

Privacy in Technological Driven World

Sanjay Kannan B¹, Arun Kumar N², Gokul B³, Nithish Kumar NP⁴

^{1,2,3,4}Law Student, Bharath Institute of Law, Chennai

ABSTRACT

In this paper, we will examine how the constitution in the country violates the rights of privacy, and other aspects of public life in the name of surveillance. Whether the longest written constitution in the world protects the common people rights especially the privacy of individuals in this technological driven world. Generally, the role played by the judicial administrations and Law system in the country is to save the people from data theft of personal information but in India, one of the main difficulties in the constitution is flexibility in the actions and the constitution of India is out-dated in comparison with the recent advancements and technologies. The surveillance by the government for the security purposes of the general public via the internet and other mediums lead to large scale violation of the right to privacy. The new Act enacted in the year of 2023 for the personal data protection is also facing huge criticism because the government lacks the knowledge in the aspects of modern technology. Both the constitution and the government are not showing any interest to protect the citizen's privacy rights which is leading to various types of cyber-crimes.

Keywords: Privacy, Administration, surveillance, social media, technology.

INTRODUCTION

“Privacy is not something that I'm merely entitled to, it's an absolute prerequisite.” — Marlon Brando. The right to privacy means the right to be left alone ¹Data Protection and Privacy is an unsolved area in the Indian Society. The right to Privacy has been dealt under various judgement and several jurists have opined in this matter of Privacy. Personal Data Protection Bill, 2019² a new legislation has been passed by the Parliament. This paper focuses on the defects made by the government in the legislation. Further also several judicial procurement was observed. A comparative analysis among the world nations in the aspects of right to privacy, data protection and surveillance has been dealt in this paper. Privacy has to be protected by legislation in the upcoming society³.

HISTORY OF PRIVACY

“Privacy” is nothing but a synonym of *“Confidentiality”*; it is based on the principle of confidentiality. The history of privacy is rooted in the period of *“Aristotle”* in ancient Greek

¹ S. Warren and L. Brandeis, The Right to Privacy, 4 HARV.L.R. 193-220 (1890).

² Personal Data Protection bill, 2019 available at: https://prsindia.org/files/bills_acts/bills_parliament/2019/Personal%20Data%20Protection%20Bill,%202019.pdf. (last accessed on 28.10.2023 at 10:30 PM).

³ Aana Sharma, DATA PROTECTION, PRIVACY AND PROPOSED LAW IN INDIA: Tracing the Previous Challenges and Transition to the Bill of 2021, HPNLU Journal, ISSN:2582-8533, Volume II, 55, (2021).

philosophical theory and it is associated with political path as well as private activity. Before the year of 1890⁴ No treaties were formed for privacy, after modern technologies were founded, the importance of privacy was higher. In the year of 1960⁵ Vance Packard society was discourse the importance of privacy in USA⁶. The debates are continuously arising all over the world. Thus the privacy and freedom of private activities are shifted to government controls by the Universal declaration of Human rights – 1948. As the technologies are developed the “Right to privacy” becomes a fundamental right in all countries across the world.

RESEARCH QUESTIONS

1. DOES THE CONSTITUTION OF INDIA, SAFEGUARDS AND SECURES THE PEOPLE’S, PRIVATE INFORMATIONS VIA INTERNET?
2. WHETHER THE SOCIAL MEDIA NETWORK SAFEGUARDS THE PEOPLE INFORMATIONS AND THE INTERNET MEDIA ARE UNDER THE CONTROL OF GOVERNMENT IN PRESENT DAYS?
3. DOES THE SURVEILLANCE BY THE GOVERNMENT, IN INTERNET SYSTEM IS CONSTITUTIONALLY VALID AND HOW IT IS VIOLATING THE RIGHT OF PRIVACY?

[CHAPTER – I] CONSTITUTIONALITY & PROTECTION OF INFORMATION

1.1 RIGHT TO PRIVACY:

According to the constitution of India, the information and data of people is ambiguous and safe, since the violation of digital data theft is continuing in the country. Article 21⁷ The constitution clearly explains about the right to life and RIGHT TO PRIVACY. The right to privacy is nothing but, rule of privacy of personal information; whenever this right is getting violated it is considered as an offence under IT act 2000 and against the constitution of India.

The government of India took various steps to secure the data of the public but, the digital data theft is continuing still now. The data theft and the collection of information is mostly through social media networks ie,. You tube, Facebook, Instagram, etc.

1.2. PRIVACY AS A FUNDAMENTAL RIGHT

Until a few years before, there was a challenge about and clarity with respect to the right to privacy under the Indian Constitution. But, in 2017 the 9 -judge bench of the Supreme Court in *Justice K.S. Puttaswamy vs. Union of India* up hold the **right to privacy is a fundamental right**,⁸ and it is an integral part of the right to life and personal liberty under Article 21.

The constitution fails to protect the right of privacy by giving more power to the legislature to make laws for surveillance. And the violation of personal information is not protected by the constitution as well as the department of law and justice is also not aware of it. Even though the legislative and

⁴ The right to privacy book by Louis brandeis and Samuel D. Warren II.

⁵ William .I prosser <https://safecomputing.umich.edu/privacy/history-of-privacy-timeline> last accessed on (29.10.2023 at 11:30 am).

⁶ USA privacy act, <https://constitution.laws.com/right-to-privacy> last accessed 29.10.23 (12.30 pm).

⁷ Art. 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.

⁸ *Justice K.S. Puttaswamy vs. Union of India* writ petition (civil) no. 494 of 2012 www.main.sci.gov.in last accessed 29.10.23 (12.40 pm).

judiciary are making certain rules and regulations for the protection of citizen's privacy rights, the executive of state cannot fail to follow the same.

1.3. DATA MINING.

Most probably social media are most violative of personal privacy information. It is using the strategy or technique called **DATA MINING**.

In present days the social media networks are using their influence and they get public information without their permission or consent, through data aggregation and mining can hold some grave girding support. Data aggregation and mining deal straight with carrying stoner data through styles of supervision through covering credit card deals, internet hunt history, social media use, etc. and linking that data with other druggies to track their actions whatever they want.

Whoever is doing data mining by the use of social media like, *you tube, facebook, Instagram and telegram* etc, are most relatively taking and making a people's personal data like **name of the person, phone number, gender, locations** etc. By taking personal things, identities and information of people, it leads to the marketing of data to another company to sell their company products. Even one person giving his locations, gender like that in the social media, the company's preferring their ideas to the people for example: person watching a random video in a social media platform regularly, the preference of the viewer of the video and his choice of watching those videos is completely controlled by these companies by the collection of data of personal information. And at times the collection of data by data mining is going wrong because some cyber criminals are hacking the database and the software of social media which lead to the serious violation of privacy and paved the way for various types of cybercrimes.

1.4. DIGITALIZATION OF GOVERNMENT

The constitution of India safeguard public information according to the article 21 and IT act of 2000. The constitution gives more power to the government to enact a law for privacy, but some improper decisions like digitalization resulting in many evil effects are raised in the concept of digitalization of the country. Government and country law giving more freedom to the social media companies in the decision of public information. Now the people are on the internet and the negative effects of dark networks are high in present days. Smartphones usage is most high, and most probably running a risk of data being stolen by dark web users. And manipulation of digital data by media companies is very easy to spread fake information as well as the public information in the society as the internet being a social impacting such results in the sector of banking, education and healthcare. And websites can monitor public information tracing without the consent of people.

And the main evil of digitalization of government results from the digital transforming and disrupts of business objectives lets Cyber Attacks. And to the cyber frauds, they advertise their posters in the individual's phones without their permission, which results in several cybercrimes like data theft, phishing, money laundering and at times copyright infringement. Further, hacking social media platform of an Individual is more than enough for the cyber criminals **because all the personal details are available in that social media platform details like name ,gender, age, locations etc**⁹. These all make a free platform to breach privacy at a large scale.

⁹ Information about digitalization of India <https://digitalindia.gov.in/> last accessed 29.10.23 (12.40 pm).

Hence, the constitution of India safeguards a people's privacy and personal surveillance is just a statement; most practically there are more Cyber Attacks to the people after the digitization of government. As per the data of **CERT IN** Indian Computer Emergency Response team, a government agency which published a statement that, there are **1.3 million- Cyber Attacks are made in financial year of 2020 to 2022**¹⁰.

[CHAPTER – II] CONTROL OF GOVERNMENT - SOCIAL MEDIA

2.1 BIGGEST DATA THEFT

As per today's scenario social media networks failed to safeguard the people's personal information which they entered into their personal account. However social media like you tube, face book, Instagram etc., are controlling the preference and choice of the user by collecting the data of the user to improve their companies financial position. For example on march 2019, one of the world famous network company in the world **FACEBOOK, it has access to 600 million accounts**¹¹ of their company users , using the information of **user IDs and passwords of accounts**, this is the one of **biggest data theft in the world**. Indian constitution as well as the Indian legislations have failed to frame the rules and regulations for the operations of social media. Hence, the social media network never safe guards' public information and they are independently taking decisions in some situations, **most probably the Government cannot interfere in the privacy policy and terms and conditions of social media**.

2.2 SILENCE OF GOVERNMENT

In the year of 2021 the **dominos a food producing company had a cyber-attack** , resulted in the leakage of **18 crore order details, like name , email, address , phone number credit details etc.**,¹² This is a serious **violation of the right to privacy** , but the government of India never addressed this issue. In this scenario, the law and justice are not taking any actions against this particular matter and not even taking any precautionary activities to prevent the future violation of privacy. At times the judiciaries are laying down guidelines for the operations of social media networks through the case filed in the name of Writ petitions filed under Article 226 in High Court and under Article 32 in the Supreme Court of India.

COOKIES

The cookies is nothing but a term of digital identification of particular web page. Cookies are the only of choosing to selected (or rejected.) when the web sites that want to track usage of websites in usage. The cookies is to track your using preferences into improve and personalize of web browsing usage.

¹⁰ CERT – IN (Government of India agency) published a statement financial report -2020,2023.

¹¹ FACE BOOK data privacy news <https://www.tomshardware.com/news/facebook-employees-access-user-passwords,38890.html#:~:text=According%20to%20revelations%20Thursday%2C%20Facebook%20has%20kept%20the,indication%20that%20its%20employees%20accessed%20those%20passwords%20improperly> last accessed 29.10.23 (1.10 pm).

¹² The dominos a food producing company data leakage <https://www.indiatvnews.com/technology/news-dominos-employees-customer-data-leaked-by-hackers-18-crore-orders-on-sale-706621> . 29.10.23 (1.15 pm).

2.3 AADHAR INFORMATION LEAKAGE

According to the WEF global risk report, the main data theft in India is ‘AADHAAR’ information leakage in India. Above 130 million people's private information are breached by cyber-attack.¹³ Thus, the government of India failed to prevent the data theft of the public. Right to privacy was violated in this issue at a larger scale, but not even a single action taken by the government against the cyber-attack. Hence, the constitution has to be amended to bring a strong law for the protection of the right to privacy.

As per the report of IBM security report,

S.no	Financial year	Data breached	Different from one to another
1.	2020	13.9 cr	Increased
2.	2023	17.9 cr data	Increased, compared to 2020 Sensex.

(Source: IBM security report -2023).¹⁴

The constitution of India ensures right to privacy under Article 21, but the government is left to follow the duty in the matter of privacy. Though there are legislations like IT act 2000¹⁵, Personal data protection Act 2023 for the protection of privacy in this technological driven world but it lacks the important features to protect the privacy rights. Thus, the personal information and the data of users are not safe in the social media platforms and the respected social media companies are not in the control of the government. And it results in the violation of the right to privacy.

[CHAPTER –III] VIOLATION OF PRIVACY AND SURVEILLANCE BY GOVERNMENT

3.1 SURVEILLANCE BY THE GOVERNMENT

The surveillance by the government is a violation of “Right to Privacy”, the respective article is not against the government surveillance. The article states that the surveillance of the government is important but not at the cost of violating the right to privacy. The surveillance of the public without a proper source of protection and without a valid law, will be against principles of the constitution.

Government Broad surveillance is the extensive monitoring of a population as a whole or as a significant portion of it. and inspection, telephone tapping, free of charge intelligence, lawful surveillance without any form of precaution, and investigation authorized by the Indian Telegraph Act of 1885¹⁶ are all examples of mass surveillance which violated the citizen’s privacy rights by the government in the name of surveillance.

The world's largest democracy countries like the United States of America, European countries, Canada, South Africa accept and recognize the right to privacy and surveillance are equally weighed.

The government of India created the Aarogya setu application with tracking software for the surveillance of people with connection to mobile networks. During the COVID 19 pandemic situation, the government acted in the larger public interest and safety created the above mentioned application which collected the private information of people like name, location, gender etc. But the privacy policy and the security of the Aarogya Setu Application is not all properly maintained, and the data collected in

¹³ WEF global risk report ‘AADHAAR’ information leakage in India. <https://www.bbc.com/news/world-asia-india-42575443> (last accessed on 29.10.23 at 1.17 pm).

¹⁴ IBM security report -2023 <https://www.ibm.com/reports/data-breach> (last accessed on 29.10.23 at 1.25pm).

¹⁵ INFORMATION TECHNOLOGY ACT ,2000 <https://www.legalserviceindia.com/> (last accessed on 29.10.23 at 1.30 pm).

¹⁶ The Indian Telegraph Act of 1885 <https://www.legalserviceindia.com/> (last accessed on 29.10.23 at 1.34 pm).

the application is at the high risk of leakage. Hence, it is not safe to store the public information, because the government's application tracks data of people's name, age, phone number, gender, even travel history of individuals via surveillance of location.

3.2 DATA PRIVACY IN GLOBAL PERSPECTIVE

S.NO	COUNTRIES	LAW FOR PRIVACY PRODUCTION
1.	UNITED STATES OF AMERICA	Utah Consumer Privacy Act (UCPA),
2.	UNITED KINGDOM	The Data Protection Act 2018 is the UK's implementation of the General Data Protection Regulation (GDPR)
3.	CANADA	The Privacy Act, passed in 1983 by the Parliament of Canada,
4.	EUROPEAN UNION	General Data Protection Regulation (GDPR)1995 ¹⁷
5.	RUSSIA	The Russian Federal Law on Personal Data (No. 152-FZ) ¹⁸

3.3 RIGHT TO BE FORGOTTEN

In the technological driven world, everything is stored permanently i.e, nothing can't be erased which leads to the large scale violation of the right to privacy. Further, arguments over the right to be forgotten have raged for a very long time for which various judicial decisions and legislations have been passed in many parts of the world. And major countries in the world accepted that fundamental right to protection of personal data and to privacy encompasses the right to be forgotten. The ability of humans to restrict, de-link, remove, or amend the publication of private information on the internet that is deceptive, humiliating, or irrelevant is referred to as the right to be forgotten.¹⁹ It is important to note that the European Union's General Data Protection Regulation (GDPR)²⁰, a legal framework that sets guidelines for collection and processing of personal information of individuals within the European Union (EU) codified Right to erasure (Right to be forgotten).

In India, petitions related to 'right to forgotten' are heard by the Delhi High Court in Parvez Hayat V UOI and Laksh Vir Singh Yadav V UOI²¹: Sunil Jacob V UOI, before the Kerala High Court. In a modern development in the Indian legislations, Data Protection Bill, 2018, 2019, 2022²² has been passed in the houses of the parliament which talked about right to forgotten and finally after several amendments in the bills, in the year of 2023 THE DIGITAL PERSONAL DATA PROTECTION ACT,

¹⁷ General Data Protection Regulation (GDPR), 1995 https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en (last accessed on 29.10.23 at 1.45 pm).

¹⁸ Russian Federal Law on Personal Data (No. 152-FZ).

¹⁹ Information technology act, Law and practice author –Vakul Sharma, Seema Sharma 7 th edition 2021.

²⁰ European Union's General Data Protection Regulation (GDPR) https://commission.europa.eu/law/law-topic/data-protection/data-protection-eu_en last accessed 29.10.23 (1.40 pm).

²¹ Parvez Hayat Vs UOI , Laksh Vir Singh Yadav Vs UOI W.P. (C) No. 1021 of 2016.

²² Data Protection Bill, 2018 <https://legislative.gov.in/> last accessed 29.10.23 (2.10 pm).

2023²³ has been enacted which is currently facing many criticisms for missing out a lot of important features of personal data protection. More importantly the Act doesn't talk about the right to be forgotten which is associated with several other fundamental rights like right to privacy, dignity etc.

CONCLUSION

In this digital era there are several legislations enacted by our government for the protection of privacy of our citizens. But due to the advancement in technology and changing society the law finds several defects in itself. Further there are differences observed in the bill and the Act which got passed. The protection of data and protection of privacy is a crucial aspect and there is no appropriate legislation which clearly prescribes the time period in this aspect. In this Paper we conclude that the data privacy law has to be amended to meet current situation.

²³ THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 <https://legislative.gov.in/> last accessed 29.10.23 (02.30 pm).