



Right to Privacy as a Fundamental Right

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ABSTRACT

Black's Law Dictionary defines 'right to privacy' as is a generic term encompassing various rights recognized to be inherent in concept of ordered liberty, and such rights prevent government interference in intimate personal relationship's or activities, freedom of individuals to make fundamental choice involving himself, his family, and his relationship with others. The right to privacy has many features: some may qualify as fundamental rights, some may not. It may be interpreted as subset of liberty: however notice of privacy seems to larger than even liberty at some instance. Nearly every country in the world recognizes a right of privacy clearly recognize in the constitution, such as the United States, Ireland and India, the courts have found that rights in other provision. Right to privacy gain importance in present scenario where biometric or Adhaar card ID removes delicacy or replica IDs and therefore, is a mighty instrument to help people living on limits through government welfare related schemes. At present explores legitimacy and extent for right to privacy in changed technological scenario, at a time when biometrics and identity data is being stored for multipurpose uses including search and surveillance.

Key Words: Right to privacy, Right to life, Indian Constitution.

Introduction.

The term right to privacy means 'a persons right to be let alone and also a right to be free from any unwarranted publicity or unwarranted public interference in matters in which the public must be concerned about.'

Our Indian constitution provides us under Art 21 the right to life and personal liberty and it has been stated as " a person shall not be deprived his life or personal liberty except according to the procedure established by law". The term 'life' under this article has been interpreted several times by our judiciary and it includes all aspects of life of a man which makes his life more meaningful, worth living and makes his life complete. As it is said that each coin has two sides , it is an universal rule. Both positive and negative side even though the technology has been emergent it is also invaded each and every part of an individual whether such invasion is desired or not thus leading to violation of privacy. In the earlier times Indian laws give protection against physical danger only. As consistently changing precedent based law developed to oblige the issues looked by the general population, it was understood that not only physical security is required but also the profound self and additionally of his sentiments and brain was required. The Supreme Court has every time stretched out the ambit of art 21 keeping in view to the international instruments to which India being a signatory. The Court has implied the right of privacy from Art.21 by interpreting it in conformity with Art.21 of the Universal Declaration on Human Rights and Art.17 of the International Covenant on Civil and Political Rights, 1966. Both of these international provides for the right to privacy.

Objects of the study.

- The object of the study is the concept if right to privacy under Art. 21 of the constitution of India.
- To determine the Constitutional validity of right to privacy.
- To study about the growth of the right to privacy.

Research Methodology.

A comparative study is based doctrinal data on how the right to privacy is being protected under the Indian Constitution as a fundamental right of a person's private and family life, health and other personal rights.

Article 21 of the Constitution.

"The scope of legal rights are broadened and now the right to life has come to mean the right to enjoy the life-the right to be let alone."- Louis brandeis, J. (1890)

Black's Law Dictionary " 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."

Art.21 of the Indian Constitution states that " No person shall be deprived of his life or personal liberty except according to the procedure established

by the law” After having the article 21, it has been interpreted that the term ‘life’ includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.

International Concepts of 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 the International covenant of Civil and Political Rights 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 the 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 in accordance with law and is necessary in a democratic society in the interest of nation security, public safety or the economic well-being of the country, for the protection of health or morals for the protection of the rights and freedoms of others.”

The Privacy Bill, 2011.

The bill says that every individual shall have a right to his privacy- confidentiality of the communication mode made by him – his personal correspondence, telephone conversation, telegraph message, postal, electronic mail and other modes of communication, confidentiality of his private or family life, protection of his honour and good name, protection from search, detention or exposure of law communication between and among individuals, privacy from surveillance, confidentiality of his banking and finance transactions, medical and legal information and protection of data relating to individuals.”

The right to respect for private and family life

The right to respect for privacy mirrors the broadminded concept of the individual’s freedom as a self-governing being as long as his/her actions do not interfere with the rights and freedoms of others. The right to privacy is a right of individual sovereignty being violated when states interfere with, penalize, or prohibit actions that specially only concern the individual, such as not wearing safety utensils at work or committing suicide. States identifies such interferences with the social costs of the trial prohibited, for instance to the health care system. The right to privacy encompasses the right to defend a person’s intimacy, identity, name, gender, honour, dignity, appearance, feelings and sexual orientation. The right to privacy may be restricted in the interests of others, under specific conditions, provided that the hindrance is not arbitrary or unlawful. People cannot be forced to change their emergence or name, for instance, nor can they be prohibited from changing their name or sex; in the interests of the rights of others they may, for example, be compelled to give biological samples for the determination of fatherhood. Another exception could be lawful counter-terrorism surveillance that necessarily operates in breach of privacy rights. Such a breach is adequate as long as it accords with judicial and parliamentary oversight. The right to privacy extends to the home, the family and correspondence. The term family relates, for example, to blood ties, economic ties, marriage and adoption. The right to the respect for privacy of the home has been interpreted to include place of business. A common interference with the privacy of association has to do with secret surveillance and censorship of the correspondence of prisoners.

Right to health and right to privacy

Where there is a controversy between two different rights, the right which advances public morality or public interest should alone be enforced by a process of court. The right to privacy of the appellant and the right to lead a healthy life of another person were clashed, both of it having its origin in Article 21. The disclosure of private information regarding the appellant would invariably result in saving an innocent person from contracting a deadly disease like AIDS. The revelation of such information is sensitive and might lead to social ostracism and cannot be done except with an overwhelming consideration of public morality and public health. AIDS patients deserve all respect as human beings and no person shall be denied any opportunity or government jobs or service on the ground of disease, but having ‘sex’ with them shall be avoided as the same would lead to the communication of a dreadful disease and the court shall not assist the person in achieving that object. Hence, in case of a conflict between right to privacy and right to health of another, the latter prevails, upon greater considerations of public morality.

Privacy Obligations under Specific Relationships

There are instances of specific inter-personal relationships wherein one party might be obligated to maintain a certain measure of confidentiality. A doctor-patient, husband-wife, customer-insurance company or an attorney-client relationship; are instances where there exists a strong ethical obligation on the part of one party to protect the privacy of information relating to an individual which may expose him to social humiliation and/or ridicule. The above principle also receives legal recognition in Ss. 123-126 of the Indian Evidence Act, 1871.

Cases.

M.P.Sharma v. Satish Chandra,

In this case the Supreme Court held that the content of the appellant that art 20(3) of the constitution includes the right to privacy was one of the ground for rejection of such claims as there is no provision similar to this in the fourth amendment.

Kharak Singh v. The state of UP

In this case for the very first time the question of right to privacy under art.21 was raised. Here a petitioner was subjected to continuous surveillance as per regulation 236 of U.P police regulation. The majority has given a decision that our Indian Constitution does not provide such right as a fundamental right but it was observed by Justice Subba rao, that “ even though our constitution does not expressly provide such a right as a fundamental, but the said right is considered to be essential element of personal liberty. Though the Supreme Court stated accepting such views the right to privacy is still waiting for its place in the Indian Constitution.

R.Rajgopal v. State of Tamil Nadu.

Again the Supreme Court declared that Art.21 includes right to privacy and it is an implied right having a sufficient constitutional status. It was observed that right includes a right to be let alone and the right ‘ to protect the privacy of his own, his family, marriage, protection, motherhood, child-bearing and education among other matters.

Justice K.S.Puttuswamy & Anr. v. Union of India & others (2015)

The unique identity scheme was discussed with the right to privacy. Again a question arises before the court that whether the right to privacy is a right guaranteed under the constitution. And the unique identity card are being issued are the protecting a persons right to privacy or not.

Conclusion

Right to privacy is an essential component of right to life and personal liberty under Article 21. Right of privacy may, apart from contract, also arise out of a particular specific relationship, which may be commercial, matrimonial, or even political. Right to privacy is not an complete right; it is subject to reasonable restrictions for prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. Where there is a conflict between two derived rights, the right which advances public morality and public interest prevails.

Bibliography.:

1. The constitution of India ,M.P.Singh (2017) V.N.Shukala, Eastern book company.
2. Human Rights , Upendra Baxi, Oxford.
3. M.P.Sharma and others v. satish Chandra 1954 AIR 300,1954 SCR 1077
4. Kharak Singh vs The Union of state U.P. &others 1963 AIR 1295,1964 SCR (1) 332
5. Justice Puttuswamy (Retd) and Anr. v. Union of India and others 494 Of 2017.
6. www.world widejournals.com
7. www.legalservicesindia.com
8. www.lawjournals.org.
9. A.K.Gopalan v. State of Madras ,AIR 1950 SC 27
10. R.C.Cooper v. Union of India , AIR 1970 SC 1318
11. Maneka Gandhi v Union of India.