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RIGHT TO PRIVACY AND SURVEILLANCE

~ *Pranjal Arora*

ABSTRACT

The Indian Constitution declared privacy to be a fundamental right of every Indian citizen in August 2017. This was ensured by the ruling rendered by the Supreme Court of India's Constitutional Bench, which consisted of nine judges. In the Mukul Rohatgi case from 2015, the then-Attorney General said there was no constitutionally protected right to privacy. However, a 9-judge Supreme Court panel disagreed, ruling that the Constitution does guarantee the fundamental right to privacy. In addition, the 2017 verdict in the cases of Kharak Singh and M.P. Sharma declared that the Indian Constitution does support a right to privacy. The Right to Life and Personal Liberty is guaranteed by Article 21 of the Indian Constitution, as well as the Fundamental Rights, which are listed in Part III of the Constitution. This demonstrates to us that, as of that point, any illegal interception of stored, received, or transmitted data by an unauthorised entity that results in a violation of the right to privacy is to be considered.

Since the 2008 Mumbai terrorist assault, a variety of data sharing and surveillance mechanisms have been put into place. Public safety and security were the main drivers for the development of such programmes, which aimed to reduce crime and terrorism.

The Central Monitoring System (or "CMS") was created to allow Law Enforcement Agencies (or "LEAs") to intercept communications. In addition to CMS, other government surveillance programmes include the CCTNS Project, NATGRID, and Lawful Intercept and Monitoring ("LIM") systems. The construction of such programmes has two goals in mind: first, mass communication interception, and second, access to keyword searches and user data.

KEYWORDS

- Right to Privacy
- Surveillance
- Data Privacy
- Privacy Laws
- Digital Surveillance
- Privacy Rights
- Government Surveillance

INTRODUCTION

In order to preserve the state's integrity, security, and sovereignty, surveillance is a crucial instrument. It also aids in the detection and investigation of these crimes. The State, however, has unrestricted access to the residents' private life due to the lack of any Data Protection laws and the millions of monitoring warrants.

Whether the right to privacy is a basic right under the Constitution of India wasn't apparent up until 2017. The right to privacy is a basic right under Articles 14, 19, and 21 of the Indian Constitution and should not be violated unless it is required to defend the sovereignty and integrity of the State, according to the Supreme Court's landmark ruling in *K.S. Puttuswamy v. Union of India*.

Despite the fact that the right to privacy has been recognised as a basic right of the people, interceptions and monitoring can still be authorised by the relevant law enforcement authorities with little to no oversight of their operations. Due to national security concerns and the fact that those being watched would not be aware of their monitoring, there is no chance for court review of the orders when they are made, eliminating any chance for legal challenge.

This results in a situation where the government is now able to monitor and intercept communications as it pleases. It is not helpful that there is no data protection legislation.

K.S. PUTTUSWAMY VS UNION OF INDIA [RIGHT TO PRIVACY JUDGMENT]

In a significant ruling named *K.S. Puttuswamy Vs. Union of India* [2017 (10) SCC 1], the Supreme Court of India ruled that the right to privacy is a basic fundamental right. Additionally, it was decided that Part III's Fundamental Rights, which guarantees freedom, and Article 21's Right to Life are both inextricably linked to the right to privacy.¹ The Court ruled that because privacy is a component of human dignity and is consequently an unalienable natural right, it is not distinct from the other freedoms granted under section III of the Indian Constitution. Regarding the beneficial and bad aspects of privacy, the necessity for the State to inadvertently invade people's private, and the necessary for a legal framework to prevent others from doing so, the ruling made other significant observations.

According to the ruling, Part III of the Indian Constitution (the chapter on basic rights) is governed by the standard of reasonableness. According to the rights that could be violated, the Court concluded that a range of tests should be used.

This essentially means that if the State acts arbitrarily, the rights protected by Article 14 of the Constitution will be violated, and any such violation must satisfy the test of not also violating the stated Article. Similar to how public order and obscenity are prohibited, private intrusions that violate the freedoms provided by Article 19 would also be subject to those laws. According to Article 21 of the Constitution, any interference with a person's life or liberty must be just, fair, and reasonable.

The verdict stipulates that there should be an effective data protection legislation, that such law should attempt to realise a legitimate state goal, and that the proposed action must be required for preserving a democratic society, to sum up its conclusions. To guarantee that the level of interference is appropriate for the situation's demands, there should also be a reasonable connection between the goals and the strategies used to attain them. The last observation was that safeguards against the misuse of State involvement is a must.

MALAK SINGH VS. STATE OF PUNJAB

In this instance, police were required to keep a surveillance registry of every convicted individual and anybody who was conceivably thought to be a persistent criminal under Section 23 of the Punjab Police Rules. According to the Court, the Constitution's primary goal is to deter crime. The court held that the surveillance might be obtrusive, invade someone's privacy, and violate Article 21 and Article 19(1)(d), which are illegal violations. The court cited the European Convention on Human Rights, which said that respect for one's private and family life should be accorded.³

The court additionally stated that, as long as it is done in accordance with Rule 23.7, police monitoring is not illegal. According to the court's ruling, police cannot add the names of any individual they choose to the monitoring register; instead, they must do so in accordance with Rule 23.4 and without violating the person's dignity. If there is too much surveillance, the court will not think twice about providing the victim with protection.

Although the court in this instance did not specify regard privacy to be a basic right, it did note that substantial invasions of privacy have an impact on personal freedom and the right to free movement under Article 19(1)(d) and Article 21. According to the court, interference with a person's dignity would prevent them from exercising their constitutionally guaranteed rights.⁴

RIGHT TO PRIVACY IS NOT ABSOLUTE

However, the right to privacy of a person can only be compromised in such extreme conditions. The IT (Procedure and Safeguards for Interception, Monitoring, and Decryption of Information) Rules, 2009 were passed by the central government, enabling the Secretary in the Home Ministry/Home Departments to give permission to organisations to intercept, decrypt, or monitor electronic data or Internet traffic. An Indian government official not below the rank of Joint Secretary may provide such consent in an emergency. The significance of reserving such rights to conduct surveillance in the present, when bogus news and unlawful acts like cyber terrorism on the dark web are on the increase, cannot be understated.

In order to begin or request authorization for an interception by State authorities, there must be some justifiable foundation or concrete proof. In the US, this is the situation. Any action without such support would be ruled by courts to be arbitrary or an infringement of someone's right to privacy. As a result, the defined procedure's structure must be followed, and its execution must correspond to both its text and its spirit. Any departure from the moral and legal bounds established by the legislation would amount to a willful infringement of residents' privacy, turning India into a surveillance state.

In the "interest of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence," the Indian Constitution places reasonable limitations on the right to privacy.

CONCLUSION

According to Article 21 of the Indian Constitution, the right to privacy is a prerequisite for the rights to life and to personal liberty. The right to privacy is not absolute; it may be subject to reasonable restrictions for the prevention of crime, public disorder, and the protection of others. However, it may also result from other types of relationships aside from contractual ones, such as business, marital, or even political ones. In the event of a conflict between these two derived rights, the right that advances public morality and public interest will take precedence.

Every person is morally entitled to the right to privacy. The Indian judicial system somewhat concurs with this. While recognising privacy as a component of the fundamental right to life, it has also established some logical restrictions on how that right may be exercised. The competing principles of personal freedom and national security are brought into harmony as a result. However, this has also unintentionally created a grey area where the right to privacy application calls for certain standards. Examples of such attempts include the PDP Bill, the ICCPR, the B.N. committee proposals, etc. Thus, strict adherence to these solutions is required.

BIBLIOGRAPHY

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