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Saving Private Indian

Sujata Dutta Sachdeva, TNN | May 24, 2003, 08.59PM IST

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Privacy Laws? What's that? Almost half a century after it framed its Constitution, India still has to enunciate a law that makes individual privacy a prime issue and brand its infringement a culpable affair.

Even today, the Indian Constitution does not recognise the right to privacy as a fundamental right. As senior Supreme Court advocate Abhishek Singhvi says, "In India, privacy is at best a creation of common law. It is statutory in nature, hence ambiguous, flexible and somewhat fuzzy at the edges."

"The problem," says senior lawyer Kapil Sibal, "is the absence of judicial concern on issues of privacy. Individuals are subsumed by the concept of the nation-state and their rights are not recognised barring the occasional dictum."

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It was in the '60s that the Supreme Court first expanded the scope of the fundamental right to life under Article 21 of the Constitution (Kharak Singh vs State of Uttar Pradesh). The court held that the right to privacy is an integral part of the right to life. But with no clear-cut laws, it remains a grey area.

Says Supreme Court lawyer Pavan Duggal: "Even though the apex court has reiterated the right to privacy as a part of right to life in various judgments, there is no real legal remedy for the individual. One can approach the courts under Article 21 if the violator is a government agency. But if the offender is a private entity, there is no effective legal remedy. The only option is to claim damages under the law of torts, which too is grey."

For example, when Maneka Gandhi moved the Delhi High Court against Khushwant Singh's autobiography Truth, Love and a Little Malice claiming it had violated her privacy, the judgement went in favour of Singh. The two-judge bench observed that the right to privacy enshrined in Article 21 could be invoked only against State action and not against private individuals.

The issue also came up in the telephone-tapping case — People's Union for Civil Liberties vs Union of India, 1996. The court observed that wiretaps are a "serious invasion of an individual's privacy" under Article 21. "No person shall be deprived of his life or personal liberty except according to procedure established by law."

"The problem gets compounded further in cyberspace where one is virtually defenceless," says Shuddhabrata Sengupta of Sarai CSDS. "In India, an individual can do little about e-mail

snooping, cyber stalking, spam mail, cellphone tracking. Websites regularly pass on information about individuals and there is little legal remedy."

Even the IT Act of 2000, India's first cyber law, does not touch upon privacy directly except under Section 72 — breach of confidentiality and privacy: if a government official passes on electronic information/data that he has received about an individual in his official capacity, he can be punished.

Sting operations like the Tehelka case also do not infringe upon a person's privacy if the intent is proved, say lawyers. "If the issue is about exposing a public wrong then one cannot seek protection under grounds of privacy," says Sibal.

Given the New Age threats to individual privacy, clear-cut laws are the need of the hour. Lawyer Rebecca John contends, "Article 21 is not enough. The laws on privacy need to be codified and put in a composite form." Kapil Sibal favours statutory status for the right to privacy.

"When the court is satisfied that privacy has been infringed upon, the offender should be made to pay damages."

Pavan Duggal under-scores the need for privacy laws for governing cyberspace. "Websites must be mandated to follow strict guidelines on various issues concerning privacy. Such legislation should be crystal clear without leaving any scope for doubt or abuse by either the state or the regulators."

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