agencies but this raises the question whether these exemptions will meet the proportionality test In the case of P UCL versus union of India the Supreme Court had issued various safeguards first being establishing necessity, purpose limitation and storage limitation.

The Sri Krishna committee in the year 2018 had observed that there is a considerable imbalance

between the power given to the individual and the power given to the state for example if the state is the only provider of a service then the principal data does not have the choice to refuse the consent in this particular situation the idea of acquiring consent is quite meaningless it. it is very unclear that such kind of exemption is extended to all the services which is given by the state. The government companies can withhold the personal data of the customers without their consent for an unlimited. But the private sectors cannot do so and it has to obey the requirements. so this violates the right to equality under article 14 of the constitution because this bill gives different treatment towards public entities and private entities who perform the same level of function

If the national crime Records Bureau for unique identification authority of India has done a data breach then that will not be reported under this bill similarly under national food Security Act 2013 the obligation to ensure the accuracy and completeness of the data will also not come under this particular bill. Under this bill, an individual does not have any recourse, well legal rights may be denied based on processing of inaccurate data

The right to be forgotten includes the right of individuals to limit the disclosure of personal data on the internet. The Sai Krishna committee had observed that the right to be forgotten is a core idea that attempts to install the limitations of memory into an otherwise limitless digital sphere. Under this bill the right to be forgotten is also not provided

## **THERE IS A CONFLICT BETWEEN RIGHT TO PRIVACY AND RIGHT TO PRESS**

The right to press comes under article 19 1A of the constitution but sometimes what happens is that the right to press and the right to privacy may be in conflict with each other. The right to expression of a person might come in conflict with another person's right to privacy what one person might want to express to the world that will infringe the privacy of another person. If a person wants to say something out in the world but it can mean that that particular thing will infringe the private life of another person so how do we decide on which way do we put the weights on. To understand this we have to look into the concept of public morality and interest we have to look at this on the basis of moral grounds and the general interest of the person and the public. The right to press should not invade the private life of a person in such a manner that it will harm the society as well as the person.

What is Public morality?

Public morality is like public health and safety. It is a concern that goes beyond the considerations of law and public policy. Stop the private parties or non governmental organization have the obligation to respect such public models. Such kind of norms will prevent the private parties from doing certain things which will harm the public. Doctor br ambedkar had invoked the phrase constitutional morality in the constitutional assembly debates after this in the year 2014 the Supreme Court had mentioned the principle of constitutional morality and since then this has become the innate voice of the constitution. In the case of Manoj narula versus union of India

It was held that constitutional morality means to bow down to the norms of the constitution and I am not to act in a manner which would become violative of the rule of law or reflective able of action in an arbitrary manner. It along with commitment to the constitution is a facet of constitutional morality.

In the post manika Gandhi era article 21 was also seen as a substantive right. Personal liberty has a wide interpretation because of which article 19 and 21 are seen as 2 sides of the coin. Article 21 has more superiority than article 19 because the laws which the state in acts in contravention of such rights can be saved under the reasonable restrictions under article 19.

## **AADHAR CARD AND RIGHT TO PRIVACY**

The linking of aadhaar card to the bank accounts and the UPI application has raised many questions in terms of right to privacy of a citizen. The Supreme Court has said that the aadhaar meta data cannot be stored for more than 6 months. The supreme court read the section 2D of aadhaar act to prevent the government authorities from storing aadhaar metadata of transaction. To ensure this the court has said that the centre must bring a robust data protection law immediately The section 57 of the aadhaar act has said that the private corporations can also verify aadhaar data but this was considered to be unconstitutional and hence struck down. In September 26<sup>th</sup> 2018 the Supreme Court had said that aadhaar is meant to help the marginalised section of the society so that they can benefit from this particular cause it takes into account the dignity of the people from a community point of view but it had strongly mentioned that it disapproves the mandatory linking to other sectors and spheres. The UIDAI has made it very clear that organizations which have user license from UAE Dai can only demand the use of aadhaar and can keep aadhaar of the customers . Entities such as films or hotels are not allowed to keep aCopy of aadhaar cards The question lies whether the aadhaar card is mandatory or it

is voluntarily even educated people cannot understand the logic behind it. For example the police in mumbai crime branches have reported that there are many fake aadhaar cards being used. Every country has its own constitutional validity regarding right to privacy. In India we have justice KS puttaswamy versus union of India where it was held very clearly that right of privacy is a fundamental right which emerges from article 21 of the constitution. In the year 2017 a justice BN srikrishna committee was formed to protect the personal data in a manner of fair and free digital economy. The objective of the committee was to unlock the data economy while keeping the data of the citizens secure and protected.

## **THE CURRENT SITUATION**

The MeitY has formulated a draft bill titled” THE DIGITAL PERSONAL DATA PROTECTION BILL, 2022”. It has also invited various comments from the public on November 18 to initiate a stakeholder consultation exercise on draft bill. MeitY is analysing, processing and collating the feedback receive with the view to take the bill forward and intentds to introduce the bill in the parliament at the latest.

## **CONCLUSION**

The data protection bill 2022 which has been introduced is it a violation of the individuals right or is it a way to protect the rights of the citizens. It is very difficult to understand because in one way we can see that the state is tryingto infringe the rights of the citizen by controlling their lives by having a means to their personal data .How far is this collection of personal data correct in forming public morality in the world the bill is still yet to become an act there is a delay in the system of the government because the government is still unsure as to what it has to do. There is a lot of controversy regarding this because in one way it also views the rti act. Dimilarly in the RTI act we see that the government is planning to amend it because it urges that the citizens should not have all the access to the public information. Therefore the right of privacy needs to be balanced with other freedom of expression freedom of media which is fundamental to the democratic society.

## REFERENCE

1. [https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022\\_0.pdf](https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022_0.pdf)
2. <https://prsindia.org/billtrack/draft-the-digital-personal-data-protection-bill-2022>
3. <https://www.drishtias.com/daily-updates/daily-news-analysis/digital-personal-data-protection-bill-2022>
4. <https://blog.ipleaders.in/different-aspects-of-right-to-privacy-under-article-21/>
5. <https://byjus.com/free-ias-prep/right-to-privacy/>

