

Right to Privacy

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Abstract:

This article deals in the understanding of the concept of right to privacy in India. This article focuses on analysing right to privacy of India as well as other countries. Many jurists have asked the question whether right to life include right to privacy, author has used various cases and quotes for better understanding of the same and how countries evolved through the same.

For many years now, right to privacy has served as a constitutional limit on governmental power. Despite being the most integral part of the human being and dignity it have received very less attention so much so that it was very difficult to arrive at a conclusion with respect to scope and limitation.

The article focuses primarily on the development India went through while accepting right to privacy as a part of right to life under Article 21 of the Indian Constitution. India has gone through various stages from Aadhaar to Section 377 of Indian Penal Code (Unnatural Offence). The countries like U.S.A, U.K and Canada have been used to study.

Keyword- Article, Human, Law, Privacy, Private.

I. INTRODUCTION

“Privacy” as simple as it sounds it extremely difficult to define, if tried to define in general sense it means that something that a person wants to protect from the public eye. Privacy has been derived from the Latin word- *privatus* meaning "separated from the rest, deprived of something" Aristotle has identified two spheres of an individual's life namely the '*polis*' (public), and '*oikos*' (private) sphere¹. Various other philosophers such as Jeremy Bentham and writer such as Shakespeare have identified the term privacy. According to Gabriel García Márquez “All human beings have three lives: public, private, and secret.”

*Solove*² adopts a rational approach and divides privacy into five rights:

- (i) The right to be let alone;
- (ii) Secrecy-concealing certain matters from others;
- (iii) Control over personal information;
- (iv) Protection of one's individuality; and
- (v) Intimacy-control over or limiting access to intimate relationships.

As humans developed, judiciary evolved and individual started to feel more liberal, intellectual and spiritual and have an individual personality progressed the scope of the law expanded to give protection to these

¹ ARISTOTLE, B. JOWETT AND H.W.C. DAVIS, ARISTOTLE'S POLITICS (Clarendon Press 1908).

² Daniel J. Solove, "Conceptualizing Privacy", (2002) 90 CAL. L. REV. 1087, 1088.

needs. Right to privacy, has been granted only in a few countries like U.S.A, U.K, Canada, South Africa, European Union and India is also part.

There are different kinds of privacy:-

1. Physical
2. Information
3. Financial
4. Internet
5. Medical
6. Political

The right to privacy implied that the right to life and liberty guaranteed to the citizens of India under the constitution is provided under Article 21. A citizen has a right to protect the privacy of his individuality, his family, marriage, motherhood, reproduction and education etc.

II. ANALYSIS PRIVACY OF DIFFERENT COUNTRIES

• UNITED STATE OF AMERICA

In the U.S.A., the need for a law to protect the privacy was expressed in 1890 in an article "The Right to Privacy" which was published by Warren and Brandeis³this article was the foundation for the formation of law on privacy.

In the famous case of *Roe v. Wade*⁴ the Supreme Court considered the constitutionality of a criminalising abortion through statute. The right to privacy was considered to be wide enough to include woman right to terminate her pregnancy owing to the emotional, mental, psychological and physical strain which it demands.

In, *Ridder & Woll*⁵:

"When we talk about women's rights, we can get all the rights in the world-the right to vote, the right to go to school-and none of them means a doggone thing if we don't own the flesh we stand in, if we can't control what happens to us, if the whole course of our lives can be changed by somebody else that can get us pregnant by accident, or by deceit, or by force."

Freedom shields the individual from unwarranted government interruptions into a residence or other private spots. In our custom the State is not present everywhere. What's more, there are different circles of our lives and presence, outside the home, where the State should not be dominantly present. Opportunity stretches out

³ 4 Harv L Rev 193.

⁴ 410 U.S. 113 (1973)

⁵ Ibid

past spatial limits. Freedom presumes an independence of self that incorporates flexibility of thought, conviction, articulation, and certain private direct.

*Stanley v. Georgia*⁶ the ownership of obscene material in a man's home was approved for the reason:

"In the event that the First Amendment implies anything, it implies that a State should not be telling a man, sitting alone in his own particular house, what books he may read or what films he may watch. Our entire constitutional legacy rebels at the prospect of enabling Government to control men's minds."⁷

- **UNITED KINGDOM**

Laws of England progressed slowly compared to privacy law in United States. In, *Albert v. Strange*⁸ the case involved unauthorized copying of etching made by Queen Victoria and her husband for their private amusement. The etchings, which represented members of the Royal family and matters of personal interest, were entrusted to a printer for making impressions. An employee of the printer made unauthorized copies and sold them to the defendant who in turn proposed to exhibit them publicly. Prince Albert succeeded in obtaining an injunction to prevent the exhibition. The court's reasoning was based on both the enforcement of the Prince's property rights as well as the employee's breach of confidence. This case was inspired by the development of the law of privacy that was developing in the United States at faster rate.

In 1991, in the case of *Kaye v. Robertson*⁹ a well-known actor hospitalized after sustaining serious head injuries in a car accident. At a time when the actor was in no condition to be interviewed, a reporter and a photographer from the Sunday Sport newspaper unauthorized gained access to his hospital room, took photographs and attempted to conduct an interview with the actor. An interlocutory injunction was sought on behalf of the actor to prevent the paper from publishing the article which claimed that Kaye had agreed to give an exclusive interview to the paper. There being no right to privacy under the English law, the plaintiff could not maintain an action for breach of privacy. In the absence of such a right, the claim was based on other rights of action such as *libel, malicious falsehood and trespass* to the person, in order to protect the privacy. Later, he was granted an injunction to restrain publication of the malicious falsehood. The publication of the story and some less objectionable photographs were, however, allowed on the condition that it was not claimed that the plaintiff had given his consent. The remedy was clearly inadequate since it failed to protect the plaintiff from preserving his personal space and from keeping his personal circumstances away from public glare. The court expressed its inability to protect the privacy of the individual and blamed the failure of common law and statute to protect this right.

But later, with the time and development, right to privacy developed more.

⁶ Ibid

⁷ 316 US 535 (1942)

⁸ (1849) 1 Mac & G 25 : 41 ER 1171

⁹ (1991) FR 62

- CANADA

Canadian privacy law has evolved over time to what it is today. It was introduced, in 1977, the Canadian government introduced data protection provisions into the Canadian Human Rights Act, which states "the right to life, liberty and security of the person" and "the right to be free from unreasonable search or seizure", but did not directly mention the concept of privacy. In 1983, the Privacy Act came and regulated as to how federal government collects, uses and discloses personal information of its citizen. Right to privacy was confirmed in the case of *Hunter v. Southam*¹⁰ In this case, Section 8 of the Canadian Charter of Rights and Freedoms (1982) was found "to protect individuals from unjustified state intrusions upon their privacy" and the court stated such Charter rights should be interpreted broadly.[4] Later, in a 1988 Supreme Court case, the right to privacy was established as "an essential component of individual freedom". In another case of *R. v. Dyment* states, "From the earliest stage of Charter interpretation, this Court has made it clear that the rights it guarantees [including privacy rights] must be interpreted generously, and not in a narrow or legalistic fashion"¹¹.

III. ANALYSIS OF INDIAN SCENARIO

The concept of privacy is as old as ancient text of Hindus. This not by any means outsider to Indian Culture, however some legal adviser like Sheetal Asrani-Dann has questions about the development in India , in help of this she likewise clarify Upendra Baxi see, "Regular encounters in the Indian setting (from the sign of good neighborliness through steady reconnaissance by adjacent neighbors, to unabated interest at other individuals' ailment or identity changes) recommend something else" .Upendra Baxi is clearly concerned with kindness, sympathy, humanity or gentleness, which is an unabated curiosity; it is not about ill-will. But Hitopadesh cannot be subject to 'Positive Law, even in ancient time it was related to 'Positive Morality'; so in this sense it can be said that in ancient Indian text there was vagueness about the right to privacy.

In India right to privacy has been derived itself from two sources: Tort Law and Constitutional Law. In common law, a private activity for harms for unlawful attack of protection is viable. If something is published without the consent of a person, then the publisher will be held liable because of the infringement of private rights. Along with it there are two exceptions as well for the same:-

1. The right to privacy does not survive once the publication is a matter of public record.
2. When the publication relates to the discharge of the official duties of a public servant, an action is not maintainable unless the publication is proved to be false, malicious or is in reckless disregard for truth.

¹⁰ Communications, Government of Canada, Department of Justice, Electronic. "Department of Justice - THE OFFICES OF THE INFORMATION AND PRIVACY COMMISSIONERS: THE MERGER AND RELATED ISSUES". www.justice.gc.ca. Retrieved 2018-07-18.

¹¹ <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/375/index.do>. Retrived 2018-07-18

In *M.P. Sharma v Satish Chandra*¹², Supreme Court on the issue of 'power of search and seizure' held that they privacy cannot be fundamental right because it is something alien to Indian Constitution and constitution maker does not bother about the right to privacy.

After the case of *M.P. Sharma* held the case of *Kharak Singh v. State of Uttar Pradesh*¹³ the Court stated that Indian constitution does not expressly state that right to privacy as fundamental right, but the same right is an essential ingredient of personal liberty. Judges argued that privacy needs to be more than physical restraint. Later in the case of *Gobind v. State of Madhya Pradesh*¹⁴, it has been fully incorporated under the umbrella of right to life and personal liberty through humanitarian approach of the Article 21 of the Constitution. It and recognize the fact that Article 21 Right to Life is not 'merely the right to the continuance of a person's animal existence', but a right to the protection of each of his limbs.

In *Maneka Gandhi v Union of India*¹⁵, Supreme Court construed the Article 21 should be seen in the wide sense. They said that both the rights of personal security and personal liberty recognized by what Blackstone termed 'natural law' are embodied in Article 21. This case started the wide interpretation of Right to Life, which later helped in putting the Right to Privacy in the scope of Right to Life.

Unni Krishnan v State of Andhra Pradesh, twelve points were stated to define meaning of life and right to privacy was in it. It means having a right to be let alone. One thing ought to be considered that without the Right to Privacy man is constrain down to live like a creature. It has been accurately indicated out that Right Privacy is a basic element of Right to Life.

*People's Union for Civil Liberties (PUCL) v Union of India*¹⁶ is with reference to phone tapping and it has to be matter of discussion whether telephone tapping is an infringement of right to privacy under Article 21 of Indian Constitution or not. Court stated that conversations on the telephone are often of a confidential character and of private in nature and telephone-conversation is a part of modern man's life. Supreme Court also said that whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case.

In *Mr. 'X' v Hospital 'Z'*¹⁷ it was chosen that when the privilege to protection conflicts with the other central right i.e. right of protection one individual and it does not prohibit the publication of material which is in the interest of general public.

*Directorate of Revenue v. Mohammad Nisar Holla*¹⁸, the court held that a person who does not break a law

¹² AIR 1954 SC 300

¹³ AIR 1963 SC 1295

¹⁴ (1975) 2 SCC 148

¹⁵ AIR 1978 SC 597

¹⁶ (1997) 1 SCC 301. It must be noted that surveillance does not merely refer to physical surveillance. It has been defined as a "police investigative technique involving visual or electronic observation or listening directed at a person or place". See Black's Law Dictionary, (5th Edn., 1979) p. 1296. It therefore follows that "telephone-tapping" is a form of surveillance

¹⁷ Ibid

would be entitled to enjoy his life and liberty which would include the right not to be disturbed. A right to be let alone is recognised to be a right under Article 21.

At last in the case of *Justice K.S. Puttaswamy (Retd.) & v. Union of India & Others*¹⁹, the case was dealt by nine judges bench and the stand taken by the court turned a setback for the government to push multiple identities with Aadhaar as it was compromising the privacy of the citizen of India.

- Kharak Singh was held correct and the expression 'life' under Article 21 means not merely "animal existence" and that the expression 'personal liberty' is a guarantee against invasion into the sanctity of a person's home or an intrusion into personal security. Court in Kharak Singh also correctly stated that the individual's dignity must and always leads towards the meaning of 'personal liberty'.
- Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.
- Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the Court embarking on a constitutional function of that nature which is entrusted to Parliament.
- Privacy can be taken in both positive and negative way. The negative one stops the state from committing an infringement upon the life and personal liberty of a citizen. And in positive way imposes a duty on the state to take all necessary measures to protect the privacy of the individual.

After observation of these entire cases one can say that Right to Privacy is individual's personal liberty, which is now recognized as a Right to Life.

IV. CONCLUSION

In many nations, right to privacy is not given expressly to their individuals, but it is coined from judicial interpretations. Countries like Russia, China, and North Korea etc. lack behind in such scenario. The term "privacy" has been described as the rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place and circumstances to communicate with others. Privacy has also been defined as a relationship between two persons where there is no interaction or communication between them, if they so opt for it.

Privacy is an integral part of human life and no person have a right to invade it. It also include right to be let alone and therefore having constitutional validity is good but again there need to be certain reasonable restriction as no person have the right to take the law in their hand in the name of privacy. It has been a long

¹⁸ (2008) 2 SCC 370

¹⁹ MANU/SC/1044/2017

process for many countries including India to be at a position to allow or rather give its citizen such freedom as along with this comes great responsibility to protect its citizen which is difficult as well as sole job of the government as well as the judiciary.

Recently, the whole process of Supreme Court trying to decriminalise Section 377 of Indian Penal Code is revolutionary and shows the progressive attitude and respecting individual's privacy. It is not an absolute right and comes with reasonable restriction. DNA Profiling Bill also now needs to be reconsidering after the judgement by the court.



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