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CONSTITUTIONAL IMPLICATIONS OF DIGITAL PRIVACY RIGHTS

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INTRODUCTION

With the rapid advancement of digital technology and the proliferation of data-driven services, personal data has become one of the most vital assets of the 21st century. This paper explores the constitutional ramifications of digital privacy rights, concentrating on the legal acknowledgment of privacy within constitutional frameworks, especially in India. It assesses the extent and limitations of digital privacy, judicial interpretations, pertinent legislations, and the challenges introduced by technological progress. The landmark ruling in *Justice K.S. Puttaswamy v. Union of India* and the introduction of the Digital Personal Data Protection Act, 2023 are examined to evaluate the shifting legal discourse. This paper seeks to connect the divide between technological advancement and the safeguarding of fundamental rights, highlighting the necessity for strong legal protections in the digital landscape.

The advent of the digital era has significantly altered the manner in which individuals engage with their surroundings. From online banking and social media to e-commerce and telehealth, the internet has emerged as a pervasive medium for both communication and transactions. Accompanying this shift are heightened concerns regarding digital privacy and the potential exploitation of personal information.

In constitutional democracies, the right to privacy is frequently regarded as a fundamental aspect of personal freedom and dignity. Nevertheless, the acknowledgment of digital privacy as a constitutional right is a relatively recent phenomenon. The pertinent legal inquiry is: To what degree can digital privacy be safeguarded within the confines of existing constitutional structures? More specifically, how does the Indian Constitution protect digital privacy, particularly in the context of technological surveillance, data breaches, and escalating governmental oversight?

This paper endeavors to explore these inquiries by scrutinizing the constitutional status of digital privacy rights in India while drawing parallels with international legal precedents. It aspires to deliver a thorough assessment of legislative initiatives and judicial interpretations that confront the challenges posed by digital technology to individual privacy.

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This study utilizes a doctrinal legal research methodology. It is based on primary sources, including constitutional provisions, Supreme Court rulings, and legislation such as the Information Technology Act of 2000 and the Digital Personal Data Protection Act of 2023. Secondary sources encompass academic journals, legal commentaries, reports from committees (for instance, the Justice B.N. Srikrishna Committee Report), and international instruments like the GDPR and United Nations resolutions. A comparative analysis is also conducted to juxtapose India's approach with that of other jurisdictions, especially the United States and the European Union.

Privacy, as a notion, is multifaceted—it encompasses physical privacy, informational privacy, decisional autonomy, and communications privacy. Within the digital realm, informational privacy is paramount, signifying the entitlement of individuals to govern the gathering, utilization, and distribution of their personal information.

Alan Westin articulates privacy as "the assertion of individuals to decide for themselves when, how, and to what degree information pertaining to them is shared with others."

Concerns regarding digital privacy stem from the extensive accumulation of data via cookies, surveillance technologies, Artificial Intelligence (AI), and big data analytics. These advancements present threats including identity theft, cyberstalking, data profiling, and widespread surveillance.

CONSTITUTIONAL FRAMEWORK OF PRIVACY IN INDIA

Pre-Puttaswamy Era

Before the year 2017, the Constitution of India did not explicitly provide for the right to privacy. Judicial interpretations had varied significantly. In the cases of *M.P. Sharma v. Satish Chandra* (1954) and *Kharak Singh v. State of U.P.* (1962), the Supreme Court determined that a fundamental right to privacy did not exist.

Justice K.S. Puttaswamy v. Union of India (2017)

The tide shifted with the pivotal ruling in *Justice K.S. Puttaswamy (Retd.) v. Union of India* [(2017) 10 SCC 1]. A nine-judge Constitution Bench unanimously affirmed that the right to privacy constitutes a fundamental right under Article 21 (Right to Life and Personal Liberty) and is essential to the freedoms protected under Part III of the Constitution.

Key Takeaways from the Puttaswamy Judgment:

- The concept of privacy is fundamentally linked to the principles of dignity and freedom.
- In the realm of digital interactions, informational privacy plays a crucial role.
- Any limitations imposed on privacy rights must satisfy the threefold criteria of legality, necessity, and proportionality.

LEGISLATIVE DEVELOPMENTS IN DIGITAL PRIVACY

1. Information Technology Act, 2000

The Information Technology Act and its accompanying 2011 Rules establish basic provisions for data protection. Section 43A stipulates that compensation must be provided in cases of inadequate protection of personal data, whereas Section 72 imposes penalties for violations of confidentiality.

Nevertheless, the Act does not offer a thorough data protection framework and does not adequately define personal or sensitive data in the context of contemporary standards.

2. Digital Personal Data Protection Act, 2023 (DPDP Act)

The DPDP Act of 2023 was enacted to create a more comprehensive framework for data protection.

Key Features:

- It applies to digital personal data.
- It mandates informed consent for the processing of data.
- It establishes a Data Protection Board to oversee enforcement.
- It grants rights including data correction, access, and grievance redressal.
- It permits government exemptions, which have faced criticism.

Critical Analysis:

- Although the Act signifies advancement, there are ongoing concerns regarding:
- Extensive government exemptions as outlined in Section 17.
- Uncertainty in the definition of public interest.
- Absence of an independent regulatory body.
- Ineffective enforcement mechanisms.

Mass surveillance initiatives, including Aadhaar authentication, NATGRID, and the Central Monitoring System (CMS), pose significant constitutional dilemmas regarding potential state overreach.

Aadhaar Case

In the case of Puttaswamy (II) v. Union of India (2019), the Supreme Court affirmed the validity of the Aadhaar scheme while limiting its compulsory application to welfare programs. The Court stressed the importance of minimal data collection and highlighted the necessity of data security.

Pegasus Spyware Controversy

The purported deployment of Pegasus spyware against journalists and activists has brought the issue of digital surveillance into sharp focus. A technical committee appointed by the Supreme Court is currently examining this situation.

Constitutional Implication:

The absence of regulatory oversight in surveillance activities, devoid of judicial review, infringes upon the right to privacy. Furthermore, the deficiency in transparency and accountability mechanisms erodes the rule of law and undermines constitutional governance.

Digital privacy serves as a fundamental pillar of personal freedom in the era of information. The constitutional framework of India, particularly following the Puttaswamy judgment, has established the foundation for acknowledging privacy as an essential right. Nevertheless, the effective implementation of this right within the digital domain is still hindered by legislative and institutional deficiencies. A robust data protection framework, supported by independent oversight and the empowerment of citizens, is crucial for upholding constitutional principles amidst technological advancements. As India progresses in its digital evolution, safeguarding the integrity of digital privacy will be pivotal in determining the vitality of its constitutional democracy.