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RIGHT TO PRIVACY

Privacy is very essential for human life. Right to privacy is recognition of the individual's right to be let alone and have his personal space. Article 12 of Universal Declaration of Human Rights, 1948 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. There is no direct provision for the right to privacy under the Indian Constitution but Article 21 of the Constitution of India states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". After reading the Article 21, it has been interpreted that the term 'life' includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

According to Black Law Dictionary, Right to Privacy means right to be let alone; the right of a person to be free from any unwarranted interference¹.

Right to privacy can be recognize as a "zero -relationship" between two or more persons in the sense that there is no interaction or communication between them, if they so choose. In **Sharda v. Dharampal**² the Supreme court has defined privacy as "the state of being free from intrusion or disturbance in one's private life or affairs³."

There are so many case laws which give recognition right to privacy in India. In **Govind v. State of Madhya Pradesh**⁴, Mathew, J. accepted the right to privacy as an emanation from Art. 19(a), and 21, but SC recognize right to privacy a limited right . Right to privacy can be restricted if there is a compelling state interest to be served⁵.

¹ <http://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html> visit on 3/10/2020 time: 12:54 am

² AIR 2003 SC 3450

³ Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P. 166

⁴ [1964] 1 S.C.R. 332

⁵ Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P. 180

In **Rayala M. Bhuvneswari v. Nagaphomender Rayala**⁶ the petitioner filed a divorce petition in the Court against his wife and to substantiate his case sought to produce a hard disc relating to the conversation of his wife recorded in U.S. with others. She denied some portions of the conversation. The Court held that the act of tapping by the husband of conversation of his wife with others without her knowledge was illegal and amounted to infringement of her right to privacy under article 21 of the Constitution. These talks even if true cannot be admissible in evidence. The wife cannot be forced to undergo voice test and then asked the expert to compare portion denied by her with her admitted voice. The Court observed that the purity of the relation between husband and wife is the basis of marriage. The husband was recording her conversation on telephone with her friends and parents in India without her knowledge. This is clear infringement of right to privacy of the wife. If husband is of such a nature and has no faith in his wife even about her conversations to her parents, then the institution of marriage itself becomes redundant⁷.

In the case of **Kharak Singh v. State of U.P**⁸ the Supreme Court for the first time recognized the right to privacy which is implicit in the Constitution under Article 21. The Court held that the right to privacy is an integral part of the right to life, but without any clear cut laws, it still remains in the gray area. The view was based on the conclusion that the infringement of a fundamental right must be both direct as well as tangible that the freedom guaranteed U/A 19(1)(a) a right to freedom of speech and expression was not infringed upon by a watch being kept over the movement of the suspect⁹.

In **R. Rajagopal v. State of T.N**¹⁰, the apex Court held that the right to privacy is a 'right to let alone'. No one can publish anything concerning the above matters without his consent, whether truthful or otherwise whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in the action of damages¹¹.

⁶ 2007 SCC AP 892,

⁷ <https://www.lawyerservices.in/Rayala-M-Bhuvanewari-Versus-Nagaphanender-Rayala-2007-12-20> visit on 5/10/2020 time: 1: 30 pm.

⁸ 1964 SCR (1) 332

⁹ Divan Madhavi Goradia, Facets of Media Law, EBC, Second Edition ,2013, P.

¹⁰ 1994 SCC (6) 632

¹¹ Singh M.P., Constitution of India, Eastern Book Company, 12th Edition P.213

PUCL v. UOI¹² this case is commonly known as telephone tapping case. Honorable SC held that telephone tapping is the abuse of right to privacy under article 21 of the Indian Constitution¹³.

In **Mr. X v. Hospital Z**¹⁴, it was held that where there is a clash of two fundamental rights, as in the instant case, namely, the appellant's right to privacy as a part of right to life and other person's right to lead a healthy life which is her fundamental right u/a 21, the right which would advance the public morality or public interest, would alone be enforced through the process of Court, for the reason that moral consideration cannot be kept at bay and judges are not expected to sit as mute structures of clay as in Hail, known as Courtroom but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day¹⁵".

In **Selvi and others v. State of Karnataka and others**¹⁶ the Supreme Court acknowledged the distinction between bodily/physical privacy and mental privacy. The scheme of criminal and evidence law mandates interference with the right to physical and bodily privacy in certain circumstances, but the same cannot be used to compel a person "to impart personal knowledge about a relevant fact". This case also establishes the intersection of the right to privacy with Article 20(3) (self-incrimination). An individual's decision to make a statement is the product of a private choice and there should be no scope for any other individual to interfere with such autonomy¹⁷.

District Registrar and Collector, Hyderabad and another v. Canara Bank and another¹⁸This Supreme Court judgment refers to personal liberty, freedom of expression and freedom of movement as the fundamental rights that give rise to the right to privacy. The Court also held that the right to privacy deals with persons and not places and that an intrusion into privacy may be by (1) legislative provisions, (2) administrative/executive orders and (3) judicial orders.

¹² AIR 1997 SC 568

¹³ Nanda Dr. Sukanta K., Media Law, Central Law Publication, First Edition (2014) P. 27

¹⁴ AIR 1999 SC 495

¹⁵ Singh M.P., Constitution of India, Eastern Book Company, 12th Edition P.214

¹⁶ (2010) 7 SCC 263

¹⁷ Jain M.P, Indian Constitutional Law, Lexis Nexis, seventh Edition(2014), P.1102

¹⁸ AIR 1993 SC 2295

In Unique Identification Authority of India & Anr. v. Central Bureau of Investigation¹⁹ case, the Central Bureau of Investigation sought access to the database of the Unique Identity Authority of India for the purposes of investigating a criminal offence. However, the Supreme Court in an interim order held that the Unique Identity Authority of India should not transfer any biometric information of any person who has been allotted an Aadhaar number to any other agency without the written consent of that person.

In **Justice K.S. Puttaswamy (Retd) v. Union of India**²⁰ is a resounding victory for privacy. The ruling is the outcome of a petition challenging the constitutional validity of the Indian biometric identity scheme Aadhaar. The judgment's ringing endorsement of the right to privacy as a fundamental right marks a watershed moment in the constitutional history of India. 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 Articles 14, 19 and 21 of the Constitution of India. It is a natural right that subsists as an integral part to the right to life and liberty. It is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes²¹.

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

Right to privacy is an essential component of right to life and personal liberty under Article 21. Right of privacy may, apart from contract, also arise out of a particular specific relationship, which may be commercial, matrimonial or even political. Right to privacy is not an absolute right; it is subject to reasonable restrictions for prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. Where there is a conflict between two derived rights, the right which advances public morality and public interest prevails.

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¹⁹ SLP (CRL) 2524/2014

²⁰ (2017) 10 SCC 1.

²¹ <https://www.mondaq.com/india/privacy-protection/625192/supreme-court-declares-right-to-privacy-a-fundamental-right> visit on 4/10/2020, time: 1:01 pm .

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