

RIGHT TO PRIVACY AND RELATED CONFLICTS

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Abstract

The rights which came into existence after widening the aspect of article 21 includes the right to privacy. Expressly this right has not been mentioned under article 21 right to privacy was founded when article 21 was read with the part IV of the Constitution. The most expanded aspect of the Indian Constitution is article 21 which stressed its scope after Maneka Gandhi's case. The supreme court held that article 21 is the most important out of all the fundamental rights available. This article is multiphase multidimensional. The coverage of article 21 can be extended only by giving broad meaning to it. The words 'life' and 'liberty' are to be interpreted not by giving literal meaning but wider and purposeful interpretation has to be given to it. Due to political, social and economic developments in the country there is requirement for not to adhere to explicitly specified fundamental rights only but to move towards recognizing more rights. In this paper the right to privacy which is impliedly covered under article 21 is being discussed. This Paper is divided into nine parts. The first part is Introduction. The second part deals with International concepts of Privacy. The third part of the paper tells about Right to Privacy in India. Fourth part of the paper is related to The Privacy Bill, 2011. The fifth part is concerned with Right to Privacy and Search and Seizure. The Sixth part deals with Tapping of Telephone invading the Right to Privacy. The Seventh part speaks about the Prisoner's Right to Privacy. In eighth part Later Developments in Right to Privacy. The Seventh part speaks about the Prisoner's Right to Privacy. In eighth part later Developments in Right to Privacy has been discussed. And the last part is the conclusion.

INTRODUCTION

As a right to privacy is not explicitly mentioned in the Indian constitution and interference in privacy is becoming a matter of great concern these days. People wants privacy and wanted to escape from public gaze. So, the right to be alone as well as the right to privacy must be considered as human right. The courts must treat the right to privacy as one of the most important issue as most of these cases left out of the courts' vision. This right also needs attention because it's being violated frequently on non-bonafide grounds. Article 21 has expanded its era and included the right to enjoy life as well as privacy. Black's law dictionary- Right to be alone, every person has right to stay away from needless publicity. Each individual has right to live without any unjustified intervention. According Lord Henkin- Many jurists may mean privacy as total of all the personal rights. Some covers describe personal right of privacy do they may be different as per their character and contents. Many people wanted to be alone, wanted to be free from unnecessary interference, to live secretly and a right to be away from the world, unwarranted scrutiny, publicity, intimacy etc. Some says right to be free from all sort of violations- physical mental or spiritual.

In 1904, this right has been recognized the cases in one of the case unauthorised use of portrait in advertisement was held to be violation of this right. 'Red kimono' name the picture was released in which the life of the women married and well settled who was formerly a prostitute it was held by

the court that it was invasion of her privacy. Article 21 of the Constitution speaks that - "No person shall be deprived of his life and personal liberty except according to the procedure established by the law." The term 'life' in article 21 covers every aspect of the human life which can make the human life meaningful. The technology has impacted every part of our life both positively and negatively. The Hindi proverb that even walls have ears it seems to be true. In the present era, it can be said that whatever you may do the world would come to know about it. In the ancient India, the right to life covers only protection from physical danger. As the time changed, it started to include the aspect of security to the man's conscience, feelings, intellect etc. Now, the scope of right to life has been widened and includes the right to be alone.

The Supreme Court has expanded the scope of article 21 and allowed the certain privileges on the basis of international agreements on human rights. Implicitly Article 21 talks about the Right to privacy which confirms the article 12 of the Universal Declaration of Human Rights as well as Article 17 of the International Covenant on Civil and Political Rights

Whether the fundamental right under article 21 covers the right to privacy or not. This question was first discussed in Kharak Singh V/S state of U.P (AIR 1963 SC 1295) case and minority decision of the Justice Subba Rao favoured it. In the year 1975 the supreme court considered the right to privacy within the framework of article 19 (1)(d). The elaborative decision given by the Justice Jeevan Reddy held that the right to privacy is impliedly covered under article 21. Keeping in view the perspective of the Anti-terrorism Act it was held that the right to privacy to be surrendered for the safety of the state and concealing the information relevant for the detection of the crime is against the law and here the right to privacy defence can be taken.

INTERNATIONAL CONCEPTS OF PRIVACY

The article 12 under the Universal Declaration of Human Rights 1948 talks about the concept of privacy. This article states that no one shall be exposed to an arbitrary intervention with this privacy, family, home or correspondence and not to outbreak upon his integrity and repute. Every individual has the right to safeguard of law against such intrusion or assault.

The Article 17 of the international Covenant on civil and political rights provides no person shall be exposed to indiscriminate or illegal intrusion with his secrecy family home or correspondence as well as not to illicit assault on his decency and repute.

Article 8 of European Convention on Human Rights also discusses the right to privacy as a human right.

RIGHT TO PRIVACY IN INDIA

In various Indian cases the right to privacy as a part of article 21 has been discussed. Originally the issue was taken in the case of Kharak Singh vs State of UP in which the court held that right to privacy is the part and parcel of article 21- The right to life and personal liberty and the court associated the right to privacy with the personal liberty.

In Govind V/s State of Madhya Pradesh⁶ even though the right to privacy is not a full-fledged right but it has been emanated from article 19(a),(d) and 21 and the right to privacy is related to persons not places.

In Maneka Gandhi vs Union of India the supreme court held that various rights have been covered under the personal liberty mentioned under article 21 and many of them have been have also been protected under article 19. The court also mentioned that the procedure under the law intervening with the right to privacy must not be prejudiced arbitrary or irrational. Landmark judgement that covers the (4) MP Jain (Indian Constitutional Law) p194 right to privacy is of Naz Foundation case in which Delhi High Court legalised the consensual homosexuality (one of the aspect of right to privacy).

The intention of Judiciary to cover the right of privacy under article 21 has been cleared by taking into consideration the above case laws. Except of the person who willingly pushes himself into the controversy, if information regarding citizens' privacy, family, marriage, motherhood, education, procreation is disseminated the person responsible for this has to pay damages. permitted interruptions in right to privacy In many ways the right to privacy can be intruded (1) by way of statutory provisions (2) by managerial or executive orders (3) by legal orders. The Parliament can invade the person's privacy on the basis of criteria of fairness assured by the constitution of India. The managerial or executive action must be rational keeping in view the facts and circumstances of the case. The court ordering the search and seizure must give justified adequate reasons to do so.

THE PRIVACY BILL 2011

This bill says that everyone has the right to privacy which includes secrecy of the communication made to him or made by him. The communication may be in the form of personal communication, telephonic conversation, telegraphic message, postal, E mail, legal conversation etc. The secrecy of private or family life, Medical and legal problems, banking transactions. Along with this everyone has right to safety of his honour and reputation as well as against search and confinement. The bill secures the persons from identity theft which includes criminal identity theft and economic identity theft. The central communication interception review committee has been formed under this bill which has to decide whether the interception orders delivered with the assent of secretary level officials infringes Section 5 of the Indian Telegraph act or not and if so then the intercepted material must be ruined instantly. Scrutiny by following a person or by closed circuit television or other electronic means must be forbidden.

No individual has right to collect or use computer reveal reveal any data relating to any other person without the approval of such person.

The infringement of the provisions of intervention is punishable with imprisonment that may extend upto 5 years or with fine which may extend to rupees 1 lakh or with both. Moreover, the revelation of facts is also punishable with up to 3 years of imprisonment or fine up to rupees 50,000 or both. And if any person acquires the information, recorded by the government official, under the wrong pretext shall be punished with fine upto rupees 5 lakh.

RIGHT TO PRIVACY SEARCH AND SEIZURE

India as well as other countries have given their verdict on the concept of right to privacy and search and seizure Supreme Court refer the American case law related to the fourth amendment of the US Constitution. The court held that the state has the restricted right of search and seizure according to the Universal Declaration of Human Rights and European Convention of Human Rights. Specifically all public records were focused those can be reviewed all the time but the collector can't order the production of records which are in

the custody of bank as it is challenged under section 73 of the Indian stamp act 1899 unless there is a rational reason or material to consider that such papers may lead to the detection of deception. The Court struck down this section 73 because it was providing and restraint control to the collector to permit any person to take these records or abstract from these documents. In this case the supreme court followed US judgements favouring the minority opinion in Millers case. The court appealed that the papers or duplicate provided to the bank will remain confidential even if they are provided to the bank willingly.

TAPPING OF TELEPHONE

Whether the telephone tapping is an attack on persons right to privacy and is it constitutionally allowed in India?

In People's Union for Civil liberties vs Union of India Supreme Court discussed this question completely. PIL was filed keeping in view increasing number of cases of telephone taping of the politicians by CBI. The court held that telephone tapping is the interference with the right to privacy as telephonic conversation is the most important aspect of private life. Furthermore, the court stated that telephone tapping would infringe article 21 except the procedure established by the law that must also be just, fair and reasonable.

The comprehensive directions provided under Section 5 of the Indian Telegraph Act are related to the telephone taping and interruption of other communications' done by the government illegally and discriminately. The court recommended that while exercising power under Section 5(2) of Indian Telegraph Act following procedure has to be followed- only to home secretary of Central of the state government can order the direction for telephone taping. And in case of emergency this power can be delegated to the officer of the the home department but that officer must not be below the rank of joint secretary. Copy of order shall be delivered to the review committee within a week. After the expiry of two months from the date of issue of such order it shall cease to have effect and must be reintroduced to continue. The body issuing the direction must keep the record of intercepted communication, the extent to which the material has been revealed, the number of people and their identity to whom the communication is revealed.

In the case of Rayala M. Bhuvanewari vs Nagaphomender Rayala husband filed divorce petition and to validate his case he produced hard disc in which the conversation of wife recorded. The court held that typing by the husband of conversation of his wife with someone else is unlawful and contravenes the article 21 of the constitution and even if the conversation was true it can't be the relevant evidence.

PRISONERS RIGHT TO PRIVACY

Even the convicts, undertrials, detenues have right to assess article 21 in the jail. Many fundamental rights are barred after the conviction such as article 19 whereas even after conviction a prisoner is eligible to assess fundamental right under article 21. The same matter arose in auto rickshaw case named R. Rajagopal vs State of Tamil Nadu. In this case an inmate written his life story in the jail reciting the conditions there and he handed over it to his wife for publication. The court held that right to privacy is inherent under article 21. No one can print anything about other person without the approval of the person concerned.

LATER DEVELOPMENTS IN RIGHT TO PRIVACY

The right to privacy been recognised under section 43 of the Information Technology Act which attaches liability for an unauthorised access into computer or computer resource. Considering the blogs, social networking sites now every individual has become a press. Many times the right to expression may clash with the right to privacy of other. Here, the concept of public interest and public morality shall prevail. The publication of information that is the part of public records including court records is reasonable even if made without any permission or sanction but each case varies.

The right to privacy may also clash with the inquiry of police as narco-analysis, polygraph test and brain mapping test when applied intrudes into the privacy of an individual.

CONCLUSION

Right to privacy is one of the facet of right to life and personal liberty under article 21. This right can also be the result of contractual relationship. Reasonable restrictions are there to control the right to privacy so that crime can be avoided, health or morals can be secured as well as rights and freedom of others be safeguarded. In case of clash between two consequent rights the concept of public morality and Public Interest shall prevail. Justice Louis Brandeis in one of the landmark judgement held that the right to privacy is the right which is mostly appreciated by the sophisticated men. Whereas Lord Hoffman said that so far as dissemination of private information is concerned every individual has right to get equal protection against private persons and the state.

American Supreme Court Judges viewed the right to privacy as one of the aspect for the search of happiness. They discussed that to track the happiness certain freedoms must be guaranteed by the State after taking the infringement of other person's right into consideration.

If we look into the precedents of the supreme court, we will notice that Supreme Court tried to cover the entire fundamental rights into water-tight compartment in the case of AK Gopalan vs State of Madras and the relaxation to this viewpoint could be felt in the judgement of Maneka Gandhi vs Union of India. As human beings are the part of the social institution this fact is always overlooked that he is the person first and everyone requires personal space for himself. Show the state provides every person the right to enjoy his personal moment with his dear ones with whom he desires to escaping from the gaze of the society.

Clinton Rossiter said that everyone has right to privacy against the whole world as he is really free human. The right to privacy is a different kind of freedom with everyone deserves in at least few private and unworly issues. The right to privacy will support that person who does not desire to share his opinions with the world. With the passage of each day this right is becoming more crucial as our lives are being splashed by the media social networking sites spy cameras and therefore we need a protection so that we can act in a way we want and ignoring others before our acts.