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To live is to Live with Dignity

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ABSTRACT

This paper deals with the concepts of the right to privacy in India along with case studies and landmark judgements. Privacy is the most integral part of human life and dignity. Right to privacy in India has been upheld by the Apex Court in many cases and it has been held that Right to Privacy is a fundamental right and an integral part of the right to life and liberty. This paper primarily focuses on the definition, concept and landmark cases of Right to Privacy in India. The paper also talks about the comparative status of privacy rights in India and other countries.

Keywords: Privacy, Data, Article 21, Private, Law.

I. INTRODUCTION

In common parlance we define privacy as a state in which you are not observed or disturbed by others. But according to the Black's Law Dictionary, it was defined as the "right to be left alone; a person's right to be free from unjustified advertising; the right to live without undue public interference in matters that do not necessarily concern you. Article 21 of the Indian Constitution states that "no person may be deprived of his life and personal freedom except in accordance with the procedure established by law". The interpretation of the term "life" encompasses all aspects of life that make a person's life meaningful and worth living. Everything in humanity has two aspects: positive and negative aspect. Technology has been a doom and a blessing to humanity. It is part of our life whether we want it, want it or not. We cannot be sure whether a third party overheard our conversation or not. There are different types of privacy, such as,

1. Political
2. Financial
3. Physical
4. Mental
5. Social Media, and
6. Information Technology.

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Alan Westin analyses and defines data protection on the basis of all these points in his book *Privacy and Freedom*. It says: “Data protection is the right of individuals, groups or institutions to determine for themselves when, how and to what extent. Data protection with regard to the relationship of the individual to social participation is the voluntary and temporary withdrawal of a person from society in general, by physical or psychological means, either in a state of solitude or intimacy in small groups or, if between larger groups, in one State of anonymity or reluctance.”³

II. RIGHT TO PRIVACY IN INDIA

India being the largest democracy in the world and second most populated country in the world with a population of almost 137cr people. In the era of dynamic technologies and gadgets, one does not have any exclusively laid out law for data protection. Isn't it ignorant and surprising that in an era where everything is online including one's personal information, where data hungry service providers are exploiting person's privacy just by a general contract principle focused on fiduciary relationship?

In the earlier times, right to life focused only on physical dangers of life such as trespass to person, property or assault, battery, etc. As the decades passed, society grew, technology took over and along with this, laws grew to accommodate with present time problems. Now, right to life includes, right to be let alone, right to liberty, right to live with dignity etc.

When we widen the extent of Article 21, we come across the right to privacy. The Constitution does not specifically grant any right to privacy as such. However, such a right has been asserted by the Supreme Court to be treated as a fundamental right under article 21. The court has insinuated the right of privacy from Article 21 by interpreting it in conformity with Article 12 of Universal Declaration of Human Rights and Article 17 of the International comment on civil and political rights, 1996.

III. ANALYSIS OF PRIVACY IN DIFFERENT COUNTRIES

(A) United Kingdom

Human rights in the UK are protected by the Human Rights Act 1998. The law affects the human rights set out in the European Convention on Human Rights. Article 8 of the Human Rights Act 1998 protects the right to liberty and respect for your private life, your family life, your home and your correspondence. By private life you mean your right to determine your sexual orientation, your lifestyle and your appearance and clothes. This includes your right to

³ Privacy and Freedom by Alan Westin

control who sees and touches your body. The courts interpreted the meaning of private life far and wide and restricted the article. There are situations in which government authorities can interfere with your right to respect for private and family life, home, and correspondence. This is only permissible if the authority can demonstrate that its actions are lawful, necessary, and proportionate in order to: protect public safety, protect the economy, protecting national security, protecting health or morals, preventing disturbance or crime; or protecting the rights and freedom of others.

(B) United States

The right to privacy is mentioned in the Fourth Amendment to the United States Constitution, which states: "The right of individuals to be safe from unreasonable searches and seizures in their people, homes, papers, and property, shall not be violated. Arrest warrants are not issued except for probable reasons, supported by oath or confirmation, specifically describing the location to be searched and the persons or property to be seized. In the United States, the need for a law to protect privacy was expressed in 1890. An article entitled "The Right to Privacy" published by Warren and Brandeis. This article was the basis for the formation of the Data Protection Act. In the famous *Roe v. Wade* case, the Supreme Court examined the constitutionality of criminalization of abortion by law. The right to privacy was recognized and considered enough to include women's right to terminate their pregnancy due to emotional stress, mental stress and physical stress that it demands.

(C) Canada

The Privacy Act is a key element of the general Canadian legal framework for the protection of privacy. It is federal legislation that focuses on the protection of personal data of the federal government and federal public institutions. However, Canadian law protects various privacy interests in many ways. Although the word "privacy" does not appear in the Canadian Charter of Rights and Freedoms, the Charter protects certain privacy interests. For example, Section 8 of the Charter protects the privacy of individuals, territories and information through the right to be free from improper searches and government confiscation. The Criminal Code also contains a number of offenses that protect privacy interests, such as the crime against voyeurism.

IV. LANDMARK CASES

In ***Kharak Singh v State of Uttar Pradesh***, court stated that the Indian Constitution does not expressly state right to privacy as fundamental right, but the same right is an essential ingredient of personal liberty.

Later in **Govind v State of Madhya Pradesh**, it was incorporated that right to life and personal liberty through humanitarian approach of the Article 21 of the Indian Constitution recognised the fact that Article 21, Right to Life is not “merely the right to the continuance of a person’s animal existence”, but a right to the protection of each of his limbs.

Maneka Gandhi v Union of India 1978⁴ stands a bulwark of Right of Personal Liberty granted by Article 21 of the Indian Constitution. It altered the landscape of the Constitution. The bench constructed that Article 21 should be seen more widely. This later started as the wide interpretation of Right to Life and Right to Privacy.

In **Naz Foundation Case (2009)**,⁵ Hon'ble Delhi High Court gave the landmark judgement on homosexuality. Here, along with section 377 of IPC, Article 14, Article 19 and Article 21, the validity of right to privacy held to protect a “private space in which a man may become and remain himself.

In **R. Rajagopal v. State of Tamil Nadu, 1994⁶** the Hon'ble Supreme Court expressly held that ‘right to privacy’ or right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has full rights to protect the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.

While the centre argued that privacy cannot be made a fundamental right, the petitioner contended that when a citizen gives his personal data to the government and in turn government shares this with the corporate organisations. It is a breach of privacy. Government’s Adhaar scheme was the trigger point. The petitioner argued that Adhaar enrolment was the means to a totalitarian state and open limitation for personal data leakage.

In the **K. Puttaswamy (ret.) and Anr. UOI 2017⁷**, the Hon'ble Supreme Court of India upheld the Adhaar Law and strike down the unconstitutional part of it. The court ruled that citizens' "right to privacy" must be protected as an integral part of the right to life and personal freedom under Article 21 of the Constitution. The court overruled previous judgments of Kharak Singh v. UP and MP Sharma v. Satish Chandra, which found that the right to privacy is not that privacy comes with the right of individuals to exercise control over their personality. The judgment clearly states that “to live is to live with dignity” and that privacy is not an elitist construction. The ruling states that privacy should be an integral part of Part III of the Indian Constitution, which sets out the fundamental rights of the citizen. The Hon'ble Supreme Court

⁴ Maneka Gandhi v UOI 1978 AIR 597, 1978 SCR(2) 621 (India).

⁵ Naz Foundation vs Government of NCT of Delhi, 160 Delhi Law Times 277

⁶ R. Rajagopal v. State of Tamil Nadu 1995 AIR 264, 1994 SCC (6) 632 (India).

⁷ Justice K.S. Puttaswamy v UOI 2017 10 SCC 1 (India).

stated that, at all costs, the state must carefully weigh individual privacy and legitimate ends as fundamental rights cannot be granted or abolished by law and all laws and actions must conform to the Constitution. The court also found that the right to privacy is not an absolute right and any invasion of privacy by the state or not by the state actor must pass the triple-test i.e., Legitimate Aim, Proportionality and Legality.

Justice D. Chandrachud, in delivering the landmark judgment on behalf of Chief Justice J. Khehar, Justice R. Agarwal, himself, and Justice S. Abdul Nazeer, stated that privacy is inherent in life, liberty, and dignity, hence is an inalienable natural right. Justices Chelameswar, Bobde, Sapre, and Kaul have also agreed with Justice Chandrachud. The verdict is: “Life and personal freedom are inalienable rights. These are rights that are inextricably linked to a dignified human existence. The individual, equality of people, and the pursuit of freedom are the cornerstones of the Indian constitution ... Life and personal freedom is not creations of the constitution. These rights are recognized by the Constitution as inherent in each individual as an essential and inseparable part of the human element that inhabits them.

V. CONCLUSION

Data protection and privacy are closely linked. Nowadays, various, sensitive information is online and obstruction of any part of it would cause great chaos in a person's life. In the course of technological progress, various countries have taken serious measures and they have enacted laws to protect personal data such as DPA (Data Protection Act) 1998, UK, ECPA (Electronic Communications Data Protection Act) 1986, USA, etc. The growth of the right to privacy has been widely recognized by landmark decisions in India, and currently our data protection is regulated, but not too comprehensive, in the Information Technology Act 2000. The government introduced the Data Protection Bill, but it will not see the light of day in 2021. We urgently need exclusive laws that protect our personal data in this environment and in times of dynamic technology.
