

LAWFUL LIGHT OF PRIVACY

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The word 'privacy' is used for isolation or concealment of something but here let's explore and unlock the true meaning of the word 'privacy' and try to understand 'privacy' in legal parlance. The impact of the term is so huge that from fundamental rights to information technology to e-commerce are under its radar.

"Without privacy, there was no point in being an individual"

- Jonathan Franzen

The world around us today is very open and connected. Therefore, the demand and need for private space have increased a lot. The "literal interpretation" of the word 'privacy' is the state of being alone and free from public attention, but that is just not enough to describe the word 'privacy'. Privacy is the time for self-contemplation. If every genius, such as Sir Isaac Newton, Thomas Edison, and others, have not remained in private until that one day of breakthrough, if they had not invested their private time in hit and trial, the world would have had to wait years, if not decades, to discover gravity, electricity, and other such historic inventions. Privacy is freedom from not only the public sphere but also having self-dignity, individual spirit, and peace. Although the word "privacy" is used over and over again as a synonym to the word concealment, in a deeper sense it refers to the freedom and escape of a human being from this social sphere, be it physical, mental, or, in fact, digital.

Privacy also plays a vital role in shaping our Indian constitution and interpreting it in the light of 'Privacy'. In August 2017, the landmark judgment by a nine-judge bench panel of the Supreme Court (India) in the case of Justice K.S. Puttaswamy (retired.) v/s. Union of India, the Apex court stated that 'Citizens of India have a constitutionally protected fundamental right to privacy, it is an intrinsic part of life and liberty under part-III, Article-21 of the Indian constitution, the same part which deals with the fundamental rights. This case was also called by the public the biometric 'Aadhaar wall case, but by whatever name the common public remembers the case, the judgment and result of it will be remembered by everyone as 'Right to

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Privacy' is our fundamental right. As the court interpreted this section in the light of the 'golden rule' of interpretation and enlightening a layman in the legal context to be a lawman (including every human being irrespective of gender).

Although the world got a glimpse of the concept of privacy in the year 1948 when the Universal Declaration of Human Rights was declared by the United Nations (U.N.). Article - 12 of the Universal Declaration of Human Rights (1948), mentioned the word 'privacy' and in addition to that the words used by the drafting committee "*no one shall*" also indicates that the United Nations was clear and candid on the concept that privacy is not a 'choice' or 'option' but a 'right' and the usage of 'shall' and not 'may' indirectly clarifies it and our case strong.

But, as there is a saying that anything in excess is not good, there should be a point of equanimity. Here, too, the Indian constitution comes to our rescue, i.e., it also states a few restrictions in the part - III of the Indian constitution, and in the case of Justice Puttaswamy (mentioned above), the court also stated three tests, so, that neither the 'State' nor an 'Individual' can use it to their advantage and even protecting the sovereignty of the State to an extent.

On the one hand, the right to privacy and the judgment of the Apex court in the Puttaswamy case have a very important role to play as the ever-growing and dynamic digital world related to information technology, the internet of things, data analytics, etc., could hamper the security of an individual; therefore, can be termed as the modern-day 'espionage' tools to collect users' data for a better user experience, but on the flip side, the data security breach is hanging like an ax. A data breach here has two aspects, which are: first, it is selling your data to a third party for commercial purposes like target marketing, and secondly, data possessed by fraudulent means like black hat hacking, phishing, etc., which is a more serious and deep crime as the fraudster can be booked under the provisions of the Indian Penal Code, 1860, popularly known as the IPC among the general public.

The new bill related to the Data protection act can surely help support Article-21 of the Indian constitution and the IPC, 1860, if drafted well, keeping in mind the equanimity approach. The new data protection bill may also go so far as to define data security by the I.T. term "encryption" and the business term "e-commerce," hinting that the Indian Contract Act, 1872, Consumer Protection Act, and even the Banking Regulations Act may have an impact. However, the primary focus should be on encryption because simply encrypting your data is not sufficient. We have to also see if it is as per the latest I.T. cryptography, i.e., is it a Data

Encryption Standard (DES) or an Advanced Encryption Standard (AES), and in AES is it using a 128/192/256-bit key or not.

The Indian Contract Act, 1872 (ICA, 1872), would also have to be interpreted by using the golden rule of interpretation because when the user installs any application (app.) or software or signs up with any website, he or she directly or indirectly gives their "consent" to the terms & conditions of that application or website by digitally ticking the boxes under it. Section-13 of the Indian Contract Act, 1872, defines 'Consent' and Section-14 of the same act defines 'Free Consent'. Now the question is not whether you have to give consent, but whether it is free consent or not? Many applications, after installation, ask for your consent, which is fine because you are agreeing. But the problem arises when you try to limit the accessibility of that application and restrict it by denying its permission request to relevant functions or features of your device but the issue is that the application indirectly protests by disabling itself. Now you are left with two options: either to give it full accessibility as per its demand or to uninstall the application. In this situation, sometimes the user has to allow the application to access the other functions or features of their device, even if the domain of the application and the usability of the required permission(s) do not have any correlation between or among them. Let's take an example to understand the situation in real-time. Many of you might have faced a situation when a simple application like a notepad, torch, or calculator asks you to grant them access to your contact list, email call logs, etc., which is quite irrelevant because the operations of the application do not have any direct relation with them.

The Banking Act would also have an impact as the new kid in town, 'cryptocurrency' is creeping into the economy. Cryptocurrency can come under both the commercial acts and the I.T. acts as it has dual features of commerce and blockchain (I.T.) characters. As the digitalization era is on the rise, we have to define, amend, and interpret many articles and sections in the light of data security, privacy, and, last but not the least, the dignity of a person, under Article-21 of the Indian Constitution.