



RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT

Dr. Ramesh Kumar Associate Professor, Jemtec School of Law affiliated to GGSIP, New Delhi

KEYWORDS :

Privacy is a fundamental human right, enshrined in numerous international human rights instruments. The Universal Declaration of Human Rights 1948¹; American Declaration of Rights and Duties of Man, 1948²; International Covenant on Civil and Political Rights, 1966³; Council of European Convention for Protection of Human Rights and Fundamental Freedom, 1950⁴; and American Convention on Human Rights, 1969⁵ and two important essays published in 1890 in the United States are said to be responsible for development of this right. In December of the same year the Harvard Law Review published an article by Samuel D. Warren and Louis D. Brandies, that launched a new legal concept which eventually broadened into the principle of information privacy.⁶

Right to privacy is not expressly provided under the Indian Constitution though it is said to exist as a necessary corollary to the expressed provisions therein. The right to privacy of an individual has been recognized as an essential component of personal liberty. Initially, a strict interpretation was given to Part III of the constitution⁷ but later on a liberal interpretation afforded it to blossom⁸. *Maneka Gandhi's case* led the expansion of right to life and personal liberty wherein it was pointed out that the procedure must be just, fair and reasonable. One can not imagine a dignified life unless he is secure in person, house and everything which is personal and dear to him. Therefore, without the right of privacy, the right to life and personal liberty cannot be imagined to be dignified. Privacy seeks to erect an unbreakable wall of dignity and reserve against the entire world. The free man is the private man, who keeps some of his thoughts and judgments entirely to himself, who feels no overriding compulsion to share everything of value with others, not even with those he loves and trusts. Pursuit of happiness requires certain amount of liberty to do as one likes. The object behind Article 21 of the Indian constitution is to prevent encroachments upon the personal liberty by the executive except in accordance with law and in conformity with the provision thereof. The words "personal liberty" are of wide amplitude and hence are to be constructed in reasonable manner so that it could promote and achieve those objectiveness and to stretch the meaning of the phrase to square with any pre-conceived notions and doctrinaire constitutional theories. Privacy has become an issue in modern democratic societies which are characterized by large-scale, sophisticated bureaucratic structures and advanced technology in communications and information systems. Technological development has been permitted to evolve without regard for its impact on our modern democratic political system. A major factor of the privacy problem is the absence of legislation and organized rules ensuring privacy, confidentiality and due process to the subjects of computerized information. Individual's claim to solitude and secrecy are major interests protected by privacy rights. It is these interests that are violated during search and seizure. Administration of an organization whether it be government, quasi-government or private, often treads into the privacy of an individual. The earliest case *Kharak Singh v. State of U.P.*⁹, the petitioner, Kharak Singh, was challanged in a case of dacoity in 1941 but was released as there was no evidence against him. On the basis of the accusation made against him, he stated that the police had opened-up a "history sheet" for him under Regulation 228 of Chapter XX of the police regulation which defines "history sheet" as "the personal records of criminals under surveillance".¹⁰ Delivering the minority Judgment, which is worth mentioning, Subba Rao J.¹¹ held we agree that regulation is unconstitutional as it infringes both the Article 19 (1) (d) and Art 21 of the constitution. In the view of his Lordship the whole country is a jail for a person subjected to surveillance. The freedom of movement in clause (d) of Article 19(1) of Constitution, therefore, must be a movement in a free country, i.e. in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice

without any apprehension, subject of course in the Law of social control. The petitioner under the shadow of surveillance is certainly deprived of this freedom. In the case of *Govind v. State of M.P.*¹² the petitioner who was a citizen of India challenged the validity of regulation 855 and 856 of the Madhya Pradesh police regulations purporting to be made by the Government of Madhya Pradesh under Section 46(2)(c) of the Police Act. Supreme Court unanimously speaking through **Mathew, J.** endorsed the minority opinion of Subba Rao, J in *Kharak Singh's case*¹³ asserting the right of privacy of individual citizens. His Lordship also cited authority from Judicial opinion from U.S.A. in *Griswold v. Connecticut*.¹⁴ **Mathew, J.** also referred to the U.S. Supreme Court's ruling *Jane Roe v. Henry Wade*¹⁵ wherein the Supreme Court said that although the Constitution of the U.S.A. does not explicitly mention any right of privacy, the United States Supreme Court recognizes that a right of personal privacy, or a guarantee of certain areas of zones of privacy does exist under the Constitution, and "that the roots of that right may be found in the first, fourth and fifth Amendments, in the penumbras of Bill of Rights, in the Ninth Amendment and in the concept of liberty guaranteed by the first section of the fourteenth Amendment" and that the right to privacy is not absolute. In case of *District Registrar & Collector, Hyderabad v. Canera Bank*¹⁶ wherein A.P. State Legislature amended Section 73 of the Stamp Act, 1899 which gave inspecting officers not only the power to search premises but also the power to seize deficiently stamped documents. Court held it unconstitutional as the Right to Privacy had been violated in the absence of procedure established by law.

In the case of *State of Maharashtra v. Madhukar Narayan Mardikar*¹⁷ Court held that, even a woman of easy virtue was entitled to privacy and no one can invade her privacy as and when he liked. In the case of *Neera Mathur v. Life Insurance Corporation of India*,¹⁸ Court held that the particulars which a female candidate was required to furnish in the declaration were very personal and filling of the same was too embarrassing if not humiliating. Hence ordered for the removal of such particulars from the declarations these particulars impugned upon the right to privacy.¹⁹ Privacy of individual is a right to be protected even from the gaze of the press. Invasion of privacy by press may arise when information about private affairs of a person is published by Newspaper. The press and the right to privacy came for the first time under notice in the case of *R. Rajo Gopal v. State of Tamil Nadu*,²⁰ the petitioner was editor, printer and publisher of a Tamil weekly magazine "Nakkeeran" published from Madras. The second petitioner was the associate editor of the magazine. They were seeking issuance of an appropriate writ, order or direction under Article 32 of the constitution restraining the respondents from taking any action as contemplated in the second respondent's communication and further restraining them from interfering with the publication of the autobiography of the condemned prisoner, Auto Shankar, in their magazine. Analyzing the right to privacy the court stated that since the right to privacy has two aspects which are nothing but two faces of the same coin (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protect personal privacy against unlawful Governmental invasion. The first aspect of this right must be said to have been violated where for example, a person's name or likeness was used, without his consent, for advertising or non-advertising proposes or for that matter, his life story was written whether laudatory or otherwise and published without his consent. His Lordship further held that, the right to privacy was implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It has "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 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.²¹ Applying the above principles, the court held that, the petitioners had a right to publish, the life story / autobiography of Auto Shankar in so far as it appeared from the public records, even without his consent or authorization. But if they go beyond that and publish his life story, they may be invading his right to privacy, and would be liable for the consequences in accordance with law. In the case of *People's Union for Civil Liberties v. Union of India*,²² a public interest litigation under Article 32 of the constitution of India was filed by the people's Union for Civil Liberties, a voluntary organisation, highlighting the incident of telephone tapping in the recent past. Delivering the Judgment Justice Kuldip Singh opined that the right to privacy by itself – has not been identified under the constitution... 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”. In the case of *Mr. 'X' v. Hospital 'Z'*,²³ the court held that the right to privacy is not absolute and may be lawfully restricted for the prevention of crime, disorder or for the protection of health or morals or protection of rights and freedoms of others. As such, when a patient was found to have HIV positive, its disclosure by a doctor would not be violative of either on the ground of confidentiality or the patient's right to privacy as the lady with whom the patient is likely to be married is saved in time by such disclosure. She would have been infected with the dreadful disease had her marriage taken place and consummated. Therefore, the right which would advance the public morality or public interest would alone be enforced through the process of law. If the right to privacy is in clash with another fundamental rights say right to health or life, the latter right will prevail if this advances the public morality/interest and the same would alone be enforced by the court. In the case of Justice K S Puttaswami case Supreme Court of India held unanimously that the right to privacy is a constitutionally protected right in India, as well as being incidental to other freedoms guaranteed by the Indian Constitution. To conclude the right to privacy has become a fundamental human right, solidly embedded in International Human Rights law as well as in national Constitutions, legislations and jurisprudence of different countries. So the need of the hour is a constitutional amendment whereby right to privacy is explicitly included in part III of Indian Constitution.

REFERENCES

1. Art.12
2. Article V,IX and X
3. Article 17
4. Article 8
5. Article 11 and 14
6. Harv. L.R. 4 (1890) 193
7. A.K. Gopalan v. State of Madras, AIR 1950 SC 27
8. Maneka Gandhi v. Union of India, AIR 1978 SC 597
9. AIR 1963 SC 1295
10. Ibid.at.p.1295
11. Id. at 1303
12. AIR 1975 SC 1378
13. Supra note 62at.p.1295
14. 381 U.S.(1965) at.p. 479
15. 410 US1973) at.p.113
16. A.I.R. 2005 S.C. 186
17. AIR 1991 S.C 207
18. AIR 1992 SC 392
19. Ibid at p. 395
20. AIR, 1995 SC 264
21. Id.at.p.264
22. AIR 1997 SC 568
23. AIR 1999 SC 495
24. (2017) 10 SCC 1