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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **THE RIGHT TO PRIVACY AND DIGITAL ERA IN INDIA**

AUTHORED BY - YAMAK SHARMA

## **An abstract**

In this age of digitization, where the line between public and private spheres is blurring with each new technical advancement, the concept of privacy is confronted with challenges that have never been seen before. In this abstract, the dynamic nature of privacy rights in the digital sphere is investigated, with a particular focus placed on the intricate link that exists between technology, personal agency, and legal institutions.

The techniques by which personal information is obtained, evaluated, and distributed have undergone a substantial transformation as a result of the proliferation of internet access, the creation of data-driven services and smart devices, and the ubiquitous availability of internet connection. In addition to enabling amazing convenience and connection, these technological breakthroughs also give rise to considerable apprehensions around the protecting of individuals' private rights.

One of the most important aspects of the discussion around privacy in the digital age is the tension that arises between the use of personal data and the liberty of the individual. Interactions that take place online generate enormous volumes of data, which may be utilised for individualised recommendations, targeted advertising, and the development of new services. On the other hand, the use of personal data that is not controlled has the potential to increase the likelihood of surveillance, bias, and the violation of fundamental rights.

## **1. An Overview**

Under Indian jurisprudence, the idea of the "right to privacy" is a peculiar fusion of well-established, formal, and universal legal concepts that are spread among numerous fields of law. This is because the "right to privacy" is widely recognised as a fundamental human right. There is a perception that it is an upgrade that is an intrinsic part of legal legislation since it is seen to be an inherent entitlement. One's perception of it is that it is a representation of the progressive

growth of fundamental possibilities and shared rights, and



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that it is an inherent component of our well-established claim to life and liberty. It is commonly acknowledged that it is necessary, despite the fact that it has not yet developed into a distinguishable autonomous entity. This is due to the fact that its absence might potentially inhibit the creation of an efficient social system. In this way, it is a representation of the acknowledgment of the privilege of extraordinary significance and likelihood, so providing a different dimension to the law that governs our electoral and welfare systems. The origin, development, and acknowledgment of this privilege are all examples that demonstrate the adaptability and evolution of our laws, which brings the law closer to the lives of individuals. The development of innovative ideas, such as the right to security, is persuasive proof that our legal system is already in place, that it functions effectively, and that it is not static.

It is possible that India's limited exposure to the first repercussions of developing technology helps to explain, at least in part, the country's divergence from the worldwide evolution of privacy jurisprudence. India remained a geographically remote colonial outpost of the British Empire throughout a time period that was marked by the widespread usage of portable cameras and telegraphs in various sections of the world. Following the deployment of these innovative technologies in Western areas, the introduction of these technologies to the coast of India resulted in limited consequences. This was due to the fact that the ramifications of these technologies for consumers' privacy had previously been thoroughly understood. Consequently, by the time they were deployed in India, the law that was relevant to their activities had already been enacted, with a particular emphasis on safety. The Indian government continues to put into effect laws that were enacted during the colonial era. These laws include the Indian Penal Code (IPC) and the Indian Telegraph Act, both of which have legal provisions that are explicitly designed to protect individuals' privacy.

In light of the fact that the Constitution does not contain a privacy order, it may be deduced that the state is not expressly bound to implement legislation that is designed to protect private information. Certain legislative measures have been put into effect by the government in order to fulfil this constitutional mandate. At the present time, India has implemented a number of traditional legislation in order to protect the privacy of persons.

In a similar vein, the constitutional provisions have served to offer a guarantee for this specific liberty. There are a number of other laws that either directly or tacitly respect the right to privacy, in addition to personal rules and constitutional constraints concerning privacy. Since this is the case, the pages that follow will attempt to address each criterion separately. As a consequence of this, there is currently no Sui-Janis legislation in India that protects individuals' privacy through the use of deceit in a variety of circumstances. Several laws that cover a wide range of topics, including "banking and money," "proficient morals of legal professionals," "doctors," "CA (chartered accountants)," "information technology and telephony," and others, contain provisions that either expressly or implicitly protect individuals' privacy or provide contingency measures in the event of a breach.

## 2. Provisions of law that pertains to the right to privacy

### Telegraph Act

With the establishment of the Telegraph Act, a broad framework for restricting telephonic communication was established. The goal of this legislation is to prohibit and penalise any unauthorised intervention into communication as well as any modification of communications that are conveyed over the Telegraph. The administration and regulation of electronic communications in India are governed by this legislation, which acts as the framework for the whole system. The particular actions that must be done in the event of a violation of the legislation are described in section 5 (3) of the statute, in combination with Rule 419-A of the Telegraph (Amendment) Rules, 2007.

"any public emergency or due to a legitimate concern for public safety" is the phrase that describes the circumstances under which this act permits any authorised government agency to halt transportation. Exchanges may be subject to interference during "public crises" or "in light of a legitimate concern for public welfare," as stipulated by the Telegraph Act. However, such restrictions must be justified by legitimate concerns for a variety of reasons, including India's influence and credibility, national security, diplomatic relations with foreign nations, public demand, and to prevent the incitement of violations through the use of such restrictions. A number of departments have adopted these all- encompassing and enigmatically reasonable aims for reconnaissance as a component of their organisational structure. In general, the idea

of public integrity or security is well-



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defined. Certain categories of entertainers working in the field of law enforcement are prone to being targeted and used for the purpose of releasing information that is not essential, which has the effect of negatively harming both transparency and accountability.

Over the course of 1996, the Supreme Court of the United States made the observation that the provisions of the Telegraph Act lacked "procedural safety" and provided only limited rules about interruptions. In 2007, Rule 419A was added to the Telegraph Rules, which resulted in the establishment of the rules. In accordance with the Code, this regulation describes the procedures that should be followed in order to minimise interruptions. In addition, the aforementioned regulation was observable in the standards that were suggested in the Information Technology Act of 2009.

A group of specialists was established by the public authority in 2012 with the purpose of putting together a report on the recognition of privacy concerns and the dissemination of information on privacy regulations. An examination of "the Telegraph Act and the Information Technology Act" was carried out by a group of specialists for the purpose of their research. They discovered major disparities in two respects: the amount of support and the way in which the data that was gathered was handled. According to the report that was compiled from the discussion, these discrepancies have led to the formation of an administrative system that is not only unclear but also complicated, open to manipulation, and lacking a feasible solution.

In the case of PUCL vs. UOI, the highest court made the remark that the right to life and personal liberty, as defined in Article 21, is regarded to include the ability to listen in on phone calls as a basic component. The privacy of an individual is being violated in a substantial way by this. With the exception of situations in which there is a public emergency or a compelling necessity to safeguard public security, the state is not required to enforce Article 21 of the Constitution. The decision that was handed down by the highest court, which was presented by a panel that included Justice and consisted of two justices. This is Sagir Ahmed and J. The basic right to privacy, as outlined in Article 21 of the Constitution, is highly prized by Indian citizens and other persons. Kuldeep Singh exhibits a great dedication to protecting this important right. The court came to the conclusion that the development of more complex



communication technology is leading to a mismanagement of the capacity to have phone conversations without jeopardising the safety of one's home or place of work. The court will provide thorough directions for the execution of jurisdiction, which will embrace a broad scope of authority as required by relevant law. This will be done in light of the issues that have been described above.

The Court formulated comprehensive regulations to regulate the manner in which the State is required to use prudence in accordance with Section 5 of the Indian Telegraph Act.

While the "Home Secretary of the Central government" is the only person who has the authority to issue a directive for "phone tapping," there is also the possibility that the force could be assigned to an official of the "Home Department of the Central and State government" rather than being subordinate to the office of the "Joint Secretary."

Within a week following the directive's promulgation, the "Review Committee" will send out a copy of the directive in duplicate form.

Unless it is renewed, the request will no longer be effective after a period of two months from the day it was issued, unless it is renewed. If it is determined that it is essential to proceed with the request that is related to Section 5(2) of the Act, the authority that is making the request may undertake a survey prior to the time that has been designated.

It is the responsibility of the commanding authority to keep records of prohibited transactions, including the completeness of the information that is to be disclosed, the number of persons involved, and the identity of those individuals to whom the information is disclosed.

In accordance with the provisions mentioned in Section 5(2) of the Act, the use of the restricted material will be restricted to the essential foundation.

In accordance with the provisions of Section 5(2) of the Act, the Review Committee will, within a period of two months, carry out an impartial investigation in order to ascertain whether or not a pertinent request has been submitted.

The request will be disregarded by the Review Committee in the event that it is determined that there is a contradiction between the provisions that are described in Section 5(2) of the

Act. Furthermore, it is able to ensure that duplicate copies of the content that has been collected are removed as easily as possible.

It is the responsibility of the Review Committee to document the decision in accordance with the relevant sections of the Act if it is determined that there is no contradiction with those requirements.

The requirements for legal accreditation or "oversight" are not included in either the Telegraph Act or the Information Technology Act in India. A formal request must be made to the Secretary to the Ministry of Home Affairs at the Central level and the Secretary to the Ministry of Home Affairs at the state level in order to address the act of interfering with communications or class messages, as stated in Rule 419A of the Telegraph Rules. This is the only way that the issue may be remedied. It is necessary to obtain the prior approval of the head or the second most senior official of the security body approved at the focal level in the event of an emergency situation. Additionally, it is necessary to obtain the approval of officials specifically designated for this purpose, as opposed to those who hold the position of "Inspector General of Police at the state level."

Information on the number of surveillance orders that have been issued in a substantial amount may be found in the Indian Telegraph Rules, 1951, notably Rule 419A (15), as well as in the IT Interception Rules, specifically Rule 21. On the other hand, it is essential to keep in mind that specialist companies are needed to guarantee the confidentiality and anonymity of the data that comes from the acquisition. As evidenced by Vodafone's 2014 "exposure report," a number of service providers attempt to present a practical justification for the significance of preserving confidentiality when collecting information regarding interference "orders." According to the organization's subsequent statement, the legislation does not include any information regarding the termination of communications or access to information exchanges.

In the case of *Bhart Shanti Shah v. State of Maharashtra* (141), it was stated that a two-judge panel of a court will only affirm the constitutional legitimacy of an interlocutory power that has been granted by a state law if it possesses the authority of the state legislature and is specifically in support of the procedural safeguards that are outlined in the legislation. The concept of "probable cause" and the implementation of "telegraph

rules" are the two pillars upon which the capacity of states to independently create procedural protections is founded.

The public character of the communication was brought to the forefront by the Supreme Court, which underlined the duty of the telecom service provider to assist the state in legitimately blocking communication. If law enforcement officials are not contacted for aid, there is a possibility that hefty financial fines will be obtained. Taking into consideration the fact that the operation is open to the public, the court stated that the service provider is obligated to carry out their responsibilities with the utmost care and accountability.

As part of the proceedings in the case of *Rayla M. Bhuvneswari vs. Nagaphamender Rayla*, the applicant submitted a separation application against his spouse in the courtroom. The individual who submitted the application requested that a hard disc be created that would contain recordings of his wife's conversations that took place in the United States. The person declined to participate in certain areas of the conversation. According to the decision of the court, the conduct of a husband secretly listening to his wife's conversation without her agreement was judged unlawful. This was due to the fact that it was a breach of her right to privacy, which is guaranteed by Article 21 of the Indian constitution. This assertion is correct; nonetheless, it cannot be acknowledged in the evidence that has been presented. After the "voice test" has been performed, the expert is tasked with contrasting the voice that the spouse has rejected with the voice that she has accepted. It is not authorised to force the spouse to do the "voice test."

The court made the observation that the cornerstone of marriage is to be found in the purity of the relationship that exists between a couple. Her phone conversations with her friends and guardians in India were being covertly recorded by her husband, who was doing this without her knowledge. The right to privacy of the spouse has been violated in a manner that is acceptable in this situation. If the husband has such a temperament and does not have faith in his wife about the conversation with his parents, then the situation is described. Since we have reached this point, the institution of marriage has lost all of its significance.

An all-encompassing requirement relating to the interruption of telephone calls is included in the statutory framework. Because the current policy does not always work as intended, there is a possibility that it might be improperly applied. Instead, the inclusion of the hour is necessary for a solid system that is founded on the principle of procedural security.

### 3. Information Technology Act

It is generally accepted that India does not have any specific regulation that pertains to information insurance. These two pieces of legislation—the "IT Act (Information Technology Act) 2000" and the "Information Technology (Reasonable Security Practises and Procedures and Sensitive Personal Data or Information) Rules, 2011"—are responsible for regulating the administrative approach to information insurance and protection in India. As an additional point of interest, the security of personal information is ensured by Article 21 of the Constitution of India, which recognises the right to privacy as an essential entitlement for each and every resident of the country. It has been established by the Supreme Court in a number of decisions that the right to privacy comprises not just information about an individual but also the ability to access such information via that individual.

### 4. The Act of 1997, which is commonly referred to as the "Telecom Regulatory Authority at India Act"

Both the Telecom Regulatory Authority of India Authority (TRAI) and the Telecom Dispute Settlement Appeals Tribunal (TDSAT) were intended to be established as a result of the Telecom Regulatory Authority of India Act, 1997 (TRAI Act), which was passed in 1997. The establishment of these institutions in accordance with the TRI Act serves the primary objective of regulating media broadcasting services, resolving disputes, rejecting bids, and protecting the interests of both professional groups and consumers. The purpose of this Act is to encourage and guarantee that the telecommunications industry will continue to make development without interruption. A number of amendments were made to the TRAI Act in the year 2000, when the TRAI (Amendment) Act was passed into law. Prior to the modification, the "TRAI" utilised both administrative and contest goal capacities in its operations. Through the passage of this legislation, the "Telecom Dispute Settlement Appeal Tribunal" was founded with the intention of supervising and resolving



issues that arise from arbitration. There was a lack of clarity in the legal framework about the potential restrictions that may be placed on public power as a result of the proposals made by the "TRAI" initiative, which were clarified by the Amendment Act. The Telecommunications Regulatory Authority (TRAI) is not a "cost-free" telecom controller. To a certain extent, the "TRAI" is subject to the powers that are exerted by the public authority. The ability to offer recommendations on subjects that impose constraints on the "TRAI" is granted to it by Section 25 of the Act, which was passed in the year. A portion of the money for "TRAI" comes from the "Central Government" as well. Moreover, in line with section 35 of the TRAI Act, the Central government. holds the ability to adopt rules on a variety of subjects, and these regulations limit the scope of TRAI's operations. As a result, the concept of the "TRAI" proposed by the Supreme Court does not form a fully independent telecommunications regulator.

In accordance with the provisions of the Act, the Telecom Regulatory Authority of India (TRAI) was constituted as an independent institution. TRAI's headquarters may be found in New Delhi, the capital of India. The "TRAI" is made up of one executive (the Chairman) and a maximum of two people, who serve under the chairman. These individuals can be either full-time or part-time employees as well. The federal government is responsible for appointing the executive and other individuals linked with the Telecom Regulatory Authority of India (TRAI). These appointments are made for a period of three years or until the individual reaches the age of 65, whichever comes first. Within the fields of media communications, industry, finance, accounting, law, executive management, and customer relations, the ideal applicant for employment should have specialist experience and know-how that is pertinent to the position. If an individual has worked for the government in the past prior to their present job, they are required to have held the post of "Secretary or Additional Secretary" for a period of at least three years. Regarding the TRAI meetings, the department is taking action at this time. An overwhelming majority of the individuals who are present and voting will be responsible for making the decision of which inquiries will be brought before the TRAI. A subsequent voting procedure will be open to the individual who is in charge of supervising the assembly.

## **A brief summary**

It was in an essay named "The Right to Privacy" that Warren and Brandeis, two eminent American legal academics, first presented the idea of the right to privacy as a legal entitlement. This paper was written by Warren and Brandeis. With that being said, it was

J. At the New York Times Company, Brennan is acknowledged with being the one who was responsible for the thorough development of this right. The House of Lords in the United Kingdom concurred with and adhered to the legislation that was established in these findings in the case of Derbyshire County Council against Times Newspapers Ltd. Sullivan vs.

The case of Kharak Singh vs the State of Uttar Pradesh was the one in which the Supreme Court of India issued its first decision about this particular privilege. Gobind v. State of M.P. is the case in question. Mr. Mathew A. made reference to the decision that was taken on Kharak Singh and Certain American. The concept of liberty serves as the foundation upon which this right is built. Regarding the later decision that the Supreme Court made in the matter of R. This is the case of Rajagopal vs the State of Tennessee. The many dimensions of this entitlement were discussed to be addressed. There was a distinction made in the text between the violation of the right to privacy that is protected by tort law, which is a private legal right, and the right to privacy that is protected by Article 21, which is a public law right.

It is unquestionable that, throughout the course of the last several decades, the country has witnessed substantial legal and regulatory changes relative to the privacy framework (also known as the privacy framework). Despite the fact that there have been advancements, the framework of privacy law in India continues to be fragmented. There are several laws, principles, and judicial declarations that address a variety of privacy-related topics.

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