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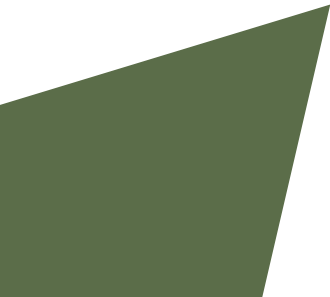
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Right to Privacy

Ankush Dhoka

ABSTRACT

The concept of right to privacy is not easy to capture in words. Privacy is therefore, an extremely precious and valuable aspect of our life. Privacy became a concern of every individual due to technological advancement and also emphasize for protection of data. The right to privacy recognized in Indian Constitution in Article 21 as such protects the right to privacy as a necessary ingredient of right to life. The Right to privacy is also recognized under the law of torts, criminal law as well as property law as an essential element involved there. Right to privacy emphasis on individual liberty and these individual liberty is under threat by the interference of the strange people. As India is a developing country it need some time the effectiveness or implementation of the new area of law. The paper would like to specifically focus on Right to privacy in modern India and impact on citizens of India, especially considering those people who are living in technologically isolated areas. The object of this research is to examine the present legal status of privacy & data protection in India as a matter of right.

INTRODUCTION

Right to privacy refers to protection of one's personal information from being published or used by other without permission. Privacy is a human right enjoyed by every person by Virtue of his or her right. Right to privacy was derived from "Article 21 protection of life and Personal liberty" of Indian Constitution. As per the Black Law Dictionary reference- "right to be alone; the right of an individual to be free from any unwarranted exposure; the right to live without any unwarranted interference by the public is not necessarily concerned"¹. To better understand the concept of Right to privacy we need to analyze cases related to these. Right to privacy is not a fundamental right was told to us by Supreme Court, In case of an eight - judge bench in M. P. Sharma vs Satish Chandra case 1954. After few years in Kharak singh vs state of UP (1962) case Supreme Court again declared that right to privacy is not a fundamental right. But after, twelve years later, in Govind vs state of M.P. (1975) Right to privacy is considered as a fundamental right by the Supreme Court. After this many cases were filed, but now it is settled position that right to life and liberty under Article 21 also includes right privacy.

OBJECTIVE

The main objective of this study is to compare Right to privacy before and after digitalization and to observe if Right to privacy is being followed and enforced by the people of India. In this Article, I will talk about how Indian judiciary has developed with the idea of Right to privacy with time.

Law related to Right to privacy

The Information Technology Act 2000² have two sections related to privacy : Section 43A which manages the usage of sensible security rehearses for sensitive personal data and provide the pay of the individual influenced by illegitimate misfortune or gain , section 72A which provide imprisonment for a period as long as three year or a fine up to Rs 5,00,000 or both for an individual who cause improper misfortune or increase by revealing individual data of someone else without their consent under the terms of lawful contract.

The privacy Bill 2011³: It says that "each individual will have a right to his privacy , privacy of correspondence made to, or by him including his own correspondence, telephone conversation, postal, electronic mail, and different mode of communication , confidentiality of his privacy or his beloved once life; protection of his honor and good name ;protection for search, detention of law communication b/w and among individuals privacy from

¹ Black's law Dictionary (11th edition 2019)

² India Code digital repository of all central and the state acts

³ India Data Privacy laws and EU GDPR, (published by Rodl and partner On 24 may 2018)

surveillance; confidentiality of his banking and financial transactions, legal and medical information and protection of information relation to individual". this bill provide security from identity theft, criminal data fraud (like other person is captured for a wrong done by someone else), and it also include money related recognize robbery (like using another person's identity to acquire credit, product and enterprises) etc. the bill also says that if any person who take or obtain any information concerning an individual from any Government worker or from any other mode under false pretext shall be punishable with a fine of up to Rs. 5, 00,000.

The Data (Privacy and Protection Bill) 2017⁴: however this bill is different from other bill in the feeling that it looks to make the assent of a person for assortment and preparing of personal data mandatory. These bill says that every person will have his individual Right and have final right to modify or remove his/her information or data from any database is in public or private.

In regarding delicate and individual data, the individual must give his/her express consent for the collection, use and storage of any such information. This bill is equally applicable on both private entities and state entities and is also applicable those persons how are following up on their behalf. This represents a noteworthy change in law from existing regime under the Information Technology Act 2000 and privacy bill 2011.

The Personal Data Protection Bill 2018⁵: The personal data protection bill provided for the accommodated the foundation of data protection authority to supervise exercises that include preparing of data.

Various aspects of Right to Privacy

Phone Tapping and Right to Privacy⁶: phone tapping and Right to privacy is affected by the development of technology relating to a person's correspondence and this has become the debating issue. In R.M. Malkani vs state of Maharashtra Supreme court said that phone tapping violates the right to privacy and freedom of speech and expression and also government can't impose regulations on publishing defamatory materials against its officials that make it Violative of Article 21 and article 19(1)(a) of the constitution.

Privacy and Health⁷: Health sector is an important matter of concern in privacy and also a major aspect of Right to privacy. Health information not only include information about health, but also the information related to health services him/her Receive. Right to life is so important that it supersedes Right to privacy. In case of Mr. X vs Hospital it was held that doctor- patient relationship thought basically commercial is professionally a matter of confidence and therefore, Doctor are morally and ethically bound to maintain confidentiality. Does disclosure of the true facts may lead to spar the person's Right to privacy.

Freedom of press and privacy⁸: the freedom of the press has not been expressly mentioned in article 19 of the Constitution of India but has been interpreted that it is implied under article 19. It would be quite difficult for court to add privacy as one of the aspects to imposing reasonable restriction. So a female who is the victim of

⁴ Right to Privacy, law wed unique legal database

⁵ Maximum punishment proposed: 'personal Data protection bill 2018'

⁶ R.M. Malkani vs State of Maharashtra 1973 AIR 157, SCR 417, SCC 471

⁷ Mr. X vs Hospital Z 1998

⁸ Destruction of public and private properties vs State of A.P. 2009

sexual assault, abduction etc. offences further be situation to the indignity of her name and the incident being posted in press media. This will be effecting his privacy. There is no particular law in India which directly protect Right to privacy against excessive publicity by the press. In *Destruction of public and private properties vs State of A.P.* supreme court says that media should be based upon the principle of impartiality and objectivity in reporting, ensuring neutrality ; responsible for reporting sensitive issues ,especially crime ,violence and protest; sensitive in reporting related to women and children and matters related to national security ;in respect of privacy. Right to privacy will provide solution to this problem.

LANDMARK CASES

M.P.Sharma and Others vs Satish Chandra⁹: this case was related to search and seizure of documents of some company the probe indicated malpractices done within the company and Attempt to conceal from shareholders the actual state of affairs by submitting false accounts and balance sheet. The F.I.R. was registered and the district magistrate issued the search warrant, and search was begin at those places which belongs to the company. Various records and documents were seized. In writ petition the aggrieved party in Supreme Court challenged the constitutional validity of the search saying that their private records were taken away and also claimed that it violated their fundamental right. In this eight judge bench analyzed the scenario in a best way and turn down the defendant .it was too vulnerable to misuse if not made to fit each and every class of society which was in itself a Impossible task. In this judges, also said that power of search and seizure is in any system of jurisprudence, an overriding power of the state for the protection of social security and that power is necessary regulated by law. Thus there is no need of making Right to privacy fundamental right, even the constitution makers has not added into the constitution of India. In this Right to privacy not linked with to the Right to own property.

Kharak Singh vs State of Uttar Pradesh and Other¹⁰ : this case is related to the issue of state surveillance as against the Right to Privacy. Petitioner kharak singh was challenged in case of dacoity, but was released as there was a lack of evidence against him. Uttar Pradesh police subsequently opened history sheet against him and brought him under surveillance. Provision of the Uttar Pradesh police regulation allow domiciliary visits at night, secretly picketing from his house, tracking/verifying his movement and inquiries from him by officers. Kharak singh field writ petition for the violation of his fundamental right. However, the court rejected the petitioners claim that another part of the regulation, namely the shadowing of routine criminals, infringed his right to privacy due to the fact this right was not recognized as a fundamental right under Indian Constitution. and reason behind the rejection of the petition was that the visits infringed the petitioners right to life, protected under Article 21 of the constitution and could only be restricted by Law which did not include executive order such as the Uttar Pradesh police regulations that reason given by the Supreme Court of India. Supreme Court also said that Right to Privacy is not a Fundamental right. And privacy linked to personal liberty.

⁹ M.P.Sharma vs Satish Chandra, District 1954 AIR 300, SCR 1077

¹⁰ Kharak Singh vs State of U.P. 1964 AIR 1295, SCR 332

Govind vs State Of Madhya Pradesh 1975¹¹: After eleven years the Supreme Court where a similar three judge bench faced a similar factual matrix in this case. This case is related to the same issues which were in Kharak Singh vs State of Uttar Pradesh. Petitioner said that several false cases were filed against him by the police, but he was acquitted in all cases except two cases. Police opened history sheet against him on the basis that he is a habitual criminal and that he put under surveillance. He also said that police visits his house at any time at day or night at frequent intervals, whenever he wants to leave the village he has to take permission from police station for departure and he also has to give the information about his destination and when he will return. He filed the case against police for violation of his fundamental right guaranteed by the constitution of India under Article 19(1)(d) and Article 21. It is said that he has committed many crimes during the period of 1969, such as in one case under Section 452 IPC he was fined Rs 100 and imprisonment of two months and in other case under Section 456 IPC he was fined Rs 500 and also imprisonment of one month etc. are crimes committed by him, in short this shows that petitioner is a dangerous criminal and that the reason he was put under surveillance in order to prevent him from committing the crime this reason was given by the Supreme Court. And Supreme Court also observed that regular visits by the police should be reduced to the clearest cases of danger to the security of the society and not routine follow up at the end of a conviction or a release from a prison. In this case Govind did not win, but Privacy won for the first time and also gained some recognition in fundamental right as in Article 21 of the Constitution of India. And after this right to privacy was not able to become absolute, but became more stronger than before.

Maneka Gandhi vs The Union of India 1978¹²: In 1977 soon after the lifting of the emergency, Maneka Gandhi received a letter from the regional passport office asking her to submit her passport. The letter said that the government of India wanted to seize her passport in public interest. However, government authorities did not provide any specified reason for the interest of the general public. However, Maneka Gandhi approached the Supreme Court under Article 32 for violation of Article 19(1)(g) right to freedom and Article 21 right to protection of life and personal liberty. In this case the court said that the procedure established by law should not interfere with personal liberty and right to privacy must also be right, just and truthful and not arbitrary, fanciful or oppressive. This judgement expanded the area of Article 21 and this judgement truly made India a welfare state as promised in the constitution of India. In this case Right to Privacy linked to Right to personal liberty.

R Sukanya vs R Sridhar¹³: This case from 2004 was transferred from trial court to the Madras High Court. South Indian actress Sukanya and Sridhar approached the court over marital dispute. Being an actress Sukanya filed an application requesting the media be restrained from publishing the details of the case, and that her privacy be respected. The trial court rejected the petition filed by Sukanya, but the high court pointed out that under the Hindu Marriage Act 1955, Section 22, proceedings shall be held in camera (which means the public is not permitted

¹¹ Govind vs State of Madhya Pradesh 1975 AIR 1378, SCR 946

¹² Maneka Gandhi vs Union of India 1978 AIR 597, SCR 621

¹³ R. Sridhar vs R. Sukanya 2004

in the court room when the proceedings related case are being heard, and only the courts judgement in the case will be published) and restrained the media from reporting on the case.

Justice K.S.Puttaswamy (retd.) vs Union of India 2017¹⁴: In this case a 91 year old retired judge K.S. puttaswamy filed a petition in the Supreme Court of India .he says that aadhar act violates the right to privacy .this case was actually concerned with an issue to a challenge to the governments Aadhaar scheme (a form of uniform biometrics based identity card) in which the government made mandatory for availing the government services and benefits. That was made before a three judge bench of the Supreme Court on the basis that this violates the right to privacy. Accordingly a constitution bench was set up and concluded that there was a need for nine judge bench to determine whether there is a fundamental right to privacy in the article 21 of Indian Constitution. In this nine judge bench of the supreme court clarified that most other fundamental right , the right to privacy is not an absolute right, and that is why Right to privacy is a fundamental right protected by Article 19 and Article 21.

LIST OF CASES

- 1) Express newspaper ltd vs the union of India 1958
- 2) M.S.M.Sharma vs Krishna Sinha 1958
- 3) Ram vs B. Baijnath singh 1962
- 4) Naresh Sridhar Mirajkar vs State of Maharashtra 1966
- 5) I.C.Golak nath vs State of Maharashtra 1967
- 6) Prem Dulari vs Raj Kumari 1967
- 7) Rustom Cavasjee cooper vs Union of India 1970
- 8) Pooran mal vs The Director of Inspection (Investigation) New Delhi and ors. 1973
- 9) Sunil Batra vs Delhi Administration and ors. 1978
- 10) P.N.Eswara vs The Registrar, Supreme court of India 1980
- 11) Unni Krishnan, J.P. vs State of Andhra Pradesh 1993
- 12) R. Rajagopal vs Union of India 1994
- 13) People's union for civil liberties vs Union of India 1996
- 14) State of Punjab vs Baldev Singh 1999
- 15) District registrar and collector, Hyderabad and another vs Canara Bank and another 2004

¹⁴ Justice K.S.Puttaswamy (Retd) vs Union of India 2017

- 16) Zee Telefilms ltd. vs Union of India 2005
- 17) Petronet LNG ltd vs India petro Group and another 2006
- 18) Selvi and other vs State of Karnataka and other 2010
- 19) Amarinder singh vs Special committee, Punjab Vidhan Sabha 2010
- 20) Sahara India Real Estate Corporation ltd. vs Securities and Exchange of India 2012
- 21) Unique Identification authority of India vs Central bureau of investigation (CBI) 2014
- 22) Manoj Narula vs Union of India 2014
- 23) Supreme Court Advocates on record association vs Union of India 2018
- 24) Common Cause (A registered society) vs Union of India 2018
- 25) Public Interest Foundation vs Union of India 2018
- 26) Indian Young Lawyers Association vs The State of Kerala 2018
- 27) Kalpana Mehta vs Union of India 2018
- 28) Joseph Shine vs Union of India 2018
- 29) Navtej singh johar vs Union of India 2018

SUGGESTION

- 1) There is no comprehensive legislation on privacy in India, it has been left to judiciary to interpret Right to privacy within the realm of existing legislation. A proper law guaranteeing privacy is therefore an urgent demand of the hour.
- 2) Indian jurist has not made an attempt to define privacy. They have relied on the cases that happen in the past, the result is that we need to have an indigenous definition on Right to Privacy.
- 3) Right to Privacy has been upheld by the Supreme Court of India as an integral part of Article 21, fundamental Right to Life which is available only against the State not against the Private persons. So there should be a law which should be available against private persons also.
- 4) The privacy of personal communications including telephone calls is protected under the law but it has been frequently violated by the police and intelligent agencies. So government should take immediate action on this thing because it violates the person's Right to privacy.
- 5) In cases relating to abortion women's right to privacy of dignity and bodily integrity should be made laws for these issues.
- 6) A remedy of restitution of conjugal rights, a concept which is abolished in many countries, so this concept should be abolished in India because it clearly violates the Right to Privacy.

- 7) Privacy is one of the most contentious legal issue arising in cyber world, India's first cyber law the Information Technology Act 2000 has omitted to deals with the crucial issue of privacy. It does not even touch or address the critical issues of right to privacy online .so there should be made law related to online privacy.
- 8) In India awareness about privacy is at a very low level in the actual world level aside cyberspace. Government should take appropriate measure to create awareness about privacy.
- 9) There exists in India an impending need to frame a model statute which safeguards the privacy of an individual especially given the emergence of customer service corporate entities.
- 10) Government surveillance of privacy conversation is possible so long it is unlike to touch on absolutely protected personal information it must be halted immediately. Any record made must be destroyed and data collected cannot be used in criminal procedure.
- 11) Given the new age threats to individual privacy, clear cut law are the need of the hour. Article 21 is not enough. The law on privacy need to be codified and put in a composite form.
- 12) For the fundamental Right to Privacy to truly become the law of the land, a larger seven judge bench of the Supreme Court is to be constituted in favor of establishing the full fledged law related to Right to Privacy.

CONCLUSION

The concept of Right to privacy is very fluid and the laws related to this topic are musk and subjective. The Right to Privacy has created made leaps and bounds in the present day society. With the electronic and telecommunication boom throughout the Country the Right to privacy has become more pivotal right. The risk of social media and other social networking sites have resulted in users voluntarily or involuntarily disclosing private information to the public. It was also observed that Right to Privacy is derived from Article 21 Right to Life and Personal Liberty and the current judicial precedent about popularity of fundamental status of right to privacy has provided a constitutional protection to privacy and confidential information and violation of said right will result in stringent criminal action against the infringer. The reason behind establishment of Right to Privacy is with respect to protection of personal information shared on digital platform and due to the fact India doesn't have privacy law as such, fundamental status of privacy will protect this right from being contravened by others. Right to Privacy has finally obtain the correct place in the Indian constitution after various legal discussion and deliberation happened in numerous instances which treated various aspects of Right to Privacy in the Constitution of India. therefore the efforts of Supreme of court need to be commended due to the fact suppling the essential fame was a frightening challenge and in spite of plenty of protest and problems, the Supreme Court succeeded in giving the right space to the Right to Privacy and now a confidential and covert information of privacy individuals will be under the protection and unauthorized intrusion in privacy matters will result in rigid punishment.

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- 3) Article 19(1)(a) Freedom of speech and expression
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- 5) Article 19(1)(d) Right to move freely throughout the territory of India