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“Dharma is to protect the Needy”

Article on

Right to privacy

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Abstract:-

The study examined that, Right to Privacy is an important part of personal liberties. Every individual has fundamental rights. Human life is not completed without the right to privacy. It strengthens human dignity and other values. Jeremy Bentham had also recognized the existence of a "private" element in an individual's life. The sole repository of "The Right to Privacy" in India is Article 21 of the constitution. Article 21 states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Article 21 is the heart of fundamental rights. It has been proved to be multi-dimensional. The extension in the dimensions of Article 21 has been made possible by giving an extended meaning to the word 'life' and 'liberty'. The right to privacy has become an issue of concern raised against the government's initiatives to collect personal data from citizens. Privacy is now seen as an ingredient of personal liberty by the citizenry. Law must not only provide a remedy for physical trespass but should also take into consideration trespass over people's intangible possession i.e., data. Therefore, it's high time that Indian Court recognizes the fact that privacy is a subjective and dynamic concept and it must consecutively be linked to the Right to Life. This article aims to explain the changing dimensions of the Right to Privacy in recent Judicial Pronouncements. It also asserts the need for umbrella legislation addressing the varied areas in which the Right of the individual to private spaces as well as against other forms of intrusion by the media and other citizens must accrue.

INTRODUCTION:-

Privacy is essential for a meaningful life. Privacy is an inherent human right. Every human being has a confidential and surreptitious part of their life, which can't be disclosed in the public domain. This right to privacy has increased throughout the world and it has been recognized as a fundamental right to privacy. Privacy is believed to be the main object of several rights. According to Black's Law dictionary "Right is to be let alone; the rights of a person are to be free from attention and to live without any disturbances in matters with which the public is not necessarily disturbed". Therefore, privacy acts as a main tool in avoidance of interference in an individual's life by anyone.

RIGHT TO PRIVACY- A FUNDAMENTAL RIGHT:-

The Supreme Court confirmed that the right to privacy is a fundamental right that does not need to be separately articulated but can be derived from Article 14, 19, 21 of the

constitution of India. It is a natural right that exists with an integral part of the right to life and liberty. It is a fundamental and inalienable right. The person can make any choices in his life and it's his privacy and no other person can ask for that privacy.

ARTICLE 21:-

Article 21 of the constitution provides "protection of life and personal liberty"- The right to privacy "is a part of the right to 'life' and 'personal liberty' enshrined by law". The term 'life' includes all those things which make a man's life meaningful, complete, and worth living. The term 'Liberty' free from control or restrictions. Thus, personal liberty means the freedom of a person from all kinds of control and restrictions imposed on that individual.

In *Kharak Singh v. State of Uttar Pradesh*, a six-judge bench of the Supreme Court held that there is no fundamental right to privacy, but they struck down the provision that allowed night visits, in the violation of 'The personal liberty. However, Justice Subba Rao gave his dissenting view and stated that the right to privacy is an essential component of personal liberty; it was not incorporated as a fundamental right in the constitution of India.¹

In *Maneka Gandhi v. Union of India*, Article 21 was interpreted in a broad sense by the Supreme Court. It was held that both the rights of personal security and personal liberty are recognized by 'Natural law' that is embodied under Article 21. A wide interpretation was attributed to the right to life. Every human has a right to life and human dignity.²

In *Govind v. State of Madhya Pradesh*, the court held that the right to privacy is an emanation of Article 19(a), (d), and Article 21, but the right to privacy is not absolute. The personal liberty and right to life throughout the country and freedom of speech create an independent right of privacy and it is characterized as a fundamental right, and the right is not absolute Depending upon the character and antecedents of the person subject to surveillance and the object and limitation under which surveillance is made, it cannot be said that surveillance by domiciliary visits would always be an unreasonable restriction upon the right of privacy. The right to privacy deals only with the persons and not according to the places.³

In a recent landmark judgment, *K.S. Puttaswamy v. Union of India*, this case was brought by a retired judge of High court, Puttaswamy, who challenged the scheme of the Indian

¹ Kharak Singh v. State of Uttar Pradesh AIR 1964(1) SCR 332

² Maneka Gandhi v. Union of India 1997 AIR 59 , 1978 SCR (2) 621

³ Govind v. State of Madhya Pradesh 1975 AIR 1378, 1975 SCR (3) 946

government for a uniform biometric-based identity card and that would be mandatory for accessing all government services and benefits. The right to privacy undeniably attained the status of a fundamental right and hence, privacy is an integral component of the constitution, which lays down fundamental rights of the citizen. The Supreme Court stated that the state must carefully balance individual privacy and its legitimate aim, it cannot be given or taken away by the law, and it must be abiding by the constitution. The right to privacy is not absolute.⁴ If any violation of privacy by state or non-state actors they must satisfy the 'TRIPLE TEST'. The triple test contains three matters they are;

- Legitimate Aim
- Proportionality
- Legality.

Privacy too can be restricted in well-defined circumstances.

1. There is a legitimate state interest in restricting the right.
2. The restriction is necessary and proportionate to achieve the interest.
3. The restriction is by law.

The recommendation was made by Justice **B.N. Sri Krishna committee** report they are:-

1. Processing Personal Data
2. Problematic Exceptions
3. Right to be forgotten
4. Data Localisation
5. Explicit Connect
6. Data Protection Authority
7. Aadhaar Act Amendments
8. RTI Act Amendments

INTERNATIONAL INSTRUMENTS ON RIGHT TO PRIVACY:-

The constitutional right to privacy has been recognized by all democratic countries in the World. The universal status also contains provisions relating to the right to privacy.

- Universal Declaration of Human Rights (UDHR)

⁴ K.s. Puttaswamy v. Union of India 2015 (8) SCALE 747

- International Covenant on Civil and Political Rights (ICCPR)
- European Convention on Human Rights

Article 12 of the Universal Declaration of Human Rights (UDHR) 1966, and

Article 17 of the International Covenant on civil and political rights (ICCPR) 1966, states that *"1. No person shall be subjected to any arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputations.*

2. Every person has a right to protection of the law against such interference or attacks."

Article 8 of the European Convention on Human Rights states that *"Everyone person has right to respect for his own private and family life and his home and the correspondence; and there shall be no interference by a public authority except such as by the law and is necessary for a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or the protection of rights and freedom of others."*

RIGHT TO PRIVACY WITHIN MARRIAGE:-

Marriage is a bond of love and trust. Marital privacy is the legally protected right of married individuals to privacy concerning their relationship, within certain limits. The law philosophers believe that a marriage merges two individuals as one unit and the right of this marital unit is above the individual privileges. "Privacy is a fundamental right; it cannot be designated as cruelty towards the husband." The supreme court of India has held that the 'TWO FINGER TEST' on a rape victim violates her right to privacy, Therefore Supreme Court asked the Government to provide improved medical procedures to confirm sexual assault.

In *Surajit Singh Thind v. Kanwaljit Kaur*, In this case, the wife has filed a petition for a decree of nullity of marriage on the ground that his husband was impotent. The husband had taken defence and said he was not impotent. To prove that his wife was not a virgin the husband applied for her medical (virginity test) examination. The court held that granting the medical examination of a woman's virginity will violate her right to privacy under Article 21 of the Constitution. It may amount to Roving's inquiry against a female. The virginity test cannot prove the consummation of marriage.⁵

⁵ Surajit Singh Thind v. Kanwaljit kaur AIR 2003 P H 353

In *Rayala M. Bhuvaneswari v. Nagaphomendar Rayala*, The court held that the act of tapping his wife's phone by the husband for the conversation of his wife with others without her knowledge was illegal and it is violative and amounted to infringement of her right to privacy.⁶

TECHNOLOGY AS A THREAT TO PRIVACY:-

TELEPHONE TAPPING –Telephone tapping is a serious invasion of the right of privacy of an individual. Telephonic conversation amounts to the exercise of the right to freedom of speech and expression of a person, which is protected under Article 19(2). Telephone tapping is allowed in India under section 5(2) of the Telegraph Act, 1885; but only under certain special circumstances.

People's union for civil liberties v. Union of India (Telephone tapping case) The Supreme court held that telephone tapping is a serious invasion of an individual's right to privacy which is preserved under Article 21 of the constitution, and it should not be claimed by the state unless there is occurrence public emergency or interest of public safety requires. These two are sine qua non for the application of the provision of section 5(2). From this case, the court has given guidelines and procedural safeguards for the exercise of power under section 5(2) of the Indian telegraph act.⁷

DATA PROTECTION IN THE TELECOM SECTOR- The right to privacy refers to the specific right of an individual to control the collection, usage, and disclosure of personal information. Personal information could be in any form such as family records, educational records, medical records, financial records, etc.

The Information Technology Act, 2000 was enacted to provide an administrative environment for e-commerce. Section 69 of the Act empowers the controller to direct any government agency to intercept any information that has been transmitted through any computer resource. It also requires that the users either disclose the encrypted keys or face up to 7 years of imprisonment. Section 72 of the Information Technology Act is the only provision that is connected with both privacy and breach of confidentiality.

REAL-TIME TRACKING – GPS (Global Positioning System) tracking is one of the most common ways of tracking vehicles. A person's right to privacy may be violated during the

⁶ Rayala M. Bhuvaneswari v. Nagaphomendar Rayala AIR 2008 AP 98, 2008(2) ALD 311, 2008(1) ALT 613

⁷ People's union for civil liberties v. Union of India 1997 1 SCC 30

process, as this technology provides voluminous information after examining the activities of a person. GPS (Global Positioning System) tracking is a double-edged sword. It has both positive and negative sides.

UIDAI-Unique Identification Authority of India (UIDAI) is a body which works as an issuing authority of UID (Unique Identity Card) to every person. A UID (Unique Identity Card) is an identity, issued by the UIDAI to provide a unique identity to every person after recovering his personal information's i.e. fingerprints, name, address, date, date of birth, etc. This covers a person's biometric information; hence it is considered as the most private information of an individual. A bill was introduced in 2010 to lift the certainty of biometrics information. It can be allowed to share in the interest of national security. Justice B.N. The Sri Krishna committee has also recommended UIDAI. Ensure autonomy of UIDAI and bolster data protection.

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

The C.B.I desired to access the huge database compiled by the Unique Identification Authority of India to search and investigate a criminal offense. It was held by the Supreme Court that UIDAI should not transfer any biometric without the consent of the person involved.

SIGNIFICANT ASPECTS OF THE RIGHT TO PRIVACY:-

1. There must be equal protection from the illegal and arbitrary interference by the private and government parties in the form of a comprehensive law. The law must ensure that the use of technology in trespassing the privacy rights and personal data of people is prohibited.
2. Medical records of individuals must be protected; the data can be potentially misused. Such data mustn't be collected and sold to researchers in the field of biomedical science, without the consent of the parties involved.
3. Financial records of individuals must also be protected from potential misuse. As the occurrence of fraud, there is an urgent need to pass a special guideline. So, Financial records of individuals must not be shared with banks, financial companies, and with any other person's without the knowledge of the consent of the parties, except in accordance with the procedure established by the law. The misuse of financial data of an individual can have a tremendous impact on the rate of increase in other crimes, or any other instance, kidnapping, extortion, etc.

4. The excessive scrutiny of employees by their employers through the biometric process is another major problem, which must be addressed by a comprehensive law.

CONCLUSION:-

Article 14, 19, 21 have said about the privacy of a person, many Supreme Court judgments have been given based on the privacy of the person. With an ever-increasing advancement in technology, the need for the essential right to privacy has become more important in present life. Our lives are mostly exposed to social media and it has become imperative that protection should be given to all people in all ways that do not create an apprehension in the mind of the people about their privacy. Privacy should be protected in every aspect. And more restrictions must be imposed by the government and special care must be taken by the government.

"The views of the authors are personal"

