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RIGHT TO PRIVACY IN INDIA

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Abstract

Privacy is an inherent part of human personality and inalienable from a human being and it is something that is not to interfere to the interest of others. The right to privacy assures and reassures a person's individuality. It is all about oneself, his feelings and emotion. This Paper illustrates and highlights the concept of privacy at the biblical times. The notion of privacy is an old concept, finding its origin in the natural law theories and concept of privacy can be traced out in the ancient text of Hindus also. This paper proceeds to examine the definition of right to privacy in 1888 by Thomas Cooley and in 1890 by Samuel D. Warren and Louis D. Brandeis and it shall also deal with the classification of right to privacy enumerated in different heads. Right to privacy although not expressly mentioned in the Indian Constitution, is an inherent right under Right to Life guaranteed by article 21 of the Indian Constitution and the legal perspective of right to privacy in India are the focused prime concern. The right to privacy is also recognized under the law of torts, criminal law as well as property law as an essential element involved therein. The urgency for a need of such a statute which protects the privacy of individuals is to be introduced, that is why the privacy bill, 2011 is also discussed in this paper as it is the draft bill of a potential privacy law which we may have in our country. This paper contains a few suggestions which have been made to reform the law with respect to the privacy of individuals and associations.

Introduction

Privacy is considered as a natural need of every human being in order to create and establish individual boundaries and also to restrict the movement and entry of other person into a particular area.

The privacy idea is an old concept like it is as old as Biblical periods i.e., relating to, or which is suggestive of the Bible or Bible times. First page of Bible explains the moment of Adam and Eve clearly. Adam and Eve made for themselves aprons by sewing fig leaves as when they opened their eyes and found that they were naked. This defines the feeling of shame as a violation of Privacy. Even we find this concept of privacy in the ancient Indian society also which is reflected in the concept of “*sarvesvesvegrihe raja*” means every man is a king in his own house. Ancient laws; Dharmshastras and Kautilya in his Arthashastra also recognized the concept of ‘Privacy’.

Non-Disclosure of person’s information, his sexual affairs, privacy regarding business secrets, etc are some of the aspects which come under the concept of privacy. Privacy is the concept similar to the secrecy, oneness etc.

In 1888 Thomas Cooley, the famous scholar of the United States of America originates the idea of privacy as a ‘right’ and then he defines the concept of privacy as ‘a right to be let alone’.¹ After this in 1890 Samuel D. Warren and Louis D. Brandeis cultivated the opinion with the initial analysis of the concept of privacy as they fixed ‘right to be alone’ included the need of right to enjoy life.²

The right to privacy protects person’s identity, intimacy and integrity with respect to the area of an individual existence.

Definition of Privacy

Traditionally ‘privacy’ means freedom from official intervention and Today with the progress and development in the field of science and technology the term ‘privacy’ has got its extended meaning, now in general meaning it is known as ‘the right to be let alone.’

¹Thomas M. Cooley, Torts 91 (1888).

² Samuel D. Warren and Louis D. Brandeis, The Right to Privacy, 4 Harvrad Law Rev. 193 (1890).

According to Black's Law Dictionary, privacy means "*right to be let alone; the right of a person to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned*".³

Justice Thomas Cooley was the one who used this expression of 'the right to be let alone' in 1888 and years later the same view was adopted by Samuel D. Warren and Louis D. Brandeis in 1890.

The right to privacy refers to the right to personal autonomy, or the right to choose whether or not to involve in particular acts or in certain experiences. In other words, right to privacy means protection and safety of one's personal information from being publically used by anyone without permission.

Classification of Privacy

The concept of privacy is divided or classified into four parts mentioned below:

i). Intimate Privacy

The intimate privacy is the individual beliefs, actions and inner and outer mechanisms of their minds which they desire to keep it as private. This privacy includes certain grounds or things which society or community would not approve.

ii). Family Privacy

Family privacy is the wider concept as it begins from married couple to blood relations like privacy between a married couple, continuing to a joint family living together and lastly ending with the blood relations of the family living together or may not be living together. Family secrets are always guarded and treated it as privately by the members of that family.

iii). Social Privacy

Social privacy includes publications of news, taking photographs, sexual relationship beyond marriage, professional trade secrets, their inventions and special methods of operations and so

³"Privacy" Black's Law Dictionary.

on. These all are categorized in social privacy sub heads i.e., in Political, Professional and Community privacy. In *R.M. Malkani v. State of Maharashtra*,⁴ a typical case of an attempt to violate professional privacy as the coroner's attempts to extract bribe from Dr. Adatia. Hence professional privacy needs to be safeguarded.

iv). Individual Privacy

Individual privacy quest is inherit in every human being and it usually depends upon their nature that which type of privacy they want in their daily existence such as privacy for mental peace, enjoyment of hobbies, meditation, etc.

Legal Analysis of Right to Privacy in India

The Constitution of India guarantees a fundamental right to privacy under Article 21. Article 21 states that “*No person shall be deprived of his life or personal liberty except according to a procedure established by law*”.⁵ So this article under its wide range clearly includes right to privacy but in 1954, in the case of *M.P. Sharma v. Satish Chandra*,⁶ the Supreme Court held that right to privacy was not a Fundamental Right.

After this case, Indian Courts have recognized the right to privacy as fundamental rights in large number of cases like the Hon'ble Supreme Court had an opportunity to look into the ambit and scope of right to privacy in *Kharak Singh v. State of UP*,⁷ where a minority opinion recognized the right to privacy as a fundamental right. The minority judges located the right to privacy under Articles 19(1)(d) of the Indian Constitution which guarantees to all the citizens of India the right “to move freely throughout the territory of India” i.e., Freedom of Movement as well as under Article 21 of the Constitution i.e., the right to personal liberty.

⁴AIR 1973 SC 157

⁵See Constitution of India, 1950.

⁶[1954] SCR 1077

⁷AIR 1963 SC 1295

In *Govind v. State of MP*,⁸ Supreme Court recognized the importance of right to privacy as supreme court in this particular case confirmed the existence of a fundamental right to privacy in Article 21.

In *Unni Krishnan v. State of Andhra Pradesh*,⁹ right to privacy was one of the twelve meanings of the right to life which are numbered.

In *People's Union for Civil Liberties v. Union of India*,¹⁰ this case before the supreme court extended the right to privacy to communications as it is related to phone tapping by the police and the court in this case said that a telephonic conversation is a part of person's private life, so this cannot be tapped by the police. If the police want to tap, there has to be a "procedure established by law" and the same must be "fair, just and reasonable." In short, telephone tapping violates Article 21 of the Indian Constitution, unless it was under procedure established by law and Article 19.

In the case of *Maneka Gandhi v. Union of India*,¹¹ whether the law is fair, just and reasonable, for all these, court laid down the test to determine like it must prescribe a procedure and the protection which are guaranteed under Article 19(1) must withstand it and last is that it must not be arbitrary, fanciful or oppressive.

In landmark case of *K.S. Puttaswamy v. Union of India*,¹² the nine-judge bench of J.S. Kehar, J. Chelameswar, S.A. Bobde, R.K. Agrawal, R.F. Nariman, A.M. Sapre, Dr. D.Y. Chandrachud, S.K. Kaul and S.A. Nazeer held that the right to privacy is the intrinsic part of Article 21 i.e., the right to life and personal liberty and as the part of Constitution of India part III. The cases; *Kharak Singh v. State of UP* and *M.P Sharma v. Union of India*, which held that there is no fundamental right to privacy under the Indian Constitution are also overruled in this case.

The Privacy Bill, 2011

The draft bill i.e., The privacy bill, 2011 lays down some regulations which is to be followed in the citizen's personal information publication, collection, maintenance, use and in case there is

⁸(1975) 2 SCC 148

⁹ 1955 SCR (2) 589

¹⁰1996(9) SCALE.

¹¹1978 SCR (2) 621

¹²2017 10 SCC 1

violation of any rights of citizen, it also provides for penalization. So this bill overall provides for the right of privacy for the citizen of our country i.e., India.

Conclusion

The right to privacy is recognized under the Indian Constitution, law of torts, criminal law as well as in property law. It is celebrated as part of right to life and liberty and should now be granted the same status of independent constitutional right. In every rights, reasonable restrictions are allowed and right to privacy is not an absolute right, it also may be subject to certain reasonable restrictions for prevention of crime, public disorder and protection of others. Privacy is in danger and the possibilities always exists, if there is a security breach and things go to harm someone. That is why to face the important challenges ahead, education, technology and policy must work together and the right to privacy is being protected by the Government of India. Not to lose control of our overdoings of bringing crisis under control, some of the suggestions may be taken into consideration like disclosure of personal information by government should be prohibited. Remedy of injunction and damages should be provided to the aggrieved person if there is any violation of personal information. Article 8 of the European Convention of Human Rights, 1950 provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society"¹³ and it should be incorporated in Human Rights Act, 1993. In this manner, it could be possible to protect privacy of the concerned parties in a desirable manner.

¹³ See Article 8 of the European Convention on Human Rights, 1950.

