BLOGS

Exploring the Right to Privacy in India from a Legal and Constitutional Perspective

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Introduction

The right to privacy, a cornerstone of individual freedom, lacks a universally accepted legal definition. Legal experts often characterize it as a fundamental human right that every person enjoys simply by virtue of their existence. Privacy transcends reliance on any particular legal instrument or charter and encompasses a multitude of dimensions. This article delves into the legal intricacies of the right to privacy, examining its various facets and historical evolution.

The Multifaceted Notion of Privacy

Privacy is an all-encompassing concept, covering a broad spectrum of aspects.

1. Bodily Integrity: This dimension of privacy safeguards an individual's physical well-being, preventing unwanted intrusion into their body or personal space.
2. Personal Autonomy: Privacy allows individuals the autonomy to make choices about their own lives, free from unwarranted interference or coercion.
3. Informational Self-Determination: Privacy includes the right to control one's personal information, ensuring that individuals can decide who has access to their data and for what purposes.
4. Protection from State Surveillance: A fundamental aspect of privacy is safeguarding individuals from intrusive state surveillance, preventing unwarranted intrusion into their lives.

5. Dignity: Privacy is intertwined with an individual's dignity, ensuring that personal matters are shielded from public scrutiny.
6. Confidentiality: Individuals have a right to keep personal matters confidential, protecting their sensitive information from unwarranted disclosure.
7. Compelled Speech: Privacy also extends to protecting individuals from being compelled to express views or beliefs against their will.
8. Freedom to Dissent, Move or Think: Individuals should have the freedom to dissent, move, or think without external constraints or pressures.

The Evolution of the Right to Privacy in India

The Indian Constitution's framers did not explicitly intend for the right to privacy to exist, and it did not initially find a place in **Part III of the Constitution**, which is concerned with fundamental rights. However, the judiciary has played a crucial role in interpreting and evolving the concept of privacy in India. The following key milestones chart the evolution of privacy rights in the country:

1. MP Sharma vs. Satish Chandra: The case of M.P. Sharma vs. Satish Chandra is a significant legal landmark in Indian jurisprudence, particularly in the context of the right to privacy. The case was heard by an eight-judge bench of the Supreme Court of India in 1954. In this case, the Supreme Court ruled in favour of search and seizure practices over privacy rights.
2. Kharak Singh vs. State of UP: Kharak Singh, a resident of the state of Uttar Pradesh, challenged certain regulations that allowed the police to conduct surveillance on individuals suspected of being involved in criminal activities. The surveillance included domiciliary visits at night, keeping records of personal movements, and maintaining surveillance registers. The court examined police surveillance powers and ruled that the right to privacy is not an absolute right under the Constitution.
3. Govind vs. State of MP: The case of Govind v. State of Madhya Pradesh is a significant legal milestone in the evolution of privacy rights in India. The Supreme Court of India heard this case in 1975, and it had profound implications for understanding the right to privacy within the constitutional framework. It was a landmark year as the Supreme Court introduced the compelling state interest test, which implies that an individual's right to privacy must yield to a larger state interest if convincingly demonstrated.

4. Mr. ‘X’ vs Hospital ‘Z’: This case emphasized that the right to privacy isn’t absolute and can be subject to limitations.
5. Ram Jethmalani & Ors vs Union Of India: This case involved revealing an individual’s bank account details without valid grounds, highlighting that it violates their right to privacy.

Incorporating Personal Sensitive Data

In the evolving landscape, the scope of privacy has expanded to encompass personal sensitive data, such as medical records and biometrics. Notably, in 1997, the Supreme Court, in the **PUCL vs. Union of India case**, unequivocally held that individuals have a privacy interest in the content of their telephone communications.

This case is a significant legal landmark in India, particularly concerning the right to privacy and the use of surveillance technologies. The case was heard by a nine-judge bench of the Supreme Court of India in 1996. The Supreme Court, in its judgment, recognized the right to privacy as a fundamental right implicit in the right to life and personal liberty guaranteed under Article 21.

Contemporary Privacy Debates: Aadhaar

In recent years, debates about the right to privacy in **India have been prominently centered around Aadhaar**, a government scheme that assigns a unique ID to residents based on their biometrics and demographic information. While initially challenged on grounds of privacy violations, **the Supreme Court’s 2013 order** restricted Aadhaar’s usage to public distribution systems and LPG subsidies. However, **in 2015**, this order was amended to allow the use of Aadhaar in various government schemes while ensuring that no one would be deprived of services due to a lack of Aadhaar.

Domestic Laws Pertaining to Privacy

The Constitution of India does not explicitly guarantee the right to privacy. Nevertheless, through various judgements over the years, Indian courts have interpreted other rights in the Constitution, primarily **Article 21 (the right to life and liberty)** as giving rise to a limited right to privacy.

In 2017, the landmark judgement in the writ petition of **Justice K.S. Puttaswamy & Another vs. Union of India and Others** affirmed that privacy is a fundamental right intrinsic to the right to

life and personal liberty. The judgement further clarified that while the right to privacy is fundamental, it is subject to reasonable restrictions, as are other fundamental rights.

Existing Law on Privacy in India

In the absence of specific legislation exclusively addressing privacy, the right to privacy in India is legally viewed under the **Information Technology Act, of 2000**. This Act contains provisions that guard individuals against privacy breaches by corporate entities. In 2008, the Act was amended to include Section 43A, which holds companies liable for compromising sensitive personal data and imposes penalties for violations.

The government, utilizing its powers under Section 43A, established rules aimed at safeguarding individual privacy by requiring companies to seek permission before accessing personal data and setting liabilities for violations.

Implications of the Recognition of Privacy

The recognition of the right to privacy as a fundamental right within the Indian Constitution has far-reaching implications. It provides a strong legal basis for the protection of individual freedoms and dignity.

Individuals can now directly approach the Supreme Court and High Courts for violations of their fundamental right to privacy, regardless of their nationality. Additionally, privacy's recognition as an integral part of life and personal liberty elevates it to an essential ingredient of various other fundamental freedoms, including the right to equality, free speech, religion, and other rights crucial for a dignified existence. These rights, however, remain subject to reasonable restrictions based on public health, morality, and order.

Conclusion

The integration of the right to privacy into the Indian Constitution represents a watershed moment in the country's legal history. It solidifies the significance of privacy as a fundamental right and acknowledges its pivotal role in safeguarding individual autonomy and dignity.

The Indian Constitution's resilience and adaptability to evolving notions of privacy in the digital age reflect its enduring commitment to preserving individual freedoms in a complex and ever-

changing world.

The legal landscape of privacy in India and around the world is continually evolving, reflecting the complex interplay between individual freedoms and the demands of modern society.