

GLOBAL SURVEILLANCE DISCLOSURE OF 2013 WITHIN INDIAN JURISDICTION: AN OVERVIEW ON RIGHTS OF PRIVACY

Arryan Mohanty*

ABSTRACT

In May 2013, Edward Snowden uncovered U.S. federal government data to the media, featuring worldwide surveillance exercises concerning activities directed by the National Security Agency, notwithstanding other mystery administration activities in regards to the observing of most pieces of the Web, particularly social networks. Privacy worries on the Internet have along these lines been profoundly impacted on account of his activities. Exploring the outcomes of this conduct as respects clients of social networks is of essential interest. After this fiasco, the following questions should have arisen among us

- Do we as a user of the internet care about our online privacy?
- Are there enough things on the internet, in a broader sense, data, they post are real?
- Do we believe that important and very private data is saved on the internet?

INTRODUCTION

Journal of Legal Research and Juridical Sciences

The concept of privacy dates back to the dawn of time. Privacy, on the other hand, is a difficult idea to grasp. Various researchers have accorded privacy varied interpretations, and it also has diverse features that evolve with change in time. Privacy is vital to individuals, and there are numerous dimensions of privacy that have grown over centuries, such as privacy of space, the privacy of person, protection of personal data, and privacy of decision. In today's technological age, it is even more important to safeguard this right. Fundamental rights are those that people have simply by being human, and they cannot be established or revoked by any authority unless unusual conditions exist. They are basic and are required to live with dignity. Numerous global agreements and pacts, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, acknowledge fundamental rights, which include ethnic, financial, and diplomatic privileges such as the right to life, personal

*SECOND YEAR, BA LLB, SYMBIOSIS LAW SCHOOL, NAGPUR.

freedom, affiliation, and religious liberty. On December 10, 1948, the United Nations General Assembly (UNGA) adopted the Universal Declaration of Human Rights. On March 23, 1976, the International Covenant on Civil and Political Rights came into effect. Both of these treaties acknowledge universally recognized human rights.

RIGHT TO PRIVACY

The right to privacy is recognized in Article 12 of the Universal Declaration of Human Rights. Likewise, the International Covenant on Civil and Political Rights (ICCPR) enacted Article 17 on December 16, 1979, and went into effect on March 23, 1976. It also prohibits such disruptions and assaults, as well as the security of the right, which India signed on December 11, 1977. The International Covenant on Civil and Political Rights is referred to as a fundamental rights law in the Protection of Human Rights Act, 1993, which was approved by Parliament. Human rights are defined in Section 2(1)(d)¹. The National Human Rights Commission "is charged with the responsibility of analyzing agreements and related global agreements on human rights and making suggestions for their effective application," according to Section 12² of the Protection of Human Rights Act, 1993. Governments are required by the International Covenant on Civil and Political Rights to uphold, safeguard, and implement its principles.³

EVOLUTION OF RIGHT OF PRIVACY IN INDIA

Journal of Legal Research and Juridical Sciences

The issue of the Right to Privacy was examined for the absolute first time in discussion of constituent get-together, where an alteration was moved by K.S. Karimuddin, where B.R. Ambedkar gave it just bombastic help and Right to Privacy was not consolidated in the Indian Constitution.⁴ The issue of privacy was managed both as a principal right under the Constitution and as a customary law right since the 1960s. Privacy was not considered as a crucial right was first held by the Supreme Court in the year 1954 by an eight-judge seat in *M.P. Sharma v. Satish Chandra* case⁵, while managing the ability to look and hold onto records

¹ Protection of Human Rights Act, 1993 § 2(1)(d)

² Protection of Human Rights Act, 1993 § 12

³ Sangh Priy Goutam, *The Right to Privacy in Emerging Digital Era: Indian Legal Scenario*, <http://www.dbrau.org.in/attachment/SANGHPRIYGOUTAM.pdf>

⁴ Qwerty9729, *Legal Analysis of Right To Privacy In India*, <https://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html>

⁵ *M. P. Sharma and Others vs Satish Chandra*, 1954 AIR 300

from the Dalmia Group, excused the existence of a right to privacy on the premise that the producers of Constitution.⁶ Our hankering for a private life made a bounce back after a decade (approx.) under the watchful eye of a six-judge seat of the Supreme Court by *Kharak Singh v. Territory of Uttar Pradesh*⁷, it was distinctly to be dismissed once more. The Supreme Court held that there is no central Right to Privacy except continuing to strike down the game plan which allowed night visits for encroachment of 'individual freedom'. As distinguished by Justice Subba Rao, wherein he said that Right to Privacy is at this point a principal part of individual freedom anyway such game plan was not solidified similarly articulated as an essential right under the Indian Constitution.⁸ In the wake of eleven difficult years (approximately), the Supreme Court was a more modest three-judge seat when confronted with a comparable verifiable framework in *Gobind v. State of Madhya Pradesh*⁹, held the presence of an essential right to security under Article 21¹⁰. However, Gobind lost, privacy won interestingly and acquired a little acknowledgment under personal liberty under the Indian Constitution.¹¹ At this point, privacy had been established in our fundamental rights. It never confronted such a solid test of its presence as it looked under the steady gaze of the nine-judge seat on account of *K.S. Puttaswamy v. Union of India*¹² in 2017 and overruled the choices of M.P. Sharma and *Kharak Singh*. After the death of the new judgment in 2017, the right to privacy is a fundamental right and will not lose its status among the Golden Trinity of Article 14 (Right to Equality)¹³, Article 19 (Right to Freedom)¹⁴, and Article 21 (Right to Life and Personal Liberty)^{15,16}

Journal of Legal Research and Juridical Sciences

⁶ Supra Note 1

⁷ *Kharak Singh v. State of Uttar Pradesh*, 1963 AIR 1295

⁸ Supra Note 4

⁹ *Gobind vs State of Madhya Pradesh & Anr*, AIR 1975 SC 1378

¹⁰ Constitution of India, art. 21

¹¹ Supra Note 6

¹² Justice K.S. Puttaswamy (Retd) vs Union of India, AIR 2017 SC 4161

¹³ Constitution of India, 1949, art. 14

¹⁴ Constitution of India, 1949, art.19

¹⁵ Evolution of Right to Privacy, India, available at <https://www.lawteacher.net/free-law-essays/constitutional-law/evolution-of-the-right-to-privacy-constitutional-law-essay.php> (last visited on January 24, 2022 at 07:57 AM)

¹⁶ Shubham Mongia, Legal Analysis of Right to Privacy In India, Legal Service India, <https://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html> (last visited on January 24, 2022 at 08:19 AM)

PROVISIONS UNDER ARTICLE 21

No individual will be denied of his life or individual freedom besides as per method set up by law as visualized under Article 21 of the Constitution of India¹⁷ derives the term life that is comprehensive of Article 21 incorporates that multitude of parts of life which go to make a man's life significant, complete and worth living. The system taken on by the Supreme Court embraced this technique of Right to Privacy to grow the ambit of Article 21.¹⁸

DEFINITION OF LIFE UNDER ARTICLE 21

A fundamental request is raised while focusing on the association between Article 19 and 21 during an emergency concerning whether there existed a trademark law right to life and individual freedom after the suspension of part III of the Constitution of India. If there ought to be an event of ADM, Jabalpur v. Shiv Kant Shukla.¹⁹ The Supreme Court held that there existed no right to life and individual freedom past Article 21²⁰ and the state's suspension of part III was characteristically real. Right to life as it is seen as the most crucial of everything is genuinely difficult to describe. Concerning a related course of action in the 5th and 14th Amendments of the US Constitution, which says that no individual will be denied his life, freedom, or property, without fair treatment of law.²¹

INTERPRETATION OF PERSONAL LIBERTY UNDER ARTICLE 21

The explanation of freedom in the fifth and Fourteenth Amendments to the US Constitution is given incredibly wide importance. It takes in all of the open doors that an individual is depended upon to have. Instead of the US Constitution, Article 21²² qualifies "freedom" by "individual" which prompts allowance that the degree of freedom under our Constitution is more modest than that in the US Constitution. The importance and degree of individual freedom were seen for the underlying time in Kharak Singh case in which it was held that the right to protection is not a trustworthy right under our Constitution and in this manner the undertaking to discover the advancement of the individual which is essentially a manner by

¹⁷ Constitution of India, 1949, art.21

¹⁸ Hinailiyas, Right to Privacy Under Article 21 and the Related Conflicts, Legal Service India, <http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html> (last visited on January 24, 2022 at 09:32 AM)

¹⁹ ADM Jabalpur vs Shivkant Shukla, 1976 AIR 1207

²⁰ Supra note 16

²¹ Supra note 17

²² United States Constitution, art. 21

which security is assaulted isn't an infringement of a Fundamental Right guaranteed by Part III. Right to security as such isn't consolidated as a Fundamental Right in the Constitution of India. This right was contemplated for the underlying time in Kharak Singh's Case which was stressed over the authenticity of explicit rules that permitted perception of suspects. In a bare essential decision, Justice Jeevan Reddy held that the right to security is inborn under Article 21. This right implies the option to be also. Contemplating the setting of surveillance, it was held that perception, if it genuinely encroaches on the protection of inhabitants, can infringe the chance of advancement, guaranteed by Articles 19(1) (d)²³ and 21. Perception is essential to thwart bad behavior and in light of material given in the set of experiences sheet.²⁴

DIFFERENT ASPECTS OF PRIVACY RIGHTS IN INDIA

Phone Tapping: Phone tapping and the right to privacy are impacted by new mechanical improvements connecting with an individual's correspondence and hence have turned into a discussing issue. In R.M. Malkani v. the State of Maharashtra²⁵ The Supreme Court saw that the Court won't endure shields for the insurance of the resident to be jeopardized by allowing the police to continuously unlawful or unpredictable strategies. Telephone tapping is a raid of the right to privacy and opportunity of articulation and the government can force limitations on distributing clandestine material against its authorities that make it violative of Article 21 and Article 19(1) (a) of the Constitution. According to Justice Baldeep Singh, through his observations in the People's Union of Civil Liberties vs Union of India²⁷ case, the right to have a telephone discussion in the privacy of one's home or office without impedance can be guaranteed a right to privacy. For this situation, the Supreme Court held that telephonic discussions are private and thus phone tapping ads up to infringement of one's privacy.²⁸

Gender Priority: One more part of the right to privacy incorporates orientation needs that suggest not just the avoidance of inaccurate depiction of private life but the option to forestall it being portrayed by any means. Indeed, even a lady of simple righteousness is qualified for privacy and nobody has the privilege to attack her privacy. Each female has the fundamental

²³ Constitution of India, 1949, art.19(1)(d)

²⁴ Ibid

²⁵ R. M. Malkani vs State of Maharashtra, 1973 AIR 157

²⁶ Dr. P.K. Rana, "Right to Privacy in Indian Perspective", 2IJL 07(2016) <file:///C:/Users/akpmo/Downloads/2-5-26-273.pdf>

²⁷ People's Union of Civil Liberties vs Union of India, AIR 1997 SC 568

²⁸ Supra note 26

right to be treated with fairness and legitimate dignity.²⁹ Yet, in the case of *Harvinder Kaur v. Harmander Singh*³⁰, the Delhi High Court held that however sexual connection establishes the most significant characteristic of the idea of marriage, they don't comprise its entire substance. Sexual intercourse is one of the components however goes to make up the marriage.³¹

Health: The health sector is a significant matter of worry in privacy and one of the significant parts of the right to privacy. Data regarding health conditions does not just incorporate data about the well-being or incapacity, yet additionally, the data connected with wellbeing administration one might get. It's a human propensity that the data in regards to wellbeing is viewed as exceptionally touchy by many individuals. The right to life is extremely critical because it overrides the right to privacy. A specialist is under a pledge or clinical morals for not to reveal the privileged Intel about the patient as the revelation will unfavorably influence or put in peril the existence of others.³² If there should arise an occurrence of *Mr. 'X' v. Hospital 'Z'*³³ It was held that specialist patient relationship, however essentially a business, is expertly a question of certainty and consequently, specialists are ethically and morally bound to keep up with privacy. Public revelation of verifiable realities in such a circumstance might prompt the fight of one individual, on the whole, to be not to mention and the other individuals on the right track to be educated.

SEARCHING AND SEIZURE POWER

The Court held that any regulation prominent on the individual freedom of a resident must be established, set out the triple test by the Supreme Court on account of *Maneka Gandhi v. Union of India*³⁴. This triple test requires any law meddling in the idea of Personal Liberty under Article. 21, to fulfill specific guidelines:

- It should recommend a procedure;
- The strategy should endure the trial of at least one of the key freedoms presented under Article 19, which might be appropriate in a given circumstance

²⁹ Ibid

³⁰ *Harvinder Kaur vs Harmander Singh Choudhry*, AIR 1984 Delhi 66

³¹ Supra note 28

³² Ibid

³³ *Mr. 'X' v. Hospital 'Z'*, AIR 1999 SC 495

³⁴ *Maneka Gandhi vs Union of India*, 1978 AIR 597

- It should likewise be at risk to be tried concerning Article 14." The decried arrangement was held to have bombed this test. Regardless of whether the monetary records were put away in a resident's home or a bank was not of such a lot of material.

ROLE OF NATIONAL SECURITY AGENCY

The right to privacy is a legal concept that has been used in numerous legal systems to limit government and private activities that infringe on people's privacy. The right to privacy is mentioned in over 150 national constitutions. The innate human right to privacy has been a topic of international controversy since ex-NSA employee Edward Snowden's global surveillance disclosures in 2013. Government agencies such as the NSA, CIA, R&AW, and GCHQ have engaged in vast, global monitoring to combat global terrorism. The question today is whether the right to privacy law can cohabit with intelligence agencies' current capacity to access and analyze nearly every facet of a person's life. One key debate is whether the right to privacy should be sacrificed as part of the social contract to strengthen defenses against alleged terrorist threats. Threats of terrorism can also be used as a justification to spy on the broader public.³⁵ India was the number one target of NSA eavesdropping among the BRICS group of rising nations, which appeared high on the list of countries targeted by the covert surveillance programs of the US National Security Agency (NSA) for collecting telephone data and internet information. India is ranked fifth on the total list of countries spied on by NSA programs, with billions of pieces of information extracted from its telephone and internet networks. The American agency used at least two major programs to gather intelligence in India: the first is Boundless Informant, a data-mining system that keeps track of several calls and emails the security agency collects; and the second is PRISM, a program that detects and collects real content from network systems. While Boundless Informant was utilized in India to monitor phone calls and internet access, PRISM used Gmail, Msn, YouTube, Facebook, and other web-based services to collect information about particular concerns that were not related to terrorism. 3 "global heat maps," which assign a color code to each country based on how much it was spied on by the NSA, plainly reveal that India was one of the most sought-after targets for American intelligence. With a color system varying from green (least monitored) to yellow and orange (most monitored), these maps show India in shades of deep orange and red, while

³⁵ Aditya Verma, *Right to Privacy*, Central Information Commission (Mar. 21, 2020), <https://cic.gov.in/sites/default/files/Right%20to%20Privacy%20and%20RTI%20by%20Aditya%20Verma%20%20281%29%20281%29.pdf>

neighboring BRICS countries like Brazil, Russia, and China — all of which are heavily monitored — are in green or yellow zones.³⁶ States are employing technology in novel ways, particularly in light of the rise in global terrorist attacks and public safety concerns. States are using a method known as 'profiling.' Both fundamentally and instrumentally, data protection is a critical concern. A data protection regime is fundamentally associated with the safeguarding of personal information. "Informational privacy is a component of the right to privacy," the Supreme Court said in Puttaswamy. In an age of information, privacy threats can come not only from governments but also from non-state actors. We applaud the Union Government's efforts to evaluate and implement a robust data protection regime. The establishment of such a regime necessitates a delicate and careful balance between individual interests and legitimate state concerns.³⁷ When a three-judge bench of India's Supreme Court was dealing with the Aadhar card scheme, the seriousness of this current situation had tremendous ramifications. The Government of India collects and compiles both biometric and demographic data of Indian citizens to be used for various reasons under the stated scheme. One of the arguments against the system is that the acquisition of such information violates the "Right to Privacy." In today's rising digital world, the right to privacy has become a critical issue not only for individuals, but also for national security in many dimensions such as economy, defense, finance, and health. This research may address a need and provide valuable contributions to the establishment of a technology-based legal system for the interest of modern civilized society to keep up with worldwide legal changes. In this tough digital era, personal privacy and information privacy, i.e., data privacy, are urgently needed for research.³⁸

PRIVACY IN SOCIAL NETWORKS AFTER THE GLOBAL SURVEILLANCE DISCLOSURE

In May 2013, Edward Snowden released details from the United States federal government to the news, showcasing global surveillance operational processes carried out by the National Security Agency, as well as other hidden service processes involving the tracking of most sections of the Internet, particularly socioeconomic connections. As a result of his acts, security grievances on the Web have been greatly impacted. The revelation of the NSA's usage of

³⁶ Shobhan Saxena, India among top targets of spying by NSA, *The Hindu* (Jun. 4, 2016), <https://www.thehindu.com/news/national/india-among-top-targets-of-spying-by-nsa/article5157526.ece>

³⁷ Goutam S., *THE RIGHT TO PRIVACY IN EMERGING DIGITAL ERA: INDIAN LEGAL SCENARIO*, 3 DPIL 5, 304-316 (2015).

³⁸ *Ibid.*

PRISM, a program whose presence was verified by the organization themselves, revealed that the agency has been continuously scanning vast portions of the Web. The initiative had the participation of the leading Internet corporations in the US, notably social networking services (SNSs) like Google and Facebook. As a result, not only how the NSA obtains social network metadata, but also the conversation substance included inside these data, became public knowledge.³⁹

CONCLUSION

In the present period, the self-disclosure conduct of social media clients has been broadly explored by researchers. New in our current review is the examination of an immediate connection between the intense risk of information undercover work by insight administrations and clients' resulting response to that risk. Utilizing the accessible information, our center inquiry posing has clients changed their conduct because the Snowden disclosures about social media surveillance can be denied with a high likelihood. Notwithstanding, this information can remember the consequences of different investigations: The dissemination of individual data through private data has been affirmed.⁴⁰ Viewing ourselves as a part of the general society, we frequently cancel that we are people first and, in the world, every single individual or individual need his/her private space. To give every person that right, the State in like manner is giving those private minutes to be appreciated with those whom they need without according to the remainder of the world. As consistently is propelling, this right is turning out to be increasingly fundamental. With our entire lives being presented to the media through social networking locales or the government operative cameras, the security is to be given to everybody and it should act in such a way that nobody should remember to barge in the right to privacy of the people. Privacy ought to be ensured in each angle yet it is exposed to sensible limitations under the arrangement of the Constitution of India and other significant legal arrangements in power. One needs to comprehend that privacy should be remembered and inside as far as possible not to disclose to the rest of the world.⁴¹

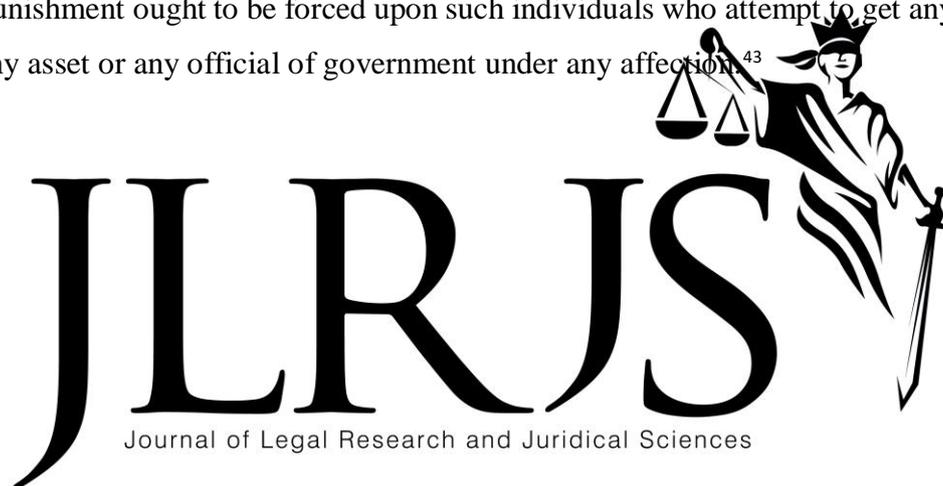
³⁹ Kai Witting, *Privacy in Social Networks after the Global Surveillance Disclosure*, file:///C:/Users/Astha%20Kothari/Downloads/10.1515_9783110418163-007.pdf

⁴⁰ Ibid

⁴¹ Supra note 19

SUGGESTIONS

- A different regulation in regards to the right to security ought to be made to give insurance from the burglary of a citizen's character whether it could be a robbery of individual personality or monetary character which might assess criminal fraud and monetary data fraud.⁴²
- There might be a denial of the capture of correspondences besides in specific cases yet just with the endorsement of Secretary-level officials.
- A Central Communication Interception Review Committee might be established to inspect and survey the capture orders passed by the concerned power.
- An information assurance authority might be set up which may ensure information and whose capacity will be to screen the advancement in information handling.
- Punishment ought to be forced upon such individuals who attempt to get any data from any asset or any official of government under any affection.⁴³



⁴² Supra note 30

⁴³ Ibid