

**“Right to Privacy in the Digital Age: Constitutional Implications in India”**

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**ABSTRACT**

It is believed that humans are independent creatures with an innate demand for privacy and control over specific areas of their existence. Human conduct has an innate and intrinsic desire for privacy, which is today acknowledged as a fundamental human right. Since each person's privacy is an essential component of their life and freedom, it must be safeguarded. The importance of this right to privacy has been acknowledged on occasion by academics and judges, and it currently occupies a unique role in contemporary life. The right to privacy is not explicitly stated in the Indian Constitution; rather, it was included in the category of essential rights through the use of judicial interpretation. Privacy is not limited to a single location or online platform. However, the use of the internet and new technological advancements have quickly exposed privacy to risks. On the one hand, technology has given humans limitless growth opportunities, but it has also presented us with many difficulties. A breach of privacy will result from unreasonable interference with someone's domain, the release of personal information, identity theft, hacking, cyberstalking, etc. The relationship between growing technology use and privacy is covered in this paper. The protection offered by international agreements and Indian legislation will be examined in this regard to safeguard the right to privacy in the digital sphere. The article will conclude with a discussion of workable solutions following a discussion of problems and difficulties. Several questions are brought up, including: who owns this information? To whom will it be accessible? What are the restrictions on using this information, if any? As with everything technological, the law footnotes the cost of catch-up. Around the world, jurists grapple with how to reconcile conventional legal concepts with the ridiculously intrusive times we live in. This position is further complicated by the several governments that are requesting and obtaining access to information from their citizens and businesses. Conversely, what are the restrictions on privacy? Can one ask the government for information about basic services, travel, or even benefits? Are privacy concerns subordinate to national security concerns? “A crucial aspect of human life has always been privacy. However, as more information is shared online and as more data is digitized, data privacy is becoming more and more important. The term "data privacy" describes the handling

of data according to its perceived value. People have a lot at stake when it comes to the privacy of their information, so this isn't just a business issue.”<sup>1</sup>

## INTRODUCTION

The development of technology has been extremely beneficial to humans. Nevertheless, many of our liberties are currently in danger due to the advancement of technology. “As technology advances and involves data that is continuously collected and processed in the marketplace, the right to privacy is becoming increasingly important. The process of going digital has led to the emergence of several criminal behaviours, including data fraud, hoax contacting, cyber harassment, and so on. When users provide their private information to websites for businesses, state authorities, digital networking companies, or interaction intelligence services, it can often be misused. The acquisition, archiving, surveillance, recording, accessing, processing, dissemination, maintenance, etc. of data is not expressly governed by law anywhere in the country.”<sup>2</sup> This essay aims to investigate the problems surrounding data analysis and the right to privacy in the digital era. The study examines privacy concerns by examining them from two distinct angles. The first chapter discusses the state's ability to monitor citizens, while the second chapter addresses customer concerns about the Competition Act of 2002's recognition of their right to privacy. The chapter ends with some inspiration from global laws and industry precedents.

## NATURE AND SCOPE

We live in an era of information technology right now. A new world with faster information exchange, greater openness, and improved communication has emerged as a result of the Internet's expansion and evolution. But everything has advantages and disadvantages. “Rapid technical improvement is always accompanied by an increase in misuse, which is made worse by the growing usage of the internet for the sharing of private, sensitive, and commercial information.”<sup>3</sup> There are limits to privacy and it isn't always perfect. The relevant state authorities have passed several laws to protect citizens' privacy, although these measures are not unrestricted and are subject to limitations in some areas. “However, as more information is shared online and more data is converted to digital form, privacy is becoming increasingly important. People have a great deal at stake when it comes to the privacy of their information, thus data regulations must consider that.” In this essay, we'll examine how the development of technology might impact a person's life and freedom, with a particular focus on privacy. We will also talk about the new areas that the digital age of technology has created where people's privacy has to be safeguarded and how much it needs to be protected. A review of how the

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<sup>1</sup> Juris Centre, *The Constitutional Right to Privacy and Its Impact on Data Protection Laws in India*, JURIS CENTRE (Jul. 18, 2023), <https://juriscentre.com/2023/07/18/the-constitutional-right-to-privacy-and-its-impact-on-data-protection-laws-in-india/> (last visited Apr 23, 2024).

<sup>2</sup> Id.

<sup>3</sup> Abhishek Das, *Right to Privacy and Data Protection in Digital Age: Possibility of Myth?*, LAWYERSCLUBINDIA, <https://www.lawyersclubindia.com/articles/right-to-privacy-and-data-protection-in-digital-age-possibility-of-myth--10682.asp> (last visited Apr 23, 2024).

government has protected data privacy through a variety of laws and regulations will also be included in the study.

## MEANING

“Privacy is the ability of an individual or group of individuals to keep information private and manage their schedules. Particularly recognized as a right under international human rights accords is privacy. Every citizen has the right to protect their privacy. As a result, it encompasses all of the elements of life that provide a man's existence greater purpose, fulfilment, and worth, among which the right to privacy is one.”<sup>4</sup> “The state of being alone, or the right to keep one's personal matters and relationships secret” are two definitions of privacy. As far as people are concerned, privacy is the ability to keep their personal information including events and happenings in their lives private and only reveal it to a select few. The great philosopher Aristotle also made a distinction between the public and private spheres of existence, with the polis, or government, referring to the public sphere and the oikos, or family, representing the private sphere and the domain of self-regulation. To mention a few, “privacy can refer to a sphere separate from government, a domain inappropriate for governmental interference, solitude, or restricted access.”

“The majority ruling stated that the Constitution did not provide a right to privacy. The right to privacy “is an essential ingredient of personal liberty,” according to Subba Rao's minority ruling. In the case of **R Rajagopal v. State of Tamil Nadu**,<sup>5</sup> the court ruled that every Indian person is free to protect their privacy, regardless of whether it pertains to childrearing, education, or other matters. **The state of Madhya Pradesh v. Govind**<sup>6</sup> is another significant case. In this case, the Supreme Court declined to overturn these regulations.”<sup>7</sup>

## CONCEPT

The concept of an individual's right to privacy is multifaceted. It refers to an internet user's special ability to control the gathering, storing, and sharing of his personally identifiable information. A person's identification details, interests, and the personal information of people they are related to, together with information about their education, health, and finances, are all considered forms of private data. “Private information may be cleverly used for several purposes, including government surveillance and profit-making for businesses. The Apex Judicial Authority declared the “Right to Privacy” to be a basic right in August 2017, notwithstanding the Indian Constitution's lack of explicit recognition of this right.”<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> 1995 AIR 264.

<sup>6</sup> 1975 AIR 1378.

<sup>7</sup> Centre, *supra* note 1.

<sup>8</sup> (PDF) THE CHANGING DYNAMICS OF THE CONCEPT OF RIGHT TO PRIVACY IN DIGITAL WORLD: AN INDIAN CONSTITUTIONAL PERSPECTIVE., [https://www.researchgate.net/publication/366618723\\_THE\\_CHANGING\\_DYNAMICS\\_OF\\_THE\\_CONCEPT\\_OF\\_RIGHT\\_TO\\_PRIVACY\\_IN\\_DIGITAL\\_WORLD\\_AN\\_INDIAN\\_CONSTITUTIONAL\\_PERSPECTIVE](https://www.researchgate.net/publication/366618723_THE_CHANGING_DYNAMICS_OF_THE_CONCEPT_OF_RIGHT_TO_PRIVACY_IN_DIGITAL_WORLD_AN_INDIAN_CONSTITUTIONAL_PERSPECTIVE) (last visited Apr 23, 2024).

It has gained immense global recognition, facilitating the digital connection of millions of people. People can now keep their personal information digitally thanks to advancements in technology, however worries regarding data privacy have been highlighted by the increasing exploitation of technology by bad actors. Social media platforms gather personal data on users' behaviours, interests, character traits, political opinions, and online habits. When this data is misused, it seriously jeopardizes users' "right to privacy," which is protected by the Indian Constitution. Modern technology has expertly woven the internet into every aspect of life, making it pervasive throughout. People use social media to communicate with each other and to build connections. In addition, digital space serves as a venue for conducting business, acquiring products and services, getting fresh information, and expediting routine tasks like banking. Every online transaction leaves the user unintentionally leaving electronic trails that are rich with information about them and their interests.

“The right to privacy is more threatened in this information age, which has been dubbed "an era of ubiquitous dataveillance, or the systematic monitoring of citizen’s communications or actions through the use of information technology," as highlighted in the ruling in **Justice K.S. Puttaswamy v. Union of India**. Since the Indian Constitution's inception, judges have closely examined the idea of including the "right to privacy," even though it was never expressly mentioned.”<sup>9</sup> In India, there is currently no data protection legislation, despite several administrative measures, or a data safeguarding agency.

## OBJECTIVES

This essay's goal is to examine the modern privacy issues brought on by social media and the digital era, with a focus on the rising worries about data breaches and misuse. It recognizes the fine balance needed in the digital age and emphasizes the crucial role that privacy plays as the cornerstone of individual freedom. One of the most important and frequently used features of personal liberty is privacy, which is highly prized by people. In its most basic sense, privacy is being free from intrusion and has long been considered a fundamental human right. “The idea that the "right to privacy" should be included within the umbrella of the right to life was first put up in the 1890s by well-known intellectuals like Samuel D. Warren and Louis Brandeis.” From the Indian Constitution's foundation, the "right to privacy" was subject to court review and only gradually came to be recognized as a basic right in India. “Justice Subba Rao's minority opinion in **Kharak Singh v. State of U.P.** first considered the right to privacy to be an essential ingredient of personal liberty.”<sup>10</sup>

## DIGITAL AGE PRIVACY

Any information is accessible with only a few clicks in this day and age of information. There are many benefits to the explosion of information, but there are drawbacks as well. The volume of data generated by different electronic devices and apps has increased significantly during the past ten years. Data is generated and is all around us in almost everything we do. There are

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<sup>9</sup> (2017) 10 SCC 1.

<sup>10</sup> Das, *supra* note 3.

two types of information: the first is the information we voluntarily disclose, and the second is information that is created every time we take a step like using a transportation system, ordering food, or traveling. Without a doubt, in this day of ubiquitous Internet access, such knowledge has become extremely valuable and has a newfound value. “Many large corporations assess the facts from this information and use it to inform their business strategy decisions. The family, marriage, procreation, and sexual orientation all significant facets of dignity must be safeguarded by the privacy of the home.”

## **DATA PRIVACY**

Data is generated and is all around us in almost everything we do. Two types of information exist: the first is the information we voluntarily give, and the second is information that is created every time we take action, like ordering food, taking public transportation, or travelling. Without a doubt, this information is quite significant, and several businesses are willing to pay to obtain access to it. Information is, in fact, the new currency in this era of widely available, essentially free internet access. Even more fascinating is the fact that you are unaware of the full potential of the information. New apps increase the value of information as technology progresses. The amount of data generated by using numerous technological devices and apps has grown significantly during the last few years. Today's businesses obtain a great deal of value from analyzing the vast amount of information available, and they frequently build their company strategy on this evaluation. Although there is no denying the business efficiency in question, the crucial query is: Do individuals have control over how other people access and use their data?

### **The Legal Structure Regarding the Right to Privacy**

“The Act firmly grants data principals control over personal data, prohibiting its storage and use without express approval except for a few permissible circumstances where the novel idea of "deemed consent" is applied.” Notably, though, the "right to be forgotten" is not expressly included in the Act as a stand-alone provision, even if Article 21<sup>11</sup> recognises it as an essential component under the purview of the "Right to Privacy." “By defining the obligations of organizations designated as "data fiduciaries," which are in charge of collecting, keeping, and using digital personal data, the Act further demonstrates its commitment to responsible data management.”<sup>12</sup>

Consequently, the "Digital Personal Data Protection Act 2023" strengthens the "right to privacy" that is protected by Article 21 of the Indian Constitution by fostering transparency, justice, and autonomy over personal data.

A fundamental component of personal autonomy, privacy is a notion that is vital to humankind. It is thought that an essay written in 1890 is where the legal idea of privacy first appeared.

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<sup>11</sup> Article 21 in The Constitution Of India 1949, <https://indiankanoon.org/doc/1199182/> (last visited Sep 11, 2023).

<sup>12</sup> RIGHT TO PRIVACY: AN INDIAN CONTEXT, The Times of India, <https://timesofindia.indiatimes.com/readersblog/the-daily-roam/right-to-privacy-an-indian-context-55047/> (last visited Apr 23, 2024).

Privacy law jurisprudence indicates a piecemeal past. The domain of personal information is the fundamental aspect of privacy, the primary interest that should be legally protected. “According to the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, and other human rights treaties, privacy is a fundamental human right. Any citizen has the legal right to have a significant degree of control over their data.”<sup>13</sup>

## DATA PROTECTION

A legal precaution known as data protection was implemented to stop the improper use of personal data. “Every person has the fundamental right to control how much of their personal information or data is used. In the digital era, privacy and data protection are two important Internet governance concerns that are linked to one another. A privacy breach may result from making someone else's (an interested party's) easily accessible personal data or information. Concerns concerning the automated and simple availability of necessary personal data about an individual to another individual or a public or private body are related to data protection and privacy of crucial personal information.”<sup>14</sup> Consequently, privacy and data protection, the two main challenges facing Internet governance today, are inherently at odds. Data privacy proposes how the personal information of an individual should be treated depending on its perceived value, while data protection is a legal precaution that guarantees privacy. Data or information belonging to individuals should be safeguarded to protect their privacy.

## INDIAN JURISPRUDENCE

"No person shall be deprived of his life or personal liberty except according to procedure established by law," states Article 21 of the Indian Constitution. On August 24, 2017, the Indian Supreme Court rendered a decision holding that Part III of the Indian Constitution guarantees the right to privacy as a fundamental right. There will be significant effects from this choice on the laws and regulations. “In line with Article 21 of the Indian Constitution, new rules will henceforth be evaluated using the same standards as laws that infringe upon personal freedom. The right to privacy is now clearly attainable; what is yet unusual are its limits and bounds. There isn't much regulation in India regarding privacy and data protection. Fundamentally, the laws and regulations in place are sectoral. This indicated that the police were abiding by the legal process and not infringing on the man's right to privacy as guaranteed by Article 21 of the Constitution.”<sup>15</sup>

The police's house visits to "habitual criminals" or those who were likely to become so were found to be illegal in **Kharak Singh v. State of Uttar Pradesh (1962)**. Our modern society, which is defined by constant advancements in electrical and technological systems, offers us several conveniences that make life simpler. Although there are arguments that privacy measures have been strengthened, every new update also increases the risks to people's privacy.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Diva Rai, *Data Privacy in Digital Age: Indian Perspective*, IPLEADERS (Mar. 20, 2020), <https://blog.ipleaders.in/data-privacy-in-digital-age-indian-perspective/> (last visited Apr 23, 2024).



“Due to the lack of a comprehensive law protecting the privacy of personal data, people in India are in danger. The security provided by the present IT regulations is inadequate. Even if someone feels they have taken security measures to secure their personal information, there is never a 100% guarantee of the protection of that information. On the dark web, confidential information can be swiftly and simply accessed. The more someone interacts online, the greater the likelihood that their privacy will be compromised.”<sup>16</sup>

## CONCLUSION

From the above, it is clear that a comprehensive law regulating the gathering and sharing of personal data is urgently needed. Comprehensive rules that regulate the processing of private information that isn't private information or information that is inherently sensitive don't exist. Following its acquisition by Facebook Inc., WhatsApp Inc. changed its privacy policies. Users are now aware that Facebook will use their account data to improve Facebook ads and product experiences. They claimed that WhatsApp users' fundamental rights under Article 21 of the Constitution were violated by removing their information's privacy and sharing it with Facebook. The Delhi High Court rendered a decision regarding the matter, directing that if users decide to completely delete their WhatsApp account, WhatsApp will remove all user data from its servers and stop sharing user data with Facebook. If users decide to remain on WhatsApp, they will not receive any updates regarding their current information, data, or details until September 25, 2016. Thus, the right to privacy and its security are crucial in the intrusive age of information technology that we live in today. Since data protection is not fully governed by a single legislation in India, other legislative acts must be cited to obtain the relevant legal provisions.

India's acknowledgement of the right to privacy has had a profound impact on data protection rules. The right to privacy highlights the significance of individual liberty, consent, and control over personal data. Because everyone has the right to privacy, extensive data protection frameworks have been built to safeguard personal data against unauthorized access, misuse, and abuse.

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<sup>16</sup> Privacy Rights in Digital Age, THE AMIKUS QRIAE (Aug. 24, 2023), <https://theamikusqriae.com/privacy-rights-in-digital-age/> (last visited Apr 23, 2024).