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RIGHT TO PRIVACY –LEGAL APPROACH

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Introduction

The idea of privacy¹ is as old as the history of mankind itself. The need for the protection of privacy was felt by human beings from the ancient times, however, the concept was not well defined. When we start discussion on the concept and basis of this right it becomes necessary to trace its historical development in order to find out a universally acceptable definition. The other relevant issue in this respect which attracts our attention is to locate the particular law under which the protection may be properly accorded to this right. At this stage it becomes necessary to look into provisions of other Constitutions in order to derive its fine points which may be beneficial for developing the parameters of the right in our country. An attempt for the protection of privacy through international Instruments is equally desirable to discuss to evolve the international common standard of this important right. On the other hand, according to Pannalal Dhar, Right to Privacy is a right whose contours still remained undefined.²

In considering the emergence of right to privacy in India, it becomes necessary to look into other Constitutions of the world. Although the right to privacy is not found as an independent fundamental right in any modern Constitution, it is not true that the interests, which from part of privacy have not been protected under other Constitutions. The Universal Declaration of Human Rights, 1948 proclaims the international standard of human rights and it is the first international document which expressly declares the right to privacy as an independent right. It is therefore necessary to look into the Universal Declaration so that the right in our country may be raised to the international standard. The present study also studies the impact of the Declaration. Coming to India we find that there is no express guarantee of the right to privacy under our Constitution. Whether the right to privacy may be developed as a fundamental right in our Constitution? The study enters a detailed discussion on this aspect and examines the relevant judicial decisions on this important right.

Right To Privacy and Its Significance

The law relating to privacy is in a state of full evolution.³ There are two reasons for this. First, that privacy, when considered as a positive right, is of recent origin. It is not found in any of the classic texts of the eighteenth century; it is but a newcomer when compared with due process of law and habeas corpus. Indeed, in the twentieth century it is a matter of current concern in developed and sophisticated societies but hardly known in the simpler milieu of other countries, where everyone knows the business of everyone else and the man who keeps to himself tends to be regarded as anti-social. With the advancement of modern science and technology, the scope and ambit of Right to Privacy has been expanded to a considerable extent. Though the right has got many new dimensions in the modern age, but it is not a right of recent origin, rather it has a great historical background and has been originated in the very old past.

The second reason for this modern development in the law is that if the right of privacy has come to be recognized in our legal systems in the first half of the last century, it has been jeopardized to an unparalleled extent as a result of the ingenuity of man in the second half. It was comparatively easy to protect privacy at a time when encroachments thereon could be identified and prosecuted - or form the subject of a civil action; but it is much more difficult in an age of scientific and technological developments, when many encroachments cannot even be perceived at the time when they are committed - though their subsequent exploitation may have far-reaching consequences. The right is based essentially upon the recognition of the individual's interest that he should be protected against any intrusion into his intimate life and into any part of his existence which he might legitimately desire to keep to himself This should include protection against the public disclosure of private facts and against publicity which places one in a false light in the public eye.

In the contemporary social scenario, a number of problems have been cropped up relating to various aspects of Right to Privacy which are closely associated with modern social life. In the present-day society, human beings are subjected to various new habits and tastes owing to social change, which have created either threats on Right to Privacy or on human life and dignity. Such problems have also given birth to many new dimensions of Right to Privacy, which are non-existent in the previous century. Those are generally called the outstanding facets of Right to Privacy, because without addressing to those threats and challenges, any discussion

¹ Dr. Sanjib Kumar Tiwari, "Right to Privacy: The Role of Indian Judiciary", JCC Law Review, Vol.III(1), 2012.

² Pannalal Dhar, Right to Privacy, AIR Journal Section (Raj.), 1987, p.145

³ Kiran Deshta, Right to Privacy under Indian Law, New Delhi, 2011



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on Right to Privacy would remain incomplete. More specifically, these areas are Privacy vs. Private Life⁴, Privacy of Women, Privacy of Children, Privacy vs. Scientific and Technological Developments as well as Data and Information Privacy.

Legislations and judicial decisions on outstanding facets have created many new debates on Right to Privacy in the contemporary social scenario⁵. Such debates have occurred in the areas of Freedom of Information, Right to Information and Right to Privacy, Privacy and Biometric Enabled National ID Cards, Privacy versus Sting Operation, Privacy versus Narco-Analysis, Polygraph Test and Brain Mapping as well as the Privacy versus LGBT Rights. Right to Privacy is not an absolute right and limitations can be imposed on it on the grounds of Public Interest, Public Figure, Public Record, Public Disclosure, Consent, Privilege, Newsworthiness, Freedom of Information or Right to Information and Administration of Criminal Justice. Limitations on Right to Privacy can also be imposed on the grounds specified under Article 19(2) of the Indian Constitution.

Supreme Court verdict on Right to Privacy

The nine-judge Bench comprised, besides Chief Justice Khehar, Justices J. Chelameswar, S.A. Bobde, R.K. Agrawal, Rohinton F. Nariman, Abhay Manohar Sapre, D.Y. Chandrachud and Sanjay Kishan Kaul. The Bench was formed as the 1954 and 1961 judgments had dominated the judicial dialogue on privacy since Independence. Both judgments had concluded that privacy was not a fundamental or ‘guaranteed’ right. To overcome these two precedents, a numerically superior Bench of nine judges was required. A five-judge Bench led by Chief Justice Khehar had referred the question whether privacy is a fundamental right or not to the nine-judge Bench.

The right to privacy: Explained

It had reasoned that collection and use of personal data of citizens for Aadhaar now a law under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act of 2016 — benefits the lives of millions of poor by giving them direct access to public benefits, subsidies, education, food, health and shelter, among other basic rights. The government claimed Aadhaar was a panacea to end corruption in public distribution, money laundering and terror funding.

The apprehension expressed by the Supreme Court about collection and use of data was the risk of personal information falling in the hands of private players and service providers. Both the government and service providers collect personal data like mobile phone numbers, bank details, addresses, date of birth, sexual identities, health records, ownership of property and taxes without providing safeguards from third parties.

National programmes like Aadhaar, NATGRID, CCTNS, RSYB, DNA profiling, reproductive rights of women, privileged communications and brain mapping involve collection of personal data, including fingerprints, iris scans, bodily samples, and their storage in electronic form. The Law Commission has recently forwarded a Bill on Human DNA profiling. All this adds to the danger of data leakage.

International significance

The nine-judge Bench’s judgment gains international significance as privacy enjoys a robust legal framework internationally, though India has remained circumspect. The judgment will have a crucial bearing on the government’s Aadhaar scheme that collects personal details, biometrics to identify beneficiaries for accessing social benefits and government welfare scheme. The government had countered that the right to privacy of an “elite few” is submissive to the right of the masses to lead a dignified life in a developing country. It said informational privacy does not exist before compelling State interests and is not an absolute right.

Conclusion

Privacy has both positive and negative aspects. When the Right to Privacy is used for the benefit or betterment of the mankind as a whole, it is called Positive Right to Privacy. It means, one should lead a secluded life for the development of one’s physical or mental integrity or intellectual quality. But, when the Right to Privacy is used for the destruction of mankind as a whole, like the leading of a secluded life for making a bomb or for the commission of suicide, it is called Negative Right to Privacy. Right to Privacy is a part and parcel of Right to live with Human Dignity. As such, it would always be used for the beneficial perspectives and not for the destructive perspectives. Human beings are social beings, they cannot live alone. In this sense, leading a social life is the very basis of social nature. Though Right to Privacy gives us the freedom to enjoy a secluded life, but that does not mean that, a human being should be left alone by the society to lead a destructive life.

⁴ Dr.Vany Adithan, "Right to Privacy under Art.21-B," Madras Law Journal, Vol.II(2003)

⁵ G. Mishra, Right to Privacy in India, Preeti Publications, New Delhi, 1st. Edn., 1994



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DOI: <http://ijmer.in.doi./2021/10.10.164>

Thus, privacy is a fundamental right guaranteed by our Constitution, but the content and extent of this right is not clear. Though, it is a difficult task to define privacy, yet, the main concept should be determined. The protection of privacy under right to human dignity enshrined in Article 21 is not sufficient enough to include all aspects of privacy. The comparative analysis of Privacy in different Western societies and cultures show that, Privacy is not a static, rather a dynamic concept. For creating an ideal modern society having the Right to Privacy, there should be a balance between the basic postulates of Individual Privacy, called Solitude, Intimacy, Anonymity and Reserve harm caused by violation of privacy cannot be repaired by awarding damages. The state of mental distress on the violation of privacy cannot be expressed in words. 28 It is submitted that these efforts are not sufficient to protect privacy which is so important. We should develop a fresh outlook to protect privacy.

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