



EXAMINING PRIVACY RIGHTS IN INDIAN SOCIAL MEDIA : A CONSTITUTIONAL ANALYSIS

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Exploring the Right to Privacy in Social Media under the Indian Constitution

ABSTRACT:

The right to privacy in social media is a fundamental concern in today's digital age. Users share personal information, photos, and thoughts on platforms, often unaware of potential invasions. This abstract explores the evolving landscape of privacy in social media, emphasizing the need for robust regulations and user awareness. Balancing the benefits of connectivity with safeguarding individual privacy is a delicate task. Analyzing the legal and ethical dimensions, this paper delves into the challenges and solutions surrounding this crucial aspect of the digital world. Protecting the right to privacy in social media is a pressing issue that requires immediate attention and action.

A. Introduction

According to J.S. Mill

“Privacy is an aspect of liberty grounded on permanent interest of man as a progressive humanbeing”

Media has entered every phase of Man's life connecting him to global world .Most Popular these days are social media platforms these have become most preferred means of sharing information. Most importantly to share and create awareness about the contemporary social issues..Social Media has become the vital source of information especially for young people

This is where the right of privacy creeps in. Right of Privacy is a fundamental right granted to every citizen of India under Article 21 of Indian Constitution.Privacy shall not be only protected in the physical world but also in cyber world. The use of Internet and social media has increased in India owing to availability of smart devices and lower internet tariff and worldwide connectivity. Social Media has 2 dimensions on one hand it provides a platform to freely express oneself to a large audience and on other hand poses risk of exposure of sensitive personal data of users

B. International Perspectives of Privacy Laws²

The right to privacy is a fundamental human right recognized and protected at the international level through various treaties, conventions, and declarations. Here's an international perspective on the right to privacy:

International Privacy Frameworks: International agreements and frameworks, such as the Budapest Convention on Cybercrime and the Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data, facilitate cooperation and harmonization of privacy protections across countries.

1. Universal Declaration of Human Rights (UDHR): Adopted by the United Nations General Assembly in 1948, the UDHR states in Article 12 that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation." This declaration serves as a foundational document affirming the right to privacy on a global scale.

2. International Covenant on Civil and Political Rights (ICCPR): This treaty, which came into force in 1976, includes provisions protecting the right to privacy. Article 17 of the ICCPR provides that "No one shall be subjected to arbitrary /discretionary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour/glory and reputation/popularity." It emphasizes/stresses that privacy is not an absolute right and can be restricted under certain circumstances, but such restrictions must be lawful and necessary.

C. Evolution of Right to privacy in India

The evolution of the right to privacy in India has been a progressive and transformative journey, with key legal and constitutional developments contributing to its recognition and protection.

Here is a chronological overview of the history of the right to privacy in India:

The evolution of privacy in India is a story of legal interpretation and adaptation to changing societal needs. Initially absent from the Indian Constitution, the right to privacy has been recognized as a fundamental right, predominantly rooted in Article 21, which guarantees the right to life and personal liberty. Landmark cases, particularly "Puttaswamy

Union of India" in 2017, declared privacy as a fundamental right, affirming that it is intrinsic to personal liberty.

These judicial pronouncements have shaped the contours of privacy protection in India, emphasizing its importance in various facets of life. Privacy is particularly relevant in the digital age, with the Indian government introducing data protection laws and regulations to safeguard sensitive personal data. Additionally, international human rights treaties, to which India is a signatory, have contributed to the development of privacy jurisprudence.

The right to privacy is now firmly established in India's legal framework and is vital in addressing issues such as data protection, surveillance, and government policies that affect individual privacy. Its evolution underscores the dynamic nature of constitutional law and the ongoing efforts to balance personal liberties with the demands of a rapidly changing world.

The recognition of the right to privacy as a fundamental right in the Privacy Judgment was a significant milestone in India's legal history. It underscored the importance of privacy in safeguarding individual dignity and personal liberty, particularly in the context of advancing technology and digital communication. The right to privacy continues to evolve and be refined through ongoing legal developments and cases in India.

This recognition of the right to privacy as a fundamental right has significant implications for privacy in the context of social media and digital technology.

D. Influence of Social media on Youth

The influence of social media on youth depends on various factors, including how it's used, the content consumed, and the level of awareness and guidance provided by parents, educators, and society. It's important to promote digital literacy, responsible usage, and open conversations about the potential benefits and risks of social media for young people. Social media has a significant influence on youth, both positive and negative. The key ways in which social media impacts young people.

• *Positive Influences:*

- a. Information and Education: Social media provides access to a vast amount of information and educational content, allowing youth to learn about a wide range of topics, from academic subjects to life skills.
- b. Connectivity: It helps young people connect with friends and family, even when separated by geographical distances.
- c. Creativity and Expression: Social media platforms enable youth to express themselves creatively through photos, videos, and writing, fostering self-expression and artistic development.
- d. Networking and Opportunities: Social media can open up opportunities for young people to network, find jobs, and connect with mentors in their areas of interest.
- e. Social Activism: Many youth use social media to raise awareness and advocate for social and environmental issues, making a positive impact on their communities and the world.

Negative Influences:

- a. Cyberbullying: Social media can be a platform for cyberbullying, leading to emotional distress, anxiety, and depression among youth.
- b. Mental Health: Excessive use of social media has been associated with mental health issues, including feelings of inadequacy, anxiety, and loneliness.
- c. Privacy Concerns: Many young people may not fully understand the privacy implications of their online presence, potentially leading to personal information exposure.
- d. FOMO (Fear of Missing Out): Youth may experience FOMO, feeling left out or inadequate when comparing their lives to the curated, often idealized, content of their peers.
- e. Addiction: Social media can be addictive, leading to a negative impact on academics, relationships, and overall well-being.
- f. Online Predators: There is a risk of youth encountering online predators who seek to exploit their vulnerability.

These concerns have led to discussions and debates, both within the government and among civil society, on how to strike a balance between freedom of expression and protecting privacy and preventing harm on social media platforms in India. It's essential to keep up with the latest developments and regulations related to social media and privacy in the country.

E. Right to privacy under the Indian Constitution:4

Privacy is not explicitly mentioned in the original text of the Indian Constitution, but it has been inferred and recognized as a fundamental right by the judiciary. The right to privacy is primarily based on Article 21 of the Indian Constitution, which protects the right to life and personal liberty. Here's how privacy is related to the Indian Constitution:

- **Article 21 - Right to Life and Personal Liberty:** Article 21 states that "No person shall be deprived of his life or personal liberty except according to procedures between the convenience of social media and the protection of privacy. established by law." The Supreme Court of India has interpreted this article to include the right to privacy as an essential aspect of personal liberty.
- **Other Fundamental Rights 5 :** Privacy is also intertwined with other fundamental rights in the Indian Constitution. For instance, it is linked to freedom of expression (Article 19), freedom of movement (Article 19), and protection against discrimination (Article 15). Violations of privacy can impact these other fundamental rights as well.
- **Data Protection Legislation:** The Indian government has introduced data protection laws, such as the Personal Data Protection Bill, which aim to regulate the processing of personal data and safeguard individual privacy rights.
- **The recognition of the right to privacy as a fundamental right under the Indian Constitution** signifies its importance and applicability in various contexts, including issues related to surveillance, data protection, and government policies that may impact individual privacy. It is a dynamic area of constitutional law, and legal developments continue to shape and protect the right to privacy in India.

F. Social Media and Privacy Right and Concerns

In India, the relationship between social media and the right to privacy is complex. While individuals have a constitutional right to privacy, social media platforms often collect vast amounts of personal data, raising concerns about data security and misuse. The Indian government has also introduced regulations to govern the behavior of these platforms, including intermediary liability rules and data localization requirements. Users are encouraged to exercise caution and understand privacy settings. Striking a balance between the convenience of social media and the protection of privacy is an ongoing challenge in the Indian context.

Social media and privacy concerns are relevant in India, as in many other countries. Here are some common privacy concerns related to social media in India:

- a. **Data Privacy and Security:** Concerns about how social media platforms collect and safeguard user data, especially in light of data breaches and cyber threats.
- b. **Government Regulations:** The Indian government has introduced various regulations affecting social media platforms, such as the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which impact issues like user data storage and content moderation.
- c. **User Data Usage:** Concerns about how social media platforms use user data for targeted advertising and whether users have adequate control over their data.
- d. **Misuse of Personal Information:** Instances of personal information being misused on social media, including doxxing and harassment.
- e. **Fake News and Disinformation:** Concerns about the spread of fake news and disinformation on social media platforms, leading to potential societal and political consequences.
- f. **Privacy Settings and Awareness:** Issues related to user awareness of privacy settings and controls on social media platforms.
- g. **Legal and Ethical Challenges:** The legal and ethical aspects of privacy, content moderation, and user rights on social media in India.

G. Privacy Laws in India

This has significant implications for social media use, which routinely collects large amounts of user data. Social media platforms thriving on an economy of data, analyzing user behavior to provide targeted advertising. The monetization of personal data raises serious privacy concerns. Regulations are required to ensure transparency and consent in the manner personal data is used by social media companies.

Privacy laws vary from country to country, and they encompass a range of regulations and legal principles designed to protect individuals' personal information and their right to privacy. Below, is an overview of some common types of privacy laws and principles

Information Technology Act 2000

The Information Technology Act, 2000 (ITA 2000) and its subsequent amendments, such as the Information Technology (Amendment) Act, 2008, The Indian government has framed various rules and regulations under the ITA 2000 to address specific issues, including privacy. For example, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, provide guidelines for the protection of sensitive personal data. are important pieces of legislation in India that address various aspects of information technology and electronic communication. These acts have provisions related to privacy and data protection.. *Data Protection and Privacy:* The ITA 2000, as amended, includes provisions for data protection and privacy, particularly in sections 43A and 72A. These sections deal with the protection of sensitive personal data and the punishment for disclosure of information in breach of a lawful contract. However, these provisions are not as comprehensive as subsequent data protection legislation. The ITA 2000, as amended, also requires that companies and entities handling sensitive personal data or information are required to implement reasonable security practices and procedures and report data breaches to affected individuals and the government. The ITA 2000 includes provisions for digital signatures and certificates, which play a role in securing online transactions and protecting the privacy and integrity of electronic documents. It's worth noting that the ITA 2000 was enacted before the right to privacy was explicitly recognized as a fundamental right under the Indian Constitution. While the ITA 2000 addresses certain aspects of privacy and data protection, India has been working on a more comprehensive data protection law, the personal Data Protection Bill

- Telecommunications and Electronic Communication Privacy Laws: These laws regulate the interception of electronic communications, such as emails, phone calls, and text messages. They often require authorities to obtain warrants for surveillance and protect the confidentiality of communications
- Children's Online Privacy Protection Act (COPPA): COPPA in the United States focuses on protecting the online privacy of children under 13. It requires parental consent for the collection of personal information from children and mandates specific privacy practices for websites and online services directed at children.
- Consumer Privacy Laws: These laws protect consumers from intrusive marketing practices and unwanted communications. Examples include "Do Not Call" registries and regulations governing unsolicited emails (spam).
- It's important to note that the specifics of privacy laws can vary significantly from one jurisdiction to another. Understanding the privacy laws that apply to respective location or the location of the data handling is crucial to ensuring compliance and protecting individuals' privacy rights.

Data Protection Bill

The Supreme Court directed the Union Government to create a robust data protection regime to regulate both private entities and state agencies. In July 2018, the five-member committee headed by Justice B.N. Sri-krishna released the Personal Data Protection Bill based on their one- year study. The bill upholds informational privacy by introducing requirements like data localization, collection limitation, purpose limitation, and mandatory notice for consent. The bill categorizes certain types of personal data as sensitive data and provides higher protection for those. It also introduces penalties for data breach.

The bill has received mixed reactions so far. Experts have criticized its broad exemptions for government agencies from following data protection regulations. This dilutes privacy safeguards against mass surveillance. There are also concerns that data localization requirements can negatively impact the growth of the digital economy. However, the bill is still under consideration and is likely to undergo several revisions before becoming law. Robust data protection legislation balancing privacy, innovation, and security concerns is the need of the hour.. This bill, once enacted into law, will provide more robust and detailed provisions for the protection of privacy and personal data.

Social media platforms also need to enhance privacy protections for users proactively. With increasing public discourse happening on social media, privacy controls become necessary to protect free speech. hacking, identity theft, targeted harassment, and bullying are some key dangers./Main Risks. Social media companies should provide granular settings to allow users to control who can view their information. End-to-end encryption for messages is another useful safeguard against data leaks. The growth of the digital economy should not compromise fundamental privacy rights.

H. Judicial Pronouncements

The right to privacy has become a highly debated issue in India with the rise of social media and increased digital connectivity.

- I. In *Kharak Singh v. State of Uttar Pradesh*⁶ The Supreme Court acknowledged that privacy is a part of the right to personal liberty under Article 21.
- II. *Gobind v. State of Madhya Pradesh*⁷ affirmed the right to privacy, emphasizing its role in protecting personal freedoms and controlling the dissemination of personal information.
- III. *Justice K.S. Puttaswamy (Retd.) v. Union of India*⁸ This historic judgment, often referred to as the "Privacy Judgment," recognized the right to privacy as a fundamental right under the Indian Constitution. The Supreme Court declared that privacy is an intrinsic part of Article 21 and other freedoms guaranteed under Part III of the Constitution. This judgment reaffirmed the significance of

- the right to privacy in the digital age. The Puttaswamy judgement also has consequences for state surveillance. It emphasized privacy as a right against the state and limiting governmental powers to curtail privacy.
- IV. Aadhaar Judgment: In a subsequent case related to the Aadhaar biometric identification system, the Supreme Court upheld the importance of privacy rights and set limitations on how Aadhaar data can be collected and used, emphasizing that it should not violate the right to privacy. The court ruled that privacy is essential for the exercise of other freedoms and that collection of personal data without consent violates the right to privacy.

I. Conclusion

In conclusion, the right to privacy judgement by the Supreme Court firmly established privacy as an integral part of the right to life under Article 21. This has wide-ranging implications for social media use and data protection in India. Robust legislation and regulatory frameworks are required to enhance privacy safeguards for citizens, upholding constitutional ideals. The Personal Data Protection Bill currently under deliberation has the potential to be a landmark privacy law if the right balance between innovation, security and privacy is struck. Social media platforms also need to prioritize user privacy and consent. With prudent regulation and technology safeguards, India can become a global leader in protecting digital privacy rights.

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