



## PRIVACY: A PERSONAL FUNDAMENTAL RIGHT

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## ABSTRACT

Right to Privacy is one of the most basic right available to every individual per se. It is expected by every person that he/she shall not be disturbed in his/her life without any reasonable cause which makes privacy one of the most undisputed right. A dispute in relation to privacy arises only when privacy of a person is disturbed by some other person. It is a settled fundamental right. Now even the State can't infringe privacy rights of any person. The right to privacy is inherited in every individual and is very essential for the overall development of a person. It is legitimate to have some privacy in the life of everyone where only that person has right to be with himself. In India the question regarding right to privacy as fundamental right is one of the most disputed one and has been in question right after the commencement of our Constitution. In this paper the researcher discusses the definition and International provisions relating to privacy rights. Also researcher makes discussion on the development of privacy rights in India through different judicial pronouncements in a chronological way. Also the researcher makes a brief discussion on the most celebrated decision on privacy in India.

**KEYWORDS :** Life, Liberty, Privacy, Article 21, Fundamental Right.

## 1. INTRODUCTION:

"Privacy" is a difficult concept to define and cannot be understood as a static and one-dimensional concept. It can only be construed as a group of rights.<sup>1</sup> The general idea of "privacy" can be conceptualized as the practices or acts which we want to protect from public scrutiny.<sup>2</sup>

The principle of privacy rights was first referred to as a human right and elaborated in the pioneering article of **Warren and Brandies**, titled "The Right to privacy".<sup>3</sup> Numerous philosophers have indirectly referred to the concept of privacy in their work. A classic example would be **Aristotle's** identification of two spheres of an individual's life namely the 'polis' or the public sphere, and 'oikos' or the private sphere.<sup>4</sup> **Jeremy Bentham** had also recognized the existence of a "private" element in an individual's life.<sup>5</sup> Even **Shakespeare** had his own notions of "private", which he said was the "undeclared" and included a sense of social secrecy.<sup>6</sup>

Followings are some definitions of the term 'privacy': According to **Black's Law Dictionary**,<sup>7</sup> the term privacy means:

- I. "Right to be let alone; the right of a person to be free from any unwarranted publicity";
- II. "Right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned".

According to **Meriam Webster**<sup>8</sup>: **Privacy means:**

- a) The quality or state of being apart from company or observation
- b) Freedom from unauthorized intrusion.

## 2. PRIVACY AND INTERNATIONAL DOCUMENTS:

The concept of privacy is not new and can be traced back since 1948, the year UDHR was drafted. Below are some international document that promotes right to privacy:-

**Article 12 of Universal Declaration of Human Rights (1948)** states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks."

**Article 8 of European Convention on Human Rights (1950)** states "Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in

accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others."

**Article 17 of International Covenant on Civil and Political Rights (1966)** (to which India is a party) states "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honor and reputation."

## 3. RIGHT TO PRIVACY IN INDIA:

The concept of privacy can be traced out in the ancient text of Hindus. If one look at the **Hitopadesh** it says that certain matter (worship, sex and family matters) should be protected from disclosure. But in modern India first time the issue of right to privacy was discussed in debates of Constituent Assembly where **K.S. Karimuddin** moved an Amendment on the lines of the U.S. Constitution, where **B.R. Ambedkar** gave it only reserved support, it did not secure the incorporation of the right to privacy in the Constitution. In 1954, for the first time the Supreme Court in **M.P. Sharma v. Satish Chandra, District Magistrate and others**,<sup>9</sup> rejected the contention that there exist a right to privacy under **Article 20(3)**<sup>10</sup>, due to the absence of any provision analogous to the **Fourth Amendment**<sup>11</sup> of the **U.S. Constitution**.

The question of a constitutional right to privacy under Part III of the Constitution was first raised in the decision of **Kharak Singh v. State of Uttar Pradesh**,<sup>12</sup> where the petitioner was subjected to continuous surveillance as under Regulation 236 of the U.P. Police Regulations. The majority opinion on the question of the existence of the right to privacy, was that "our Constitution does not in terms confer any like constitutional guarantee." But **Subba Rao J.**, while pronouncing the minority opinion, observed that "it is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty". Although the Supreme Court began to accept certain points of the minority view<sup>13</sup>, the right to privacy was still waiting for its place in Indian Constitutional Jurisprudence.<sup>14</sup>

In **Gobind v. State of Madhya Pradesh**<sup>15</sup> the Supreme Court held that a "limited" right to privacy was implied within the ambit of Part III of the Constitution, which originates from the Articles 19(a), 19(d) and 21. However it was noted that these rights are not absolute and comes with some reasonable restrictions arising out of contravening public interest. In this

decision, Mathew J. taking the U.S. Jurisprudence into consideration, observed that the right to privacy exists with the penumbral zones of the Fundamental Rights explicitly guaranteed under Part III of the Constitution.<sup>16</sup>

The Supreme Court in **Sunil Batra v. Delhi Administration**<sup>17</sup> observed that a minimal infringement of a prisoner's privacy is unavoidable as the officers have an obligation to keep a watch and ensure that their other human rights are being duly observed. On the contrary, the court in **Malak Singh v. State of Punjab and Haryana**<sup>18</sup> held that surveillance is a direct encroachment upon an individual's right to privacy.

Moreover, the Supreme Court in **R. Rajgopal v. State of Tamil Nadu**,<sup>19</sup> again asserted that the right to privacy is an implicit right under Article 21<sup>20</sup> of the Constitution. The court noted that the said right includes a "right to be let alone" and the right to "safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters."

On a similar note, in **State of Maharashtra v. Madhukar Narayan Mardikar**,<sup>21</sup> the Supreme Court held that even a "women of easy virtue" is entitled to her privacy and nobody has the authority to invade their privacy at their sweet will.<sup>22</sup>

The Supreme Court in **People's Union for Civil Liberties v. Union of India**<sup>23</sup> held that telephonic conversations are private in nature and thus, telephone tapping would be unconstitutional unless conducted by a procedure established by law. The Court concluded by saying that, "we have, therefore, no hesitation in holding that the right to privacy is a part of the right to 'life and personal liberty' enshrined under article 21 of the Constitution. Once the facts in each case constitute a right to privacy, article 21 is attracted. The said right cannot be curtailed, except according to procedure established by law.

The Supreme Court in **S.P. Gupta v. Union of India**,<sup>24</sup> held that a balance needs to be struck between the right to information and right to privacy. The court reiterated the point that a right to privacy is not an absolute right and can be infringed to serve a serious public concern.

Right to privacy is not absolute in nature and can be restricted through lawful means for the prevention of crime, disorder, or protection of health or moral or protection of rights of freedom of others.<sup>25</sup> The Supreme Court in **Mr. 'X' v. Hospital 'Z'**,<sup>26</sup> held that moral considerations cannot be kept at bay and public morality can constitute a "compelling state interest" warranting a law infringement of the right to privacy.

In 2002, the Delhi High Court, held that a person who is suffering from the dreadful disease of AIDS cannot claim the right of privacy and cannot maintain the right of secrecy against his proposed bride and the laboratory which tested his blood. A Year later, the Supreme Court upheld the above decision in **Mr. 'X' v. Hospital 'Z'**,<sup>27</sup> wherein it was reiterated that the bride has an unequivocal right to have full knowledge about the health of her proposed husband's health and the hospital or the doctor concerned has the lawful authority to carry out the same.

The Courts have taken divergent views on the issue of mandatory medical tests violating an individual's right to privacy. While it has been held that ordering/allowing medical examination of a woman to determine her virginity would be a gross violation of her right to privacy,<sup>28</sup> the Matrimonial Courts have the power to order a spouse to undergo medical tests.<sup>29</sup> However it was noted that courts should exercise such a power with utmost care and only after due examination of the case on a prima facie basis.

But the Delhi High Court seemed to have a contrary opinion, when it held that a party to a legal proceeding cannot be compelled to undergo any scientific or medical test against their will, which has the effect of violating the person's right to privacy.<sup>30</sup> Furthermore, the High Court also observed that the right to privacy should come into play as and when party to proceeding is directed to any scientific or medical for collecting evidence against their will.<sup>31</sup>

Recently in **Ram Jethmalani v. Union of India**,<sup>32</sup> the Supreme Court has held that right to privacy is an integral part of life. This is cherished constitutional value and it is important that human beings be allowed privacy, and be free of public scrutiny unless they act in an unlawful manner.

It was held by the Supreme Court in **Avishek Goenka v. Union of India**<sup>33</sup> that the right to privacy is subject to public safety. The Court also held that the illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in right to life and liberty guaranteed under our Constitution. However, the right of privacy may not be absolute and in exceptional circumstances, particularly when authorized by a statutory provision, the right may be infringed.<sup>34</sup>

Last year the Patna High Court in **Confederation of Indian Alcoholic Beverages Companies v. The State of Bihar**<sup>35</sup> held that Indian citizens have right to enjoy their liquor within the confines of their house, in an orderly fashion, and that right is derived from the right to privacy under Article 21 of the Constitution.

The latest development in the field privacy right in India is the case of **Justice K.S. Puttaswamy (Retd.) and Others v. Union of India and Others**.<sup>36</sup> In this case the issue came before the Honorable Supreme Court of India is that whether the Aadhar System (a nationwide biometric identification system) is in conformity of Constitutional Provisions or not. This issue was before the five judge bench of the court (popularly known as the Aadhar Bench). The Bench has to decide whether the collection of biometric data under the Aadhar System is in violation of right to privacy. To answer this question the Bench has to decide whether the Right to Privacy is fundamental right under the Constitution of India. Due to conflicting judgements of past the Aadhar Bench submitted this question to the Chief Justice of India. The Chief Justice of India constituted 9 judge bench (known as Privacy Bench) in order to decide this question.

The Privacy Bench comprises of Chief Justice J.S. Khehar, Justice Chandrachud, Justice Agrawal, Justice Abdul Nazeer, Justice Chelameshwar, Justice Bobde, Justice Sapre, Justice Nariman and Justice Kaul. The Privacy Bench unanimously held that Right to Privacy is protected as Fundamental Right under Article 21 of the Indian Constitution. The judgement of the case is in six parts. Justice Chandrachud has written on behalf of himself, Chief Justice JS Khehar, Justice Agrawal and Justice Abdul Nazeer ( known as "Lead Judgment"). Justice Chelameshwar, Justice Bobde, Justice Sapre, Justice Nariman and Justice Kaul have written separate judgments providing their own findings, conclusions and observations (referred to as "Single Judge Judgment(s)"). The judgement holds that:

- I. The right to privacy is intrinsically protected as the part of Right to Life and Personal Liberty under Article 21 as a part of Fundamental Rights given under Part III of the Constitution.
- II. The earlier judgments of the Supreme Court in **Kharak Singh** and **M.P. Sharma** to the extent they held otherwise, are overruled.
- III. The Right to Privacy is also provided under Article 19<sup>37</sup> of the Constitution of India.
- IV. The constitutional right to privacy can be defined in both negative and positive terms, i.e.:

- To protect the individual from unwanted intrusion into their private life, including sexuality, religion, political affiliation, etc. (the negative freedom)
  - To oblige the state to adopt suitable measures to protect an individual's privacy, by removing obstacles to it (the positive freedom).
- V. The right to privacy is not absolute and there shall be reasonable restrictions on it. An infringement on right to privacy must be by law which is fair, just and reasonable.
- VI. This right as declared a fundamental right, can't be waived.
- VII. The right of privacy attaches to the person since it is an essential facet of the dignity of the human being. So there is availability of right to privacy in public places too.

#### 4. CONCLUSION:

*"All human beings have three lives: public, private and secret"*

- *Gabriel Gracia Marquez*

Above written well known quotation is now getting legal recognition as a Right to Privacy and after going through the above cases, it is very clear that the right to privacy is implicit to part III of the Constitution but there is a need for Parliament to explicitly adopt Right to Privacy as a fundamental right. Today in the era of digitalization it is of the utmost importance that the privacy of each and every individual should be protected so that a person could lead his life with full dignity. In this direction the Kerala High Court has given a very beautiful judgement where it held right to access internet is a part of right to Privacy and right to Education and hence is a fundamental right.<sup>38</sup> Privacy in present time is the most dynamic right which cannot be defined exhaustively. With going towards the Digital World where every aspect of life will be dealt and dependent on personal information of individuals like Fingerprint, Iris Image, etc. there emerges greater need for the proper protection of privacy right and accountability of it's breach.

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