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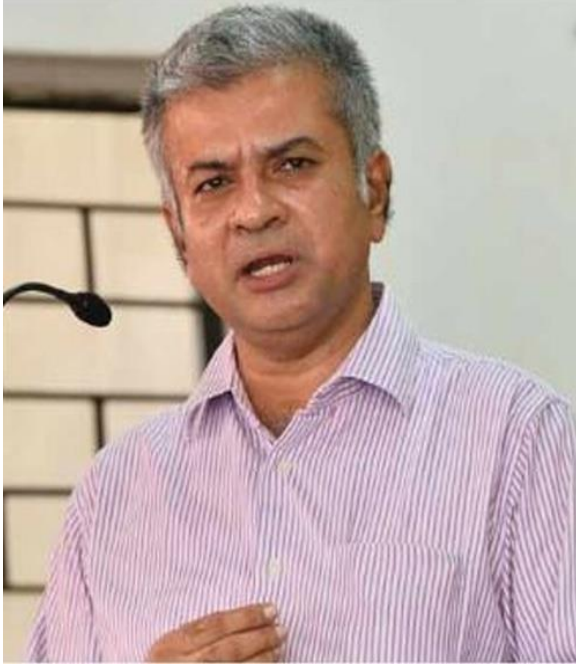
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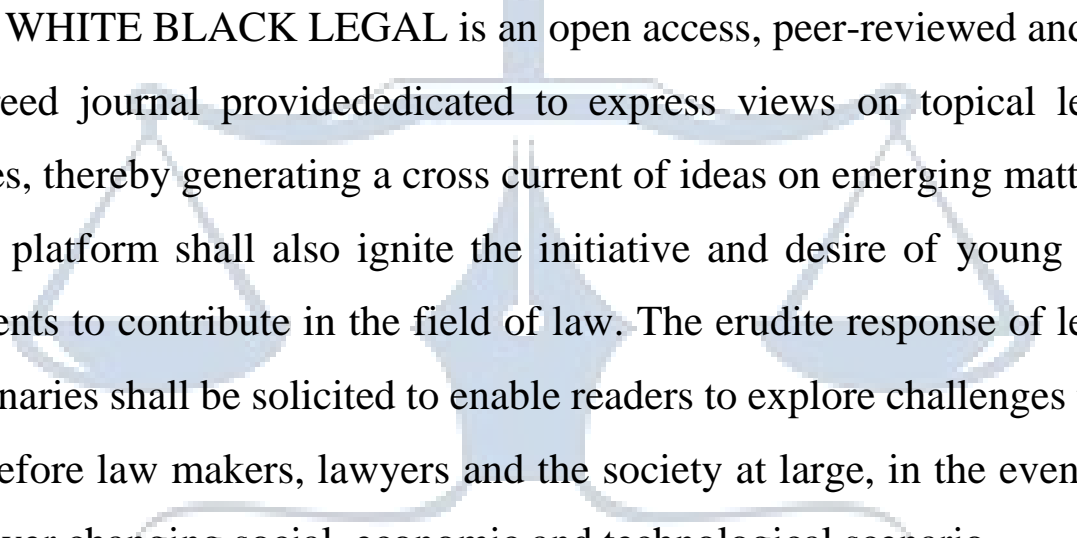
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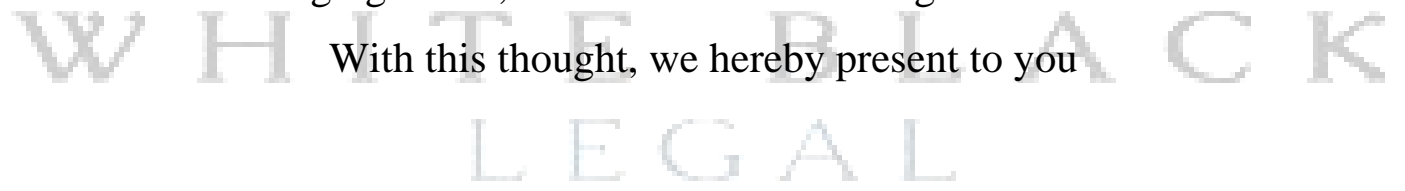
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With this thought, we hereby present to you



RIGHT TO PRIVACY

Research Dissertation submitted to:

Amity Law School, Noida

Amity University Uttar Pradesh

Under the supervision of:

Ms. VINAYAKA S RIVASTAVA

In Part Fulfilment of Requirements for the Degree of

Bachelor of Law B.A LL.B. (G)

Submitted By:

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DECLARATION

I declare that the dissertation entitled “Right to Privacy” is the outcome of my own work conducted under the supervision of Ms. Vinayaka Srivastava, Assistant Professor of Law at Amity Law School, Noida - Amity University, Uttar Pradesh.

I further declare that to the best of my knowledge the dissertation does not contain any part of any work, which has been submitted for the award of any degree either in this University or in any other University/Deemed University without proper citation.

SANJEEVANI SHANDILYA

Dated: 7TH April, 2024

CERTIFICATE

I have the pleasure to certify that **Enrolment No. A032134719068**, a student at Amity Law School, Noida has pursued her dissertation and prepared the present paper entitled “Right to Privacy” under my supervision and guidance. To the best of my knowledge the paper is the result of her own research work.

This is being submitted to Amity University for the degree of Bachelor of Law in partial fulfilment of the requirements of the said degree.

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This dissertation is the outcome of the study by the author. Any material written by another person that has been used in the paper has been thoroughly acknowledged. As my research has concluded, there are a number of people I would like to thank for the successful attempt.

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AMITY LAW SCHOOL, NOIDA

LIST OF ABBREVIATIONS

- AIR – All India Reporter
- Anr - Another
- Art. – Article
- Const. – Constitution
- HC – High Court
- Hon’ble - Honourable
- ICCPR – International Covenant on Civil & Political Rights
- IT – Information Technology
- Ors - Others
- RTI – Right to Information
- RTP – Right to Privacy
- SC – Supreme Court
- SCC – Supreme Court Cases
- UDHR – Universal Declaration of Human Rights
- UN – United Nations
- UOI - Union of India
- V – Versus

LIST OF CASES

- Directorate of Revenue and Anr v. Mohammed Nisar Holia, Appeal (Crl.) 311 of 2002
- Diwan Singh v. Inderjeet, A.I.R. 1981 ALL 342

- Justice K.S. Puttaswamy (Retd) v. Union of India, Writ Petition (Civil) No. 494 of 2012
- Kharak Singh v. The State of Uttar Pradesh & Ors, A.I.R. 1963 S.C. 1295
- Lokniti Foundation v. Union of India & Ors, Writ Petition (Civil) No. 491 of 2012
- M.P. Sharma & Ors v. Satish Chandra, District Magistrate, Delhi & Ors, A.I.R. 1954 S.C.
- 300
- Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597
- Mr. X v. Hospital Z, Appeal (Civil) 4641 of 1998
- Naz Foundation v. Government of NCT of Delhi & Ors, Writ Petition No. 7455 of 2001
- People’s Union of Civil Liberties v. Union of India, A.I.R. 1997 S.C. 568
- R. Rajagopal v. State of Tamil Nadu, A.I.R. 1995 S.C. 264
- R.M. Malkani v. State of Maharashtra, A.I.R. 1973 S.C. 157
- Rayala M. Bhuvneswari v. Nagaphomender Rayala, A.I.R. 2008 AP 98 • United States v. Miller, 425 US 435 (1976)

TABLE OF CONTENTS

Declaration	i
Certificate	ii
Acknowledgment	iii

List of Abbreviations	iv
List of Cases	v
Table of Contents	vi-vii
Chapter 1: Introduction	1
Chapter 2: Right To Privacy Under the Indian Constitution	3
2.1 Introduction	3
2.2 Judicial Pronouncements	3
Chapter 3: Threats & Recent Developments In Right To Privacy	7
3.1 Technology As A Threat	7
3.2 Right To Privacy And Search & Seizure	7
3.3 Tapping Of Telephone	8
3.4 Latest Developments	10
Chapter 4: Right To Privacy As A Fundamental Right Vis – A – Vis Aadhaar Case	12
4.1 Brief	12
4.2 Chronology Of Aadhaar Case	13
4.3 Judgment	14
4.4 Explanation Of Right To Privacy	15
4.5 Opinions	16
4.6 Aadhaar Act Is Unconstitutional: A Fiery Dissent	17
Chapter 5: Legislative Framework	19

5.1 The Indian Easement Act, 1882	19
5.2 Family Laws	19
5.3 Criminal Law	20
5.4 The Information Technology Act, 2000	21
Chapter 6: Conclusion & Suggestions	23
6.1 Conclusion	23
6.2 Suggestions	24
Bibliography	25

CHAPTER 1: INTRODUCTION

In its most basic sense, the term "privacy" refers to the absence of intrusion. "*Justice Louis Brandeis of the US Apex Court defined privacy as the right to be left alone.*" Human dignity and privacy are two of the most important aspects of human life. The importance of privacy in one's life aids in the establishment of boundaries that are intended to limit access to our bodies, possessions, places, data, and conversations.

The "right to privacy", on the other hand, is an individual's right to protect their own body, home, property, thoughts, feelings, secrets, and identity from interference. The "right to privacy" is defined as follows in the UDHR, 1948¹:

*"No one shall be subjected to arbitrary intrusions into his or her private, family, home, or correspondence, or attacks on his or her honor or reputation. Everyone has a legal right to be protected from such interference or attacks."*²

The ICCPR³ also "*requires the State to take legislative and other measures to give effect to the prohibition on such intrusions and attacks, as well as the protection of the right to privacy.*"

"No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, correspondence or nor to unlawful attacks on his honour and reputation, according to ICCPR to which India is a party."

As India is a signatory to both the conventions i.e. the UDHR & ICCPR, so both binding in India. However, no law has yet been enacted in India to guarantee this privilege.

Throughout today's culture, privacy concerns are thought to be more significant than they have ever been in human history. On the other hand, digital technology and new media have altered the ways in which information is transferred, received, and recorded, posing a serious threat to our privacy.

¹ UN General Assembly, "*Universal Declaration of Human Rights*", 10 December 1948, 217 A (III)

² Universal Declaration of Human Rights, 1948, art 12

³ UN General Assembly, "*International Covenant on Civil & Political Rights*", 16 December 1966, UN, Treaty Series, Vol. 999, p. 171

Although the majority of the public debate has focused on situations in which third parties have violated people's privacy (e.g., the spying scandals that shocked Europe, WikiLeaks, and the control that large corporations like Google, Facebook, and Amazon have over a person's data and behavior), privacy violations can also occur when people share content without their knowledge. Making proper legislation to defend their citizen's rights becomes increasingly crucial.

CHAPTER 2: RIGHT TO PRIVACY UNDER THE INDIAN CONSTITUTION

2.1 Introduction

The Article 21⁴ has been dubbed the "heart" of the document. The Apex Court expanded the meaning of the words "life" and "personal liberty," resulting in the creation of several rights under the aforementioned article. The right to be proclaimed a Fundamental Right, as well as the social and political rights contained in Part IV (DPSP), can be read in conjunction with Part III to give DPSP's provisions enforceability.⁵

The ICHR is primarily taken to understand and extend Article 21. There was no such thing as a "right to privacy" in the past, and the law primarily protected physical risks like trespassing on someone's property, which led to the formation of the right to property, which is now considered part of the right to life. *"Later, it was discovered that, in adding to physical privacy, privacy of the mystical self and feelings is also essential, so the choice of the right to life was further broadened.*

*The right to be alone was derived and later known as the right to privacy."*⁶

2.2 Judicial Pronouncements:

1. *In the Maneka Gandhi case a seven-judge Supreme Court majority ruled in Maneka Gandhi v. Union of India that the term "personal liberty" in article 21 encompasses a broad variety of rights, some of which are recognised as basic rights and are given further protection under section 19. Any legislation that limits an individual's freedom must satisfy the Triple Test:*

1. It needs to specify a procedure;

2. The process needs to satisfy the requirements of one or more of the fundamental rights listed in Article 19 that might be relevant in a given situation;

2. *It must pass the test of Article 14."*

Interference with personal liberty and the "right to privacy must be legal, just, and fair, not arbitrary, whimsical, or oppressive."

The Apex Court has been battling with the subject of the presence of the privilege to privacy remembering the developing cultural and mechanical elements. *"Four years after the Indian Constitution happened; the Court was given the topic of protection on account of MP Sharma v.*

⁴ INDIA CONST, art 21

⁵ Kakoli Nath, *Analysis of Right to Privacy in Modern Era*, Finology Blog (Oct 01, 2020), <https://blog.finology.in/constitutional-developments/analysis-of-right-to-privacy-india>

Id.

⁶

*Satish Chandra*⁶ in 1954 wherein the court held that the act of search and seizure isn't disregarding one's privacy and that the drafters of the constitution didn't plan to make protection as a principal right and on the off chance that that wasn't the situation, at that point it ought to have been unequivocally accommodated like the other major rights under Part III nor does it contain any language like the Fourth Amendment of the U.S. Constitution."⁷

"Nonetheless, the court stated that the court has not reached a decision on whether the right to privacy is protected within the scope of Art. 21 right to life and individual liberty."

From there, in the 1963 case of "**Kharak Singh v. State of Uttar Pradesh**"⁸ the court examined the scope of police surveillance and concluded that the "right to privacy" is not guaranteed under the Indian Constitution. *"In a similar decision, Justice Subba Rao expressed his disagreement, stating that while our Constitution does not expressly declare the right to privacy as a significant right, it is a vital part of individual liberty perceived in Article 21."*

In advance of this, **R.M. Malkani v. State of Maharashtra**,⁹ which was decided eleven years after the **Kharak Singh Case**, held that phone tapping of a blameworthy individual does not jeopardize his privacy, and that by using the word liable, they *"invalidated the chief standard of criminal law that states that a denounced individual is presumed innocent until proven guilty."*

While the states have consistently and convincingly disputed the privilege of protection, it has remained a question mark for our courts only on few occasions.

In 1975, known as the "watershed year" for the "right to privacy", "**Govind v. State of Madhya Pradesh**"⁹ obtained the trial of convincing state interest from an American statute and examined certain police guidelines as being in violation of the fundamental "right to privacy". The court decided that when the scales were tipped, the "right to privacy" would have to be given up in the name of a greater state/public interest.

⁶ M.P. Sharma & Ors v. Satish Chandra, District Magistrate, Delhi & Ors, A.I.R. 1954 S.C. 300 (India)

⁷ *Id.*

⁸ Kharak Singh v. The State of Uttar Pradesh & Ors, A.I.R. 1963 S.C. 1295 (India) ⁹ R.M. Malkani v. State of Maharashtra, A.I.R. 1973 S.C. 157 (India)

⁹ "Govind v. State of Madhya Pradesh & Anr, A.I.R. 1975 S.C. 1378 (India)"

Furthermore, in “*PUCL v. Union of India*”¹⁰ the Apex Court of India stated categorically that each individual has a privacy interest in phone exchanges and that tapping the phone constitutes an attack on one's privacy. As a result, telephone tapping was found to be in violation of Article 21 unless it was permitted by a legal plan.

In addition, in **Mr. X v. Hospital Z**,¹¹ the court observed at the possibility of a blood donor's “right to privacy” in his clinical records. As a result, the concerned medical clinic revealed the fact that the philanthropist was HIV positive without his consent. Despite the fact that clinical data are considered private, the court declared that emergency clinics can discover reports in exceptional situations if the non-divulgence could risk the life of another resident, in this case, his better half.¹²

Furthermore, in **R. Rajagopal v. State of Tamil Nadu**,¹³ the Apex Court attempted to strike a balance between the rights to protection and the right to free speech. The collection of memoirs of a death sentence inmate - Auto Shankar - exposes a state-sanctioned link between cops and gangsters. Despite the fact that the court considered the privilege to protection under Article 21, it avoided discussing the widely available report.

Finally, the Delhi High Court, in **Naz Foundation v. Government of NCT of Delhi**,¹⁴ decriminalized “*sex between two consenting adults in private and read down section 377 of the IPC*”¹⁵. According to the NALSA case, *an individual's sexual directions, as well as their sexual connections, are covered under the right to privacy.*”

¹⁰ People’s Union of Civil Liberties v. Union of India, A.I.R. 1997 S.C. 568 (India)

¹¹ Mr. X v. Hospital Z, Appeal (Civil) 4641 of 1998 (India)

¹² “*Right to Privacy in India, Constitution of India, Article 21*”, Find Your Advocate (Dec 11, 2020),

<https://www.findyouradvocate.in/2020/12/right-to-privacy-in-india-constitution.html>

¹³ R. Rajagopal v. State of Tamil Nadu, A.I.R. 1995 S.C. 264 (India)

¹⁴ Naz Foundation v. Government of NCT of Delhi & Ors, Writ Petition No. 7455 of 2001 (India)

¹⁵ The Indian Penal Code, 1860, No. 45, 1860 (India)

CHAPTER 3: THREATS & RECENT DEVELOPMENTS IN RIGHT TO PRIVACY

3.1 Technology as a Threat:

Pegasus spyware, for example, is a modular malware that can initiate total surveillance on the targeted device, including actively reading the user's messages and mail, listening to calls, sending back the browser history, and more, effectively taking control of nearly every aspect of your digital life. According to reports in Indian media, the spyware's targets include lawyers involved in the Bhima Koregaon case. While WhatsApp's communication in the Bhima Koregaon case¹⁶ did not specifically name Pegasus or the NSO group, Rathod (one of the Bhima Koregaon case's lawyers) indicated that

¹⁶ *The Bhima Koregaon Case*, Finology Blog (July 24, 2020), <https://blog.finology.in/Legalnews/bhimakoregaoncase>

the chance of spyware targeting him is quite likely.

Official disclosures on if and how this spyware was used to hack some citizens in India are now needed. The aforementioned WhatsApp cases demonstrate that India's current data privacy guidelines are insufficient. State interception is permitted under Section 69¹⁷ under specific circumstances. State agencies are said to have collaborated with WhatsApp in this case.

WhatsApp said in a recent instance that its messages are safeguarded and that no third party may access them, defending user privacy and the messaging platform's protected messages.

3.2 Right to Privacy and Search & Seizure:

The “right to privacy” on the one hand, and the state’s authority of search and seizure on the other has both been the subject of rulings in India and other nations. It is said that while all public documents can be inspected at any time, the Collector will not be able to order the production of records maintained with banks under the impugned revised “*Section 73 of the Indian Stamp Act, 1899*”¹⁸. These materials are copies of private records. The “right to privacy” is used to safeguard documents held by banks. Documents cannot be reviewed unless there is reasonable cause or material to suspect that they may lead to the discovery of fraud.¹⁹

S. 73, which gave the Collector unrestricted right to allow "any individual" to take notes or extracts from such papers, was struck down by the Court. Even the Act's standards did not give adequate guidelines or protections for how this power could be applied. The Apex Court cited previous US decisions on the matter. In **Miller's Case**,²¹ it preferred to follow the minority perspective, believing that the majority decision was erroneous. It also alluded to a number of publications and comments that said the majority judgment was incorrect. “*The Court decided that records or copies of documents submitted to the bank would remain intimate. The fact that they are freely supplied to the*

¹⁷ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

¹⁸ The Indian Stamp Act, 1899, No. 2, 1899 (India)

¹⁹ Hina Iliyas, *Right to Privacy under Article 21 and the Related Conflicts*, Legal Service India, ²¹ United States v. Miller, 425 US 435 (1976)

bank does not indicate that they are no longer private documents, as stated previously."²⁰

3.3 Tapping of Telephone:

The tapping of a person's phone is a major violation of their "right to privacy". In India, is it constitutionally permissible? If so, what are the restrictions and protections in place?

In **People's Union for Civil Liberties v. Union of India**,²¹ the Apex Court reviewed the issues raised above in depth. In this case, a Public Interest Litigation was launched in response to the CBI's widespread phone tapping of politician's phones. "Telephone talk is an important part of a man's private life," the court ruled. The right to have a private phone conversation in the quiet of one's own home or business is unquestionably a "right to privacy." As a result, telephone tapping is a major infringement of privacy. This indicates that phone tapping would be a violation of Article 21 unless it was done in accordance with the legal procedure. "Just, fair, and reasonable" procedure is required.²⁷

The Court established detailed guidelines to govern the State's discretion vested in it under Section 5²² for the purpose of telephone tapping and interception of other messages, in order "*to protect the public interest from the government's arbitrary and unlawful exercise of power.*" "Section 5(2) of the Act authorizes the interception of messages if the provisions of the Act are followed." The "occurrence of any public emergency" or "in the interest of public safety" are the "sine qua non" for the application of provisions under section 5(2) of the Act; unless a public emergency has occurred or the interests of public safety demand, the authorities have no jurisdiction to exercise the powers conferred by the legislation. The Court defined a public emergency as the occurrence of a sudden circumstance or state of affairs that affects the general public and necessitates quick action. The term public safety refers to a state or situation in which the general population is in considerable danger or risk. "*The Court stated that if either of these two elements are not met, the Central Government, State Governments, or authorised officers cannot use phone tapping, even if they believe it is necessary or*

²⁰ *Id.*

²¹ *Supra* note 16 ²⁷ *Id.*

²² The Indian Telegraph Act, 1885, No. 13, 1885 (India)

expedient in the interests of the country's sovereignty and integrity.” In other orders, even if the Central Government is satisfied that intercepting the message or resorting to telephone tapping is necessary or expedient in the interest of the country's sovereignty or integrity, privacy of the State, friendly relations with foreign States, public order, or preventing incitement to commit an offence, it cannot do so unless a public emergency has occurred or the interest of public safety or the existence of a national privacy threat.

The following procedural protections have been established by the Court for the exercise of power under Section 5(2) of the Indian Telegraph Act:

- Only the *“Home Secretary of the CG or the SG”* can issue a telephone tapping order. In an emergency, the power may be delegated to a member of the CG & SG Home Departments who is not below the rank of Joint Secretary;
- Within one week of the order being *“passed, a copy of the order will be given to the Review Committee”*;
- The order will expire two months after it is issued unless it is renewed. *“If the authority making the order believes it is necessary to continue the order under Section 5(2) of the Act, it may reconsider it before that time”*;
- The authority issuing the order must keep a record of intercepted communications, the scope of the material to be released, the number of people to whom the material is disclosed, and their identities;
- In accordance with Section 5(2) of the Act, the use of intercepted material shall be confined to the bare minimum;
- If the Review Committee finds that the provisions of Section 5(2) of the Act have been violated, the order will be set aside. It can also order the destruction of the intercepted material's duplicates;

- If, after conducting an inquiry, the Review Committee determines that no violation of the relevant Act provision has occurred, the finding shall be recorded.

3.3.1 Divorce Petition: Husband Infringes On Wife's Right To Privacy Under Article 21 by Tapping Her Conversation With Others Seeking To Produce In Court:

In **Rayala M. Bhuvneswari v. Nagaphomender Rayala**,²³ the petitioner filed a divorce petition in court against his wife and requested to provide a hard disc relating to his wife's conversation recorded in the US with others to corroborate his case. Some of the dialogue was rejected by her. The Court ruled that the husband's unauthorized taping of his wife's chat with others without her knowledge was a breach of her “right to privacy” under Article 21. Even if the claims are true, they cannot be used as evidence. The woman cannot be forced to take a voice test and then have the expert compare her admitted voice to the section she denied. The Court stated that marriage is founded on the purity of the relationship between husband and wife. Without her knowledge, her spouse was secretly recording her phone conversations with her friends and parents in India. This is an obvious violation of the wife's RTP. If a husband is of this character and has a trust in his wife, even when it comes to her interactions with her parents, the institution of marriage becomes obsolete.

3.4 Latest Developments:

“The right to privacy, once established as a basic right, is broad enough to encompass all aspects of life. With the advancement of technology and social networking sites, granting such a right has become increasingly challenging. On the other hand, a person's right to privacy includes the ability to keep personal information private. The extent to which each person's zone of privacy should be preserved is subjective and may change from person to person. The right to privacy is also recognized in Section 43³⁰, which renders unauthorized access to a computer resource

²³ Rayala M. Bhuvneswari v. Nagaphomender Rayala, A.I.R. 2008 AP 98 (India) ³⁰ *Supra* note

punishable.”

With the rise of blog spots & networking sites, everyone is now a journalist. The RTP frequently clashes with the “*right to freedom of expression*”. The right to press, in particular, is drawn from Article 19 (1)(a)²⁴. A “*person's right to freedom of expression may collide with another person's right to privacy.*” When there is a conflict, the concept of public interest and public morality is useful in explaining which should win out. Personal information about an individual may be published without his agreement or approval if the information is part of public records, such as court records. Each situation is unique, and each right is unique.

Under the broad understanding of personal liberty, every right derived from Article 19 can also be inferred from Article 21. In the case of a dispute between two derived rights, the Court normally adopts the standard of public interest or public morality, but alternative interpretation is also feasible. A right derived under Article 21 is superior to a right derived under Article 19, because a state making law in violation of such a right can be preserved under the reasonable constraints set forth in 19(2) – (5) to protect the state. In the pre-Maneka era, when Article 21 was not a source of substantive rights, the situation was different.

In a number of ways, the RTP may collide with police investigations. In practice, narcoanalysis, polygraph exams, and brain mapping tests intrude unnecessarily on a person's right to private. By declaring these tests inhumane and illegal, the Apex Court was affirming the individual RTP. In **Directorate of Revenue and Anr v. Mohammed Nisar Holia**,²⁵ the Apex Court cited a US Apex Court decision holding that thermal imaging, a sophisticated sense enhancing technology that, when kept outside a person's residential house, can detect whether the inmate has kept narcotic substance within, is an infringement on the said person's RTP. The Court reversing the conviction for non-compliance with the statutory requirement of search and seizure prohibited unnecessary infringement of a person's RTP and stated that no authority shall be allowed unrestricted power to infringe on a person's RTP. Although a statutory power to search and seize may not infringe on the RTP in and of itself, in cases of this sort, the least a Court may do is ensure that the right is not infringed unduly.

²⁴ INDIA CONST, art 19(1)(a)

²⁵ Directorate of Revenue and Anr v. Mohammed Nisar Holia, Appeal (Crl.) 311 of 2002 (India)

CHAPTER 4: RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT VIS – A – VIS AADHAAR CASE

4.1 Brief:

The two appointed authority and six adjudicator seat options set a precedent that the RTP is not an essential “*right under the Constitution*” and is not natural under Article 21. The first argument was that the constitution's drafters never intended to combine a RTP and that reading it as natural for the “*privileges to life and individual freedom under Article 21*” or to opportunities guaranteed under Article 19 would be tantamount to the legal executive reworking the constitution.

It was also referred to as an aristocratic concept, one that was too formless for a precise definition and hence should not be elevated to the status of a fundamental right.

Concerns over the RTP have been focused on the Aadhaar scheme planned by the government, under which all Indian citizens will be given a unique identity once the government collects biometric data like as iris scans and fingerprints, regardless of segment nuances. It was made compulsory in both public and private locations as proof of identity, and it was tested on the grounds that it violated a person's privacy. The country's technological advancements aren't aimed at protecting the information obtained from undesired outsiders and programmers, which could lead to its misuse, posing a risk to the individual whose information has been stolen.

The Apex Court, in response to a break request, limited the use of the Aadhaar card to the public transportation system and the provision of LPG. The issue stayed and the issue with respect to one side to protection alluded to a bigger seat and the Court if there should arise an occurrence of **Justice K.S. Puttaswamy (Retd) v. Union of India**²⁶ resonated the triumph for protection.

“According to the court, the right to privacy is guaranteed as a natural part of the right to life and individual liberty guaranteed by Article 21 and as one of the opportunities guaranteed by Part III of the Constitution. Long stretches of irregularity inferred from other decisions came to a halt, and this decision was a resounding endorsement of the privilege of protection as a fundamental right. The decision will be remembered as a watershed moment in our country's sacred history. The seat emphasized on the fact that protected agreements must be read and interpreted in an equitable manner while explaining the decision.”

4.2 Chronology of Aadhaar Case:

- *“Aadhaar was created by the UPA government in 2006-07.”* It was the UPA government that conceptualized a scheme for unique identification for low-income families. Following this, the then-government authorized the Aadhaar scheme, as well as its principles;
- **September 2009:** The Unique Identification Authority of India (UIDAI) was established by the central government for the aim of providing Aadhaar cards to citizens. The inventor of Aadhaar, Nandan M. Nilekani, was named the first chairman of the UIDAI;
- **2012:** In the Apex Court of India, retired justice K S Puttaswamy filed a writ petition. Puttaswamy, a retired Karnataka High Court judge, questioned the government's strategy of making Aadhaar cards mandatory for all residents, as well as the government's plans to link citizens biometric IDs to other government

²⁶ Justice K.S. Puttaswamy (Retd) v. Union of India, Writ Petition (Civil) No. 494 of 2012 (India)

initiatives. He went on to say that Aadhaar breaches the Indian constitution's guarantee of equality and the right to privacy to all citizens;

- **23rd September 2013:** The Apex Court ruled in an interim ruling that no citizen should be punished for not having an Aadhaar card, even if the government has made it necessary for certain government services;
- **March 24, 2014:** The Apex Court issued a new ruling this year, instructing the agencies to reverse any orders that make Aadhaar essential for receiving benefits;
- **February-March 2016:** The Modi government interpreted the Apex Court's declaration in the "*Lokniti Foundation v. Union of India*"²⁷ identity verification case, as a consequence, the government declared the linking of mobile numbers to Aadhaar mandatory;
- **September 2017:** "*The constitutional bench upheld the hearing on Aadhaar's legality, but struck down the section requiring Aadhaar to be linked to a bank account, school admissions, and mobile phones*";
- **January 2018:** The Aadhaar case hearing began by a five-judge bench;
- **May 10th, 2018:** The Apex Court concluded the final hearing in the long-running Aadhaar case, deferring its decision.³⁰

4.3 Judgment:

The Court affirmed its validity and declared that when a person agrees to disclose his "biometric data, the Aadhaar Act does not infringe his RTP". The court has prohibited private enterprises from using the Aadhaar card for KYC authentication. At the same time, the Apex Court ruled that Aadhaar will continue to be used for a variety of other purposes, including as obtaining a PAN card and submitting an ITR.

²⁷ Lokniti Foundation v. Union of India & Ors, Writ Petition (Civil) No. 491 of 2012 (India) ³⁰
Namrata Kandankovi, *Aadhaar and the Right to Privacy*, Ipleaders (June 08, 2019),
<https://blog.ipleaders.in/aadhaar-right-privacy/>

- K.S Puttaswamy v. Union of India should be examined in detail;
- A five-judge constitutional court chaired by India's then-chief justice, Deepak Misra, determined in the case of K S Puttaswamy v. Union of India that Aadhaar would be necessary for both the issuance of a Permanent Account Number (PAN) and the filing of income tax returns. Therefore, it is impossible for a taxpayer or someone in need of a PAN card to avoid registering for Aadhaar; •
- The Apex Court has ruled that students attempting to pass the CBSE, NEET, or UGC exams do not need to have Aadhaar. Furthermore, the court decided that schools could no longer use Aadhaar as a means of admission;
 - Possession of an Aadhaar number is mandatory in order to access government social programmes. Furthermore, in order to benefit
- While delivering the judgment, the Apex Court went one step further and declared section 57 of the Aadhaar Act unconstitutional. By taking this step, the Apex Court ensured that no private body or firm can now ask its employees for their Aadhaar numbers;
- *“The Apex Court also threw down the Aadhaar Act's National Privacy Exception in its decision. The government took this action in order to guarantee greater privacy to an individual's Aadhaar data by restricting government access to it”*;
- While delivering the judgment, the Apex Court created a specific exception for children, ruling that no youngster should be denied access to government programs because he or she does not have an Aadhaar number.²⁸

4.4 Explanation of Right to Privacy:

With the implementation of the *“Aadhaar Act of 2016”*²⁹, the government mandated the collection and use of citizens personal data. In support of this move, the government stated that the

²⁸ *Supra* note 37

²⁹ The Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016, No. 18, Acts of Parliament, 2016 (India)

collection of personal data and enrolment of each citizen under the Aadhaar act would further advantage the existence of millions of poor people because they would now be able to directly “*access government services*”. The government also stated that Aadhaar was a cure for eradicating existing undesirable elements in society such as corruption, money laundering, and terrorist financing.

The Court has frequently asked the government if it has intentions to set up a solid data protection structure in order to reduce the likelihood of a data breach. In response, the government claimed that on July 31, 2017, a team of experts led by former Apex Court judge B N Saikrishna was formed, and that this committee works to identify critical data protection issues, as well as develop a draft data protection bill.

4.5 Opinions:

The Aadhaar case was heard by a five-judge panel that includes the then-Chairman of the Apex Court of India, Deepak Misra, Justice A K Sikri, Justice Ashok Bhushan, Justice A M Khanwilkar, and Justice D Y Chandrachud. This constitutional bench supported the constitutionality of Aadhaar, with the exception of a few sections relating to personnel data disclosure, use of the Aadhaar ecosystem by private entities, and cognizance of offence. Deepak Misra, A K Sikri, and Khanwilkar formed the majority view. The dissenting opinion was written by Justice Chandrachud and Ashok Bhushan.

The bench decided that after the biometric information is obtained and the Aadhaar is issued, there is no way to get a duplicate card because the information stays intact with the UIDAI after the issuing of the same. When a second attempt to enroll in the Aadhaar is undertaken, the biometric data will immediately match the previously stored information. “*As a result, the second effort would be turned down. The bench in support of this claim stated that Aadhaar was given the moniker Unique Identification Number because of this (UID).*”

While considering whether the court should apply the strict scrutiny standard or the just, fair, and reasonable standard when considering the said law, which was said to be in violation of the RTP, the bench considered whether the court should apply the strict scrutiny standard or the just, fair, and

reasonable standard. The court used the concept of a "just, fair, and reasonable test" in its Aadhaar decision. This was adopted by the court because it was consistent with the reasonable restrictions that the court has the authority to impose under Article 19.

Bringing the public's attention to the concept of the surveillance state, as there were claims that the Aadhaar was putting in place a surveillance state. The court dismissed all arguments that Aadhaar would lead to the formation of a surveillance state, ruling that during the enrolment process for Aadhaar, only minimal biometric data such as iris scanning and fingerprints are collected, and the UIDAI does not collect data such as location, purpose, or transaction details, and thus the information collected for the purpose of Aadhaar remains in silos, with the merging of silos prohibited.

After a thorough examination of the "*issue of right to privacy*", the bench determined that not all personal matters are covered by the RTP, and that only individuals who have a reasonable expectation of private are protected under Article 21.

The court established a triple test for "*Aadhaar in order to determine the reasonableness of invasion of privacy*", and it concluded that Aadhaar was backed by a statute, the Aadhaar act. Furthermore, the bench determined that the act serves a legitimate state goal, as evidenced by the act's introduction and the statement of objects and reasons, both of which try to reflect the act's goal. To reach a particular opinion "*on the issue of the right to privacy*", the bench applied three major tests:

- *"The Existence of law;*
- *Such acts are required to pass the test of proportionality;*
- *A Legitimate State interest."*

While delivering the Aadhaar judgment, the court concluded that all of the above standards had been met.

4.6 Aadhaar Act is Unconstitutional: A Fiery dissent by Justice D.Y. Chandrachud:

While the majority of the bench maintained the Aadhaar act's constitutional legality, "*Justice Chandrachud vehemently disagreed with the majority's decision and went on to argue that Aadhaar is unconstitutional by its very nature.*"

While expressing his sympathetic “dissent from the majority, Justice Chandrachud stated that technological vicissitudes cannot jeopardize constitutional protections.”

The enactment of “Aadhaar as a money measure”, according to Justice Chandrachud, is against the Indian Constitution's principles. *“He further stated that the speaker of the Lok Sabha's action in permitting the Aadhaar to be enacted as a money bill should be subject to judicial review.”* Aadhaar Act being a lawful statute, Justice Chandrachud agreed with the bulk of the verdict, but he also stated that the *“act does not offer any kind of robust framework for the protection of citizens personal information.”*

He also stated that providing private party’s access to an individual's data would result in profiling, which would lead to the determination of a citizen's political opinions. *“As a result, he expressed his belief that data should always be vested in the persons themselves because it is of paramount value to them, and failure to do so could jeopardize the situation.”*

Finally, he argued that it is now impossible to live in India without an Aadhaar card, but that doing so is a violation of Art. 14. *“If the Aadhaar is seeded with every other database, he claims, there is a serious risk of infringing on people's RTP.”*

CHAPTER 5: LEGISLATIVE FRAMEWORK

5.1 The Indian Easement Act, 1882:

A RTP is protected by paragraph “(b) of Section 18 of the Indian Easement Act, 1882”, which states:

According to a local custom, no owner or occupant of a home can open a new window that would substantially intrude on his neighbor's privacy. A constructs a home in the town near B's, A obtains an easement from B not to open new windows in his house in order to command a view of the parts of A's house that are normally hidden from view, and B obtains a similar easement with respect to A's house. The RTP is a valuable value that must be safeguarded. If this privilege has been recognized by custom, it has been infringed upon. Because the RTP is a customary right, the Court must always consider whether the custom is acceptable in the circumstances and if it has ceased to be enforceable by desuetude. Regardless, the traditional RTP can be argued to exist exclusively in the inner courtyards.³⁰ In India, there is no legal recognition of an inherent RTP. It

is merely a customary easement that arises from a local custom. As a result, not every invasion of privacy is actionable. It must be demonstrated that there has been a significant and tangible invasion of privacy. The RTP can be abused to the point of oppression.

In determining whether or not there has been a substantial invasion of the RTP, each case must be determined on its own unique facts.

5.2 Family Laws:

In certain statutes, the privacy of family and friends is mentioned. Certain marriage and divorce statutes may be said to have the goal of privacy in mind when hearings are held in camera. Confidentiality of procedures is thought to be beneficial at times. This is especially true in matrimonial processes. All matrimonial statutes allow the parties to have the procedures heard in

³⁰ Diwan Singh v. Inderjeet, A.I.R. 1981 ALL 342 (India)

private if they so wish. This is spelled out in Section 22 . The Indian Divorce Act of 1869 contains a similar clause, although it is not as thorough as the “Hindu Marriage Act of 1955”.

"The whole or any part of any process under this Act is heard, if the court judges suitable, between closed doors," says Section 53 of the Indian Divorce Act of 1869. The court has discretion under this Act, whereas the other three statutes make it mandatory.

5.3 Criminal Law:

The presumption of innocence appears to have been caused by any inducement, threat, or promise, and there are provisions in the Evidence Law that protect the privacy interests of accused persons in light of the presumption of innocence appears to have been caused by any inducement, threat, or promise is inadmissible in evidence.³¹ As a specific privilege, communication privacy and official secrecy have been protected from disclosure. The judicial personnel are not obligated to answer any questions about his behavior in court.³² Furthermore, throughout a marriage, communication between the husband and wife is considered private, and the law protects such communication. Even someone who is or has been married is prohibited from disclosing any such communication without the approval of the other party.³³

Furthermore, state issues are considered privileged and only the head of the department concerned has the authority to grant or deny such approval as he sees fit. The special privilege also applies to communications made to a public official in his official capacity and confidence. The privacy of the source of information linked to the commission of an offense is protected by public policy for both police officers and revenue officers. No such official can be forced to reveal the source of the information.³⁴

Certain types of professionals, such as barristers, attorneys, pleaders, and vakil, have access to the privilege of communication. The communication between such a professional and his clients is not

³¹ The Indian Evidence Act, 1872, s. 24 & 25

³² s. 121

³³ *Id.* s. 122

³⁴ *Id.* s. 124

permitted to be divulged unless the clients expressly approve. This protection, however, does not apply to communications made for illicit purposes or to facts relevant to the commission of a crime or fraud. The interpreters have access to this privilege as well.³⁵

The privilege of confidential communication extends not only to the above-mentioned groups of professionals, but also to the client, who cannot be forced to reveal any confidential communication between him and his legal professional to the court. The privilege has also been extended to anyone in possession of such a deed or document.³⁶

Person's status is so important to their personality; it is often safeguarded by legal regulations under a legal system. The IPC has sections 499-502 that deal with defamation and make it a punishable offense. The penal code has given special consideration to a woman's modesty, and any effort to insult her modesty simply through words, sound, gesture, or exhibition is penalised harshly.

The Cr.P.C.³⁷ contains some rules that attempt to protect women's privacy. When it is essential to search a female, Section 51(2)³⁸ says that the search must be conducted by another female officer with strict regard for decency. Section 53(2)³⁹ specifies that any examination of a female's person under this section must be conducted by or under the supervision of a female registered medical practitioner. Females have so been given specific protection under these regulations. The provision in Section 164⁴⁰ relates to the recording of confessions and statements, also establishes provisions to protect a person's privacy. Similarly, if the provisions of Section 165⁴¹ are not followed when a police officer conducts a search, the search will be invalid. The provisions of Section 165 must be followed when a police officer conducts a search.

³⁵ The Indian Evidence Act, 1872, s. 126

³⁶ s. 130

³⁷ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India)

³⁸ *Id.* s. 51(2)

³⁹ *Id.* s. 53(2)

⁴⁰ *Id.* s. 164

⁴¹ s. 165

5.4 The Information Technology Act, 2000:

This act makes it illegal to disclose information secured from any electronic record, book, register, correspondence, or other type of electronic record to anyone else.

Nonetheless, we have all of these statutes and laws that are related to privacy in some way, if not directly. Because of the advancement of science and technology, as well as the widespread use of computers, the problem of preserving people's privacy has become extremely complex, and current laws are insufficient to address privacy related challenges in the digital era.”

CHAPTER 6: CONCLUSION & SUGGESTIONS

6.1 Conclusion:

According to Article 21, the right to life and personal liberty includes the RTP as a fundamental component. In addition to a contract, an RTP may result from a particular relationship, such as a business partnership, marriage, or a political one. The right to privacy is not unrestricted; reasonable

restrictions may be placed on it in order to avoid crime, disturbance, or harm to one's health or morality, as well as to safeguard the rights and liberties of others. In cases where two derived rights conflict, the right that advances public morality and interest prevails. Louis Brandeis J. famously declared in a case that the RTP is "the right most treasured by civilised man." Lord Hoffmann responded to criticism from the media by saying that there is no rational explanation for why a person would do this.

The RTP has been discussed by American Apex Court judges as part of the pursuit of happiness. The pursuit of happiness necessitates the state's protection of certain liberties, allowing us to act as we see fit as long as it does not infringe on the rights of others. Liberty is not a measurable or restricted right. It can be seen across the full legal spectrum.

When one examines the Apex Court's earlier decisions from its formative years, one can see the court's desire to treat the Fundamental Rights as watertight containers. This was especially apparent in the case of A.K. Gopalan v. State of Madras, with the easing of this strict stance evident in Maneka Gandhi v. Union of India. The right to life was viewed as a guarantee of a full and meaningful life, rather than the embodiment of a mere animal existence.

Our standing as members of a society often overshadows the fact that we are individuals first. Every person needs their own personal space for whatever activity they engage in (provided that this is allowed). Because of this, the state guarantees everyone the freedom to spend private time with anyone they wish, hidden from prying eyes. As per Clinton Rossiter, maintaining privacy can be seen as an effort to sustain autonomy in certain personal and spiritual matters, making it a distinctive sort of independence. The most distinctive quality that a person can have is their autonomy. There he is a man truly free. This is a right, not a resistance to the state. Our right is getting increasingly important as time goes in this day and age. We need privacy because our lives are being splattered all over the media, whether it's through social networking sites or spy cameras, so we may operate the way we want to and not think about others before our acts. After all, the only person to whom we owe an explanation is ourselves, not the rest of the world.

6.2 Suggestions:

"India work with the international community to adopt rigorous privacy and personal data protection

regulations," given the growth and implications of global trade, especially given the impact of the Internet. Currently, a number of nations (including the EU) are reluctant to do business with India because of inadequate privacy laws. This is particularly critical as India develops into a major back-office outsourcing hub for transcription of medical records and credit processing. Another obstacle to creating a safe space for online conversation is the threat to privacy. India won't be able to take full use of the immense opportunities and benefits that e-commerce presents to developing nations like ours unless these issues are resolved. privacy is also a barrier to establishing a secure environment for Internet communication. Unless these difficulties are addressed, India will be unable to fully profit from the enormous prospects and benefits those ecommerce offers emerging countries like ours.

It is necessary to provide a legislative framework with clear guidelines for the intentions and procedures behind the offline and online assimilation of personal data. Customers need to be made aware of the dangers associated with willingly disclosing personal information, and no information should be gathered without prompt consent. Achieving a successful balance between individual freedom and safe trade routes is critical to India's trading prospects.

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