
UNIT 2 NATIONAL LEGAL FRAMEWORK FOR PROTECTING PRIVACY

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2.1 INTRODUCTION

“The privacy, private life, honour and image of persons are inviolable, and the right to compensation for property or moral damages resulting from their violation is ensured; the home is the inviolable refuge of the individual, and no one may enter therein without the consent of the dweller, except in the event of ‘flagrante delicto’¹ or disaster, or to give help, or, during the day, by court order; the secrecy of correspondence and of telegraphic, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the manner prescribed by the law for purposes of criminal investigation or criminal procedural finding of facts; access to information is ensured to everyone and the confidentiality of the source shall be safeguarded, whenever necessary to the professional activity”

Article 5 [Equality], provided in Chapter I – Individual and Collective Rights and Duties under Title II Fundamental Rights and Guarantees – Constitution of Brazil².

While privacy issues are now being deliberated upon in the Indian media and have been of interest amongst academia and jurists, unlike Brazil, the legal safeguards under the current legal regime in India are limited in nature and scope. Privacy Law in India comprises a number of central statutes covering particular sectors and activities, and some constitutional safeguards, which have very occasionally been used in support of privacy rights through actions for unauthorized surveillance, search and seizures, disclosure of personal details, DNA testing, matrimonial discord, defamation, trespass or nuisance.

Majority of countries in the world including India yet do not have a specific data protection law; a number of them either have general privacy rights, sometimes entrenched in a constitution, or have sector-specific privacy laws.³ The Constitution of 1950 does not expressly recognise the right to privacy. However, the Supreme Court first recognised in 1964 that there is a right of privacy implicit in the Constitution under Article 21 of the Constitution, which states, “No person shall be deprived of his life or personal liberty except according to procedure established by law” [Kharak Singh v. State of UP. ISCR 332 (1964)]. So far the law of privacy has been relegated to a penumbral status and has never enjoyed the status of a well-defined right. It is necessary to preserve the tenuous balance between the right of the individual to be let alone and the fundamental right to free speech, expression and information. In this unit we will closely examine the legal framework and the judicial trends as they exist in India for the protection of the right to privacy.

2.2 OBJECTIVES

After studying this unit, you should be able to:

- familiarize yourself with the position of privacy as under Indian constitutional and legal framework;
- explain how the Constitution of India addresses the privacy issues;
- appreciate to what extent the Information Technology Act 2000 addresses the issue of privacy; and
- know the position of right to privacy under various Indian legislations.

2.3 POSITION UNDER INDIAN CONSTITUTION

On a closer scrutiny of the judicial interventions in the area of privacy rights, one can discern that privacy rights have their genesis in the law of torts and the constitutional law. In common law, a private action for damages for unlawful intrusion of privacy is maintainable. Under the constitutional law, the right to privacy is implied in the fundamental right to life and liberty. The Indian courts have seized the opportunities whenever they came and tried successfully to bring the privacy right within the purview of fundamental rights. Even though right to privacy is not enumerated as a fundamental right in our Constitution it has been inferred from Article 21. This section traces down the evolution and development of right to privacy as emanating from the ‘right to life’ enumerated under Article 21 of the Constitution of India read with other fundamental right falling under Part III of Indian Constitution, highlighting development in law in the post constitutional period in India.

2.3.1 Supreme Court on Right to Privacy – 1954 to 2005

The right to privacy against unreasonable search and seizure has been recognised under the fourth amendment to the US Constitution. As early as 1954, privacy rights came under the scrutiny of the Supreme Court of India in the case of *M.P Sharma v. Satish Chandra* [AIR 1954 SC 300 (Para 18 p. 306)] where the process of search and seizure was challenged in the light of fourth amendment to the American Constitution. A bench of eight judges in Para 18 that: “A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under article 20(3) would be defeated by the statutory provisions for searches. It is to be remembered that searches of the kind we are concerned with are under the authority of a Magistrate (excepting in the limited class of cases falling under section 165 of the Criminal Procedure Code). Therefore, issue of a search warrant is normally the judicial function of the Magistrate. When such judicial function is interposed between the individual and the officer’s authority for search, no circumvention thereby of the fundamental right is to be assumed.”

However, a good half a century later, Supreme Court in the case of *District Registrar and Collector vs. Canara Bank* [(2005) 1 SSC 496] held that the right to privacy of the person includes right to freedom from unreasonable, search and seizure. It further said that the, State cannot have unrestricted access to inspect and seize or make roving inquiries into all bank records relating to person, without any reliable information before it prior to such inspection. Documents or copies of documents of the customer which are in bank must continue to remain confidential vis-à-vis the person, even if they are no longer at the customer’s house and have been voluntarily sent to a bank. Search, taking of notes or extracts or seizure of the said documents would amount to breach of confidentiality and be violative of the privacy rights of the customers of the bank, unless there is some probable or reasonable cause or basis. Hence disclosure of the private documents of the customers or copies thereof by a bank would therefore be violative of the privacy rights of its customers.

2.3.2 Right to Privacy Emanating from ‘Right to Life’ – Article 21 – Indian Constitution

It is evident from various pronouncements of the Supreme Court that right to privacy, though not a fundamental right has gained constitutional recognition in Indian courts. The writ courts have carved out a constitutional right to privacy reading it as a part of ‘right to life’ under Article 21 of the Constitution of India, which states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. It can be reasonably inferred that there do exist legal spaces within the Constitution of India that can be utilized for honouring and upholding the right to privacy. The judicial interventions by the Supreme Court of India reaffirms this position through innovative and creative interpretation of ‘Right to Life’ under Article 21 as including ‘Right to Privacy’.

2.3.3 Right to Privacy versus Freedom of Press

It is only in *R. Rajagopal alias Gopal v. State of Tamil Nadu* [(1994) 1 SCC 632], where a question concerning the freedom of press vis-à-vis the right to privacy of the citizens of their country was raised, that the Supreme Court unequivocally stated that the right to privacy is implicit in Art. 21. The dispute in this case was over the publication of the alleged autobiography/life story of Auto Shankar, who was charged and tried for as many as six murders. It was claimed that the autobiography set out the close nexus between Auto Shankar and several IAS and IPS and other officers some of whom were indeed his partners in several crimes. One of the three questions that arose on the pleadings is ‘whether a citizen of this country can prevent another person from writing his life story or biography?’

Whether the freedom of expression guaranteed by Art. 19 entitles the Press to publish such unauthorized account of a citizen’s life and activities and if so, to what extent and in what circumstances? What are the remedies open to a citizen of this country in a case of infringement of his right to privacy and further in case such writing amounts to defamation?” Supreme Court after considering a number of Indian, American and English cases came to a conclusion that “the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a right ‘to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish anything concerning the above matters without his consent—whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. The position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy”.

2.3.4 Surveillance versus Right to Privacy

The earliest cases decided by the Supreme Court of India where the foundations for the right were laid, concerned the intrusion into the home by the police under State regulations, by way of ‘domiciliary visits’. Such visits could be conducted any time, night or day, to keep a tag on persons for finding out suspicious criminal activity, if any, on their part. The validity of these regulations were challenged in the Court.

One of the first cases where ‘right to privacy’ came under scrutiny of Supreme Court was the case of *Kharak Singh v. state of U.P.* [AIR 1963 SC 1295 (Para 20 p. 1303)] relating to police surveillance, Supreme Court considered the constitutionality of Police regulation that permitted the police to keep a close watch on would be criminals. *Kharak Singh* was a case where the petitioner was put under surveillance as defined in Regulation 236 of the UP Police regulations. It involved secret picketing of the house, domiciliary visits at night, periodical enquiries by police officers into repute, habits, association, income or occupations, reporting by police constables on the movements of the person etc. The regulation was challenged as violative of the fundamental rights guaranteed to the petitioner.

In the given case the majority observed “The right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III.” However *Subha Rao, J.*, in his minority judgment dissenting with the majority held that the fundamental right to privacy is part of the right to liberty in Art. 21, part of the right to freedom of speech and expression in

Art. 19(1)(a), and also of the right to movement in Art. 19(1)(d), held that the Regulations permitting surveillance violated the fundamental right of privacy AIR 1963 SC 1295 (Para 31 p 1305).

The matter again came up for consideration of the Supreme Court in *Govind v. State of M.P.* [(1975) 2 SCC 148 (Para 23-24 p. 156)] which again was a case of surveillance, this time under MP Police Regulations. The Court had to consider the Constitutional validity of Regulations 855 and 856 of MP Police Regulations, which provided for surveillance. Justice Mathew observed that “privacy primarily concerns the individuals. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values”. Justice Mathew opined that the law of privacy can not be cast in stone as “in the application of the Constitution our contemplation cannot only be of what has been but what may be. Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet”. Thus one can ascribe that surveillance, by and large, has been held to be intrusive and an encroachment upon the right to privacy by the Supreme Court of India [*Malak Singh v State of Punjab* (1981) 1 SCC 420, *Sunil Batra v. Delhi Admn* (1978) 4 SCC 494].

2.3.5 Right to Privacy against Wire-trapping

In *People’s Union for Civil Liberties v. UOI* [(1997) 1 SCC 301 (Para 18 p. 311)]. The Supreme Court held that tapping into telephonic conversations was unconstitutional unless it has been brought about by a procedure established by law. The issue before the Supreme Court was the citizen’s right to protect their privacy from being abused by the authorities. Taking cue from the earlier decisions, in this public interest litigation, the Supreme Court reiterated its earlier stand that right to privacy is a part of the right to ‘life and personal liberty’ enshrined under Art. 21 of the Constitution and the said right cannot be curtailed, except according to procedure established by law [(1997) 1 SCC 301. (para 18 p. 311)]. The Court further held that the right to privacy by itself has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether the right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as ‘right to privacy’. Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man’s life. It is considered so important that most people carry mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man’s life. Right to privacy would certainly include telephone conversation in the privacy of one’s home or office. Telephone tapping would, thus, be in violation of Article 21 of the Constitution of India unless it is permitted under the procedure established by the law. The Court also highlighted the necessity to lay down procedural safeguards for the exercise of power under section 5(2) of Telegraph Act which permits interception of telephone messages, so that the right to privacy of a person is protected.

2.3.6 Privacy Right – Reasonable Restrictions

The Supreme Court has categorically stated that the rights to privacy like any of the fundamental rights, is also subject to reasonable restrictions. Thus in *Govind’s case* [(1975) 2 SCC 148 (Para 23-24 p. 156)] the Supreme Court stated that there ‘can be

no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does not find that a claimed right is entitled to protection as fundamental privacy right, a law infringing it must satisfy the compelling state interest test.

From the above observations of the Supreme Court the following principles emerge:

1. Right to privacy is a fundamental right, implicit in Article 21;
2. It is not an absolute right, but subject to reasonable restrictions like any other fundamental rights; and
3. Right to privacy can be exercised subject to other rights and values and compelling State and public interest.

Please answer the following Self Assessment Question.

Self Assessment Question 1

Spend 3 Min.

Whether the Supreme Court of India recognises the right to privacy as constitutional right?

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2.4 POSITION UNDER INFORMATION TECHNOLOGY ACT, 2000

Information Technology Act, 2000 (the “Act”) was enacted in year 2000 to provide for a regulatory environment for electronic commerce. The Information Technology Act, 2000 does not directly deal with the issue of privacy nonetheless a few provisions of the Act do touch upon some aspects of privacy. The Act deals with issues related to unauthorized access, damage to computer through computer contaminants, hacking, breach of privacy and confidentiality and publishing false digital signature certificate for fraudulent purposes.

Section 72 of the Act entitled ‘Penalty for breach of confidentiality and privacy’ directly deals with ‘confidentiality’ and ‘privacy’ of individuals. The Section 72 reads:

Save as otherwise provide in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulation made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

This section is narrow in scope as it covers only the persons empowered under the Act. It means that provisions of this section apply only to the officials who are authorized

to collect data under this Act. In its application, this section would be extremely limited since it covers offences only by the authorities such as Adjudicating Officers, members of the Cyber Regulations Appellate Tribunal (CRAT) or Certifying Authorities under the Act. This section does not specify any punitive measures for any service provider or intermediary who by virtue of any individual availing its services has secured access to any material or other information relating to such individual, discloses such information or material to any other person, without the consent of such subscriber.

Under the proposed amendments to Section 72, if any intermediary who by virtue of any subscriber availing his services has secured access to any material or other information relating to such subscriber, discloses such information or material to any other person, without the consent of such subscriber and with intent to cause injury to him, such intermediary shall be liable to pay damages by way of compensation not exceeding Rs. 2,500,000 to the subscriber so affected. Further the amendments to Section 72 also propose to make video voyeurism an offence under the Act.

Section 66 of the Act deals with hacking. It states that hacking is committed if some one, with the intention of causing wrongful loss or damage (or with the knowledge that such damage or loss is likely to result) to the public/any person, destroys/deletes/alters any information residing in a computer resource, diminishes its value or utility, or affects it injuriously by any means. If a person commits hacking, he/she is liable to be punished with imprisonment up to 3 years, or with a fine, which may go up to Rs. 200,000, or with both. Section 66 of the Information Technology Act while making unauthorized access of a computer system an offence, also makes unauthorized downloading/extraction of data also an offence. Though this provision does not deal with privacy directly it can be used in cases where personal information has been obtained through unauthorized access.⁴

Section 43 of the IT Act entitled “Penalty for damage to computer, computer system, etc.” deals with unauthorized access to a computer system. It states:

If any person without permission of the owner or any other person who is incharge of a computer, computer or computer network –

- (a) accesses or secures access to such computer, computer system or computer network;
- (b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
- (c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
- (d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or other programmes residing in such computer, computer system or computer network;
- (e) disrupts or causes disruption of any computer, computer system or computer network;
- (f) denies or causes the denial of access to any person authorized to access any computer, or computer network by any means ;
- (g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder; and

- (h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network.

He shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected. Any person who unauthorizedly accesses a computer, extracts data and introduces contaminant is liable under this section.

Section 79 deals with the Network Service Provider’s Liability. It states that: A network service provider shall be liable for violation of privacy of a third party if he makes available any third party information or data to a person for the commission of an offence or contravention. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages [(1994) 6 SCC 632]. However, a network service provider will not be liable if he proves that the offence or contravention was committed without his knowledge or he had exercised all due diligence to prevent such commission.

Liability of Companies

Where a company infringes the privacy rights of a person, every person who at the time of contravention was incharge of and was responsible to the company for the conduct of its business as well as the company shall be guilty of the contravention and liable to be processed against and punished accordingly. However, as per section 85 of the Information Technology Act, such person shall not be liable if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention. These provisions provide sufficient protection against privacy violations by private individuals.

Please answer the following Self Assessment Question.

Self Assessment Question 2	<i>Spend 3 Min.</i>
Which are the provisions under the Information Technology Act that touch upon the concept of privacy in the information world?	
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2.5 POSITION UNDER FREEDOM OF INFORMATION ACT, 2002

Under the Freedom of Information Act, 2002, every citizen can secure access to information under the control of public authorities consistent with public interest, in order to promote openness, transparency and accountability in administration and in

relations to matters connected therewith or incidental thereto. This right to receive information from public authorities, including the judiciary, has the following features:

- (i) Section 8(1), subject to section 8(2), exempts from disclosure of information in certain cases, like where sovereignty and integrity of India may be prejudicially affected by the disclosure or where public safety and order will be affected by such disclosure or for the protection of trade or commercial secrets.
- (ii) Section 9 empowers a Public Information Officer to reject a request for information where such a request is too general in nature or when it relates to information that is contained in published material available to public or where it relates to information, which would cause unwarranted invasion of the privacy of any person.

2.6 POSITION UNDER EASEMENTS ACT, 1882

Indian Easements Act, 1882 accords statutory recognition to customary right of privacy. Section 18 of the Act provides that an easement may be acquired in virtue of local customs, which are called customary easement. Illustration (b) to the above section more or less settles the contents of the customary right of privacy. It lays down:

By the custom of a certain town no owner or occupier of a house can open a new window therein so as to substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new window in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect of A's house.

In 1888, the case of Gokal Prasad v Radho [ILR 10 All (1888) 358] came before a Division Bench of Allahabad High Court for decision. The plaintiff alleged that the defendant had wrongfully built a new house in such a way that certain eaves of that new house projected over the plaintiff's land and that a verandah and certain doors of the house interfered with the privacy of those portions of the plaintiff's house and premises which were occupied and used by the females of the plaintiff's family. Accordingly he claimed to have the eaves, in question, and the verandah removed and the doors, complained of, be closed. The female members of the plaintiff's family were paradanashin women. The lower court decreed the plaintiff's claim with costs. On appeal, the District Judge that an appeal was made and this is how the case came before the High Court, the Division Bench of the High Court formulated the following questions.

Does the privacy in fact and substantially exist and has it been and is it in fact enjoyed? If it were found that no privacy substantially exists or is enjoyed, there would be no further question in an ordinary case to decide if, on the other hand, it were found that privacy did substantially exist and enjoyed, the next question would be: was that privacy substantially or materially interfered with by acts of the defendant done without the consent or acquiescence of the person seeking relief against those acts.

Chief Justice Edge, who delivered the judgment, arrived at the conclusion after examining various authorities that a right of privacy exists and has existed in these provinces by usage or custom and that substantial interference with such a right of privacy, where it exists, if the interference be without the consent of the owner of the dominant tenement, afford such a good cause of action. In his concurring judgment Justice Mahmood pointed out that under conditions of life such as they are in these provinces, the custom that invasion of privacy is actionable is far from being an unreasonable custom, and the

custom itself is so well recognised that Mr. Motilal Nehru, for the respondent, in course of his argument stated that it was wholly unnecessary to remand the case for ascertaining the custom. Thus, the appeal was decreed and the lower court decree was restored.

The Gokal Prasad case is an important decision in several ways. In the first place, the extensive examination of the cases undertaken by the court illustrates the existence of the customary right to privacy prior to the present decision.

2.7 POSITION UNDER INDIAN PENAL CODE, 1860

Indian Penal Code (the “IPC”) though not directly dealing with, and carving out any specific penal provision against the infringement of the right to privacy has given due weightage to privacy in terms of honouring individual’s right to maintain solitude, peace, dignity and self respect, and penalizing unsanctioned intrusion in an individual’s life and affairs.

Section 509 of IPC, comes into effect when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Section 209, IPC deals with obscene acts and songs and lays down: Whoever, to the annoyance of others:

- a) does any obscene act in any public place
- b) sings, recites or utters any obscene song, ballad or words in or near any public place, shall be punished with imprisonment of either description for a term, which may extend to 3 months or with fine or both. (Cognizable, bailable and triable offences).

Section 354, IPC deals with assault or criminal force to a woman with the intent to outrage her modesty and lays down that: Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both.

Sections 405 & 406: Punishment for Criminal Breach of Trust

Anyone who commits a criminal breach of trust may be punished with imprisonment, which may extend to 3 years, or with a fine, or with both. In case any person, who has been entrusted with property, or with any power over any property, dishonestly misappropriates the property, makes wrongful use of the property, dishonestly disposes off that property, or induces any other person to do so, such a person commits “criminal breach of trust”.

2.8 PRIVACY UNDER INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1987

Under the Indecent Representation of Women (Prohibition) Act (1987) if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing “indecent representation of women”; they are liable for a minimum sentence

of 2 years. Further section 7 (Offences by Companies) holds companies where there has been “indecent representation of women” (such as the display of pornography) on the premises guilty of offenses under this act, with a minimum sentence of 2 years.

2.9 PRIVACY UNDER INTELLECTUAL PROPERTY RIGHTS

India has one of the most modern copyright protection laws in the world. A major development in the area of copyright was the amendment to the Indian Copyright Act, 1957 in 1999, to make it fully compatible with the provisions of WTO’s Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement. The Copyright (Amendment) Act, 1999, came into force on January 15, 2000. The other important development during 1999 was the issuance of the International Copyright Order, 1999, which extended the provisions of the Copyright Act to nationals of all World Trade Organization (WTO) member countries. Under the Indian law, computer programs have copyright protection but no patent protection. A software program is an algorithm and patent law does not protect algorithms per se. As per the provisions of the Indian Copyright Act, 1957, any person who knowingly makes use of an illegal copy of a computer program is punishable. According to Section 63B, copyright infringement attracts a minimum imprisonment of 7 days. The Act further provides for fines, which are not to be less than Rs. 50,000, but may go up to Rs. 200,000 and a jail term up to 3 years, or both [(1994) 6 SCC 632].

India has not provided statutory protection under its intellectual property right regime to trade secrets, or valuable business information, which provide an additional benefit or competitive advantage over competitors. Since globally the right in trade secret remains so long the owner prevents its disclosure, thus, if properly protected, trade secrets may last forever. The Supreme Court [P.U.C.L. v U.O.I. (2003)(3) SCALE 263] specified the grounds on which the government can withhold information relating to various matters, including trade secrets. The Supreme Court observed that “every right – legal or moral – carries with it a corresponding objection. It is subject to several exemptions/ exceptions indicated in broad terms. Generally, the exemptions/ exceptions under those laws entitle the Government to withhold information, including information, which, if disclosed, would violate the privacy of the individual.

Please answer the following Self Assessment Question.

Self Assessment Question 3

Spend 3 Min.

What are the Indian legislations which deal with the right to privacy?

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2.10 POSITION UNDER SPECIFIC RELIEF ACT, 1963

According to Section 39 of the Specific Relief Act, 1963, a person has a right to claim temporary and permanent injunctions against unauthorized disclosure of confidential information.

2.11 POSITION UNDER PUBLIC FINANCIAL INSTITUTIONS ACT, 1993

The Public Financial Institutions Act, 1993 codifies India's tradition of maintaining confidentiality in bank transactions.

2.12 SUMMARY

- Legal safeguards under the current legal regime in India are limited in nature and scope.
- Neither the Indian Constitution nor there are any sector specific Privacy Laws which comprehensively addresses the privacy concerns.
- The Privacy Laws in India comprises a number of Central statutes covering particular sectors and activities, and the constitutional safeguards, which have very occasionally been used in support of privacy rights through actions for unauthorized surveillance, search and seizures, disclosure of personal details, DNA testing, matrimonial discord, defamation, trespass or nuisance.
- Majority of countries in the world including India yet do not have a specific data protection law; a number of them either have general privacy rights, sometimes entrenched in a constitution, or have sector-specific privacy laws.
- The Constitution of 1950 does not expressly recognise the right to privacy.
- However, the Supreme Court first recognised in 1964 that there is a right of privacy implicit in the Constitution under Article 21 of the Constitution, which states, "No person shall be deprived of his life or personal liberty except according to procedure established by law."
- Privacy rights have their genesis in the law of torts and the constitutional law.
- The Indian courts have seized the opportunities whenever they came and tried successfully to bring the privacy right within the purview of fundamental rights. Even though right to privacy is not enumerated as a fundamental right in our Constitution it has been inferred from Article 21.
- The Supreme Court has categorically stated that the rights to privacy like any of the fundamental rights, is also subject to reasonable restrictions. From these observations of the Supreme Court the following principles emerge:
 1. Right to privacy is a fundamental right, implicit in Article 21.
 2. It is not an absolute right, but subject to reasonable restrictions like any other fundamental rights.
 3. Right to privacy can be exercised subject to other rights and values and compelling State and public interest.
- The Information Technology Act, 2000 (the "Act") does not directly deal with the issue of privacy nonetheless a few provisions of the Act do touch upon some aspects of privacy.

- The Act deals with issues related to unauthorized access, damage to computer through computer contaminants, hacking, breach of privacy and confidentiality and publishing false digital signature certificate for fraudulent purposes.
- Section 72 of the Act entitled ‘penalty for breach of confidentiality and privacy’ directly deals with ‘confidentiality’ and ‘privacy’ of individuals.
- Section 66 of the Act deals with hacking.
- Section 43 of the IT Act entitled ‘Penalty for damage to computer, computer system, etc.’ deals with unauthorized access to a computer system.
- Section 79 of the Act provides for Network Service Provider’s Liability for violation of privacy of a third party if it makes available any third party information or data to a person for the commission of an offence or contravention.
- Section 9 of the Freedom of Information Act, 2002, empowers a Public Information Officer to reject a request for information where it relates to information, which would cause unwarranted invasion of the privacy of any person.
- Indian Easements Act, 1882 accords statutory recognition to customary right of privacy.
- Indian Penal Code (the “IPC”) though not directly dealing with, and carving out any specific penal provision against the infringement of the right to privacy has given due weightage to privacy in terms of honouring individual’s right to maintain solitude, peace, dignity and self respect, and penalizing unsanctioned intrusion in an individual’s life and affairs.
- Under the Indecent Representation of Women (Prohibition) Act (1987) if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing “indecent representation of women”; they are liable for a minimum sentence of 2 years.
- As per the provisions of the Indian Copyright Act, 1957, any person who knowingly makes use of an illegal copy of a computer program is punishable.
- According to Section 39 of the Specific Relief Act, 1963, a person has a right to claim temporary and permanent injunctions against unauthorized disclosure of confidential information.
- The Public Financial Institutions Act, 1993 codifies India’s tradition of maintaining confidentiality in bank transactions.

2.13 TERMINAL QUESTIONS

1. How does the Constitution of India address the privacy that should be accorded to an individual or citizen? Discuss with case laws.
2. Does the Information Technology Act 2000 address the issue of privacy of an individual?
3. Discuss how the Indian legislations have addressed the issue of privacy?
4. Privacy may be viewed as an Intellectual Property Right. Discuss.

2.14 ANSWERS AND HINTS

Self Assessment Questions

1. Yes, under the constitutional law, the right to privacy is implied in the fundamental right to life and liberty. The Indian courts have seized the opportunities whenever they came and tried successfully to bring the privacy right within the purview of fundamental rights. Even though right to privacy is not enumerated as a fundamental right in our Constitution it has been read in 'Right to Life' under Article 21.
2. Section 43, 66, 72 and 79 of the Information Technology Act, 2000 deal with privacy related aspects.
3. Information Technology Act, 2000, Right to Information Act, 2002, Indian Penal Code, 1860, Easements Act, 1882 etc. are some of the legislations touching upon privacy issues.

Terminal Questions

1. Refer to section 2.3 of the unit.
2. Refer to section 2.4 of the unit.
3. Refer to sections 2.3-2.11 of the unit.
4. Refer to section 2.9 of the unit.

2.15 REFERENCES AND SUGGESTED READINGS

1. 'Flagrante delicto' is a legal term used to indicate that a criminal has been caught in the act of committing an offence.
2. The Constitution of Brazil. 1988. 18 Feb. 2007 <[http:// www.Oefre.unibe.Ch law/icl/br00000_.html](http://www.Oefre.unibe.Ch/law/icl/br00000_.html)>.
3. Mustafa, Faizan. "Privacy issues in data protection: National and International laws". PL Webjour 16 (2004).
4. Singh, Sajai. "Privacy, Information Security and Data Protection In India". Background paper for Privacy. Seminar Presentation. The Roosevelt Hotel, New York. 15 Nov. 2005.