



The COVID-19 Crisis Demands a Balance between Right to Life & Right to Privacy

India, along with the entire world, is going through a crisis. It is a phase of unprecedented health emergency. However, for us, the situation is more critical. We are not only dealing with the Coronavirus but also with hunger, shelter, and migration at large scale. This is a double whammy.

Dealing with the crisis is certainly the need of the hour; but for overall and long-term welfare of citizens, we need to consciously work on reviewing the impact of these efforts on our rights. This article is an endeavor in that direction.

Let us focus on two rights at stake: right to life and right to privacy, both critically important rights. Right to life has been specifically provided in the Constitution under Article 21. And through a number of judicial pronouncements, right to privacy has been held as a part of right to life.

Article 21 of the Constitution of India, provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws. During this pandemic, it is our life that is at stake. Understanding it beyond just ‘staying alive’, right to life has been interpreted to include a large number of other rights, such as, right to live with human dignity, right to livelihood, right against sexual harassment, right to shelter, right against honor killing, right to health, right to medical care, right not to die, right to pollution-free air, right to clean environment, right to know or right to be informed, right to free legal aid, speedy trial and also right to privacy. Though there is no fixed definition of privacy, there are various interpretations available as mentioned in the box alongside.

What are the interpretations of privacy?

What privacy includes

- Preservation of personal intimacies, the sanctity of family life, marriage, procreation, home, and sexual orientation.
- A right to be left alone.
- Safeguards individual autonomy, recognizes the ability of the individual to control vital aspects of his or her life.
- Personal choices governing a way of life are intrinsic to privacy.
- Protection of heterogeneity and recognition of plurality and diversity of our culture.

Privacy is not surrendered when a person is in public place

- By being in public place does not mean an individual has surrendered privacy, even as the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arena.
- Privacy attaches to the person since it is an essential facet of the dignity of the human being.

What Right to Privacy does not mean

Not an absolute right: Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right.¹

¹ <https://www.financialexpress.com/india-news/what-fundamental-right-to-privacy-means-and-what-it-doesnt-10-points-from-supreme-court-verdict/823334/>



Looking at the history of modern India, the first attempt to protect the privacy of an individual against unreasonable state interference was in the Constituent Assembly. Mr. Kazi Syed Karimuddin moved an amendment to protect individuals from unreasonable search-and-seizures. Notably, Dr. B. R. Ambedkar accepted the amendment, calling it a 'useful proposition'. However, the right to privacy did not find a definite and explicit place in the Constitution.

It was after the case of **Kharak Singh v. State of U.P.**² that the question whether the right to privacy could be implied from the existing Fundamental Rights came before the court. Latest case in development and interpretation of right to privacy has been the case of **Justice K.S. Puttaswamy (Retd.) and others, versus Union of India**³, popularly known as the Aadhaar case. In April 2017, Supreme Court delivered a unanimous verdict in the matter affirming that the Constitution of India guarantees to each individual a fundamental right to privacy. Considering the need to bring in transparency and a check on beneficiaries of government schemes, Supreme Court held the AADHAAR Scheme valid. At the same time, recognizing that each citizen has a right to privacy, Supreme Court held that the supply of personal information has always been discretion of the Individual. Supreme Court also specifically pointed out that sufficient security measures ought to be taken to protect data and it asked the government to bring a robust law for data protection as soon as possible.

"Right" to Privacy

Kharak Singh v. State of U.P.

- Kharak Singh, an accused in a dacoity case was let off due to the lack of evidence. However, Uttar Pradesh Police using the provisions of U.P. Police Regulations continued conducting domiciliary visits at night, secret picketing of Singh's house, tracking / verifying his movement and periodic inquiries by officers. Singh filed a writ petition before the Supreme Court challenging regular surveillance by police authorities on the grounds of infringement of his Fundamental Rights. In the judgement, "Surveillance" related provisions of the U.P. Police Regulations, which permitted surveillance by "domiciliary visits at night", was held to be in violation of Article 21.

Dealing with COVID-19 Crisis in Light of Right to Privacy

Governments across the world are putting best efforts to fight against Coronavirus. In India as well, the government is taking many efforts and steps to fight the virus. All this is being done to protect the right to life of us, citizens. For everyone right now the priority is protection of right to life. In the race to contain the pandemic, many Governments are deploying digital surveillance tools as a means to exert social control. For example, in South Korea, government agencies are using camera footage, smartphone location data, credit card purchase records, and tracing movement of people to establish virus transmission chains. In Israel, internal security agency is using mobile phone location to track virus transmission. Health and law enforcement authorities are understandably eager to employ every tool at their disposal to try to hinder the virus. However, these surveillance efforts threaten to alter the precarious balance between public safety and personal privacy on a global scale.

² (AIR 1963 SC 1295)

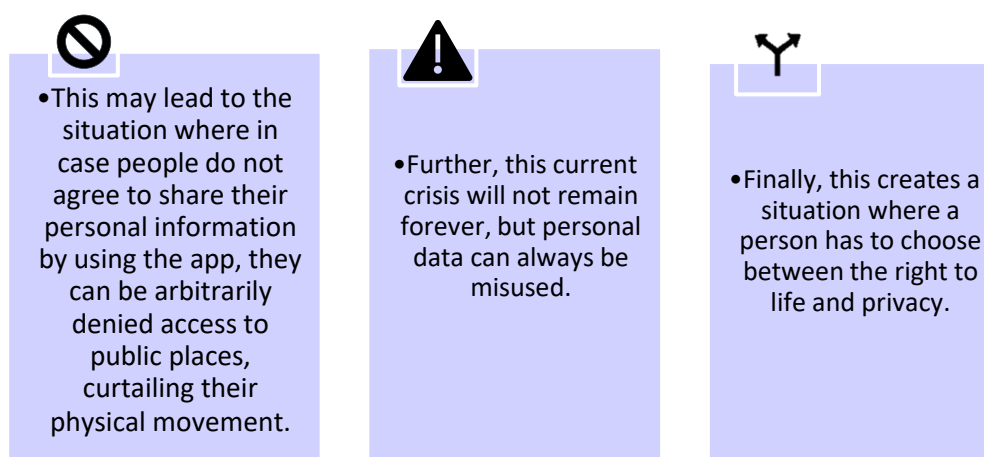
³ <https://indiankanoon.org/doc/127517806/>



Scenario in India

The Indian Government is promoting the Aarogya Setu application. It is an app devised to establish traceability and thus, control the virus. It seeks the mobile number of the person, personal information such as name, gender, age, sex, occupation, travel history, and most importantly, permission to access live location. Through the privacy policy of this application, the Government seeks permission to use the data for limited purpose, however, there are few concerns arising out of this:

Firstly, nowhere it is specified for how long and which government organization can use the data, and for what purposes. *Secondly*, the efforts and provisions regarding protection of data is almost non-existent. This is despite Supreme Court direction in the AADHAAR case. *Thirdly*, though it is a voluntary app, it is increasingly becoming mandatory, as people have started receiving messages from their banks and offices that they should install the Aarogya Setu app on their phones. Organisations like Swiggy and other urban service providers have mandated their workers to install it and show their health status. A recent order by the Ministry of Home Affairs directed that it has been made mandatory for all employees, private and public, and it is the responsibility of head of the organizations to ensure 100% coverage. Even for residents of those areas marked as Containment Zone, this has been made mandatory.⁴ Such preconditions would have far reaching consequences as mentioned below:



Thus, there is an urgent need to balance the value of protecting human rights and privacy and the value of upholding public interest in preventing mass infections. As citizens, we need to remain conscious and raise critical questions:

1. What measures are being taken to ensure its protection and how appropriate or effective these measures are?
2. How much data is absolutely needed for situation like this? What are the specifications related to purpose and duration of use of data?
3. What measures can be taken in the cases where use of the app becomes mandatory?
4. And most importantly, are citizens not entitled to protection of both rights – right to life **and** right to privacy?

In a crisis, the balance of our Fundamental Rights becomes even more urgent and important. There is, after all, a reason why they are called Fundamental.

⁴<https://www.mha.gov.in/sites/default/files/MHA%20Order%20Dt.%2015.2020%20to%20extend%20Lockdown%20period%20for%20%20weeks%20w.e.f.%204.5.2020%20with%20new%20guidelines.pdf>