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RIGHT TO PRIVACY

POST PUTTASWAMY: EVOLVING

JURISPRUDENCE IN INDIA

“The right to privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such right remains with human till he/she breathes last. It is indeed inseparable and inalienable from human being.”

- Justice Abhay Manohar Sapre, Puttaswamy judgment.

ABSTRACT

Privacy in layman's terms refers to having an autonomous control over your body (such as reproductive choices), territory, to sharing and keeping information, make personal choices (such as sexual orientation and religion), and live a dignified life. The right to privacy is not explicitly a part of fundamental rights; however, the Supreme Court of India has recognized the right to privacy as a fundamental component of dignified life and personal liberty. In 2017, the landmark decision of Justice *K.S Puttaswamy vs. Union of India*,¹ changed the lens through which privacy was understood and protected under the Indian Constitution. Earlier, privacy was seen from the view of luxury, but with changing dynamics of society, it became a necessity. The current status of privacy is that it is now it is recognized as a fundamental right under Article 21 of the Indian

¹ AIR 2015 SC 3081

Constitution. The right to privacy protects individuals from unnecessary intervention either by the government or private companies. In today's world, where it is often said that 'data is the new currency', where constant exchange of data takes place or collected through online surveys. Protecting privacy is of paramount importance in today's surveillance- driven world.

This article will explore the concept of how the concept of privacy has evolved from a marginal right to a fundamental right and how the Indian Judiciary has expanded and interpreted the scope of privacy after the Puttaswamy judgment.

Keywords: Privacy, Article 21, fundamental right, Supreme Court.

INTRODUCTION

According to Black's Law Dictionary, 'Right to Privacy'² means "the right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned."

Article 21³ of the Constitution of India states, "***No person shall be deprived of his life or personal liberty except by the procedure established by law.***"

The right to life includes 2 rights:

1. Right to life
2. Life to personal liberty

"Life" in Article 21 does not merely connote mere animal life existence or not being dead; it includes living with dignity, safety, and necessities, and "personal liberty" means freedom to move, speak, express, work, and make personal choices as long as it does not violate the law. This right is available to both citizens and non-citizens under the Constitution of India.

In a democratic country like India, the operation of the legal system depends heavily on individual liberties. The right to Privacy plays an indispensable role. Despite the fact that the word "privacy" is not specifically mentioned in the Indian Constitution, the Supreme Court has over the years construed a number of its provisions, particularly Article 21, to include the right to privacy as a necessary part of the right to life and personal liberty. Every human being is born with some basic rights, like the right to life, liberty, equality etc. and they are known as "natural rights." And one of these natural rights includes the right to privacy. It exists naturally because every individual need personal space, control over their personal information, and freedom to choose, and an absence of privacy would curtail a person's life to live with freedom, independence, and dignity. Even though the right to privacy is a natural right and a fundamental

² Right to Privacy, Black's Law Dictionary (11th ed.2019).

³ Art.21, Const. of India

right (under Article 21 of the Indian Constitution after 2017), this right is not absolute, and the state, under certain conditions, can curtail it, for instance, for national security, public order, etc. However, these restrictions follow strict rules and are 'reasonable' in nature to avoid misuse

RECOGNITION OF PRIVACY AT INTERNATIONAL LEVEL

In international law, Privacy is widely recognized as a fundamental human right; it safeguards individuals from arbitrary interference by the government or other individuals meddling in others private lives, decisions, or conversations. Various international conventions, treaties, declarations, and human rights organizations not only recognize but also protect privacy throughout the world. A few are discussed below: -

Article 12 of the Universal Declaration of Human Rights (UDHR), 1948, states:

"No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks."

However, it is not legally binding; the UDHR forms the bedrock of many binding national laws and treaties.

Another is Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, states:

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honor and reputation.*
2. *Everyone has the right to the protection of the law against such interference or attacks.*

ICCPR is legally binding on the ratifying countries, and India is a member of this covenant.

Article 8 of the European Convention on Human Rights (ECHR), 1950 states:

"Everyone has the right to respect for his private and family life, his home, and his correspondence."

However, restrictions are allowed, but they must be lawful, proportionate to the need, and aim to achieve a legitimate purpose such as public safety or national security.

PRE-PUTTASWAMY PRIVACY LANDSCAPE

In India, prior to the historic Puttaswamy ruling in 2017, the right to privacy was not explicitly recognized as a fundamental right. Court's view on privacy were ambiguous and incoherent. While some previous rulings recognized it as a component of personal liberty, others rejected its constitutionality. The courts opted for a case-by-case strategy. Under Article 21, privacy was regarded as an implied right that primarily stemmed from individual liberty. There was no standardized test or doctrine to determine how and in which situation privacy could be regulated. Let's understand the position of privacy before it became a fundamental right in the Indian Constitution.

M.P. Sharma and Others vs. Satish Chandra,⁴ (1954) was the first case that address the concept of Privacy as a right and laid the foundation for future debates on the right to privacy, even though the existence of it was denied.

This case is related to the search and seizure of papers from some Dalmia group entities after their affairs were investigated. Searches were carried out after the District Magistrate issued warrants in response to the FIR filed. The constitutionality of the searches was contested in writ petitions before the Supreme Court on the grounds that they infringed upon their fundamental rights under Articles 19(1)(f) and 20(3), which safeguard against self-incrimination. The 8-Judge bench of the Supreme Court expressly denied the existence of right to Privacy as a fundamental right under the Constitution. The Supreme Court focused only on self-incrimination and invalidated the idea of privacy, saying no such guarantee is outlined in the Indian Constitution.

Another classic case is, ***Kharak Singh vs. State of U.P.***,⁵(1962), where, Kharak Singh, contested the U.P. Police Regulations, which allowed the police to monitor his whereabouts and also included visiting his house at night, as it led to the violation of his fundamental rights under Article 19(1)(d) and Article 21 of the Indian Constitution.

The 6-bench Supreme Court held that domiciliary night visits were unconstitutional but upheld other surveillances. Also, majority opinion does not explicitly recognize the right to privacy as a fundamental right under the Constitution, and hence it cannot be interpreted as a part of Article 21 of the Constitution. However, Justice Subba Rao was of the dissenting opinion and strongly in support of the right to privacy as an inherent part of Article 21 of the Constitution and stated that “*Liberty takes within its sweep the right of a person to be free from encroachments on his private life.*”

In, ***People’s Union for Civil Liberties (PUCL) V. Union of India*** (1997),⁶ popularly known as the ‘telephone tapping case’, the phone-tapping powers given to the government (both central and state) under Section 5(2) of the Indian Telegraph Act, 1885, were challenged. The Court was of the view that telephone conversations are a part of the right to life and personal liberty enshrined under Article 21 and therefore lead to the serious invasion of privacy. Arbitrary surveillance is not permitted and it can only be authorized, if reasonable grounds, such as a public emergency or interest of public safety, are present. This case was a significant step toward acknowledging privacy in the digital and communication age and firmly upheld the right to informational privacy.

FULL RECOGNITION OF PRIVACY AS A RIGHT

The Justice K.S. Puttaswamy v. Union of India (2017) case was a major breakthrough where privacy as a fundamental right was recognized under Article 21 of the Indian Constitution. It transformed the status of the right of privacy from a nebulous idea into a core part of

⁴ AIR 1954 SC 300

⁵ AIR 1963 SC 1295

⁶ AIR 1997 SC 568

fundamental rights, redesigning the landscape of India's Constitution. Let's analyze the judgment in detail:

Background of the case:

The Aadhar card was introduced as a means of identifying an individual, and the Unique Identification Authority of India (UIDAI) is the organization that issues the card and enrolls individuals. The UIDAI was founded in 2009. Since each person will only have one identification and there is no possibility of duplication, the primary goal of the Unique Identification Scheme was to offer a unique identity number that is unique in nature.

The UIDAI provided Indian citizens with a 12-digit identifying number known as their Aadhaar number. In an effort to eliminate fraudulent beneficiaries and expedite the service delivery process, the Aadhaar project was connected to a number of welfare programs.

This case arose from concerns regarding the Aadhaar scheme, under which the government was collecting and compiling both demographic and biometric information data of the residents of the country to be used for various purposes, and was attacked on various counts including the violation of right to privacy. Retired High Court judge Justice K.S. Puttaswamy filed a writ petition, claiming that forcing citizens to share their personal information is an infringement against an individual's right to privacy under Article 21 of the Constitution of India. A nine-judge panel was established to re-examine this matter because previous rulings such as *M.P. Sharma v. Satish Chandra* (1954) and *Kharak Singh v. State of U.P.* (1962) had determined that the Constitution did not protect and guarantee the right to privacy.

Issue:

- Is the right to privacy an intrinsic part of the right to life and personal liberty under Article 21 and a part of the freedoms guaranteed by Part III of the Constitution?
- Are earlier judgments like *M.P. Sharma* and *Kharak Singh*, which denied the existence of privacy as a fundamental right, still valid?

Ruling:

On, 24th August 2017, the Supreme court in *Justice K.S. Puttaswamy vs. Union of India*, by a bench of nine judges, overruled *M.P. Sharma vs. Satish Chandra*, which held that the right to privacy is not protected by the Constitution. It also overruled *Kharak Singh vs. State of U.P.*, to the extent it had held the right to privacy was not protected by the Constitution, although invalidating domiciliary visits at night on the ground of violation of ordered liberty, there was implicit recognition of the right to privacy. The right to privacy is provided 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. The Supreme Court overturned the previous rulings in a unanimous ruling, stating that the right to privacy is a basic right safeguarded by Articles 14, 19, and 21 of the Constitution. According to the Court, privacy is a collection of rights that include freedom of thinking, decision-making autonomy, bodily autonomy, and protection of personal information. According to the ruling, privacy is a fundamental component of the right to life and personal freedom under Article 21. It also upholds other rights, such as equality (Article 14) and freedom of speech (Article 19). The Court underlined that privacy is essential to dignity and that dignity

is the cornerstone of all rights, with Justice D.Y. Chandrachud stating that *Privacy is concomitant of the right of an individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights that are natural to or inherent in human beings.*

The ruling also stated that, like other rights that forms part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, Privacy is not an absolute right. A law that encroached upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21, an invasion of privacy must be justified on the basis of a law that stipulates a procedure that is fair, just, and reasonable. An invasion of life or personal liberty can be restricted by the state, but it must meet the three-fold requirement:

- 1) Legality- existence of law.
- 2) Need- state interest must be legitimate.
- 3) Proportionality- rational nexus between the object and the means adopted to achieve them and should not be excessive.

The aim is to maintain the balance between individual privacy and state interest.

Post-Puttaswamy ruling, the Indian judiciary has taken charge in broadening the scope of privacy. Courts have generally found in favor of privacy in issues pertaining to seizures of mobile phones without warrants, Privacy in prisons, or the right to be forgotten in digital content. However, the judiciary has also shown vigilance, acknowledging that privacy is not absolute and can be reasonably restricted.

CONCLUSION

In India, right to Privacy, before becoming a full-fledged and exhaustive fundamental right, had undergone a prolonged evolution, from being denied recognition in cases such as M.P. Sharma and Karak Singh to being lauded for affirming privacy as an intrinsic and inalienable part of life and personal liberty under Article 21 of the Indian Constitution after the landmark judgement of Justice K.S. Puttaswamy vs. Union of India.

By introducing privacy as a fundamental right, the Puttaswamy ruling has marked a turning point in Indian constitutional history. In addition to reinforcing the democratic principles, the recognition of privacy as a fundamental right has given people more authority over their private lives, choices, and information. The government cannot curtail the privacy of any individual according to their whims and fancies. Now, surveillance without any proper justification is prohibited under the Constitution of India. The Supreme Court has expanded the scope of Article 21 and confirmed that the attainment of equality, liberty, and dignity depends on the right to privacy.

As India is becoming more digitally advanced, the right to privacy is becoming evolving right that changes with time and society and therefore needs constant protection. However, the right to privacy can become a reality for everyone with the help of strict legislation, vigilant courts,

responsible, and informed citizens. Being left alone does not constitutes every aspect of privacy. In a world that is changing quickly, privacy is also about being able to be who you are, make your own decisions, and maintain your personal space. With awareness and accountability, India can create a society that respects everyone's right to privacy.

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