

“Right to Privacy”

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INTRODUCTION

Right to privacy, a right that has become the headline after Aadhar project came into existence is a burning issue now-a-days. Aadhar, a number which is provided to a person after taking his/her retina scan, finger prints, address and all other details has been recently challenged in the Supreme Court of India in regards to the violation of right to privacy for the first time in 2012.

Right to privacy as a concept in the history of Indian Judiciary was first recognized in late 1800s when a local british court decided a case recognizing the privacy of pardanashin women to use her balcony without the fear of neighborhood gaze.¹ The conditions changed, the jurisprudence evolved and the country became independent. We the people gave ourselves the supreme law of the country i.e. The Constitution of India, 1950 which consisted of everything through which the country is to be regulated. The supreme law which further became a source to every other law of the country. Three organs are formed to act as the basic pillar of the constitution and the judiciary has been provided with the power to interpret the law.

The Constitution remained silent about the Right to privacy and various cases and situations were decided further by the Hon’ble Supreme Court regarding the right. A right which is claimed to come under the scope of Article 21 of the constitution i.e. Right to life and personal liberty. The right to life consists of the right to live with dignity & to live a dignified life, one doesn’t only include the food, clothes and shelter but also the basic requirements of the life such as medical aid, privacy etc. However the other side of the coin says that the right to privacy is a threat to the nation’s security and it is not under the scope of Article 21.

There has always been a dilemma and the evolution of the right as well as the present scenario and the present needs are discussed further in the paper

¹Nikhil Narendra, *A brief history of the right to privacy*, THE WEEK, Feb. 21, 2018, 08:12 PM, <http://www.theweek.in/content/archival/news/india/brief-history-right-to-privacy.html>

EVOLUTION OF RIGHT TO PRIVACY

The Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950 but it did not explicitly include the right to privacy. The jurisprudence kept on changing and the right to privacy was read as an integral part of 'personal liberty' into 'Article 21' of our Constitution by the Supreme Court. Like most freedom, we took it for granted, until last year our government told us that privacy is not a fundamental right after all.

Right to privacy as “No Fundamental Right”

The statement that “Privacy is not a fundamental right of Indian Citizens” was first stated by the Supreme Court in the case of *M.P. Sharma v. Satish Chandra case*² in 1954. Two petitions of similar kind were taken up together by the 8-judge bench of the Supreme Court. The Law in question was that whether the search and seizure of private documents by the Police is the violation of the fundamental right of citizens under article 20(3) of the constitution. While examining the case, hon’ble court stated that

*“The Constitution makers have thought fit not to subject such regulation to Constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right. by some process of strained construction”*³

Hon’ble court denied the existence of right to privacy in between the issue regarding the search and seizure of private documents on the basis of no explicit mention about the right to privacy in the constitution similar to the 4th amendment in the US Constitution.

Again we did show our desire for a private life after nine years of this case before a 6-judge bench of Supreme Court in another case of *Kharak Singh v. State of Uttar Pradesh*⁴, but that also to be rejected again. Kharak Singh, the petitioner was tried in a dacoity case but was acquitted later since there was no evidence against him. After some time the police opened the history-sheet of two classes out of which class A consisted of dacoity case and the petitioner was put under surveillance under regulation 236 of the UP Police Regulations Surveillance. The police constables and chaukidar of village sometimes enter enters his house, knock and shout at his door, wake him up during the night and thereby disturb his sleep, periodical inquiries and verification of movements.

² M.P. Sharma v. Satish Chandra case, 1954 AIR 300.

³ M.P. Sharma v. Satish Chandra case, 1954 AIR 300.

⁴ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295.

The Majority of judges stated in the judgment that “*The right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III.*”⁵ However the court refused any right of “right to privacy” but stroke down the provision which allowed the night visits on the basis of ‘personal liberty’.

The dissent of Justice Subba Rao was the silver lining when he stated “*It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty.*”⁶ His statement was the first stating about the existence of right to privacy in the post-jurisprudence period.

Right of Privacy as “Fundamental Right”

After 12 long year of the Judgment in the said case, the Supreme Court, with a smaller three-judge bench in the case of Gobind V. State of Madhya Pradesh⁷ examined the case of similar factual matrix and referred to many English judgments and the statement of Justice Subba Rao in the case of Kharak Singh⁸. The court upheld the existence of right to privacy as the fundamental right under article 21 of Constitution.⁹ However, the court stated that the right to privacy is not an absolute right and is subject to be inferred by the procedure established by law. Though Gobind lost, privacy won for the first time!

Further, the post-liberalization era proved to be an era which strengthened the concept of right to privacy. Supreme court dealt with the freedom of press vis-à-vis right to privacy in case of R. Rajagopal V. State of Tamilnadu¹⁰ which was about the right of petitioners to publish the autobiography of an infamous gangstar from bangalore known as “Auto Shankar”.

Hon’ble court held that “*The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and 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 an*

⁵ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295

⁶ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295

⁷ Gobind V. State of Madhya Pradesh, AIR 1975 SC 1378

⁸ Kharak Singh v. State of Uttar Pradesh, 1963 AIR 1295

⁹ INDIAN CONST. Art 21.

¹⁰ R. Rajagopal V. State of Tamilnadu, 1995 AIR 264

action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”¹¹

The two-judge bench decided the right to privacy as the fundamental right of the citizen under the right to life and liberty given through article 21 of the Indian Constitution and said that every person owns the right to be left alone. No one has the right to publish anything concerning privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters and the publication on the above matters will lead to the violation of the right to privacy of the Citizen

The couple of years later, the court needed to deal with a case regarding the telephone tapping of well known politicians and said that it is the duty of the government to comply with the strict guidelines in the cases of telephonic conversations taping. The court also gave many strict guidelines to comply with before tapping any telephonic conversations. Further the guidelines were included in the provisions regarding the interception under The Telegraph Act, 1985 and Information Technology Act, 2000. This case is well known as the PUCL case.¹²

Right to Privacy and Constitution of India

On August 24th, 2017, the Supreme Court has given its decision on Right to privacy in Justice K S Puttaswamy V Union of India, proclaiming it as a fundamental right of a native. This judgment has at long last put a conclusion to the long chronicled fight in court from the previous 40-50 years. Since the 1960s, the Indian legal and the Supreme Court specifically, have managed the issue of privacy, both as a fundamental right under the constitution and as a common law right. The common string through every one of these judgments by the supreme court of India has been to perceive a right to privacy either as a fundamental under the constitution or as a common law right, yet to forgo giving a particular definition before the ongoing historic point judgment. Rather court has chosen to have it advance on case to case premise. As Justice Mathew put it, "The right to privacy will, in this way, fundamentally, need to experience a procedure of case by case improvement".

- **Right to privacy in the context of surveillance by the state**

The first case to set out the nuts and bolts of right to privacy in India, was the case of Kharak Singh v. State of Uttar Pradesh, where a seven judge seat of the Supreme Court was required to check the legality of certain police controls which enabled police to do domiciliary visit and observation of people with criminal record. In the present case the candidate challenges the defendability of such arrangements on the ground of that they abused his fundamental right to privacy under provision 'personal liberty 'of article 21 of the constitution of India. In

¹¹ R. Rajagopal V. State of Tamilnadu, 1995 AIR 264, para 26, cl. 1.

¹² PUCL V, Union Of India, (1997) 1 SCC 301

this particular case lion's share of the judges decay to translate article 21 to incorporate inside its ambit the right the privacy, part of the dominant part communicated "The right of privacy isn't an ensured right under our Constitution, and along these lines the endeavor to find out the developments of an individual is simply a way in which privacy is attacked and isn't an encroachment of a fundamental right ensured in Part III." But anyway they recognized it as a customary law right to appreciate the liberty of their homes and favors a maturity saying "man's house was his palace" The lion's share consequently comprehended the term 'personal liberty' in Article 21 with regards to age old standards from custom-based law while holding domiciliary visits to be unlawful. Two of the judges of the seven judge seat, be that as it may, saw the right to privacy as a part of Article 21, denoting an early acknowledgment of privacy as a fundamental right. Equity Subba Rao held "It is genuine our Constitution does not explicitly announce a right to privacy as a fundamental right, however the said right is a basic element of personal liberty."

The subject of privacy as a fundamental right introduced itself by and by to the Supreme Court a couple of years after the fact on account of Govind v. State of Madhya Pradesh. The applicant in this case had tested, as illegal, certain police controls in light of the fact that the directions damaged his fundamental right to privacy. In spite of the fact that the issues were like the Kharak Singh case, the 3 judges hearing this particular case were more disposed to give the right to privacy the status of a fundamental right. Equity Mathew stated: "Rights and opportunities of subjects are put forward in the Constitution keeping in mind the end goal to ensure that the individual, his personality and those things stamped with his personality will be free from official obstruction aside from where a sensible reason for interruption exists. 'Liberty against government' an expression instituted by Professor Corwin communicates this thought strongly. In this sense, a large number of the fundamental rights of nationals can be depicted as adding to the right to privacy." This statement was anyway qualified with the disclaimer that this right was not an outright right and that the same could be abridged by the State gave it could set up a "convincing public interest" in such manner.

- **Right to Privacy against Right to Free Speech**

Subsequent to the Govind judgment, the Supreme Court was required to adjust the privilege of privacy against the privilege to free discourse on account of R. Rajagopal v. State of Tamil Nadu. In this case, the petitioner was a Tamil newsmagazine which had looked for bearings from the Court to limit the respondent State of Tamil Nadu and its officers to not meddle in the publication of the autobiography of a death row convict– 'Auto Shankar' which contained insights about the nexus amongst hoodlums and cops. The Supreme Court surrounded the inquiries in these terms: "Regardless of whether a resident of this nation can keep someone else from composing his biography or life story? Does such unapproved composing encroach the resident's entitlement to privacy? Regardless of whether the opportunity of press ensured

by Article 19(1) (a) qualifies the press for distribute such unapproved record of a national's life and exercises and if so to what degree and in what conditions?" While noting the above inquiries, a seat of two judges of the Supreme Court, out of the blue, specifically connected the privilege to privacy to Article 21 of the Constitution yet in the meantime rejected issues of open record from being secured under this 'Right to Privacy'. The Supreme Court held: "(1) the privilege to privacy is verifiable justified to life and freedom ensured to the residents of this nation by Article 21. It is a "right to be not to mention". A national has a privilege to defend the privacy of his own, his family, marriage, procreation, parenthood, child-bearing and instruction among different issues. None can distribute anything concerning the above issues without his consent whether honest or generally and whether commendatory or basic. In the event that he does as such, he would abuse the privilege to privacy of the individual concerned and would be at risk in an activity for harms. Position may, be that as it may, be unique, if a man intentionally pushes himself into controversy or willfully welcomes or raises a controversy. (2)The control previously mentioned is liable to the exemption, that any publication concerning the aforementioned viewpoints winds up unobjectionable if such publication depends on open records including court records. This is for the reason that once an issue turns into a matter of open record, the privilege to privacy never again subsists and it turns into a real subject for input by press and media among others."

- **The 'Right to Privacy' of HIV ('ve) Patients**

On account of Mr. 'X' v. Hospital 'Z', the Supreme Court was required to talk about the extent of a blood giver's entitlement to privacy of his medical records. The respondent hospital for this situation had uncovered, without the authorization of the blood contributor, the way that the blood benefactor was analyzed just like a HIV patient. Because of this revelation by the hospital, the woman who was to have been hitched to the blood contributor had severed her commitment and the benefactor was liable to social alienation. Talking about the issue of privacy of medical records, the Supreme Court decided that while medical records are thought to be private, specialists and hospitals could make exemptions in specific situations where the non-revelation of medical data could jeopardize the lives of different natives, for this situation the spouse.

- **The 'search and seizure' Powers of Revenue Authorities**

In 2005, the Supreme Court passed one of its most essential privacy related judgments on account of District Registrar v. Canara Bank. For this situation the Supreme Court was required to decide the legality of an arrangement of the A.P. Stamps Act which permitted the Collector or 'any person' approved by the Collector to enter any premises to lead an assessment of any records, registers, books, documents in the guardianship of any open officer, if such investigation would bring about revelation of extortion or oversight of any obligation payable to the Government. The principle issue, for the situation, identified with

the privacy of a client's records put away by a money related establishment, for example, a bank. The impugned arrangement was held to be unconstitutional by the Supreme Court in light of the fact that it fizzled the trial of sensibility cherished in Articles 14, 19 and 21 of the Constitution. The Court held that any enactment interrupting the personal liberty of a resident (for this situation the privacy of a national's money related records) must, so as to be sacred, fulfill the triple test set around the Supreme Court on account of *Maneka Gandhi v. Association of India*. This triple test requires any law meddling with the idea of 'personal liberty' under Art. 21, to meet certain standards: "(i) it must endorse a system; (ii) the method must withstand the trial of at least one of the key rights gave under Article 19 which might be pertinent in a given circumstance; and (iii) it should likewise be obligated to be tried with reference to Article 14." The impugned arrangement was held to have fizzled this test. All the more vitally, the Court decided that the idea of privacy identified with the national and not the place. The ramifications of such an announcement was, to the point that it didn't make a difference that the money related records were put away in a subject's home or in a bank. For whatever length of time that the money related records being referred to had a place with a subject, those records would be ensured under the resident's entitlement to privacy.

Conclusion

Following the pattern of these judgements, the idea of right to privacy has advanced and risen, as a major right. Our legal has attempted in these different judgements translate the importance and the extent of right to privacy. Right to privacy is a fundamental segment of right to life and individual freedom under Article 21. Right of privacy may, aside from contract, likewise emerge out of a specific particular relationship, which might be business, wedding or even political. Most likely *Puttaswamy* judgment will have a profound effect upon our legitimate and protected scene for quite a long time to come. It will affect the transaction amongst privacy and straightforwardness and amongst privacy and free discourse; it will affect State surveillance, data collection, and data protection without a doubt.