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## Right to privacy-A comparative study under the legal systems of India, UK and USA

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### Abstract

The right to privacy is as old as human mankind. It is evolving with the changing dynamics of human society and is one of the most concerned topics in present time. There is no denying to the fact social media is the new life blood of this generation which poses the major threat to the right to privacy. This right comprises a wide ambit due to which gets entangled with various other rights such as right to information. The lack of balance between the two raises privacy concerns which needs necessary amendments. This paper is an attempt to have a glance over the legal issues and their solutions adopted by various nations around the world. The complexities revolving around right to privacy are so well knitted that it needs to be handled carefully to protect the integrity and preserve the essence of our basic human right i.e., Right to Privacy.

**Keywords:** right, privacy, legal systems

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### Introduction

If the right to privacy has a meaning, it is an individual's right, whether married or single, to be free from unjustified government interference. In the contemporary world, the issue of privacy has gained momentum, and the landscape is rapidly changing. There is a wave to protect people's privacy from intrusion, especially in the era of information technology, where the risk of a breach is rampant. The paper presents a comparative study of the Right to Privacy in India, the USA, and the UK. It also focuses on the recent judicial precedent and how the position of privacy rights evolved in the nations. The right to privacy is acknowledged as one of the international norms, which is an intriguing point to consider.

The gamut of privacy includes the right to data protection, the privacy of home, marriage, procreation, family, sexual orientation, and all the aspects of human life where there is an unwarranted interference by public or private institutions. The worldwide awareness movements and revolt have resulted in a wave recognizing the need for validating the "Right to Privacy." "An attempt is there to compare the laws between nations, analyzing their approach to provide its citizens the right to privacy.

### Privacy- A comprehensive view

The word 'privacy' comes from the Latin word 'Privatus,' which means separated from the rest' <sup>[1]</sup>. Privacy is required to strike a balance among personal and society interests that is functionally equivalent to past, present, and future societies. In this way, the need for privacy may be traced back to the origin of human society.

Privacy is not a static, but rather a changing notion, according to a comparative examination of privacy in various Western civilizations and cultures <sup>[2]</sup>. In India, privacy was never an alien concept; rather, it was ingrained in the country's rich cultural legacy as a deeply entrenched norm. The current evolution of the right to privacy in the United States has been built on the Warren Brandeis essay and Fourth Amendment search and seizure cases, the final consequence of which is the Privacy Act of 1974 <sup>[3]</sup>. In the United Kingdom, there was no such thing as a privacy legislation; instead, there was a breach of confidence statute. The Younger Committee Report <sup>[4]</sup> was submitted in 1972 with the assistance of various legal developments, with the final result being the Data Protection Act of 1998. Though India falls far behind the United Kingdom and the United States of America in terms of privacy protection in the contemporary era, it has been enriched by several legislative and judicial developments, culminating in the Right to Privacy Bill, 2011, currently known as the Privacy Bill, 2014 <sup>[5]</sup>.

### Evolution and Development

In this section, the evolution and development phase of the right to privacy with respect to India, USA and UK is discussed.

#### India

In India the first ever case to deal with the question of privacy was *MP Sharma v Satish Chandra* <sup>[6]</sup> wherein court held that the Indian Constitution did not include a basic feature of the right to privacy, which is akin to the

4th Amendment of the US Constitution. The matter was brought before the court, again, after nine years in *Kharak Singh v. State of Uttar Pradesh*.<sup>[7]</sup> The court upheld the prior precedent, ruling that the right to privacy does not fall under the umbrella of fundamental rights. The ray of hope of this verdict was Justice Subba Rao's dissenting opinion<sup>[8]</sup>, which said that while the right to privacy has not been designated a fundamental right by the constitution, it remains a critical component of human liberty. *Govind v. State of Madhya Pradesh*<sup>[9]</sup> is a case wherein finally the court decided that the right to privacy falls under the purview of basic rights protected by Article 21 of the Indian Constitution. Finally, in a landmark decision in the case of *Justice K S Puttaswamy (Retd.), and Another v Union of India and Others*<sup>[10]</sup> on August 24, 2017, the Supreme Court of India proclaimed the right to privacy to be a fundamental right guaranteed by the Indian Constitution. The Court's ruling, holding that this right comes from the basic right to life and liberty, has far-reaching implications.

## USA

As indicated above, Louis Brandeis and Samuel Warren originally expressed the right to privacy under the United States Constitution in their famous essay in the Harvard Law Review in 1890. The United States Constitution never expressly mentions the term "privacy," although it does include numerous essential safeguards in the Bill of Rights.<sup>[11]</sup>

Since 1965, the United States Supreme Court has recognised the right to personal privacy or certain other types of privacy under the United States Constitution, including the First, Fourth, and Fifth Amendments, the Bill of Rights Penumbra, the Ninth Amendment, and the concept of liberty guaranteed by the first section of the Fourteenth Amendment<sup>[12]</sup>. There's also the Children's Online 2000 Act, which protects children's right to privacy in the United States<sup>[13]</sup>.

*Boyd v. United States*<sup>[14]</sup>, was the first case in which the issue of privacy was raised. In *Katz v United States*<sup>[15]</sup>, the Supreme Court established the "reasonable expectation of privacy test," which states that the fourth amendment guarantees the right to privacy if a person expects privacy (subjective) and such expectation is "acceptable" for society.

Furthermore, in *Smith v. Maryland*<sup>[16]</sup>, the US Court recognized the limitations of Katz principles when such scenarios emerge that cannot be adopted under the fourth amendment.

The right to privacy was declared "fundamental" by the US Supreme Court in *Roe v. Wade*<sup>[17]</sup>, and any violation by the state had to be justified by public interest. *Lawrence v. Texas*<sup>[18]</sup>, a 2003 case that maintained the privacy of two homosexual men and overturned the Texan sodomy ban, was an example of this. Currently, Ron Wyden, Rand Paul, and eleven other Senators have introduced the USA Rights Bill to reform the National Security Agency (NSA) monitoring programme, which is one of the most powerful kinds of government spying. This is intended to improve the civil rights guaranteed by the US Constitution.

## UK

Since 1972, the UK has been protecting the Right to Privacy. The Younger Committee Report on Privacy and Final Report of the Royal Commission on the Press, 1977 are the most important documents on the Right to Privacy in the UK.

The Data Protection Act of 1998, which is a recent piece of legislation dealing with a law linked to the Right to Privacy, was adopted by the United Kingdom Parliament, outlining the legal foundation for information management of their people<sup>[19]</sup>. The Privacy of Data and Personal Information Act protects data and personal information privacy, not individual privacy. As a result, individual privacy is wholly unprotected. Apart from that, no separate law addressing all facets of the Right to Privacy has been passed so far. In a nutshell, new legislation is required that covers individual privacy exhaustively<sup>[20]</sup>.

In *Francome v Mirror Group Newspaper Ltd*<sup>[21]</sup>, an injunction was sought to prevent the publication of an unlawfully intercepted phone call, indicating a tendency toward a novel approach to breach of confidence by way of an injunction. This case focused on how information was collected rather than the parties' connection, expanding the scope of breach of confidence as a privacy remedy and satisfies the standards set forth in *Coco v Clark*<sup>[22]</sup>.

The new model reinterpreted the implied agreement of secrecy; it is now implied into dealings between parties on the premise that a reasonable man in the defendant's situation would assume such a duty, rather than on the basis of mutual, albeit unspoken agreement on the topic<sup>[23]</sup>.

It may now encompass situations in which the media obtains clearly personal information without authorization and subsequently publishes it without the owner's approval, because the court may conclude that a reasonable person would presume a duty of confidence in such circumstances. When utilized in this fashion, the primary function of maintaining confidence is reduced to preventing private or personal information from being released into the public sphere without the plaintiff's agreement. While the conduct is still regarded as a "breach of confidence," it has become nearly indistinguishable from a "pure" privacy tort<sup>[24]</sup>.

## Right to Privacy- A wide lens approach

The right to privacy includes within its ambit the 'Right to be Forgotten'. It is a right to have publicly available personal information erased from the internet, search engines, datasets, websites, and other public platforms provided it is no longer important or applicable. This concept came to the surface for the first time in the case of *Google Spain vs. Maria Costa Gonzalez*<sup>[25]</sup>, where Maria Costa asserted that when a Google search pulled up an

auction notice for his foreclosed property from 1998, it was somehow a breach of his right to privacy to have it out there. He claimed that the newspaper and Google had abused his personal information. When the matter was brought before the Spanish Data Protection Authority, it was determined that the newspaper changes its news on a routine basis and is not required to withdraw the newspaper, whereas Google processes the personal data of its users and thus was requested to remove Maria Costa's private information. Soon after the concept was invoked in various cases in India as well. In *Jorwar Singh Mundy vs. Union of India* <sup>[26]</sup>, an American citizen, Jorwar Singh Mundy, requested that the Delhi High Court's judgement in an NDPS Act case against him, in which he was cleared of all counts, be overturned. He stated that the judgment's public availability constituted a blemish on his reputation. The Right to be forgotten empowers individuals to have information, films, or images about themselves removed from certain internet records so that search engines would not uncover them, according to the Delhi High. It goes on to say that this power gives a person the ability to mute past occurrences in his life that are no longer happening.

The issue with the concept is that it conflicts with the right to information. Therefore, a balance needs to be struck between both the rights by limiting the Right to Information and restricting the sensitive personal data of individual from being accessed by the public at large. This is one of the major aspects with needs to be dealt in the age of technology and internet where news spread with just a click. Such instances where the false accusation take a toll on the reputation of the individual are very common, if such news remains in public domain, it greatly impacts the image of an individual. The right to be forgotten is an extended version of right to privacy which should not be neglected and should be dealt very cautiously as the information in question may impact the person involved in several aspects of life.

### Recent Incidents

There are various incidents every now and then pertaining to privacy. One such incident which arose recently is the WhatsApp Privacy policy which irked the data regulatory authorities and privacy experts. The new privacy policy introduced by WhatsApp notified the users with the only option to accept it. It clearly stated that WhatsApp will collect information such as profile names, pictures, phone numbers, IP address, usage and log information, device information and the like. Most importantly, the privacy policy confirmed that WhatsApp will allow Facebook companies and third parties to access messages that users share with businesses on the app <sup>[27]</sup>.

This update had received red flags from data regulatory authorities and privacy experts for its extended data collection and sharing practices. Though most of the users on digital platforms agree to privacy and cookie policies without actually reading them, WhatsApp's updated policy had sparked a mass exodus as users at large are concerned that Facebook would be able to read their private messages <sup>[28]</sup>. This case had altogether alarmed the need for data privacy law in India. The key area of concern clouds over data sharing with Facebook and third parties violating the principle of data localisation, by allowing the transfer of personal data outside the jurisdictions. Also, the usage of the information beyond the purposes for which the consent was given at the time of collection violates the principle of purpose limitation.

The Competition Commission of India (CCI) has taken Suo moto action of WhatsApp's contentious privacy policy and terms of service and has initiated an inquiry. The policy appears to be in violation of section 4 of the Competition Act of 2002, according to the study. The policy allows WhatsApp to exchange user data with Facebook and its companies, according to CCI's decision. This privacy policy is mandatory and non-consensual in nature, requiring users to "take it or leave it."

In India, the right to privacy has been recognized by the courts since the K.S Puttaswamy decision, and the only privacy regime is provided under Section 43A of the Information Technology Act, 2000, the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which is also limited and non-exhaustive in terms of legal remedies. However, work on a report for the proposed law on the protection of Indian citizens' personal data, the Personal Data Protection Bill, 2019. In comparison to the current regime, the 2019 Bill has a broader reach, beginning with the definition of personal data and ending with sanctions for non-compliance. The law stipulates that user have the right to access and erase their personal data, as well as a clear privacy notice, an informed consent procedure, a restriction on the transfer of personal data beyond India, and the appointment of a data protection officer. In such a situation, WhatsApp would be required to abide by the law of the state, and individuals would be able to seek legal redress for such a violation of their private rights <sup>[29]</sup>.

Lastly, it is important to note that due to the presence of data protection legislation in the specific countries, WhatsApp has released separate updated privacy rules for European, Californian, and Brazilian citizens. WhatsApp has around 4 million users in India, which is significantly greater than in these countries; yet, owing to the lack of a data privacy regulation, private rights are infringed upon, and complex legal actions are initiated. As a result, in the absence of Data Protection Laws, the Right to Privacy has no value <sup>[30]</sup>.

### Analysis

Only certain rights of women for abortion, the prevention of unjustifiable abortion, and the prohibition of female foeticide have been addressed in some legislation in all three countries, such as India's Pre-Conception and Pre Natal-Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 <sup>[31]</sup>. However, there is no legislation controlling a woman's right to choose whether or not to become a mother. The issue of abortion for women must be dealt with in a private manner. The right to abort, in J. Nariman's perspective, should be included in the list of

"a significant number of private concerns." In India, a woman's right to an abortion is conditional on a number of factors. A woman must seek medical advice before having an abortion (if she is 12 weeks pregnant). The Act does not allow a married woman to obtain an abortion if she is not ready to have a child. Even after she is raped by her husband, resulting in her pregnancy<sup>[32]</sup>, her freedom is limited. A married lady has no legal remedy under these two circumstances<sup>[33]</sup>.

The Privacy Act of 1974 in the United States and the Data Protection Act of 1998 in the United Kingdom sufficiently address the issue of data or information privacy. There is also the Information Technology Act of 2000 in India.

The comparative analysis of notable facets, dimensions, and current trends of Right to Privacy, as well as contemporary debates on Right to Privacy, leads to the conclusion that the United States of America is the strongest country in terms of privacy protection<sup>[34]</sup>, the United Kingdom is in the middle, and India is a novice country in terms of such protection. By means of judicial evolution, maintaining privacy and secrecy in matrimonial procedures by conducting in camera sessions has been a legal concept in the United States and the United Kingdom<sup>[35]</sup>. This clause is included in all marital legislation in India, including the Hindu Marriage Act of 1955, the Special Marriage Act of 1954, and the Divorce Act of 1869.

The constitutional protection of the right to privacy is similar in the United States and India, because neither country has an express constitutional guarantee of the right to privacy, and it is the sole creation of the judiciary in both countries. However, in the United Kingdom, the lack of a codified constitution has caused the judiciary to be hesitant to recognize this right. Privacy has been formed as a Customary Right in the rules of house construction in India<sup>[36]</sup>, but it has been developed as an old light principle in the United States. The legislation in the United Kingdom is quiet on the subject.

### Conclusion

There is no way to limit the Comparative Analysis of Privacy Protection Laws to a certain quantity. There are several aspects to the Right to Privacy, which are growing in number with the passage of time. As a result, the necessity for legislative protection of the right to privacy is growing. In this respect, a component-by-component comparison study is insufficient to make a conclusion statement<sup>[37]</sup>. However, it is worth noting that in the ancient time, Indian laws were significantly superior to Western laws<sup>[38]</sup>, however in the current period, the United States of America has become the leading country with these laws. In terms of the protection of these laws, the United Kingdom is still in the early stages of development<sup>[39]</sup>.

The most essential characteristic of all of these laws is that they all emphasize the need of data protection, since in this age of information and communication technology, no country can survive without the storage and processing of massive amounts of computerized personal data.

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