



Right to privacy in Indian perspective

Dr. PK Rana

Reader, M.S.Law College, Cuttack, Odisha, India

Abstract

The right to privacy stands recognized in Indian Constitution. Article 21 as such protects the right to privacy as a necessary ingredient of the right to life and personal liberty. The right to privacy is also recognized under the law of torts, criminal laws as well as property laws as an essential element involved therein. However in the near future the Indian Judiciary and legislatures will be able to carve out the separate zone of privacy and will keep a proper balance between the competing interest of individuals and social interest.

Keywords: Individual Privacy, Personal Liberty, Freedom of expression

1. Introduction

The terms privacy and right to privacy can't be easily conceptualized. It has been taken in different ways in different situations. Tom Gaiety said ^[1] 'right to privacy is bound to include body' inviolability and integrity and intimacy of personal identity including marital privacy. Jude Cooley ^[2] explained the law of privacy and has asserted that privacy is synonymous to 'the right to be let alone'. Edward Shils ^[3] has also explained privacy is 'zero relationship between two or more persons in the sense that there is no interaction or communication between them, if they so choose'. Warren and Brandeis ^[4] has very eloquently explained that 'once a civilization has made distinction between the "outer" and "inner" man, between the life of the soul and the life of the body.... The idea of a private sphere in which man may become and remain himself'. In modern society privacy has been recognized both in the eyes of law and in common parlance. But it varies in different legal systems as they emphasize different aspects. Privacy is a neutral relationship between persons or groups or between groups and persons. Privacy is a value, a cultural state or condition directed towards individual on collective self-realization varying from society to society.

2. Constitutional Interpretation

The Indian Constitution provides a right to freedom of speech and expression ^[5], which implies that the person is free to express his will about certain things ^[6]. A person has the freedom of life and personal liberty, which can be taken only by procedure established by law ^[7]. These provisions improvably provide right to privacy. The privacy of a person is further secured from unreasonable arrests ^[8], the person is entitled to express his wishes regarding professing, propagating any religion ^[9]. The privacy of property is also secured unless the law so authorizes i.e. a person cannot be deprived of his property unlawfully ^[10]. The personal liberty in Art.21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty ^[11], secrecy ^[12], autonomy ^[13], human dignity ^[14], human right ^[15], self-evaluation ^[16], limited and protected communication ^[17], limiting exposure ^[18] of man and some of them have been raised to the status of fundamental

right, viz, life and personal liberty, right to move freely, freedom of speech and expression, individual and societal right and given protection under Art.19. Article 21 as such protects the right to privacy as a necessary ingredient of the right to life and personal liberty. The Supreme Court of India has interpreted the concept of right to life to mean right to dignified life in Kharak Singh Case ^[19], especially the minority judgment of Justice Subba Rao. In Govind v. State of M.P. ^[20], Mathew J., delivering the majority judgment asserted that the right to privacy was itself a fundamental right, but subject to some restrictions on the basis of compelling public interest. Privacy as such interpreted by our Apex Court in its various judgments means different things to different people. Privacy is a desire to be left alone, the desire to be paid for one's data and ability to act freely. Privacy relates ability to control the dissemination and use of one's personal information.

3. Phone Tapping and Privacy

Right to privacy is affected by new technologies. Right to privacy relating to a person's correspondence has become a debating issue due to the technological developments. There are cases of intercepting mails and telephonic communication of political opponents as well as of job seekers. Section 5(2) the Indian Post Office Act and Section 26(1) the Indian Telegraph Act empower the Central and State Governments to intercept telegraphic and postal communications of the occurrence of public emergency in the interest of public safety. In R.M. Malkani v. State of Maharashtra ^[21], the Supreme Court observed that the Court will not tolerate safeguards for the protection of the citizen to be imperiled by permitting the police to proceed by unlawful or irregular methods. Telephone tapping is an invasion of right to privacy and freedom of speech and expression and also Government cannot impose prior restraint on publication of defamatory materials against its officials and if it does so, it would be violative of Art. 21 and Art. 19(1)(a) of the Constitution. Justice Kuldip Singh opined in People's Union for Civil Liberties v. Union of India ^[22] that right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as right to privacy. In this case Supreme Court had laid down certain procedural guidelines to conduct legal

interceptions, and also provided for a high level review committee to investigate the relevance for such interceptions. But such caution has been thrown to winds in recent directives from Government bodies as is evident from phone tapping incidents that have come to light. In *State of Maharashtra v. Bharat Shanti Lal Shah* ^[23], the Supreme Court said that interception of conversation though constitutes an invasion of an individual's right to privacy but right can be curtailed in accordance with procedure validly established by law. Court has to see that the procedure itself must be fair, just and reasonable and not arbitrary, fanciful or oppressive. An authority cannot be given an untrammelled power to infringe the right to privacy of any person ^[24]. In *Neera Fadia tapes case* ^[25] to use phone tapping as a method of investigation in a tax case seems to be an act of absurd overreaction. For so many journalists, politicians and industrialists to have their phone tapped without a rigorous process of oversight represents a gross violation of basic democratic principles.

4. Gender Priority on Privacy

The right to privacy implies the right not merely to prevent the incorrect portrayal of private life but the right to prevent it being depicted at all. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes ^[26]. The modesty and self-respect may perhaps preclude the disclosure of such personal problems like whether her menstrual period is regular or painless etc., ^[27]. The basic right of female is to be treated with decency and proper dignity. But if a person does not like marriage and lives with another the society should be able to permit it. Sense of dignity is a trait not belonging to society ladies only, but also to prostitutes ^[28]. Rape is not only a crime against the person of a woman, it is crime against the entire society ^[29]. As a victim of sex crime she would now blame anyone but the culprit. Rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely assault – it is often destructive of the whole personality of the victim ^[30]. Right to privacy is an essential requisite of human personality embracing within it the high sense of morality, dignity, decency and value orientation.

The question of relation between the right to privacy and conjugal rights arose for the first time in *Sareetha v. Venka Subbaiah* ^[31]. Where in the A.P. High Court held the provisions of S.9 of the Hindu Marriage Act, 1955 i.e. the restitution of conjugal rights, as unconstitutional as it is violative of Art.21 of the Constitution of India vis-à-vis right to privacy. But in *Harvinder Kaur v. Harmander Singh* ^[32], the Delhi High Court held that though sexual relation constitute most important attribute of the concept of marriage but they do not constitute its whole content. Sexual intercourse is one of the elements but goes to make up the marriage but it is not *sumsum bonum*. In *Saroj Rani v. Sudarshan Kumar Chandha* ^[33], the Supreme Court agreed with Delhi High Court and thereby upheld the constitutionality of Section 9. This right is within the right to marry and it does not violate the right to privacy of wife. It has been generally felt that the Supreme Court in this case lost an ideal opportunity for changing law in this regard in accordance with the changing spirit of the times. The right of the husband or the right of wife to the society of the other is not a creation of statute.

5. Freedom of Press and Privacy

The freedom of press has not been expressly mentioned in Art. 19 of the Constitution of India but has been interpreted that it is implied under it. The Constitution exhaustively enumerates the permissible grounds of restriction on the freedom of expression in Art. 19(2), it would be quite difficult for Courts to add privacy as one more ground for imposing reasonable restriction. So, a female who is the victim of sexual assault, kidnapping, abduction or a like offence should not further be subject to the indignity of her name and the incident being published in press media ^[34]. The freedom of speech and expression as envisaged in Art.19(1)(a) of the Constitution also clothes a police officer to seize the infringing copies of the book, document or newspaper and to search places where they are reasonably suspected to be found, impinging upon the right to privacy ^[35]. Newspaper or a journalist or anybody has the duty to assist the State in detection of the crime and bringing criminal to justice. Withholding such information cannot be traced to right to privacy in itself and is not an absolute right ^[36]. Regarding protection of privacy vis-à-vis encroachment by press in the judicial approach is not very clear. There is no specific legislation in India which directly protects right to privacy against excessive publicity by press.

Electronics media include television channels, radio, internet broadcast, and all electronic journalism which are used by today's media. Main purpose of media is to bridge the gap between Government policy and public grievances. In *Destruction of Public and Private Properties v. State of A.P.* ^[37] the Supreme Court said that media should be based upon the principles of impartiality and objectivity in reporting, ensuring neutrality; responsible reporting of sensitive issues, especially crime, violence, agitations and protests; sensitivity in reporting woman and children and matters relating to national security; and respect for privacy. Casting couch is very popular tool used by media now a days which directly hammer the individual privacy. There is no guideline to handle this issue. Privacy frame will provide solution to solve this problem.

6. Health and Privacy

Health sector is the important concern in privacy. Your health information includes any information collected about your health or disability, and any information collected in relation to a health service you have received. Many people consider their health information to be highly sensitive. The right to life is so important that it supersedes right to privacy. Under medical ethics, a doctor is required not to disclose the secret information about the patient as the disclosure will adversely affect or put in danger the life of other people ^[38]. In *Mr. 'X' v. Hospital 'Z'* ^[39] it was held that doctor patient relationship though basically commercial, is professionally a matter of confidence and therefore, doctors are morally and ethically bound to maintain confidentiality. In such a situation public disclosure of even true private facts may sometimes lead to the clash of one person's right to be let alone with another person's right to be informed. In another case Court said that ^[40] the hospital or doctor was open to be concerned to reveal such information to persons relating to the girl whom he intended to marry and she had a right to know about the HIV-positive status of the appellant. The Court also held that appellant's right was not affected in any manner in revealing his HIV – positive status of the appellant. The Court also held that appellant's right was not affected in any manner in revealing

his HIV-positive status to the relatives of his fiancée. In matrimonial cases the petitioner would always insist on medical examination. If the respondent avoids such medical examination on the ground that it violates his/her right to privacy or for that matter right to personal liberty as enshrined under Art.21. Narco-analysis, lie-detection and BEAP tests in an involuntary manner violate prescribed boundaries of privacy. A medical examination cannot justify the dilution of constitutional rights such as right to privacy ^[41]. If DNA test is eminently needed to reach the truth, the Court must exercise the dissector of medical examination of a person ^[42]. Though the right to personal liberty has been read into Art. 21, it cannot be treated as an absolute right. To enable the Court to arrive at a just conclusion a person could be subjected to test even though it would invade his right to privacy.

7. Conclusion

The right to privacy stands recognized in Indian Constitution. The right to privacy is also recognized under the law of torts, criminal laws as well as property laws as an essential element involved therein. The right to privacy assures and reassures a person's individuality. It is all about oneself, his feelings and emotion. Infringement of the right hurts the inner self, destroys one's confidence. The right to privacy celebrated as part of right to life and liberty should now be granted the status of independent constitutional right. Privacy is in danger, but some important progress has been made. Technology, policy, and education must work together to face important challenges ahead.

But let us hope that in the near future the Indian Judiciary and legislatures will be able to carve out the separate zone of privacy and will keep a proper balance between the competing interest of individuals and social interest.

8. Reference

1. Gaiety Gom. Right to Privacy, 12 Harvard Civil Rights Civil Liberties Law Review, P.233.
2. Cooley, Thomas M. A Treatise on the Law of Torts, 1888, p.29 (2nd ed.).
3. Shils Edward, Privacy. Its Constitution and Vicissitudes, 31 Law & Contempt Problems, 1966, p.281.
4. Samuel Warren, Louis D Brandeis. The Right to Privacy. Harvard Law Review, 1890, P.193.
5. Article 19(1)(a) of the Constitution of India.
6. Article 19(2) of the Constitution of India.
7. Article 21 of the Constitution of India.
8. Article 22 of the Constitution of India.
9. Article 25 of the Constitution of India.
10. Article 300A of the Constitution of India.
11. Kharak Singh V. State of U.P., AIR 1963 SC 1295 & Govind v. State of M.P., AIR 1975 SC 1378.
12. Allgeyer v. Louisiana. 165 US 578 (1897).
13. Louis Henkin; Privacy and Autonomy, 74 Columbia Law Review, 1974, p.1410.
14. Olmstead v. U.S., 277 US 438, 478(1928) & Maneka Gandhi v. Union of India, AIR 1978 SC 597.
15. Article 12 of the Universal Declaration of Human Rights, 1948; & Article of the 17 International Covenant of Civil and Political Rights, 1966.
16. Westin, Alan F. Science, Privacy and Freedom, 66 Columbia Law Review, 1966, 1003.
17. Ibid at p.1027.
18. Ibid at p.1040.
19. Supra Note 11
20. Supra Note 11.
21. AIR 1973 SC 157.
22. AIR 1997 SC 568.
23. (2008) 13 SCC 5.
24. Directorate of Revenue v. Mohd. Nisar Holia, (2008) I SCC (Cri) 415.
25. The times of India, Allahabad Times, 2010.
26. State of Maharashtra v. Madhuker Narayan Markikar, AIR 1991 SC 207.
27. Neera Mathur v. LIC of India, AIR 1992 SC 392.
28. State of Punjab v. Baldev Singh, AIR 1999 SC 2378.
29. Dinesh v. State of Rajasthan, AIR 2006 SC 1267 & State of Punjab v. Ramdev Singh. AIR 2004 SC 1290.
30. Rajinder v. State of H.P.(2009 16 SCC 69.
31. AIR 1983 AP 346.
32. AIR 1984 Delhi 66.
33. AIR 1984 SC 1562.
34. R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.
35. State of Maharashtra v. Sanghraj Damodar Rupawate (2010) 7 SCC 398.
36. People's Union for Civil Liberties (UPCL) v. Union of India, AIR 2004 SC 456.
37. AIR 2009 SC 2266.
38. Spring Meadows Hospital and other v. Hajot Ahluwalia, AIR 1998 SC 1801.
39. AIR 1999 SC 495.
40. Mr. 'X' v. Hospital 'Z'. AIR 2003 SC 664.
41. Selvi v. State of Karnataka, (2010) 7 SCC 283.
42. Bhabani Prasad Jena v. Orissa State Commission for Women (2010)8 SCC 633. Sarda v. Dharmpal, AIR 2003 SC 3450.