



Right of Privacy : Issues and Challenges

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ABSTRACT

This article is an attempt to reflect the concept of right to privacy in India. The Supreme Court has asserted that in order to treat a right as a fundamental right, it is not necessary that it should be expressly stated in the constitution as a Fundamental Right. Political, social, and economic changes in the country entail the recognition of new rights. Law will change according to its social transformation. Right to privacy is one amongst such right which has emerged after widening up the area of Article 21. However, such a right has been guaranteed by the Supreme Court under Art. 21 and several other provisions of the constitution read with the Directive Principles of State Policy. The researcher has discussed various issues and challenges relating to right to privacy in India.

KEYWORDS

fundamental right, right to privacy, constitution of India

INTRODUCTION:

According to Black's Law Dictionary 'Right to Privacy' means "right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned". The right to privacy derives from an English Common Law maxim which asserts that "Every man's house is his castle". Article 21 of the Constitution of India states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The spirit of law under Article 21 of constitution of India, refers that the term 'life' includes all those aspects of life which go to make a man's life meaningful, complete and worth living. Right to Privacy, becomes a burning issues regarding to concerns raised against government's initiatives to collect personal data from citizens, is not a fundamental right in the Constitution of India but privacy now seen as an ingredient of personal liberty.

Various issues raised for the government's initiatives such as Unique Identification Authority of India (UIDAI), Digital Locker, and other digital services through Digital India Scheme. The right to privacy has been developed by the Supreme Court over a period of time. With the expansive interpretation of the phrase "personal liberty" this right has been read into article 21. It cannot however be treated as an absolute right. Some limitations on this right have to be imposed.

RIGHT TO PRIVACY AND INDIAN CONSTITUTION:

Right to privacy has not been defined as a Fundamental Right under Constitution of India. The scope of this right first evolved in **Kharak Singh vs The State of Uttar Pradesh**. & **others**,¹ which was concerned with the validity of certain regulations that permitted surveillance of suspects. This right of privacy is considered as the right to be let alone. In the context of surveillance, it has been held that surveillance, if intrusive and seriously encroaches on the privacy of citizen, can infringe the freedom of movement, guaranteed by Articles 19(1) (d) and Article 21 of Indian Constitution.

INTERNATIONAL INSTRUMENTS ON 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 honour and reputation. Everyone has the right to protection of the law against such interference

or attacks." **Article 17 of International Covenant of Civil and Political Rights** (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 honour and reputation". **Article 8 of European Convention on Human Rights** 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."

JUDICIAL INTERPRETATION & RIGHT TO PRIVACY:

In **Govind v. State of Madhya Pradesh**,² Justice Mathew accepted that, the right to privacy as an emanation from Art. 19(a), (d) and 21, but right to privacy is not absolute right. "Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, the fundamental right must be subject to restriction on the basis of compelling public interest". Surveillance by domiciliary visits need not always be an unreasonable encroachment on the privacy of a person owing to the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which the surveillance is made. The right to privacy deals with 'persons not places'.

In another case **Smt. Maneka Gandhi v. Union of India & Anr**,³ the Supreme Court held that 'personal liberty' under article 21 covers a variety of rights & some have status of fundamental rights and given additional protection under article 19 of the Indian Constitution. Triple Test for any law interfering with personal liberty: (1) It must prescribe a procedure; (2) the procedure must withstand the test of one or more of the fundamental rights conferred under article 19 of Indian Constitution which may be applicable in a given situation and (3) It must withstand test of Article 14. The law and procedure authorising interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.

In **K.S. Puttaswamy (Retd.) and Ors. Vs. Union of India (UOI) and Ors**,⁴ the Apex Court held that, if the observations made in *M.P. Sharma and Ors. v. Satish Chandra and Ors.* and

Kharak Singh v. State of U.P. and Ors. are read literally and accepted as law, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 of the Constitution would be denuded of vigour and vitality. Institutional integrity and judicial discipline require that pronouncement made by larger benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger benches. It is better that the ratio decidendi in the two cases is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a bench of appropriate strength.

In **P.U.C.L. v. Union of India**,⁵ the Supreme Court of India, while laying down the standards for telephone wiretapping had observed that the right to privacy is an integral part of the fundamental right to life enshrined under Article 21 of the Constitution and this right shall be available only against the state.

Earlier Justice P.N Bhagawati also observed that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of his right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights .” Hence one could observe from the above cases that the Supreme Court accepted that human dignity implies expressing oneself in diverse forms and acknowledges the value and worth of all the individuals in the society.⁶

Lord Denning has also argued for the recognition of a right to privacy that, “English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established.”⁷

In **Mr X vs Hospital Z**,⁸ the apex court held that, right to privacy in doctor patient relationship is not absolute. Right to healthy life would justify breach of confidentiality or right to privacy of another person.

In another case **Directorate of Revenue vs Mohd Nisar Holla**,⁹ the court held that a person who does not break a law 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.

CONCLUSION:

In many nations, right to privacy is not given expressly to their individuals, but it is coined from judicial interpretations. 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 Zero-relationship between two or more persons in the sense that there is no interaction or communication between them, if they so choose. Many Jurists have suggested that privacy is valued because it satisfies a number of primary human needs.

REFERENCES

- 1 1964 SCR (1) 332, 2 1975 SCR (3) 946, 3 1978 SCR (2) 621, 4 2015(8) SCALE 747, 5 (1997)1 SCC 30, 6 (1981)2 SCR 516, 7 Lord Denning, ‘What Next in Law’, 8 (1998) 8 SCC 296, 9 (2008) 2 SCC 370