

## RIGHT TO PRIVACY: AN OVERVIEW

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### ABSTRACT

*Privacy is a natural need of a man to establish individual boundaries and to restrict the entry of others into that area. There are sufficient evidences in both oriental and occidental civilizations to support this view. The idea of privacy is as old as Biblical periods. The studies of animal behaviour and social organization suggest that man's need for privacy may well be rooted in the animal origins, and that men and animals share several basic mechanisms for claiming privacy among their own fellows. Bible describes the moment when Adam and Eve opened their eyes and they knew that they were naked: and they sewed fig leaves together and made themselves aprons. The distance from the biblical garden to the statutory wilderness may have taken thousands of years to traverse because it is necessary for a secure relationship between individual and individual whether it is between man and his wife, son and father or friend. In other words, it concretises relationship of love, friendship and trust. The concept of privacy in its broad sense 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 to solitude. Secrecy and autonomy. Privacy is an inseparable part of the vocabulary of every society.)*

**Keywords:** *Human Rights, Right to Privacy, Constitutional Provisions.*

### INTRODUCTION :

Once a civilization has made a distinction between the "outer" and the "inner" man, between the life of the soul and the life of the body, between the spiritual and the material, between the sacred and the profane, between the realm of God and the realm of Caesar, between the Church and the State, between the rights inherent and inalienable and rights that are in the power of government to give and take away, between public and private, between society and solitude, it becomes impossible to avoid the idea of privacy by whatever name it may be called the idea of "private space in which man may become and remain himself."

"Man's house is his castle."

Above well-known proverb is now getting legal recognition as Right to Privacy. Human beings have a natural need to autonomy or control over confidential part of their. This need is inherent in human behaviour and now this has been recognized as fundamental right to privacy. It is not a right against physical restrains but it is a right against psychological restrain or encroachment of right. USA, UK, India, and at International level UDHR, ECHR, ICCPR has recognized this right as fundamental right. The scholars and judges have also found the necessity of this right. Warren and Brandies were the some of them. Well known Lord Denning also found its necessity in modern life and also tried to trace out the root of right to privacy in the common law.

Right to Privacy is not explicit in the Constitution of India, so it is a subject of judicial interpretation. The judicial interpretations of fundamental right bring it within the purview of fundamental right. The journey of this project would start from the search of answer of issue that whether the right to privacy is a fundamental right, through analysis of cases and some pioneering work of scholars.

### **Right to Life and Personal Liberty :**

Article 21 reads as:

*“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”*

According to Bhagwati, J., Article 21 “embodies a constitutional value of supreme importance in a democratic society.” Iyer, J., has characterized Article 21 as “the procedural *magna carta* protective of life and liberty.

This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.

In **Maneka Gandhi v. Union of India**, the Supreme Court gave a new dimension to Art. 21 and held that the right to live the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Elaborating the same view, the Court in **Francis Coralie v. Union Territory of Delhi**, observed that:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self”.

Another broad formulation of the theme of life to dignity is to be found in **Bandhua Mukti Morcha v. Union of India** Characterizing Art. 21 as the heart of fundamental rights, the Court gave it an expanded interpretation. Bhagwati J. observed:

“It is the fundamental right of everyone in this country...to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions or freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

Following the above stated cases, the Supreme Court in **Peoples Union for Democratic Rights v. Union of India** held that non-payment of minimum wages to the workers employed in various Asiad Projects in Delhi was a denial to them of their right to live with basic human dignity and violation of Article 21 of the Constitution. Bhagwati J. held that, rights and benefits conferred on workmen employed by a contractor under various labour laws are clearly intended to ensure basic human dignity to workmen. He held that the non-implementation by the private contractors engaged for constructing building for holding Asian Games in Delhi, and non-enforcement of these laws by the State Authorities of the provisions of these laws was held to be violation of fundamental right of workers to live with human dignity contained in Art. 21.

### **Right to Privacy under the Indian Constitution :**

There are certain kinds of individual conduct over which the government should have no control at all. The philosophy of to 'let the person alone' or 'autonomy' become the ground of different pronouncement by the courts in declaring privacy as a right - Constitutional or legal or otherwise. "The Courts of different legal system adjudicate on their point. The line and length followed by Indian judiciary can be gathered by the Indian Supreme Court on Right to Privacy.

### **Right against Surveillance :**

The constitution does not grant in specific and express terms any right to privacy as such. Right to privacy is not enumerated as a fundamental right in the constitution. However, such a right has been called by the Supreme Court from Art 21 and several other provision of the state policy. For the first time, as early as 1963 in **Kharak Singh v. State of Uttar Pradesh** a question was raised whether the right to privacy could be implied from the existing Fundamental Right, such as, Art 19(1)(d), 19(I)(e) and 21. The majority of the judges participating in the decision said of the right to privacy that 'our constitution does not in terms confer any like constitutional guarantee'.

On the other hand, the majority opinion SUBBA RAO J. was in favour of interring the right to privacy from the expression 'Personal Liberty' in Art 21.

"Further, the right to personal liberty takes is not only a right to be free from restrictions placed of his moment, but also free from encroachments of his private life. It is true our constitution does not expressly declare a right to privacy a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country satisfies domestic life..."

### **Right to Safeguard the Privacy of His Own :**

Explaining the right to privacy in **R. Rajagopal v. State of T.N.** Even without his permission or approval of the State Supreme Court petitioners insofar as they appear in the public records of Auto Shankar's life-story/autobiography do have the right to express that held. The story of his life, but beyond that, and if they can not attack his right to privacy, in accordance with the law then they should be held accountable for results. Similarly, the state or its officials said, the publication can not be used to prevent or restraint. Among other things, it is a citizen of his own, his family, marriage, procreation, motherhood, child-bearing and have the right to protect the privacy of "the said. Anyone can publish anything related to the above, except the knowledge or consent otherwise – and

whether laudatory or not critical., he does so, then he will be in violation of the individual's right to privacy, and will be responsible for the loss of a job....”

### **Right to Autonomy of Reproduction :**

No human right is more basic than our right to reproductive freedom. And no human right is so gravely threatened. The late Supreme Court Justice Louis Brandeis once wrote that “the greatest dangers to liberty lurk in insidious encroachment by man of zeal-well meaning, but without understanding.” (An American Case, **Roe v. Wade.**)

The Supreme Court in India has taken into consideration the U.S. position as well as Art 8 of the European Convention on Human Rights which defines the Right to Privacy.

The right to “reproductive autonomy” is also one of the aspects of right to privacy. The right of use contraceptives, the right of a woman to abort, all these fall within the ambit of the right to privacy”.

“The right to make a decision about reproduction is essentially a very personal decision either of the part of a man or woman. Necessarily, such a right includes the right not to reproduce”.

### **Right Against Sexual Harassment at Workplace :**

Art. 21 guarantees right to life right to life with dignity. The court in this context has observed that:

“The meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment or abuse”.

Sexual Harassment of women has been held by the Supreme Court to be violative of the most cherished of the fundamental right, namely, the Right to Life contained in Art. 21.

In **Vishakha v. State of Rajasthan**, the Supreme Court has declared sexual harassment of a working woman at her work as amounting to violation of rights of gender equality and rights to life and liberty which is clear violation of Articles 14, 15 and 21 of the Constitution.

### **Right to Medical Privacy :**

It is well settled that the right to privacy is not treated as absolute and is subject to such action as may be lawfully taken for the preventive of crimes or disorder or protection of health or morals or protections of rights and freedom of others. In case there is conflict between fundamental rights of two parties that which advances public morality would prevail.

A three-judge bench in case of **Sharda v. Dharmpal** ruled that a matrimonial court had the power to direct the parties to divorce proceedings, to undergo a medical examination. A direction issued for this could not be held to the violation of one's right to privacy but court however said that for this there must be a sufficient material.

**Right of the Women of Decency and Dignity :**

It is a basic right of a female to be treated with decency and proper dignity and the search of a woman by a person other than a female officer is a violative of it. No woman can be arrested after sunset and before sunrise and without female police officer until the arresting officer is satisfied with reasons to be recorded that the delay in arrest would impede the course of investigation. Rape has been held to be violation of Right to life under Art 21. Supreme Court observed.

“Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against human rights and is violative of victim’s most cherished right, namely. Right to life which includes right to live with human dignity contain in Art 21.

**Non-Disclosure of Identity of Rape Victim :**

Courts have also shown the tendency of refrain from revealing, even in judicial decisions, the identity of the victims of rape. In the case of Punjab v. Ramdev Singh, Supreme Court stated.

“Printing or publishing name of any matter which may make known the identity of any person against whom an offence under section 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgement by High Court or Supreme Court, But keeping in view the social object preventing social victimisation or ostracism of the victim of a sexual offence for which section 228-A has been enacted, it would be appropriate that in the judgement, be it of these court or lower court, the name of the victim should not be indicated, we have chosen to describe her as, ‘victim’, in the judgement.

**Right to Privacy and Telephone Tapping :**

Phone tapping means secretly listening or recording a communication in telephone in order to get information about others activities. It is also known as ‘*wire-tapping*’ in some countries (primarily in USA). Phone Tapping can only be done in an authorized manner with permission from the department concerned.

However, if it is undertaken in an unauthorized manner then it is illegal and will result in prosecution of the person responsible for breach of privacy. Telephone along with other communications devices find mention under entry 31 of the constitution’s union list & is based on entry 7 in the federal list of the Government of India Act 1935. The G.I. Act itself had taken the note of the progress of Science in entry 7, List-I, which run as Posts and telegraph; “telephones, wireless, broad casting & other like forms of communication” and entry 31 list of our constitution retained the entry, hence the need to interpret the word “telegraphs flexibly to include telephones, wireless, broad casting etc. did not arise. The Supreme Court also recognised the fact that the right to privacy is an integral part of the fundamental right to life enshrined under Article 21 of the constitution. This right can also be traced to Article 17 of the International Convent on Civil & Political right (ICCPR) to which India

is a signatory. But the right is only available & enforceable against the state & not against action by private entities.

### **Right to Information and Privacy :**

The right to information often collides with the right to privacy. The government stores a lot of information about individuals in its dossiers supplied by individuals in applications made for obtaining various licences, permissions including passports, or through disclosures such as income tax returns or for census.

When an applicant seeks access to government records containing personal information concerning identifiable individual, it is obvious that these two rights are capable of generating conflict. In some cases this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern. As one American writer said one man's freedom of information is another man's invasion of privacy.

### **Right to Privacy and Sexual Autonomy :**

Autonomy, in the sense fundamental to the theory of human rights, is an empirical assumption that persons as such have a range of capacities that enables them to develop, and act upon plans of action that take as their object one's life and the way it is lived. The consequence of these capacities of autonomy is that humans can make independent decisions regarding what their life shall be, self critically reflecting, as a separate being, which of one's first-order desires will be developed and which disowned, which capacities cultivated and which left barren, with whom one will or will not identify, or what one will define and pursue as needs and aspirations. In brief, autonomy gives to persons the capacity to call their life their own. The development of these capacities for separation and individuation is, from birth, the central developmental task of becoming a person.

### **Narco test and Right to Privacy :**

Narco-analysis is a frequently used test for investigation and for prevention of crimes. Narco-analysis is gaining judicial acceptance despite that it is a doubtful science and is considered highly unreliable. It is weak vis-a-vis human rights and also increases the possibility of a gross miscarriage of justice. Invocations of compelling public interest can't justify the dilution of constitutionally' guaranteed rights.

It is alleged that Narco-analysis test is violative of his Fundamental Rights under Article 20(3) of the Constitution of India, 1950. It guarantees protection against self-incrimination.

The Supreme Court is also of the similar view, Recently, in **Selvi & Ors v. State of Karnataka**, it has held that since the underlying rationale of the 'right against self-incrimination' is to ensure the reliability as well as voluntariness of statements that are admitted as evidence, the compulsory administration of impugned techniques violates such right. Results obtained by such tests bear a 'testimonia' character and thus they can't admitted in evidence if they have been obtained through the use of compulsion.

**Conjugal Rights and Privacy :**

The Andhra Pradesh High Court in **Saritha v. Venkata Subbaiah** declare Section 9 of the Hindu Marriage Act. 1955. Constitutionally void as violative of the right to Privacy and Human dignity guaranteed by Art 21. The Court held the provision as savage barbarous.

The above view of the A.P. High Court was dissented by the Delhi High Court in case of **Smt. Harvinder Kaur v. Harmender Singh**. It was declared that the object of restitution decree was to bring about cohabitation between the estranged parties so that people live together in the matrimonial home in amity. It was to preserve the marriage.

The S.C. in **Saroj Rani v. Sudarshan Kumar**, accepted the view of the Delhi H.C. and held that conjugal rights should be viewed in their proper perspective by keeping its mind in its dictionary meaning. The Court explain that the only sanction against the disobedience of such a decree was attachment of property provided he or she had property to be attached that too when the disobedience was wilful. The Court thus upheld the validity of Section 9 of the Hindu Marriage Act. 1955 and pronounce that it serve a social purpose as an aid the pressure to breakup marriage.

**CONCLUSION :**

With respect to the area of an individual existence, the right to privacy protects one's identity, integrity and intimacy. Identity includes one's name, gender, appearance, feelings, honour and reputation, and so on, Privacy, however, is not an absolute right. Only arbitrary or unlawful interferences are prohibited; in order to know whether a given interference actually violates the right to privacy, we have to balance it with certain vital interests, such as national security, health, morals, the prevention of crime or the rights and freedoms of others. Therefore contribution made by Western Scholar to develop this right is equally justifiable in relation to Indian privacy Jurisprudence & last not the least we can conclude that the **Right to Privacy** means **"to right to be let alone"**.

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