

ESSAY ON:
RIGHT TO PRIVACY: IT'S SANCTITY IN INDIA

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INTRODUCTION:

“Man’s house is his castle”, the mentioned saying implies about inherited “Right to Privacy” in human being. Every human being has certain confidential and superstitious part of their life, which can’t be divulged at public domain. The right to privacy has gained momentum throughout the world and it has been recognised as a fundamental right to privacy.

Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. Yet the autonomy of the individual is conditioned by her relationships with the rest of the society. Those relationships may and do often pose questions to autonomy and free choice. The overarching presence of state and non-state entities regulates aspects of social existence which bear upon the freedom of the individual.

Right to privacy is a right which an individual possesses by birth. Privacy, simply means the right of an individual to be left alone which is recognised by common law.

The Preamble of Indian Constitution guarantees liberty of thought, expression, belief, faith and worship to all the citizens of the country. A paralysis of Art. 21 of the Indian Constitution which includes the word “personal liberty” reveals that for an individual to lead a dignified life, his/her liberty should be protected which ultimately demand right to privacy to be given legal recognition.

Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental Rights and not even the state has authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person’s life meaningful. Article 21 protects the dignity of human life, one’s personal autonomy, one’s right to privacy, etc. Right to dignity has been recognised to be an essential part of the right to life and accrues to all persons on account of being humans.

The Right to privacy can be both negatively and positively defined¹. The negative right to Privacy entails the individuals are protected from unwanted intrusion by both the state and private actors into their life, especially features that define their personal identity such as sexuality, religion and political affiliation, i.e.; the inner core of a person’s private life.

The positive right entails an obligation of states to remove obstacles for an autonomous shaping of individual identities.

ORIGIN:

The notion of privacy is sometimes, ambiguous because of different historical theories of privacy given by three different groups of eminent jurists. While one group of jurists including Douglas, Blackmun regarded privacy as protection of individual liberty, another set of jurists including Black and Rehnquist adhered to non-recognition of some unrecognised substantive due process rights as fundamental. The third group of justices including Justice

¹ Max Planck Encyclopaedia of Comparative Constitutional Law

White and Justice Harlan regarded privacy as a view to protect the family from government interference. However, the fact that privacy is an existing right just like any other human right cannot be denied.

Another view of the importance of Right to Privacy is that it is essentially considered to be a natural right. Natural Rights are those divine rights which are considered supreme to all other rights. Thus, privacy finds its origin in the natural law theories.

It was however, the social contract theorists, i.e.; Hobbes, Rousseau and John Locke who in his book 'Two treaties on civil govt.' sowed the seeds of the 'Right to Privacy' by advocating the theory of Natural Rights which according to him were inviolable and inalienable. According to Locke setting up a government and making laws was only a secondary transaction between individuals, the primary being preservation of life, liberty and property. According to him people give up only a part of their natural rights while abandoning the 'state of nature' and the remaining natural rights like life, liberty and property are kept intact with them. Appropriately therefore, in furtherance of this theory in his work "Essay concerning human understanding" John Locke introduces the concept of 'Tabula Rasa' which meant that the mind of the individual was a dean state and individuals were free to author their own soul. Individuals were also free to define the content of their character.

In **People's Union for Civil Liberties vs. Union of India²**; the Court mentioned as follows-

"We have; therefore, no hesitation in holding that 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 a given case constitute a right of privacy. Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law".

International Scenario:

The recognition of privacy as a fundamental constitutional value is part of India's commitment to a global human rights regime. **Article 51** of the Constitution, which forms part of the Directive Principles, requires the state to endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. **Article 12 of Universal Declaration of Human Rights, recognises the right to privacy:**

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

The **International Covenant on Civil and Political Rights in its Art. 17** provides that 'No one shall be subjected to an arbitrary and unlawful interference with his/her privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation, and that everyone has right to the protection of the law against such interference or attacks'.

In order to have a categorical understanding of Right to Privacy in Indian Constitution, it is indispensable to have a thorough knowledge about USA privacy laws since Indian judiciary relied upon those laws for the interpretation of private matters.

² AIR 1991 SC 207 (Supreme Court of India)

It was developed by Warren and Brandies in the backdrop of the dense urbanisation which occurred particularly in the East Coast of the United States. “Warren and Brandies” discussion was a commencement of deliberation on inalienable right of privacy in USA. The Constitution of USA mentions about plenty of inalienable rights including the right to liberty and pursuit of happiness and these rights should be protected by statutes, rules and regulations by the government but privacy laws were lacking in USA and then Warren and Brandies mentioned about application of common laws for the protection of these rights in order to protect the privacy of an individual. The help of common law was obtained because common laws contained the right to be free from harassment and exposure and it was the only available remedy for the protection of private matters. Right to privacy was subject to the explicit right to free speech and it was the only available remedy for protection of private matters. Right to privacy was explicit right to free speech and it was unequivocally mentioned in the first amendment of Bill of Rights, so from this it can be inferred that right to privacy was an Implicit in USA constitution.

The discussion of Warren and Brandies on right to privacy explained the actions that fall under the ambit of privacy invasion, such as Intrusion into one’s private life and affair; Public disclosure of embarrassing private facts; Unwanted publicity of private individuals; Misappropriation of a name or likeness for financial advantage.

In the case of **Griswold vs. Connecticut**³, the Supreme Court of U. S held that forbidding use of contraceptives by the state intrudes in constitutional right to marital privacy. Justice Douglas for the majority held that the right to privacy has emanated from penumbras of American Bill of Rights.

In **Lawrence vs. Texas**⁴, held that Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct was unconstitutional as applied to adult males who had engaged in consensual act of sodomy in privacy of home. The mentioned Texas statute was violating right to privacy. The Court added the observation and stated that it is the liberty of a person to abstain from unwarranted intrusion by the government into dwelling or other private places.

INDIAN CONTEXT:

Right to privacy is one such right which has come to its existence after widening up the dimensions of Article 21.

According to **Black’s Law Dictionary**; 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 interference by the public in matters with which public is not necessarily concerned”.

Right to privacy is not enumerated as a Fundamental Right in Constitution of India. Art. 21 of Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

³ 381 U.S. 479 1963

⁴ 539 U.S. 558. 2003

In case of **Govind vs. State of Madhya Pradesh**⁵, the court observed that domiciliary visits by the police should be reduced to the clearest cases of danger to the community security and not routine follow up at the end of a conviction or release from prison or at whim of a police officer. In truth legally apart, these regulations ill-record with essence of personal freedoms and the state will do well to revise these old police regulations verging perilously near unconstitutionality.

Several other pre-constitutional enactments which codify the common law also acknowledge the right to privacy, both as between the individuals and the government, as well as between individuals inter se. These include:

1} **S.126-9**, The Indian Evidence Act,1872(protecting certain classes of communication as privileged)

2} **S.4**, The Indian Easements Act,1882(defining easements as the right to choose how to use and enjoy a given piece of land)

3} **S.5(2)**, The Indian Telegraph Act,1885(specifying the permissible grounds for the government to order the interception of messages)

4} **S.5 and 6**, The Bankers Books (Evidence)Act,1891(mandating a court order for the production and inspection of Bank records)

5} **S.25 and 26**, The Indian Post Office Act,1898(specifying the permissible grounds for the interception of postal articles) and themselves becoming agents of political power qua the state.

Constitutions like our own are means by which individuals the Preambular people of India create the state, a new entity to serve their interests and be accountable to them and transfer a part of their sovereignty to it. The cumulative effect of both these circumstances is that individuals governed by constitutions have the new advantage of a governing entity that draws its power from and is accountable to them, but they face the new peril of a diffuse and formless entity against whom existing remedies at common law are no longer efficacious.

The instances of Right to Privacy can be traced through many ways. Some of which are:

1.Surveillance and Privacy

A person is kept under surveillance so that his/her activities could be traced and that the person does not commit any further crimes. The decision to conduct surveillance must be based on balancing the interference with the right to privacy with the legitimate public interests which the authorities aimed to protect. Some of the things to be taken into consideration before keeping a person under surveillance are-

- The criminal background of the person whether the person has actually committed such crimes which require keeping him/her under surveillance.
- The frequency of the person committing crime, i.e., whether he/she commits crime repeatedly at frequent intervals or not.
- The level of crime committed, i.e., it is of such heinous nature for the security of public it is necessary to trace the activities of the person.

⁵ (1975) 2 SCC 148

In the case of **Kharak Singh vs. State of Uttar Pradesh**⁶, the appellant was being harassed by police under regulation 236(b) of the UP regulation, which permits for domiciliary, visits at night. The Supreme Court held that the regulation 236 is unconstitutional and violative of Art. 21. Among the measures of surveillance contemplated by Regulation 236 were the following:

- a) Secret picketing of the house or approaches to the house of suspects;
- b) Domiciliary visits at night;
- c) thorough periodical inquiries by officers not below the rank of sub-inspector into repute, habits, associations, income, expenses and occupation;
- d) The reporting by constables and churidars of movements and absences from home;
- e) The verification of movements and absences by means of inquiry slips;
- f) The collection and record on a history-sheet of all information bearing on conduct.

The Court concluded by saying that Art. 21 of the constitution to include “right to privacy” as a part of right to “protection of life and personal liberty”. Justice Subba Rao equated personal liberty with privacy and he observed that concept of liberty in Art. 21 was comprehensive enough to include privacy and that a person’s house, where he lives with his family is his castle and that nothing is more deleterious to a man’s physical happiness and health than a calculated interference with his right to privacy.

2. Homosexuality and Privacy

“If the right to privacy means anything, it is the right of the individual, married or single, to be freed from unwarranted governmental intrusion”

William J. Brennan

Homosexuality is considered as a taboo in Indian society which results in the isolation and subjugation of those who have different preferences when it comes to choosing a partner for life. In a landmark judgement for the LGBT community in the country, the Supreme Court lifted a colonial-era ban on gay sex. The centre, which had initially sought adjournment for filing its response to the petitions, had later left to the wisdom of the court the issue of legality of the penal provision [Sec. 377 of I.P.C] on the aspects of criminalising consensual unnatural sex between two consenting adults. The Centre said that the other aspects of the penal provision dealing with minors and animals should be allowed to remain same. **Sec. 377** refers to “**Unnatural offences**” and says, “Whoever, voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment for either description for a term which may extend to 10 years, and shall also be liable to pay a fine”.

The issue was first raised by **Naz Foundation**⁷, which had in 2001 approached the Delhi High Court which had decriminalised sex between consenting adults of same gender by

⁶ AIR 1963 SC 1295

⁷ Naz Foundation vs. Govt. of NCT of Delhi, 160 Delhi Law Times 277 (Delhi High Court 2009)

holding the penal provision as “illegal”. This 2009 judgement of the High Court was overturned in 2013 by the apex court which had also dismissed the review plea against the curative petitions were filed which are pending. However, the HC’s judgement was overturned in 2013 by the SC who found it to be “legally unsustainable”. The Court also quashed the review petition filed by the Naz Foundation. In 2016, five petitions were filed in SC by LGBTQ activists claiming that their “rights to sexuality, sexual autonomy, choice of sexual partner, life, privacy, dignity and equality, along with the other fundamental rights guaranteed under Part-III of Constitution are violated by Section 377”.

In 2017, the SC had upheld the Right to Privacy as a fundamental right under the Constitution. It also observed that “sexual orientation is an essential attribute of privacy”. In 2018, the Apex Court bench announced that consensual adult gay sex is not a crime and Article 14 and 21 of Indian Constitution contradict the present scenario of Sec 377. It also said that Section 377 remains in force relating to sex with minors, non-consensual sexual acts, and bestiality.

In **National Legal Services Authority vs. Union of India**⁸(NALSA); a bench of two judges while dealing with the rights of transgenders, adverted to international conventions acceded to by India including the UDHR and ICCPR. Provisions in these conventions which confer a protection against arbitrary and unlawful interference with a person’s privacy, family, home and would be read in a manner which harmonizes the fundamental rights contained in Articles 14,15,19 and 21.

3.Patient Information and Privacy

One of the major issue surrounding right to privacy is the revelation of patient’s personal information by medical practitioner. All the patients have right to privacy, and doctors have a duty to hold information about their health conditions and treatment plans in strict confidentiality unless it is essential in specific circumstances to communicate such information in the interest of protecting other or due to public health considerations⁹.

In a case of X vs. Z. Hospital, where the doctor revealed to a patient’s fiancée that the patient is HIV positive. The patient did not get married to that particular person and later on sued the doctor contending that it was an infringement of Right to Privacy. Court, however, had a different view and stated that the doctor cannot be said to have been liable for any breach of privacy right because this revelation is necessary from the point of view of public welfare.

4.Cyberspace and Personal Information

The present era is marked by two things: heavy reliance on technology and virtual space. But behind the interfusion of these two there exists a world of potent threats and risks. Cyberspace is the new frontier for gathering personal information, and its power has only begun to be exploited.

For instance, in crimes like cyber phishing, where a user shares his credentials to a disguised trustworthy site but subsequently becomes a victim of fraud. The internet is rapidly becoming the hub of personal information market. Currently, there are two basic ways that websites collect personal information. First, many websites directly solicit data from their users.

⁸ WP (Civil)No 604 of 2013

⁹ Protecting Patient’s Information in India: Data Protection Laws and Challenges,2012 (5) NUJS L REV 411

Numerous websites require users to register and login, and registration often involves answering a questionnaire. Online merchants amass data from their business transactions with consumers. One of the most popular information sharing techniques is performed by a firm called Double Click. When a person visits a website, it often takes a quicker detour to double click. Double click accesses its cookie on the person's computer and looks up its profile about the person. Based on the profile, Double click determines what advertisements that person will be most responsive to, and these ads are then downloaded with the website the person is accessing.

Cyber crime is any criminal activity in which a computer or network is the source, target or tool or place of crime. According to the Cambridge English Dictionaries, Cyber Crime are the crimes committed with the use of computers or relating to computers, especially through internet. Crimes which involve use of information or usage of electronic means in furtherance of crime are covered under the ambit of cybercrime. Cyber space crimes may be committed against persons, property, government and society at large.

In Indian scenario of Cyber space crimes and Cyber space laws, there was no statute in India for governing Cyber laws involving privacy issues, jurisdiction issues, intellectual property rights issues and a number of other legal questions. With the tendency of misusing of technology, there arisen a need of strict statutory laws to regulate the criminal activities in the cyber world and to protect the true sense of Technology ITAct,2000 was enacted by the Parliament of India to protect the field of e-commerce, e-governance, e-banking as well as penalties and punishments in the field of cybercrimes.

Criminal liability in India for cyber crimes is defined under the Indian Penal Code. Certain sections of IPC deals with various Cyber Crimes:

- Sending threatening messages by e-mail¹⁰
- Word, gesture or act intended to insult the modesty of a woman¹¹
- Sending defamatory messages by e-mail¹²
- Bogus websites, Cyber Frauds¹³
- E-mail spoofing¹⁴
- Making False documents¹⁵
- Forgery for purpose of harming reputation¹⁶
- Web-jacking¹⁷
- E-mail Abuse¹⁸
- Punishment for criminal intimidation¹⁹
- Criminal Intimidation by an anonymous communication²⁰
- Obscenity²¹

¹⁰ Section 503 of Indian Penal Code,1860

¹¹ Section 509 of Indian Penal Code,1860

¹² Section 409 of Indian Penal Code,1860

¹³ Section 420 of Indian Penal Code,1860

¹⁴ Section 463 of Indian Penal Code,1860

¹⁵ Section 464 of Indian Penal Code,1860

¹⁶ Section 468 of Indian Penal Code,1860

¹⁷ Section 383 of Indian Penal Code,1860

¹⁸ Section 500 of Indian Penal Code,1860

¹⁹ Section 506 of Indian Penal Code,1860

²⁰ Section 507 of Indian Penal Code,1860

- Printing etc. of grossly indecent or scurrilous matter or matter intended for blackmail²²
- Sale, etc., of obscene objects to young person²³
- Obscene acts and songs²⁴
- Theft of Computer Hardware²⁵

5.AADHAR AND PRIVACY

‘Identities float in the air, some of one’s own choice but others inflated and launched by those around, and one needs to be constantly on the alert to defend the first against the second’

Zygmunt Bauman

‘May I see some ID?’ We hear this every day. It is so commonplace that we take it for granted. But much hangs on what we produce. Being able to enter some workplaces or join the fast-track line at the airport or simply withdraw cash from ATM—each of these depends on having ID. Equally, without the right ID you may be refused to emergency medical attention, denied access to secure website, or turned away at the border.

‘Aadhar’ in Hindi means “base or foundation”. An Aadhar is a 12-digit random unique identification number issued to Indian citizens by Govt. of India. The Unique Identification Authority of India(UIDAI) is the issuing and managing agency of the Aadhar Card. Any individual, irrespective of age and gender, who is a resident of India, may voluntarily enrol to obtain Aadhar number. Aadhar was primarily introduced for direct transfer of subsidies into citizens bank account. But now the government has widened the scope of Aadhar.

The main reason why the case of infringement of privacy was filed was because the Government of India asked for Biometrics of the citizens to provide them with Aadhar Cards. The Aadhar scheme makes it mandatory for all citizens to have the Aadhar card otherwise they would suffer problems with respect to opening bank accounts, payment of taxes etc. The major contention was that Aadhar Act does not make the enrolment of Aadhar mandatory and hence, the said scheme is not violating any right because all the people are giving their biometrics voluntarily. The Government of India definitely provides various security benefits to the poor of the country. If a citizen does not obtain Aadhar then he/she would be deprived of such benefit. This would ultimately deprive them of benefits and would create different unreasonable classes of citizens which would again violate Article 14 of the Indian Constitution.

Another reason for the invalidity of the scheme is that there is definitely a trace of undue influence that can be found here. The Doctrine of Colourable Legislation finds its genesis in the principal that what cannot be done directly can also not be done indirectly. The Aadhar

²¹ Section 292 of Indian Penal Code,1860

²² Section 292A of Indian Penal Code,1860

²³ Section 293 of Indian Penal Code,1860

²⁴ Section 294 of Indian Penal Code,1860

²⁵ Section 378 of Indian Penal Code,1860

Act is definitely a form of colourable legislation wherein the government directly and secretly has an undue influence on certain sections of the society. When a citizen is made to choose between privacy and welfare schemes, then they would definitely choose food and shelter first.

In the case of **Justice K.S. Puttaswamy vs. Union of India and ors.**²⁶, The govt of India decided to provide to all its citizens a unique identity called Aadhar which is card containing 12-digit number. The registration of this card was made mandatory so as to enable the people to file tax returns, opening bank accounts, etc. However, the registration procedure for such card required the citizens to give their biometrics such as fingerprints, iris scans etc. Retired Justice K.S. Puttaswamy filed a petition challenging the constitutional validity of this Aadhar project contending that there was a violation of right to privacy of the citizens since, the registration for Aadhar is made mandatory. As a result of which all those who don't even want to register themselves, are not left with any option. Moreover, there is a lack of data protection laws in India and hence, there are chances that the private information of people may be leaked if proper care is not taken. This will lead to violation of Right to privacy of individuals. It was held that Privacy is a constitutionally protected right which not only emerges from the guarantee of life and personal liberty in Art. 21 of the Constitution, but also arises in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the Fundamental Rights contained in Part III of the Indian Constitution.

6. WOMEN'S RIGHT TO PRIVACY

A woman's Right to make reproductive choices is also a dimension of personal liberty as under Art. 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods.

Furthermore, women are also free to choose Birth control methods such as undergoing sterilisation procedures. Reproductive rights include a woman's entitlement to carry a pregnancy to full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a compelling state interest in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP ACT²⁷, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices.

In the case of **Suchita Srivastava vs. Chandigarh Administration**; A woman was alleged to have been raped while residing in a welfare institution run by the government was pregnant. The District Administration moved to the High Court to seek termination of pregnancy. The High Court directed that the pregnancy be terminated though medical experts had opined that the victim had expressed her willingness to bear the child. The High Court had issued this direction without the consent of the woman which was mandated under

²⁶ Writ petition (civil) No. 494 of 2012

²⁷ Medical Termination of Pregnancy Act, 1971

the statute where the woman is a major and does not suffer from mental illness. The woman in this case was found to suffer from a case of mild to moderate mental retardation. It was held that the reproductive choice of the woman should be respected having regard to mandate of Sec.3.

7. RIGHT TO INFORMATION ACT & RIGHT TO PRIVACY

The Right to Information & Right to Privacy are both essential human rights in modern Information society. For the most part, these two rights complement each other in holding governments accountable to individuals. Privacy is increasingly being challenged by new technologies and practices. The Technologies facilitate growing collection and sharing of personal information. Sensitive personal data are now collected and used routinely. Public records are being disclosed over the Internet. The Right to access to information held by government bodies (RTI) provides that individuals have a basic human right to demand information held by government bodies. It derives from the right of freedom of expression to “seek and receive information”²⁸, and is recognised worldwide as a human right.²⁹

In the case of **Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi**³⁰; dealt with the provisions of Section 8(1)(g) of the Right to Information Act, 2005. A person claiming to be a public spirited citizen sought information under the statute from the Bihar Public Service Commission on a range of matters relating to interviews conducted by it on two days. The Commission disclosed the information save except for the names of the interview board. The High Court directed disclosure. Section 8(1)(g) provides an exemption from disclosure of information of following nature:

Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement and security purposes. It was held that:

Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The Information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity.

JUDICIAL ENUMERATION OF THE FUNDAMENTAL RIGHT TO PRIVACY

There is nothing unusual in the judicial enumeration of one right on the basis of another under the Constitution. In the case of Article 21's guarantee of personal liberty, this practice is only natural if salmond's formulation of liberty as incipient rights is correct. By the process of enumeration, constitutional courts merely give a name and specify the core of guarantees already present in the residue of constitutional liberty. Overtime, the Supreme Court has been able to imply by its interpretative process, that several Fundamental Right.

²⁸ Universal Declaration of Human Rights (UDHR), art.19

²⁹ For a detailed overview of international standards on RTI, see Mendel (2008) and Banisar (2006)

³⁰ Civil Appeal No. 9052 of 2012 arising out of SLP (C) No. 20217 of 2011

In **Unnikrishnan, J.P. vs. State of A. P**³¹; A Constitution Bench of this Court held that several unenumerated rights fall within Article 21 since personal liberty is of widest amplitude on the way to affirming of a right to Education.

“Just like food and water, people need privacy”. In the verdict of Right to privacy to be declared as Fundamental Right; opinion by individual judges are:

Justice A M Sapre: Right to privacy comes with birth, goes with death

The right to privacy of an individual is a natural, cherished, inseparable and inalienable right which is born with a human being and extinguishes with it. He said that it cannot be conceived that an individual enjoys a meaningful life with dignity, without such a right.

Justice S K Kaul: Privacy should be protected against state, non-state actors

He expressed apprehension that the growth and development of technology has created new instruments for the possible invasion of privacy by the state including through surveillance, profiling and data collection and processing. The judge concluded that “The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both state and non-state actors and allows the individuals to make autonomous life choices.

Justice R F Nariman: Fundamental Right remains despite shifting sands of govts

Right to privacy would remain an inalienable Fundamental Right despite the ‘shifting sands’ of governments in power. He rejected the government’s argument that since several statutes are already there to protect the privacy of individuals, it is unnecessary to read a Fundamental Right of Privacy into Part III of the Constitution.

Justice J Chelameswar: Right to terminate life falls under Right to Privacy

An individual’s right to refuse life-prolonging medical treatment or terminate life is a freedom which falls within the zone of right to privacy.

He also said tapping of telephones and internet hacking of personal data is another area which falls within the realm of privacy.

He also touched upon other aspects like consumption of food and a woman’s freedom of choice on whether to terminate pregnancy.

Justice D Y Chandrachud: Privacy safeguards an individual’s autonomy

He said privacy safeguards an individual’s autonomy and recognises the ability of the individual to control vital aspects of life.

Justice S A Bobde: Privacy inextricably bound with exercises of human liberty

Right to Privacy is ‘inextricably bound up’ with all the exercises of human liberty and any ‘diminution’ in it would weaken fundamental rights which have been expressly conferred.

³¹ 1993 AIR 217,1993 SCR (1) 594,1993 SCC (1) 645, JT 1993(1) 474,1993 SCALE (1) 290

CONCLUSION

The Right to Privacy is a Fundamental Right. It is a right which protects the inner sphere of the individual from interference from both State and non-state actors and allows the individuals to make autonomous life choices.

The inference can be drawn that India relied upon the US Constitution for the interpretation of Right to Privacy within Indian sphere, therefore it can be uttered that American Constitution has pivotal and significant role in moulding of Right to privacy in accurate shape. It was always observed that Right to Privacy is derived from Right to Life and Personal Liberty.

It is now rightly expressed that; the technology has made it possible to enter a citizen's house without knocking at his/her door and this is equally possible both by the state and non-state actor. It is an individual's choice as to who enters his house, how he lives and in what relationship. The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity.

While considering the evolution of Constitutional jurisprudence on the right to privacy, in the challenge laid to Sec.377 of Indian Penal Code, one of the grounds of challenge was that the said provision amounted to an infringement of the right to dignity and privacy. The Right to live with dignity and the right to privacy both are now recognised as dimensions of Article 21 of the Constitution of India.

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