

RIGHT TO PRIVACY IN INDIA

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Abstract :

Article 21 says that No person shall be deprived from his life and personal liberty except according to procedure established by law . Article 21 talks about person which includes citizen as well as non citizen . It is a fundamental human right recognized in the Union Declaration Human rights , the international covenant on civil and political rights and in many national and international treaties . The right to privacy can not be easily developed , the term privacy is used in different situations with different meanings . The right to privacy is also define in law of torts , property laws , and criminal laws as well . The hon'ble supreme court gave various leading judgments for the protection of right to privacy . In the leading case the hon'ble supreme court include the term dignity in privacy . Dignity and privacy are the two sides of one coin and both are inseparable . Privacy includes dignity and dignity includes liberty .

In this article we will discuss right to privacy with the help of case laws , books etc...

Keywords :

Privacy , liberty , individual privacy , dignity .

Introduction :

Right to privacy is a lawful right for every individuals .No person live without this right .

This right restrain the threaten of individual privacy from the government actions and the private actions (It was Important for the early settlers that their homes and persons be protected from unwarranted governmental intrusion).

By virtue of his or her existence every human being enjoyed this right to privacy as human right.

This privacy extends to bodily integrity, personal autonomy, compelled speech and freedom to dissent or move or think.

LEGAL DEFINATION OF RIGHT TO PRIVACY

Duhaime's law dictionary -

Privacy is a person's right to control access to his or her personal information.

Gillian Black, in her 2011 book on publicity rights and image (oxford: Hart Publishing, 2011), page 61-62 --

Proposes that privacy is the desire of an individual to be free of intrusion.

In the European convention on human rights

g8(1) "Everyone has the right to respect for his privacy and family life, his home and his correspondence."

R v Edwards (1996) 1 SCR 128 The Canada's Supreme Court Justice Cory use following words to define privacy as :

The state or condition of being alone, undisturbed, or free from public attention, as a matter of choice or right; freedom from public attention, as a matter of choice or right; freedom from interference or intrusion.

“An important aspect of privacy is the ability to exclude others from the premises. The right to be free from intrusion or interference is key element of privacy.”

R v Duarte also R v Sanelli (1990) 1 SCR 39

Privacy is often raised in the context of government collection or distribution of personal information. In this regard, these words of Justice Dickson in R v Duarte in a criminal cases involving a wire trap :

Privacy may be defined as the right of the individual to determine when, how, and to what extent he or she will release personal information. A reasonable expectation of privacy demands that an individual may proceed on the assumption that the state may only violate this right by recording private communications on a clandestine basis when it has established to the satisfaction of a detached judicial officer that an offence has been or is being committed and that interception of private communications stands to afford evidence of the offence.

Historical background of Right to Privacy :

The earliest recordings of right to privacy in Indian jurisprudence were in the late 1800s when a local British court upheld privacy of a pardanashin woman to access her balcony without the fear of the neighbourhood gaze. The jurisprudence has evolved ever since and the right to privacy was read into Article 21 of our constitution by the Supreme court as an integral part of personal liberty. Like most freedom, we took it for granted, until last year our government told us that privacy is not a fundamental right after all.

That privacy is not a fundamental right was first told to us by the Supreme Court in the year 1954. An eight judge bench in M.P. Sharma v. Satish Chandra case, while dealing with the power to search and seize documents from the Dalmia Group, dismissed the existence of a right privacy on the basis that the makers of constitution had not envisaged a fundamental right to privacy similar to the 4th Amendment in the U.S.

Our desire for private life made a comeback after nine years before a six judge bench of the Supreme Court in the case of Kharak Singh v. State of Uttar Pradesh, only to be rejected again. Kharak Singh, an alleged dacoit, was subjected to surveillance and secret picketing of the house, visits at night, periodical inquiries and verification of movements. The Supreme Court refused to budge and held that there is no fundamental right to privacy but went on to strike down the provision allowed night visits for violation of `personal liberty`. The silver lining was justice Suba Rao's dissent, wherein he said even though the constitution did not declare the right to privacy to be a fundamental right, it was still an essential ingredient of personal liberty. He went on to say”nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy”, thereby recording the existence of this right in our post-independence jurisprudence.

Twelve long years later, the Supreme Court, albeit a smaller three- judge bench, when faced with a similar factual matrix in Gobind v. State of Madhya Pradesh, upheld the existence of a fundamental right to privacy

under Article 21. However, the right was not absolute and could be interfered with by a procedure established by law. Though Gobind lost, privacy won for the first time!

Privacy jurisprudence was further strengthened in the post-liberalisation era. In the case of the infamous gangster from Bangalore, “Auto Shanker” (R. Rajagopal v. State of Tamil Nadu), the Supreme Court dealt with a conflict between the freedom of press and the right to privacy and held that the later had a acquired a Constitutional status. A couple of year later in the PUCL case, the court questioned the telephone tapping of prominent politicians and asked the government to comply with strict guidelines for tapping telephonic conversations. The provisions under the Telegraph Act, 1885, and information Technology Act, 2000, that deals with interception are based on the guidelines issued by the Supreme Court in the PUCL case.

By this time, privacy had assumed an inherent role in our fundamental rights jurisprudence that helped us lead a dignified life without fearing surveillance. It never faced such a strong challenge in the last 54 years of its existence as it currently facing before the nine-judge bench which is looking into whether the decisions in M.P. Sharma and Kharak Singh are good law.

So, what happens if tomorrow we are told that the right to privacy is not a fundamental right? The right to privacy will lose its status amongst the Golden Trinity of Article 14 (Equality), Article 19 (Fundamental Rights) and Article 21 (Right to life). These rights can only be taken away from us by a just and reasonable law, which is the paramount protection that our constitution offers us. If privacy is not a fundamental right, this intrinsic right can be taken away by our legal system. In Aadhaar era, where our right to life and liberty is linked to our identity in the form of Aadhaar, the consequences could be disconcerting to say the least.

Protection of right to privacy in India :

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by part III of the constitution.

The nine judges constitutional bench hear the arguments to determine whether the right to privacy is a fundamental right, The supreme court stated that the right to privacy cannot be an absolute right and that the state may have some power to put reasonable restrictions.

Right to privacy is an element of various legal traditions to restrain governmental and private actions that threaten the privacy of individuals.

Through the latest judgment of supreme court about right to privacy makes Indians think on this basic right of us. In this supreme court judgment, they stated that right to privacy is a fundamental right for Indian citizens under the constitution of India. That means no legislation can surpass it. This very incident gave the much – needed awareness and now people debating about the privacy and related concerns.

LEADING CASES :

People’s Union for civil liberties vs Union of India

In this case the Hon’ble supreme court held that the right to privacy is a part of right to protection of life and personal liberty .

Kharak Singh v. The State of U.P. & Others 1963 AIR 1295, 1964 SCR(1) 332**Judgment dated : 18 December, 1962**

The court stated that the right to privacy is a fundamental right. The majority judges said that right to privacy was both the right to personal liberty and freedom of movement as well.

Govind v. State of M.P. & Anr 1975 AIR 1378, 1975 SCR(3)946**Judgment Dated: 18 March, 1975**

In this case the Hon'ble supreme court confirmed that the right to privacy is a fundamental right. The right as said to include and protect personal intimacies of the home, marriage, family, motherhood, etc. but it also observed that it was subject to "compelling state subject".

R. Rajagopal v. Union of India

The apex court said that the right to privacy is a part of the right of a personal to personal liberty that is guaranteed under the constitution. It further recognized that the right to privacy can be both an actionable claim and also a fundamental right.

District Registrar and collector, Hyderabad another v. Canara Bank and another

In this case the Hon'ble Supreme Court judgment refers to personal liberty, freedom of expression and freedom of movement as the fundamental rights that further gives rise to the right to privacy.

Petronet LNG LTD v. Indian Petro Group and Another**Judgment Dated : 13 April, 2009**

In this case the Delhi high court said that firms cannot assert a fundamental right to privacy.

Selvi and others v. State of Karnataka and others**Crl. Appeal No. 1267 of 2004****Judgment Dated : 5 May 2010**

In this case the Hon'ble Supreme Court made a difference between physical privacy and mental privacy. The case also established a connection of the right to privacy with Article 20(3) (self incrimination).

Unique Identification Authority of India & Anr. v. Central Bureau of Investigation

The central Bureau of investigation sought access to the huge database compiled by the unique Identity Authority of India for the purposes of investigating a criminal offence. The Supreme Court however, said that the UIDAI was not to transfer any biometrics without the consent of the person.

Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.

Writ Petition (civil) No. 494 of 2012

Judgment Dated: 26 September 2018

In this case the unique identity scheme was discussed along with right to privacy. The question before the court was whether such a right is guaranteed under the constitution.

In this case the Supreme Court stated that the right to privacy is protected as fundamental right of Indian constitution under Articles 14, 19 and 21 of the constitution of India.

Need to protect citizens information :

The current focus on the right to privacy is based on the realities of the digital age. India is rapidly becoming a digital economy. Problem of ID theft, fraud and misrepresentation are real concerns. In recent year, several national program and schemes are implemented through information technology platforms, using computerized data collected from citizens. With more and more transactions being done over the internet, such information is vulnerable to theft and misuse.

Therefore any system of data collection should factor in privacy risks and include procedures to protect citizen information.

Conclusion :

The supreme court of India gave much needed boost on the awareness of privacy of every individual in India as right to privacy. Before this lot of people's don't know about it. They share the information with anybody, people post their email ID, addresses, phone numbers in the open forum comment boxes, Indian society need to learn the importance of the privacy. After the judgment of Hon'ble Supreme Court, it protect the right to privacy under fundamental right of constitution.