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**A CRITICAL ANALYSIS OF THE RIGHT TO PRIVACY WITH  
SPECIFIC REGARD TO INDIAN JUDICIAL APPROACH**- Preeti Nakhat<sup>1</sup>**ABSTRACT**

A persons need to establish personal boundaries and manage access to them drives his need for privacy. Privacy must be a notion in every society's vocabulary. This assertion can be supported by sufficient data in both eastern and western civilizations. The Biblical times are when the idea of privacy first emerged. The need for privacy may have animal origins, according to research on animal behaviour and social organization, and both humans and animals share a number of fundamental strategies for claiming their right to privacy among their own kind. The Bible claims that when Adam and Eve opened their eyes and saw they were naked, they sewed together fig leaves to make apron for themselves. When spoken to generally, the word "privacy" covers a range of subjects. As an illustration, his concealment about his extramarital affairs, the confidentiality of business secrets, and his disregard for others, among other things. It relates to the notion of isolation. independence and secrecy. The concepts of privacy and the right to privacy are difficult to grasp. Privacy frequently relates to modern information and communication technologies and is based on the principle of natural rights. This paper mainly focuses on the analysis of Right to Privacy

**Keywords:** *Right to Privacy, Human Rights, Constitution, Fundamental Rights*

**INTRODUCTION**

The definition of "right to privacy" in Black's Law Dictionary reads "right to be left alone" or "right to be free from any unjustified interference." The Indian Supreme Court recognized the right to privacy act to be a basic right guaranteed by the Indian Constitution in a historic judgement on August 24, 2017. This right derives from the fundamental rights to life and

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liberty, according to the court's decision, which has significant ramifications. Here, we'll talk about the right to privacy article and determine whether or not it qualifies as a basic right.

The right to privacy in India has changed during the past 60 years as a result of several rulings. Regarding the years, there has been disagreement over whether the right to privacy is a fundamental right due to inconsistency from two early rulings.<sup>2</sup> The evaluation and interpretation of constitutional provisions must guarantee that they are in line with the international human rights treaties that India has ratified. According to the court, privacy is a basic prerequisite for the meaningful enjoyment of other granted freedoms.

### **HUMAN RIGHTS AND RIGHT TO PRIVACY**

Security concerns, in general and especially, are more frequently inclined to exchange information with other countries and to obtain personal data from them as a matter of necessity, especially in light of the fact that the world is making significant progress toward increasing its openness and interdependence in a variety of sectors. As a result of the technological explosion and improper use of every piece of information, individual privacy now sees a feeling of urgency in its protection. It may be expected that a future where privacy is prioritized is not too far off.

While every piece of data is on the verge of being misused, there is an everlasting need for protection in the area of privacy, comparable to other fundamental rights, and an unauthorized intrusion will shatter the fundamental connection of life's dignity. Article 21's protection of the right to life assumes that life will be lived with dignity rather than as a simple animal. It is difficult to accurately and comprehensively describe what is meant by dignity. With time and situation, it could change. It has been established and is reaffirmed with little ambiguity that the fundamental right to life is a component of the fundamental right to life that constitutes the fundamental framework of the Constitution, taking into account the Article 21 life interpretation during the post Kesawananda Bhariti period. Any intrusion into someone's private affairs without the necessary legal consent has the effect of breaching the dignity of life, which is guaranteed by a number of laws. The Indian Constitution is a loosely written document. With the goal of ensuring that its citizens have

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<sup>2</sup><https://www.vedantu.com/civics/right-to-privacy>

fulfilling lives and making it simpler for them to exercise the human rights that a civilized society demands.

The concept of Indian right jurisprudence of international law, however, would have a different name and flavour. In the landmark case that recognized the third gender in India has a vocal judiciary that has fought for the inclusion of these concepts in our legal texts and the manifestation of international norms in matters pertaining to human rights. After conducting a thorough investigation into international law, the Court concluded that “Article 51, as already indicated, has to be read along with Article 253 of the Constitution, International Covenants to which India is a party and to give due respect to other non-binding International Covenants and principles,” due to the lack of adequate legislation protecting human rights.

If the parliament has passed any legislation that is against international law, Indian courts must enforce Indian law rather than international law in certain cases. However, municipal courts in India would abide by international law in the absence of conflicting laws. Regarding integrating international law with local ordinances, it is stated that” let they are persuasive public policy principles and the domestic law's silence can be an occasion for the Court to read principles of international law into constitutional provisions to effectuate existing constitutional guarantees.” Therefore, there is nothing stopping the courts in India from upholding the right to privacy in accordance with international standards.

## **RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT UNDER THE INDIAN CONSTITUTION**

### **RIGHT TO LIFE AND PERSONAL LIBERTY**

*“Article 21: Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.*

*[Article 21A. Right to education- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.]”*

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## **RIGHT AGAINST SEXUAL HARASSMENT AT WORKPLACE**

The Indian Constitution's Articles 14, 15, and 21 safeguard women's basic rights to equality and life against sexual harassment at work, which is a form of gender discrimination. Sexual harassment at work hinders women's ability to function in today's competitive environment and makes the workplace unwelcoming and insecure for them. It not only prevents people from performing their jobs effectively, but it also has a detrimental effect on their social and economic development<sup>1</sup> and results in their physical and emotional suffering. The “*Indian Ministry of Women and Child Development*” passed the “*Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (often referred to as the “*POSH Act*”) in that year. It is the first law in the nation specifically addressing the issue of sexual harassment at work. Additionally, the POSH Act's Sexual Harassment of Women at Work (Prevention, Prohibition and Redressal) Rules, 2013, were later released by the government (“POSH Rules”). 2013 saw the passage of the Criminal Law (Amendment) Act, sometimes known as the “Criminal Law Amendment Act.” Voyeurism, stalking, and sexual harassment were all made criminal as a result.

The POSH Act was passed with the goal of preventing workplace sexual harassment against women and ensuring that sexual harassment claims are handled properly. Although the Act aims to give every woman (regardless of her age or level of employment) access to a respected, safe, and safe environment at work that is free from all forms of harassment, implementing its provisions effectively remains a challenge.

## **RIGHT TO MEDICAL PRIVACY**

It is essential to uphold the patient's right to privacy about their medical care. An individual has the right to the privacy and confidentiality of their personal and medical information. Only the patient and his doctor, physician, healthcare provider, or health insurance provider should discuss such sensitive and confidential information. The patient must provide consent before a healthcare practitioner can reveal any of the patient's medical information to third parties. Since patients trust their doctors to keep their medical information private and since disclosing it might have negative consequences for their personal or professional lives, it is important to maintain patient privacy.

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## **RIGHT OF THE WOMEN OF DECENCY AND DIGNITY**

The personal gems of women are dignity and decency. Anyone who attempts to kidnap and disrobe her modesty is seen as a sinner, and the law very likely mandates punishment for such behaviour.

Each and every woman has the right to live in dignity, free from intimidation, compulsion, violence, and prejudice. Law very much upholds the modesty and dignity of women. The criminal code outlines the penalties for offenses against women such as sexual harassment (Section 354), assault with the purpose to strip her naked or violate her sense of modesty (Section 354), voyeurism (Section 354), stalking (354D), etc.

## **NON-DISCLOSURE OF IDENTITY OF RAPE VICTIM**

The Indian Penal Code 1860 (IPC), Section 228A, forbids printing or publishing the name or any other information that reveals the identify of a rape victim (section 376, 376 A-E of the IPC). Both adults and kids should be aware of this. This restriction may be waived by the survivor or, in cases where the victim is deceased (or unable of giving consent), by the victim's family, in writing to a designated welfare institution or other appropriate body. Any information that is printed or published in violation of this clause is a crime known as an offense against public justice, which carries a maximum two-year jail sentence.

### *Identity of Nirbhaya's Parents Disclosed*

The 2012 Delhi gang-rape case affected people's consciences all throughout the nation and led to significant legal reforms in how such horrible crimes are handled.

Later, in an interview, her father stated, "Her actual name should be known to everybody. My child didn't do anything wrong. She defended herself and died. I'm pleased with her. Her identity being revealed will inspire other women who have survived terrible assaults. They will draw courage from my daughter."

## **RIGHT TO PRIVACY AND TELEPHONE TAPPING**

The act of secretly attaching a certain gadget to a person's phone in order to covertly listen to their phone calls is known as phone tapping, also known as wiretapping. In India, tapping telephones is only permitted by a small group of special authorities, such as the government, and only in extremely particular situations that guarantee the integrity, security, and safety of

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the whole nation. Nobody has the right or authority to tap phones or listen in on private conversations. While passive wiretapping is permitted and acceptable when carried out by the government, active wiretapping, which entails tampering with the signal, is illegal and carries a three-year prison penalty.

Telephone tapping is a violation of both the right to privacy and the freedom of speech and expression, both of which are fundamental rights protected by the Indian Constitution. In India, telephone tapping is governed and supervised by the Telegraph Act, 1885, but as wireless communications proliferated, it proved insufficient to protect individuals' rights.

### **RIGHT TO INFORMATION AND PRIVACY**

According to Article 19(1)(a) of the Constitution, the Right to Information (RTI) is a basic right and is frequently referred to as a cornerstone for reinforcing the foundations of democracy. Through public access to information, the Right to Information Act of 2005 promotes transparency and accountability of the government.

On the other hand, since the Supreme Court made this determination in *K.S. Puttaswamy v. Union of India* 2017, the right to privacy is likewise regarded as a basic right under Article 21 of the Constitution.<sup>3</sup> The main issue emerges when these two rights are in conflict and execution of any one would result in the other being superseded. The RTI Act, 2005 therefore lays the path for the right to privacy by prohibiting the sharing of information that violates anyone's private unless it is necessary for the greater welfare of society.

### **PERSONAL DATA PROTECTION BILL, 2019**

As we stated at the outset, privacy in the current era mostly refers to the secrecy of electronic communications and the subsequent personal data that results from such actions. Similar to the GDPR regulation in Europe, the Personal Data Protection Bill, 2019, seeks to localize the data processing operations of online platforms. From this statute, the idea of a "data fiduciary" has developed. The person who gathers the data is the data fiduciary (like Google). It must explain why gathering someone's personal information is required (for example –

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<sup>3</sup><https://www.sconline.com/blog/post/2020/11/20/interplay-between-right-to-information-and-right-to-privacy/>

enabling the person to sign up for an online service). <sup>4</sup>The fiduciary must uphold openness and use the required encryption techniques to safeguard personal data.

## **CONCLUSION**

To respond appropriately and in advance to the growing threats to privacy, our legal framework for privacy must be built with a strong thread. Even though the concept of the Aadhaar and the actual issuance of the Aadhaar has provided numerous benefits and has saved a person incredibly precious time by permitting a quick transaction. The idea of the Aadhaar is a breach of personal privacy and might even endanger national security because anybody could easily access our personal information through a data leak.

Scientific techniques can only be used in a criminal trial to get information from an accused person, a witness, or a suspect without violating their right to privacy and right against self-incrimination if persons are doing so voluntarily and in compliance with the law. A similar strategy was implemented in England as a type of trial and error, but it was eventually dropped on the grounds that it violates individual freedom. The Aadhaar program in India infringes the right to personal liberty as granted by Article 21 of the Constitution due to its analogous consequences.

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<sup>4</sup><https://byjus.com/free-ias-prep/right-to-privacy/>