

THE EVOLUTION OF THE RIGHT TO PRIVACY IN THE AGE OF DIGITISATION

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Abstract

*This has raised complex challenges regarding **data protection**, consent, surveillance, and algorithmic profiling. The right to privacy, recognized as a fundamental right by various constitutions and international conventions, now requires robust legal, ethical, and technological frameworks to safeguard personal autonomy and prevent misuse of sensitive data. This paper explores the evolution of privacy as a legal right, its intersection with data protection laws such as the EU GDPR and India's Digital Personal Data Protection Act, 2023, and the emerging threats posed by cybercrime, state surveillance, and AI-driven decision-making. It further examines global best practices, highlighting the need for a balanced approach that protects individual privacy while allowing for legitimate state and business interests in data processing. Ultimately, this study underscores the urgency of implementing comprehensive data governance models to ensure digital trust, security, and protection of human dignity in an increasingly interconnected world.*

Keywords: Right to Privacy, Data Protection, Digital Rights, Cybersecurity, GDPR, Digital Personal Data Protection Act (DPDPA), Surveillance, Algorithmic Profiling, Data Governance, Human Dignity, Cyber Law

INTRODUCTION

Human dignity connotes the basic idea that human beings possess an intrinsic and incomparable moral worth, in virtue of which they are worthy of respect or 'ought to be accorded a form of moral recognition.'¹ Immanuel Kant's "Groundwork of the Metaphysics of Morals" provides the most authoritative formulation of dignity.² In his book, Kant presents a conception of dignity that resonates with his own understanding of autonomy. Kant defines autonomy as the 'property of the will by which it is a law to itself. Thus, the contemporary understanding of autonomy involves not

¹ Dillon, R. S. (2020, September 16) Respect. Stanford Encyclopedia of Philosophy. <https://plato.stanford.edu/entries/respect/>

² Kant, I. (1996). Groundwork of the Metaphysics of Morals. (M. Gregor, Trans.) Cambridge: Cambridge University Press.

only the capacity to make individual choices but also the duty to respect others' choices. He opines that "*humanity itself is dignity*", and "one needs to be respected by another individual. Every facet of human life and human behavior is said to be in relation to the law."³ From this larger idea emanates the concept of privacy, which is an integral part of human beings' lives today and is attracting huge attention globally. The notion of privacy can be understood as the right to be free from any sort of intrusion.

Privacy is the quality or state of being secluded from the rest of the world. It has now attained the standard of a fundamental right under the Constitution of India. Privacy may be voluntarily sacrificed in exchange for rationale and perceived benefits, often prone to cyber threats and losses.

In this digital age, we are witnessing continual technical advancements and innovations globally. The internet has undeniably transformed societal communication, governmental services, and organizational engagement. A burgeoning interface exists between technology and society, where improved technologies aid in resolving and alleviating numerous challenges across several sectors, while simultaneously raising persistent concerns around human complacency and undue dependence on technology.⁴ Such reliance gives rise to cyber threats and data losses. These risks are mostly latent in nature, and the ones committing them are difficult to identify. Here comes "Cyber Law" at play, which almost comprehensively engulfs the laws concerning data privacy and protection.

³ E.J. Jathin '*Human Genome Project: Emerging Challenges of Right to Privacy vis-à-vis Insurer's Right to Know*' 2 (Vol. XXXI) (March-June) *C.U.L.R.* (Number 1&2) (D. Rajeev Edtr.),(N.S. Gopalkrishnan & A.M. Varkey (eds.) (2007).

⁴ Atin Kumar Das, '*Interface between Technology and Society: A Study of the Legal Issues*', 8 *Indian Journal Of Law And Justice* 120-127 (2017).

IMPORTANCE OF PRIVACY

In 1859, John Stuart in his essay "On Liberty"⁵, gave expression to the need to preserve a zone within which the "liberty of the citizen would be free from the authority of the state." In late 1890, Samuel D Warren and Louis Brandeis⁶ stipulated the need of "right to enjoy life which includes 'right to be alone'. The right "to be let alone" thus represented a manifestation of 'an inviolate personality', a core of freedom and liberty from which the human being had to be free from intrusion."

Article 12 of the Universal Declaration of Human Rights (UDHR), Article 17 of the legally enforceable International Covenant on Civil and Political Rights (ICCPR), and Article 16 of the Convention on the Rights of the Child (CRC) all guarantee the right to privacy. The right to privacy appears in numerous countries' constitutions and human rights declarations. Although it isn't mentioned specifically in the US Constitution, scholars deduce it from a number of clauses, notably the Fourth Amendment. According to it, everyone has the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." These all make privacy more necessary, and here are some justifications for its significance⁷.

1) Privacy rights prevent the government from conducting unnecessary surveillance on people (without cause)⁸-

Privacy is a limit on government power, as well as the power of Private sector companies. The more someone knows about us, the more power they can have over us. Personal data is used to make very important decisions in our lives. Personal data can be used to affect our reputations,

⁵ Mill, John Stuart, 'On Liberty' (3 ed., 1864). London: Longman, Green, Longman Roberts & Green

⁶ Harvard Law Review, Vol. 4, No. 5. (Dec. 15, 1890), pp. 193-220

⁷ <https://www.humanrightscareers.com/issues/reasons-why-privacy-rights-are-important/>

⁸ <https://unite.un.org/blog/why-privacy-essential-preserving-our-freedoms>

and it can be used to influence our decisions and shape our behavior. It can be used as a tool to exercise control over us. And in the wrong hands, personal data can be used to cause us great harm.

- 2) Privacy rights for social and political activities-** Privacy helps protect our ability to associate with other people and engage in political activity. A key component of freedom of political association⁹ is the ability to do so with privacy if one chooses.
- 3) Privacy rights help ensure against stealing or misuse data are held accountable-**

The unnecessary surveillance or the misuse of the authenticated information provided by the user under confidence should be prevented. Privacy rights being upheld accordingly by the government and private sector players helps in preventing such types of misuse and mishandling of data and information.

- 4) Privacy rights help maintain social boundaries-**

We maintain physical, social and informational boundaries, and we have an elaborate set of these boundaries for the many different relationships we have. Privacy helps people manage these boundaries. Breaches of these boundaries can create awkward social situations and damage our relationships. Privacy is also helpful to reduce the social friction we encounter in life.

- 5) Privacy rights help build trust-**

In relationships, whether personal, professional, governmental, or commercial, we depend upon trusting the other party. Breaches of confidentiality are breaches of that trust. In professional relationships such as our relationships with doctors and lawyers, this trust is key to maintaining candor in the relationship.

- 6) Privacy rights ensure we have control over our data-**

Personal data is used to determine whether we are investigated by the government, or searched at the airport, or denied the ability to fly. Indeed, personal data affects nearly everything, including what messages and content we see on the Internet. Without having knowledge of what data is being used, how it is being used, the ability to correct and amend it, we are virtually helpless in today's world. Moreover, we are helpless without the ability to have a say in how our data is used or the

⁹ <https://libguides.royalroads.ca/privacy/importance>

ability to object and have legitimate grievances be heard when data uses can harm us. One of the hallmarks of freedom is having autonomy and control over our lives

7) Privacy rights protect freedom of speech and thought-

Privacy is key to freedom of thought. A watchful eye over everything we read or watch can chill us from exploring ideas outside the mainstream. Privacy is also key to protecting speaking unpopular messages.

8) Privacy rights protect reputations i.e. right to be forgotten-

Privacy enables people to manage their reputations. How we are judged by others affects our opportunities, friendships, and overall well-being. Protecting reputation depends on protecting against not only falsehoods but also certain truths. Also, a person always has the right to claim his reputation when at stake. A wrong allegation can break the whole of the career opportunities for anyone hence, right to be forgotten is the primary right associated with the privacy rights.¹⁰

9) Ability to Change and Have Second Chances-

Many people are not static; they change and grow throughout their lives. There is a great value in the ability to have a second chance, to be able to move beyond a mistake, to be able to reinvent oneself. Privacy nurtures this ability. It allows people to grow and mature without being shackled with all the foolish things they might have done in the past.

10) Adherence to General Data Protection Regulations (GDPR)-

The GDPR was passed by the European Union and came into effect on 25th May, 2018. It lays down certain general privacy principles-

- “The right to be informed”
- “The right of getting access”
- “The right to rectification”
- “The right to erasure”
- “The right to restrict processing”
- “The right to data portability”

¹⁰ <https://gdpr.eu/right-to-be-forgotten/>

GENESIS OF RIGHT TO PRIVACY IN INDIA

In the ever-evolving landscape of human rights and digitization, the right to privacy and dignity has emerged as a cornerstone of modern constitutional jurisprudence. The roots of the right to privacy in India can be found in various constitutional provisions and judicial interpretations that evolved over time¹¹-

Commission and Reports: In 1971, the Law Commission of India's 42nd Report proposed to make a privacy law in India by legislating to prevent eavesdropping and unauthorized photography. This formula, adopted by the India Penal Code (Amendment) Bill, 1978, proposed a new chapter on privacy. However, it did not examine press freedom and it eventually lapsed. The Justice Shah Report on Privacy in 2012 recommended the passing of privacy legislation, in addition to identifying 57 specific existing sectoral and policy guidelines that have privacy implications and hence would need to be amended as the new legislation is passed.¹² A draft privacy protection bill was introduced in the Indian Parliament in 2014,¹³ which has taken the shape of the Personal Data Protection Bill, 2019, and thereafter as the Digital Personal Data Protection Act, 2023.

¹¹ Pradeep K.N. and Nandini D. Patil's, "The Interplay of Privacy and Dignity Rights under Indian Constitution", International Journal of Creative Research Thoughts ISSN: 2320-2882

¹² 'Report of the Group of Experts on Privacy', Gov't Of India Planning Comm'n, (16 October, 2012), http://planningcommission.nic.in/reports/genrep/rep_privacy.pdf

¹³ Dhiraj R. Duraiswami: 'Privacy and Data Protection in India', Journal of Law & Cyber Warfare, Vol. 6, No. 1 (Summer 2017), pp. 166-186 by- Lexeprint, Inc. <https://www.jstor.org/stable/26441284>

Preamble and the Vision of a Free and Just Society: The Preamble to the Indian Constitution lays down the objectives and guiding principles for the nation. It emphasizes justice, liberty, equality, and fraternity among citizens. The aspiration for justice and liberty laid the foundation for recognizing and protecting individual rights, including the right to privacy.

Article 21: Right to Life and Personal Liberty: Article 21 of the Indian Constitution explicitly guarantees the right to life and personal liberty to every citizen. It states that "No person shall be deprived of his life or personal liberty except according to a procedure established by law."¹⁴ The phrase "personal liberty"¹⁵ has been interpreted expansively by the judiciary to include a wide range of rights, including the right to privacy. The right is embodied under Part III of the Constitution of India which comprises Articles 14,19,21,25,28.

MP Sharma vs Satish Chandra (1954):¹⁶ The power of search and seizure by the State was held to be a reasonable restriction during the course of investigation. In this case, it was also argued that the right to privacy cannot be incorporated in the Indian constitution in the absence of a clause analogous to the Fourth Amendment to the US Constitution.

Kharak Singh v. State of Uttar Pradesh (1963):¹⁷ This was a seminal judgment that addressed the concept of privacy. While the court ruled that there is no fundamental right to privacy as such, it recognized that the right to personal liberty under Article 21 includes the right to privacy. Justice Subba Rao, in his dissenting opinion, emphasized the importance of privacy as a fundamental right, setting the stage for future developments.¹⁸

¹⁴ Dr. P K Agarwal and Dr. K N Chaturvedi's, "Constitution Of India", Prabhat Paperbacks, 2021 Edition, Pp-38

¹⁵ The Supreme Court held that personal liberty includes nothing more than physical freedom of body i.e. freedom from arrest and detention from false imprisonment or wrongful confinement in the case, A K Gopalan v State of Madras. <https://blog.ipleaders.in/protection-of-life-and-personal-liberty>

¹⁶ AIR 1954 SC 300

¹⁷ AIR 1963 SC 1295

¹⁸ Dr. J N Pandey's, "Constitutional Law Of India", Central Law Agency, 57th Edition, 2020, Pp-255

Govind vs. State of Madhya Pradesh (1975):¹⁹ The court observed that the domiciliary visits at night should be reduced to the clearest cases of danger to the community security and not routine follow-up at the end of conviction or release from prison or at the whim of a police officer. Hence, the Hon'ble Supreme Court accepted the right to privacy within a limited sphere and held it not to be an absolute right.

Rajagopal v. State of Tamil Nadu (1994):²⁰ The Apex Court held that the petitioners have a right to publish what they allege to be the life-story (autobiography) of Auto Shankar in so far as it appears from the public records, even without his consent or authorization. But if they go beyond that and publish his life story, they may be invading his right to privacy. The Constitution exhaustively enumerates the permissible grounds of restriction on the freedom of expression in article 19 (2), it would be quite difficult for courts to add privacy as one more ground for imposing reasonable restriction. The court observed that the right to privacy is implicit in the right to life and personal liberty guaranteed to a citizen under Art.21 of the Constitution, a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.²¹

District Registrar and Collector vs Canara Bank (2005):²², has significant implications for recognizing informational privacy, as it was held that an individual has a reasonable expectation that information provided to a third party will be used only for the purpose for which it was provided.

National Legal Services Authority vs Union of India (2014):²³ The apex court held that Article 21, which speaks of the rights to life and personal liberty, is the heart and soul of the Fundamental Right. Article 21 encompasses all elements of life that contribute to the purpose of a person's

¹⁹ (1975) 2 S.C.C. 148

²⁰ (1994) 6 S.C.C. 632

²¹ Rishika Taneja and Sidhant Kumar, 'Privacy Law, Principles, Injunctions and Compensation' (2014).

²² (2005) 1 S.C.C. 496

²³ (2014) 5 S.C.C. 438

existence. Article 21 safeguards human dignity, personal autonomy, and the right to privacy, among other things.

Justice K.S. Puttaswamy v. Union of India (2017):²⁴ In this historic judgment, a 9 judges bench of the Supreme Court unanimously ruled that the right to privacy is safeguarded as a fundamental right under Article 21. The court declared that privacy is an essential condition for the meaningful exercise of other guaranteed freedoms.²⁵

ROLE OF CYBER SECURITY IN DATA PRIVACY

Cybersecurity is the collection of technologies, practices, and processes aimed at shielding networks, computers, programs, and data from damage, attack, or unauthorized access. The 7 layers of cybersecurity should focus on the mission-critical assets you are trying to safeguard-

- 1) Mission Critical Assets – This is the information you have to safeguard.
- 2) Data Security – Data security controls guard the storage and transmission of information.
- 3) Application Security – Application security controls guard access to an application, an application's access to your mission-critical assets, and the security of the application internally.
- 4) Endpoint Security – Endpoint security controls guard the link between devices and the network.
- 5) Network Security – Network security controls guard an organization's network and inhibit unauthorized access to the network.
- 6) Perimeter Security – Perimeter security controls encompass both the physical and digital security practices that safeguard the business as a whole.

The Human Layer – Humans are the weakest link in any cybersecurity stance. Human security controls encompass phishing simulations and access management controls that safeguard mission-

²⁴ (2017) 10 S.C.C. 1

²⁵ <http://indiankanoon.org>

critical assets from a broad range of human threats, such as cybercriminals, malicious insiders, and careless users.²⁶

Cybersecurity and Data Privacy are rapidly evolving fields in India which need certain regulations to check upon. The major laws governing data privacy and cybersecurity in India are-

- Information Technology Act, 2000
- Digital Personal Data Protection Act, 2023

EMERGING TRENDS IN CYBER SECURITY AND DATA PRIVACY- With the passage of time, key trends in the data privacy landscape are emerging daily and exponentially. The new trends where this has an impact are-

- 1) Increased focus on Artificial Intelligence and machine learning
- 2) Blockchain Technology prevents risks from unauthorized personnel²⁷
- 3) Enhanced consumer rights
- 4) Expansion of Data Subject Rights
- 5) Global Law compliance
- 6) Stricter enforcement of laws and higher penalties

STRATEGIES FOR COMPLIANCE- With continuous evolution of data privacy landscape, the key strategies for compliance can be the following-

- 1) Conduct thorough data mapping
- 2) Implement robust security measures
- 3) Develop clear privacy policies
- 4) Provide employee training
- 5) Engage with privacy professionals

²⁶ "Digital Notes on Cyber Security", Department of Information and Technology, Malla Reddy College of Engineering and Technology, Telangana

²⁷ <https://thelegalschool.in/blog/cybersecurity-and-data-privacy>

CONCLUSION

“Privacy is an essential concept in the cyber world, where it is the ability of an individual or group to seclude themselves, or information about themselves, and thereby express them selectively. When something is private to a person, it usually means that something is inherently special or sensitive to them. The domain of privacy partially overlaps with security (confidentiality), which can include the concepts of appropriate use, as well as protection of information.

Cyberspace and technology are advancing at lightning speed; newer innovations and enhancements emerge even before the current ones have settled and stabilized. The use of cyberspace has become mainstream due to rapid technical breakthroughs. The internet proved to be an effective battlefield for cyber-attacks and psychological warfare by both state and non-state actors due to a lack of stringent legislation. There is a large amount of personal information exchanged via the internet as a result of technical advancements and increased usage, hence leads to cybercrimes.

In India, cyberspace has proven to be extremely beneficial. During the initial stages of the internet, cyberspace security was given relatively little thought, as most of the emphasis was given to expanding network connectivity with minimal cost. This was when the hackers succeeded in exploiting this vulnerability to cause interruptions, distortion, and damage. As the internet grew in popularity and provided ways leading to additional sectors such as e-commerce, e-finance, and

media platforms, cybercrime grew massively, prompting governments to establish multi-layered security systems and structures to combat the problem.

As long as India's law and polity remain ambivalent about the rights of the individual against the community, privacy law will suffer. By whatever term the law employs to describe the undefined claims of the community— public interest, public morality, public order, or national security—the price of frequently privileging these claims over the freedoms of the individual is the loss of privacy.”²⁸

Therefore, safeguarding India's digital ecosystem encompasses cybersecurity and data privacy. As India moves forward on the path of digital transformation, it is important to balance data protection and innovation.²⁹ This striding forward would require holistic and collaborative efforts amongst individuals, Government agencies and relevant stakeholders, as it would be a dynamic pathway to build upon.

²⁸ “Legal Perspective of Data Protection In India With Special Reference To Data Protection Bill, 2019”, dissertation submitted by Divya Singh, Faculty of Law, University of Lucknow