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We would like to thank our Authors who contributed their works and the readers of Lawgic Stratum for their enormous trust and support.



RIGHT TO PRIVACY V. AAROGYA SETU APP

- A. Gemma Maria Suzzana¹

Abstract:

In this article, I have discussed the privacy issues that have been faced by the AarogyaSetu app. Aarogyasetu was launched by our Indian government, last year, during the peak hours of Covid-19. Aarogyasetu was launched to protect the people from Covid-19, by identifying the Covid-19 positive patients.

Aarogyasetu is a contact tracing application, it tracks and finds out how many people have been affected by Covid-19. Traditionally, if a person is suffering from a communicable disease, he will be asked to tell the list of persons, he was in contact with, within recent days.

But this traditional method does not hold good in times of pandemic. Because it consumes time and the disease is so serious and easily communicable. So it is essential to take quick, essential, and precautionary steps.

This application uses Bluetooth and GPS features of a smartphone to track and trace the covid-19 positive patients. As soon as the application is installed, it collects all the personal information of the individuals. The personal information collected, will be shared with all the government departments. And the accessibility of Bluetooth and GPS will result in a violation of the privacy of the individuals whoever using it. Because, it was said by the French Ethical Hacker Robert Baptiste, who is known as Elliot Alderson that using the Bluetooth feature a person from any country could find out who is sick in India. Moreover, the Indian government made it mandatory to install the AarogyaSetu application. Accessing a person's data without his consent and making a compulsory installation of the application is a serious infringement of the right to privacy which is guaranteed under Art 21 of the Indian Constitution.

One cannot say the application is not necessary and the Government has taken a wrong step by introducing an application that places the individual's privacy on the verge of the cliff. The application is necessary and

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essential for the prevailing situation. But the privacy features applications should be updated because no one wants their privacy to get affected and their personal information gets shared with any third party. Countries like Singapore use a contact tracing app in which the personal information of the individuals cannot be shared with anyone except the Health Department of Singapore. Therefore, the Indian Government should also design and update the privacy features of the application in such a way that the personal information of the citizens will not be shared with any third party except the Health Department of the Indian government that the citizen's privacy won't get violated.

Keywords: Right to Privacy, ArogyaSetu, COVID - 19

Introduction:

Several pleas have been made against India's contact tracing app, 'Aarogyasetu'. Aarogyasetu app is an application used to track and trace COVID- 19 positive patients, using the Bluetooth and GPS features of the smartphones². As it uses the Bluetooth and GPS features, it infringes on the privacy of an individual by tracing out their locations and collecting their personal information and sharing it with all government departments.

The first plea that came before Delhi High Court against Aarogyasetu is from South Chemists and Distributors Association stating that the application indirectly promoting e- pharmaceuticals³.

This plea is from offline pharmaceuticals sellers stating that a government app should not promote-pharmaceuticals in the name of the COVID- 19 contact tracing app. The petitioners said that the official mobile application AarogyaSetu in a "highly illegal, arbitrary and discriminatory manner" as the website promotes and acts as a marketing tool for e-pharmacies only.

The homepage of the website is giving a false appearance of a contact tracing app but it mentions only the list of e- pharmacies.

²<https://aarogyasetu.gov.in/>

³<https://economictimes.indiatimes.com/news/politics-and-nation/high-court-seeks-centres-reply-on-plea-to-de-link-aarogya-setu-app-from-website-promoting-e-pharmacies/articleshow/75738814.cms>



The Centre was represented by Additional Solicitor General Maninder Acharya and lawyer Kirtiman Singh, both opposed the plea and argued that these are extraordinary circumstances and the main purpose of developing the website is to provide easy access to medicines.

It is opposed by the petitioner that the website has been created intentionally to promote- pharmacies by taking advantage of the name and goodwill created by the app.

It is also stated by the petitioner that the criteria for getting listed as a seller under the website are that it must be an e- pharmacy, which is illegal and discriminatory. Another plea has been raised by a company in Kerala against the mandatory download of the application as infringes privacy. The Managing Partner of Leetha Industries, Jackson Mathew, filed a petition against the compulsory imposition of arogyasetu app on the people under the threat of criminal prosecution, making it a condition to exercising other basic rights and services including a right to carry on a business or right to practice a profession or a trade amounts to an unconstitutional condition. The petitioner Mathew said the Arogyasetu app collects more personal information and locates the user's place, therefore, it violates the core principle of the K. Puttaswamy case where the Supreme Court held down the right to privacy as a fundamental right. He added there is no prohibition of sharing of user's personal information with other government departments thus enabling a surveillance system. Mathew also added that the only safeguard is found in the terms of services of the app which can be unilaterally changed by the government at any time they want⁴. Therefore, the app is not safe and it has many defaults. Let us know more information about the Arogyasetu application in this article.

What is the Arogyasetu app?

'Arogyasetu' is a Sanskrit word that means 'bridge to health' or 'bridge for freedom from disease'. It is a contact tracing application, designed to track, trace COVID- 19 affected individuals. This application was designed and developed by the National Informatics Centre, which comes under the government Ministry of Electronics and Information Technology. Arogyasetu application was launched on April 2, 2020. This application is made applicable to both Android and iOS mobile operating systems. One can download the app from the Google play store and Apple's app store. And it is available in 12 languages.

⁴<https://economictimes.indiatimes.com/news/politics-and-nation/new-plea-in-kerala-hc-against-aarogya-setu-app/articleshow/75676487.cms>



The purpose of the app is to spread awareness of COVID- 19 and to connect related health care centers to the people of India. Also, it augments the steps taken by the Department of Health to control and eradicate COVID-19 and it shares the best advice and practices to fight against Coronavirus. Before knowing how the app works, let's know what contact tracing is.

What is contact tracing?

Contact tracing is one of the methods to know how many people are getting infected by the disease. Traditionally, if any person is affected by the communicative disease, he will be asked to tell how many people he was in contact with within recent days.

But this method will not be so effective in the case of a pandemic, as it consumes time. So, an application has been developed to show the possibility of getting infected by using Bluetooth and GPS features in smartphones. These apps will check the proximity range of getting infected by the disease. If the proximity is more likely to get affected, then it alerts the users by sending emails and messages and also informs the government and the health care centers.

Contact tracing apps already have been used by some countries including Hong Kong and Singapore. The UK is planning to launch the app in the middle of May.

How does the app work?

Aarogyasetu works by using the GPS and Bluetooth features of smartphones. The app forms a user database to create a network of information to alert the citizens and government of the possibility of individuals who can be victims of Coronavirus.

The app uses the GPS in the smartphone to find out people who are close to COVID- 19 positive patients. The app requires access to GPS all the time and also it requires Bluetooth access after download.

After providing GPS and Bluetooth permission, the app requests the user to provide some basic information to create the user profile. The basic information includes name, gender, age, and health status. It also asks the countries, the user resided in the past weeks. Also, it asks the user if he belongs to anyone of the exempted categories of professionals. Then it asks whether the user is willing to help them in times of need.



Once the user completes the basic information, the user has to undergo a self-assessment test. Here the user is asked to submit their current health status and whether they are showing any COVID- 19 symptoms. The user is also to furnish their travel history. If you are a doctor, they will ask you whether you have been exposed to any COVID- 19 patients. Based on the results they will suggest you further.

The app turns on the Bluetooth in the smartphone to check the proximity under which an individual can be affected by the COVID- 19 patients. When the two smartphones installed the app, within the Bluetooth range come closer, it exchanges the details. They will alert the user if anyone around the user is get infected by COVID- 19. Then these cases are informed to the government and the health centers to take further steps.

Is downloading Aarogyasetu made mandatory?

Prime Minister Narendra Modi tweeted in support of the app. He urges the people of India to download the application. It has been made mandatory for the government servants and employees and some private-sector employees. Food delivery services such as Zomato and Swiggy are asked their employees to download the app and it is made mandatory.

In Noida a suburb in the capital of India, Delhi the installation of the application has been mandatory, and fails to download the app will lead to six months' imprisonment.

Supreme Court former judge BN Srikrishna said the impulse to download the application is strictly illegal since the app is not backed by any legislation, he said to one popular newspaper in India⁵.

What is the right to privacy?

According to black's dictionary, 'right to privacy means 'right to be let alone' or 'the right of the person to be free from unwanted interference'. Recently, in India right to privacy has been recognized as a fundamental right by Justice DY Chandrachud in Justice KS Puttaswamy and ors v. Union of India⁶. Thereby the right to privacy is guaranteed under Art 21 of the Indian constitution.

The right to privacy cannot be conceptualized. To understand the concept of the right to privacy, one has to read many definitions regarding the right to privacy.

⁵<https://www.bbc.com/news/world-asia-india-52659520>

⁶K.S. Puttaswamy and ors. Vs Union of India (2017) 10 SCC 1



Tom Gaiety said ‘right to privacy is bound to include body’ inviolability and integrity and intimacy of personal identity including marital privacy. Jude Cooley on explaining the law of privacy said that the meaning of privacy is to be let alone. Edward Shills has also explained privacy means a zero relationship between the people in other sense it means there is no communication between persons. There lies a neutral relation between persons. Privacy is a value, a cultural state, or condition that is intended towards individuals on collective self-realization varies from society to society. Therefore, the right to privacy as to the right to be let alone is thus regarded as a manifestation of “an inviolate personality”, a hub of freedom and liberty from which the human being had to be free from invasion. The right to privacy, in other words, can be stated as the need to let alone.

Evolution of the concept of the right to privacy in India:

Right to privacy in ancient India:

In ancient India worship, sex, and family matters should be protected from disclosure. The right to privacy is considered a ‘positive morality in ancient India. But the right to privacy was a vague concept in ancient India.

Right to privacy in modern India

The concept of the right to privacy was first discussed in the debate of constituent assembly where an amendment was made by K.S. Karimuddin, where BR Ambedkar befitting support but the concept of the right to privacy was not included in the constitution. Since the 1960’s the issue of privacy was dealt with as a fundamental right under the constitution and as a common law right. The right to privacy not regarded as a fundamental right was first held in 1954 by the Supreme Court in an eight-bench judge judgment in *M.P. Sharma v. Satish Chandra*⁷.

After that in *Kharak Singh v. State of Uttar Pradesh*,⁸ the court again rejected the plea of right to privacy as a fundamental right but struck down the provisions of night visit as it was against personal liberty. It was a six-bench judge judgment.

⁷M.P. Sharma v. Satish Chandra, AIR 1954 SCR 1077

⁸Kharak Singh v. State of Uttar Pradesh AIR 1964(1) SCR 332



Then after eleven long years in a three-bench judge judgment in *Gobind v. State of Madhya Pradesh*,⁹ the court held the existence of a right to privacy as a fundamental right. Though Gobind lost, privacy won for the first time and gained a small recognition under personal liberty under Art 21 of the Indian constitution.

By this time, the concept of privacy is deeply rooted in fundamental rights. It has never faced such a strong challenge when the case came before the nine-judge bench in the case of *K.S. Puttaswamy v. Union of India* in 2017 and overruled the decisions of *M.P. Sharma* and *Kharak Singh*. After the recent judgment in 2017, it is clear that the right to privacy is a fundamental right and it will be considered as one of the elements among the Golden Trinity of Article 14 (Right to Equality), Article 19 (Right to Freedom), and Article 21 (Right to Life and Personal Liberty)

Arguments made in the plea:

Many arguments are going on about the privacy concerns of the aarogyasetu app since the app uses the user's Bluetooth and GPS features of the phones. Bluetooth and GPS can locate the area and place of the user where he resides. If the locations of the users are shared it will be a strict violation of privacy. French ethical hacker Robert Baptiste, who is known by Elliot Anderson, says, forcing it to or making it mandatory to download such kind of application does not make the story successful and it just leads to repression¹⁰. This statement is about contact tracing apps all over the world.

What about India's app?

As earlier said it does violate privacy by sharing the location of the users. It requires constant access to Bluetooth and GPS features to collect the data which is invasive from a privacy and security point of view.

An app named Trace Together is used in Singapore to find out COVID- 19 positive patients. They have assured the citizens that the data collected by the app will be shared strictly only with the Health Ministry to control disease and not with any law enforcement authorities to enforce lockdowns and quarantine¹¹.

But this is not the case with the aarogyasetu app. Internet Freedom Foundation, a digital rights advocacy group in Delhi says that 'the app is very flexible, in which it shares data with law enforcement authorities to ensure compliance of lockdowns and quarantine'.

⁹Gobind v. State of Madhya Pradesh, 1975 (2) SCC 14

¹⁰<https://www.bbc.com/news/world-asia-india-52659520>

¹¹<https://www.bbc.com/news/world-asia-india-52659520>



But the manufactures of the app claim that at no point the identity and the information of the users will not be shared with any third party. Mr. Singh of MyGov said that the data of the users will not be used for any other purposes and no third party can have access to it¹².

Nikhil Pahwa¹³, who is the editor of internet watchdog Medianama says that the biggest issue with the app is that it tracks location which is globally deemed unnecessary. Tracking someone's location is a strict violation of their privacy and he worried about the Bluetooth function of the app, as Bluetooth tracking might give false or incorrect data.

For instance, if I am on the third floor and my neighbor Mr. John is on the fourth floor, it will show that we have met even though we are on different floors. This is because; Bluetooth travels through walls which in turn shows false positives and incorrect data.

Aarogyasetu app allows the authorities to update the collected details into a government-operated and owned 'server' which in turn gives those details and information to medical and health care centers and law-enforcing authorities.

The Software Freedom Law Centre, a consortium of lawyers, technology experts, and students, says that the government can share their information with anyone they want and this will create a big problem.

MyGov said that the app has been designed by keeping in mind the privacy and security of the user and the process of contact tracing and risk assessment can be done anonymously. Mr. Singh says after finishing your registration the app will give you an anonymous ID. All the interactions with the government can be done with this ID. Therefore, your identity cannot be revealed. No personal information can be shared. But experts have raised doubts about this statement.

Alderson said that using the Bluetooth feature one can find out who is sick in India. And he added that basically, he can see anyone is sick in the prime minister's house or he can see if someone is sick in a specific house if he wanted. These statements were written by him in the blog.

Indian government rejected all these statements regarding breach of privacy. Nikhil Pahwa, editor of internet watchdog Medianama said that India has a terrible history in protecting the privacy of the citizens impliedly

¹²<https://www.bbc.com/news/world-asia-india-52659520>

¹³<https://www.bbc.com/news/world-asia-india-52659520>



mentioning Aadhaar, which is considered the world's largest and most controversial biometrics-based identity database. Critics have criticized the Aadhaar scheme as it was not safe, putting personal information at risk, and also condemned the government for making the people compulsorily link bank account numbers with it. But the Supreme Court finally held that the Aadhaar scheme is not a violation of privacy.

Critical Analysis:

The right to privacy is guaranteed under Art 21 of the Indian constitution. It is a fundamental right. Therefore, no one can take away the privacy of others. Such type of activities is unconstitutional. AarogyaSetu app is a contact tracing app to find out the COVID- 19 positive patients, which requires the user's Bluetooth and GPS to locate him.

It can be said that the application is a good initiative by the Indian government until the data are not shared with any third party. Because the application is designed in such a way that data can be taken by any third party. Elliot Alderson, a French ethical hacker said in his blog that he can see if anyone is sick in the prime minister's office or he can see anyone is sick in a specific house in India.

People don't want their privacy to get affected by any unknown third party. Locating someone's location is a sure violation of privacy and it infringes Art 21 of the Indian constitution. It can be argued that this application is necessary for the prevailing current situation. But an application infringing or disturbing one's privacy cannot be allowed in any situation. The impact of this sort of application will be huge in later days. Because in today's world the technology has touched its peak, anyone in the world can hack or access the personal information of the users if it is not properly protected.

Therefore, it cannot be said that the application is not necessary or should be abolished. Because the same sort of applications is used by other countries to track and find out COVID- 19 positive patients. But they are assuring the safety of the people in protecting the personal information by developing applications with the best safety features. In Singapore, the contact tracing app is designed in such a way that the application cannot be shared with any third party other than the health department. But in the case of the AarogyaSetu app, the features of the app are not that safe since the data can be shared with anyone.

One cannot say the application is not necessary or the government has taken a wrong decision not thinking about the privacy of the individuals. The application is a good move by the Indian government. But the security



and privacy features of the app are to be updated in such a way no one can have access except the health department of the government.

Conclusion:

To conclude since the right to privacy is a fundamental right guaranteed under Art 21 of the Indian constitution as well as a natural right it cannot be taken over or infringed by anyone. But the application Aarogyasetu cannot be abolished since it is necessary for the prevailing situation. Therefore, the said application Aarogyasetu should be designed in such a way by making the privacy features more strong and reliable in a manner not infringing the privacy of the individuals.