



## RIGHT TO PRIVACY AS A CONCOMITANT RIGHT TO LIFE – INDIAN CONSTITUTIONAL PERSPECTIVE

**Dr. J.K.L. Sujata**

Asst. Professor

MJP College of Law

Dr. B.R. Ambedkar University

Srikakulam

**Abstract:** Privacy is natural need of a man to establish individual boundaries and to restrict the entry of others into that area. The scope of privacy covers a number of aspects, for example non-disclosure of information, his sexual affairs, privacy of business secrets and non-observance of others, etc. It is a concept related is solitude, secrecy and autonomy. Privacy is an inseparable part of the vocabulary of every society. Privacy has grown into a large and widely concept. Synonymous with autonomy, it has colonized traditional liberties, become entangled with confidentiality, secrecy, defamation, property, and the storage of information. Thus, the right to privacy can comprise public disclosure of private facts and intrusion upon individual's seclusion, solitude or private affairs.

**Key Words:** Right to Privacy, Right to life, Fundamental Right, Privacy and home, Privacy and family, Privacy and press, Privacy and gender, Privacy and Health, Privacy and Data Protection, Privacy and Aadhar

Privacy means “the condition or state of being free from public attention to intrusion inter or interference with one’s acts or decisions.”

### **Right to Privacy means:**

- “Right to personal autonomy.
- Right of a person and person’s property to be free from unwarranted public scrutiny or exposure.”

Whereas invasion of privacy means “An unjustified exploitation of one’s personality and intrusion into one’s personal activities.” Privacy is also considered as a synonym to “right to be alone”.

Privacy is a right to be enjoyed by every human being by virtue of his or her own existence. It also extends to bodily integrity, personal autonomy, compelled speech and freedom to dissent or move or think. The right to privacy is to restrain government and private actions that

threaten or hinders the privacy of individuals.

Every modern society has accepted that privacy is essential and it has recognized it not just on humanitarian grounds but also in the eyes of law.

### **SCOPE OF PRIVACY:**

The modern state collects all types of information about individuals and stores them often in computerized form. In such a situation two types of difficulties may be envisaged. One relates to the apprehension of the individual that the authority may publish it. The other relates to the danger of supply of such material by the authority to strangers. In both cases the consent of the individual is not obtained before any eventual publication. The concerned individual may come to know about it on after the publication. Even if the right to privacy protects the person from any publication by the



authority, does it prevent the supply of such information to third parties?

In democratic societies there is a fundamental belief in the uniqueness of the individual, his basic dignity, his worth as a human being. Psychologist and sociologists have linked the development and maintenance of the sense of individuality to the human need for autonomy. One of the accepted ways of representing the individual's need for an ultimate core of autonomy has been to describe the individual's relation with others in terms of a series of zones or regions of privacy leading to a 'core self.. This core self is pictured as surrounded by a series of layer consecutive circles. The inner circle shelters the individuals ultimate secrets, those hopes, fears and aspirations that are beyond sharing with anyone unless the individual comes under such stress, that he must pour out these ultimate secrets either by physical or other means. This deliberate penetration of an individual's protection shell, his psychological Armour will leave him naked to ridicule and will put him under the control of those who know his secrets.

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. Sec.377 of Indian Penal Code is important. 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 part of Article 21 of the Constitution of India. The Right to Privacy" is the right that protects the personal information of people. This right is the 12th Article in the, "Universal Declaration of Human Rights", it says that "no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation"<sup>1</sup>. It is important because the right to privacy makes us feel safe at home. When people say "I don't care about the right to privacy because I have nothing to hide". It is not different than saying "I don't care about freedom of speech because I have nothing to say". This right to privacy gives us our own space, time and prevent others from Government which was spying on people all around the world by using their spy software in computers and telephones and hacking into famous companies and networks. This software made it possible for the U.S government to listen to phone conversations, watching people through web cameras and reading their personal text messages. By hacking into companies like "Microsoft", "Apple" and "Skype", the FBI got access to servers of all of those companies. That's how they downloaded their spy software into the phones and computers of citizens and companies<sup>2</sup>. After software was downloaded it was listening to special words like "bomb, teract, murder, hack, and after sorting those messages by categories actual persons were reading those messages to decide whether it is important or no. It was absolutely disrespectful to people

---

<sup>1</sup> "Universal Declaration of Human Rights"

<sup>2</sup> "Edward Snowden"



privacy rights and to privacy of other countries<sup>3</sup>. It means that America does not trust anyone. That's the only reason why they were doing it, probably after 9/11 they trying prevent another terrorist attack. And now in Russia, the government made a new law that says that people can not use VPN (Virtual private network) or Proxy servers. (Idrisova). These things make you safe on the Internet, by giving you full anonymity. Today, the degradation of the inner life is symbolized by the fact that the only place sacred from interruption is the private toilet<sup>4</sup>.

The landmark paper on the right to privacy was published by two American lawyers, Warren and Brandeis, called 'The Right to Privacy', in 1890 in the Harvard Law Review. In this paper, the two lawyers recommended the availability of actions in the law of tort for a breach of privacy. The authors recommended the application of this right not only as a method to counter the gossip and rumours generated by the press, but also to deter the trend. Subsequently, one of the first official mentions of the right to privacy in the Supreme Court was in *Olmstead v. United States*, in 1928, where Justice Brandeis, in his dissenting opinion, reiterated the importance of the right to privacy, where he said, The protection guaranteed by the Amendments is much broader in scope. The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in

material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone — the most comprehensive of rights, and the right most valued by civilized men.”

In India, the right to privacy has been discussed mostly in the context of privacy as against the state. The researcher shall discuss three cases in this context, which have shaped the right to privacy in India.

In *Kharak Singh v. State of U.P.*<sup>5</sup>, the petitioner was a dacoit who had been released from custody because there was no evidence against him. The police opened a history sheet against him and he was put under surveillance as under Regulation 236 of the U.P. Police Regulations. Regulation 236 of the Regulations defined surveillance. It read:

“Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures :

- (a) Secret picketing of the house or approaches to the house of suspects;
- (b) Domiciliary visits at night;
- (c) Through 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 chaukidars of movements and absence from home;

<sup>3</sup> “Edward Snowden”

<sup>4</sup> Lewis Mumford, American philosopher

<sup>5</sup> AIR 1964(1)SCR332, AIR1963SC1295



- (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.”

In *R. Rajagopal v. State of Tamil Nadu*<sup>6</sup>, the petitioners, who were the editor and associate editor of a Tamil weekly magazine, requested the court to issue a writ restraining the State of Tamil Nadu and the Superintendent of Prisons, Salem, Tamil Nadu, to prevent them from carrying out the actions that they had threatened in a letter to the weekly, because the weekly intended to publish the autobiography of a prisoner named Auto Shankar who was sentenced to death. The autobiography contained several assertions that established the involvement of several IPS and IAS officers in the crimes that the prisoner had committed. However, it was not clear whether the prisoner had expressly consented to the publication of his autobiography in the weekly and also whether he had written the autobiography himself. The court, working on an assumption that Auto Shankar had neither written the autobiography nor authorized the weekly to publish it, placed the following questions for consideration: (1) Whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Article 19(1)(a) entitles the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances? What are the remedies open to a citizen of this country in case of infringement of his right to

privacy and further in case such writing amounts to defamation?

“Right to personal autonomy and Right of a person and person's property to be free from unwarranted public scrutiny or exposure are important components of Right to Privacy.”

Whereas invasion of privacy means “An unjustified exploitation of one's personality and intrusion into one's personal activities.” Privacy is also considered as a synonym to “right to be alone”.. Privacy is a fundamental human right provided for in numerous international treaties and conventions. It is important for protection of human dignity and is one of the essential pillar for a democratic nation. It supports one's own rights and others rights as well.

Privacy is a right to be enjoyed by every human being by virtue of his or her own existence. It also extends to bodily integrity, personal autonomy, compelled speech and freedom to dissent or move or think. The right to privacy is to restrain government and private actions that threaten or hinders the privacy of individuals.

#### **Privacy and its relation to different aspects of society**

Privacy is a value directed towards individuals, groups or society on collective self regulation which means different things to different people. In a democratic country like India which has been known for its diversity. It has people from all religions, customs and backgrounds and therefore it is easy to ascertain that one thing may not mean the same to the entire country and so is the situation with privacy. Privacy means different things to different people. For some it is privacy of information, for others privacy of body and for some it may have some other

---

<sup>6</sup> (1994)6SCC632



different perspective. So privacy can be read along different lines with various different aspects of the society or country and can be read with privacy which has been discussed further. Privacy and person: The Indian legal system not only guarantees right of life but also protects from any fear, force, infirmity and provides freedom of life and speech which involves privacy in all scenarios as no one can be forced to talk about their marriage or make a confession or no one can be forced to act in a certain manner. It ensures that consent of an individual as and when required must be exercised freely and therefore making privacy a big whole lot of a deal for people as individuals.

**Privacy and home:** Sanctity of home is recognized as a right in most nations. It is a place of retreat from the outside world and it is a place where no one should live under fear or feel to be under radar. Therefore privacy of home is a sacrosanct and must and needed to be protected.

**Privacy and family:** If primary has some social impact, it is on family which is considered as a set of intimate relations which can flourish if kept away from public scrutiny. Privacy in respect to family is very important right from one's financial situation to observation of conjugal rights. Law protects all communication between husband and wife which is required to make the world a better place to live as everybody treats and considers their spouses as their confidant and such a privacy is not maintained between the spouses then an individual would have no one to confide to and eventually would be left alone.

**Privacy and press:** Generally known as Fourth Estate, this is to be considered as the cornerstone of any democracy. Press enjoys freedom but in non-democracy it is absolute. Privacy of individuals is to be set

out as a privacy even by the fourth estate though there is no legislation in the country for this but ethically and morally it is how it should work.

**Privacy and gender:** This right is not just a preventive measure in terms of preventing incorrect dissemination of private information but also prevention of portrayal of correct image. Every person male or female, reputed or infamous, has this right. In this patriarchal country, this right does not only exist for men but also for women and ignoring the fact of whoever she may be and whatever the information may be, right from menstruation to her sexual interests, from marriage to her conjugal obligations, whether she is a house lady, a employee, a corporate junkie, a vendor or even a prostitute, her life is her own and nobody else's and nobody deserves or has a right to poke a nose into it whoever it maybe say husband, fellow workers, employers, society or whatever. The right does not only extend to males but to females as well.

**Privacy and Health:** Privacy in the health sector is a major concern. The relationship between a doctor and a patient is of trust and is termed as a fiduciary relationship that are those relationships that are built on trust and confidence between the parties. Every person has the right to keep their medical history to themselves or share it with a person whom one wants to share with. No one is allowed to peep into somebody's life or medical life and also the doctor is not allowed to spill the beans as adjudicated in cases where the court said doctors are morally and ethically sound to maintain confidentiality.

**Privacy and Data Protection:** In our country there is absence of legislation for privacy and on the other hand data banks have been created at all institutions and



places and in government records as well at large scales. And hence privacy becomes most important with data privacy because no one wants their information to get spilled and thereafter all factors of protection of data so stored about individuals, their family jobs, health and etc must be a major concern for any government.

### **Privacy and Aadhar**

This major talk about privacy started in our country with the Bharatiya Janata Party (BJP) led government schemes of aadhaar. Privacy and surveillance in India

Privacy holds a lot more sanctity for a country like India then any other nation because of it being the largest democracy of the world with the second largest populated country of the world having people from various diversities following different customs and ideologies.

The question is why the talks about privacy have taken pace now why now. It's because depicted international regulations on human rights, states and companies continue to violate privacy. Technologies have developed so good and so fast that surveillance has become interference for one's privacy. Advancements in processing data including everything from photos to texts from bank details to daily acts of an individual etc. are topped and there processing out pace existing laws like anything.

To add up to this growing global surveillance industry has made. This impediment to fight terrorism and ensure global security. This has extended powers to agencies to evade human laws. State surveillance has crossed lives all together, nobody knows about monitoring somebody asking about it. This has been opened and brought out in open in various cases where civil society organisations

have faced threat when researching state policies and practices or documenting violations of right to privacy.

### **Necessity for Privacy in society**

Privacy matters because of some social, psychological reasons that justify the need of privacy when talking about any person as an individual and not as a society as a whole. It includes various reasons like starting with respect for individuals and reputation management as privacy is all about respecting your space and respecting other individuals. If one does not like no one to interfere in his own personal affairs so does others. If somebody wants to keep something private, it is disrespectful to ignore such wishes. It may not be a win-win situation for all but privacy enables people to manage their reputation and what people are perceived by others affect their opportunities, relations and credibility.

And thereafter privacy brings people to avoid long standing judgements and help them bring change, get hold of the affairs of their lives and opportunities to grow and achieve heights in their lives. It gives them a second chance, probably called as a chance of redemption. This further develops their thought process in a positive manner for the society, avoids criminal psychologies, avoids feelings of revenge, guilt, vengeance etc. It helps people to think positively and develop, grow, nurture, reinvent themselves without the fear or worries of getting judged for their actions or conducts of the past. But still that does not mean that at all times there is no scope for redemption for these people, not everybody deserves punishment, deserve jail and if such an approach of an eye for an eye is considered then almost the complete population would be under scrutiny and almost half would be already in jails. When an individual knows where his or her data is



and upto what extent it is available to the world then a person is conscious about the world surrounding him or her and hence in such a state there are a higher chances of people trusting one another. Also, when there is a line between what goes out and what does not, people can trust others in areas where trust is must which includes sectors like professional services, governmental affairs or activities or commercial purposes. When trust is breached in one relationship then such a thing can make a person reluctant to trust all other relations.

**Privacy is important because:**

- Privacy gives us the power to choose our thoughts and feelings and who we share them with.
- Privacy protects our information we do not want shared publicly (such as health or personal finances).
- Privacy helps protect our physical safety (if our real time location data is private). Privacy helps protect us as individuals, and our businesses, against entities we depend on or that are more powerful than us.

Thus Privacy is tied to Freedom... Could we really be free – and have free will – without Privacy? Thankfully Privacy is not dead (yet) but it is under threat. Some entities such as the NSA have made it clear that their goal is the end of privacy, worldwide. Without privacy, we will become easily controlled, manipulated, and feel a loss of control over ourselves and our personal lives.