

RIGHT TO PRIVACY AND ISSUES RELATED IN DIFFERENT SPHERES

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INTRODUCTION

As we know in today's world, access towards every part of the world and every person in the world has become easier due to advancements in technology. People are getting acquainted with most of the things happening in society and people have even started showing interest in knowing about happenings in society. Even media is becoming so strong that it has reach towards every subject and they try to get into the subject so deeply that sometimes violates the privacy of an individual and makes it public. Whereas in some instances actions of the state are such that it infringes the right to privacy of an individual. And thirdly where the law itself can be possibly unconstitutional for reason that it violates the privacy of an individual. So basically, Privacy doesn't have its definition but it's in a way protected under constitutional which shows its vitalness. Art. 21¹ of the Constitution of India which gives the Right to Life to every individual covers the aspect of the Right to life with dignity. This Right to Life with dignity covers the aspect of Privacy. So we have to understand that if privacy is invaded then it means the dignity of the individual is infringed as apparently violates Art. 21 of the Constitution of India. So here in this paper, I have objected to highlight as mentioned above legal matters and instances under different spheres of the Law as-

1) *Firstly*, acknowledgment of Right to Privacy under Constitution of India.

2) *Secondly*, Different spheres under which Privacy is seen as an issue-

1. Privacy at Public Places.
2. Privacy and Press (Media).
3. Right to privacy in Information Technology.
4. Privacy and Evidence Law.

(So, though the here there are different spheres are covered under the broad ambit of 'Privacy in Public')

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¹ The Constitution of India, 1949 art. 21.

² The Constitution of India, 1949 Available at: <https://indiankanoon.org/doc/237570/> (Last Visited on March 26, 2021).

- 3) *Thirdly*, International law perspective on privacy.
- 4) *Fourthly*, Observation, Conclusion, and Suggestions.
- 5) *Fifthly*, Bibliography.

DIFFERENT SPHERES TO OBSERVE THE ISSUE OF PRIVACY

1) Emergence of Right to Privacy under Indian Constitution

The right to privacy emerged in Indian Constitution through a landmark judgment of *KS Puttuswamy vs Union of India*³. Here I will briefly introduce the history behind the Right to Privacy in the context of the judicial opinions over a particular issue. The present case was dealt with by the nine-judge bench of the Supreme Court. The issue of the right to privacy, in this case, was urged while challenging India's national identity project – Aadhaar, and at the same time, the Advocate General of India responded that the Indian Constitution does not constitute the Right to Privacy. The argument was based on two precedents of *MP Sharma v. Satish Chandra*⁴ and *Kharak Singh vs the State of UP*⁵. *MP Sharma's* case dealt with the issue of self-incrimination whereas, in the case of *Kharak Singh*, the court acknowledged that intrusion into the personal home of anyone would violate its privacy but at the same time denied to acknowledge that the Indian Constitution envisages the Right to Privacy. So, after these cases of Supreme Court bench decisions below courts followed these precedents and created complexity as not acknowledging privacy of the individual as Fundamental Right. Supreme Court in the present case overruled and contradicted various cases covering various spheres where the court denied to acknowledge the Right to Privacy. Specifically, the court overruled both the above-mentioned cases as well as the *ADM Jabalpur case*⁶ and questioned the ruling of the *NAZ foundation case*⁷.

Court Observation in KS Puttuswamy case-

1. *Right to Privacy need not be specifically and separately envisaged under the Indian Constitution as it comes under the extended meaning of Art. 14, 19, and 21 of the Indian Constitution.*

³ 1998 AIR 264

⁴ 1954 AIR 300, 1954 SCR 1077

⁵ 1963 AIR 1295, 1964 SCR (1) 332

⁶ *Additional District Magistrate vs S.S. Shukla Etc.*, 1976 AIR 1207, 1976 SCR 172.

⁷ *Naz Foundation vs Government of Nct of Delhi*, WP(C) No.7455/2001.

2. *The right to privacy is a Fundamental, Inalienable, Inherent right under the Indian Constitution.*
3. *The right to privacy is extended to all spheres of life of an individual covering his/her state of things.*
4. *The court at the same time even held that this right is no absolute right and subject to certain restrictions and have to pass three tests such as- there should be a law allowing encroachment on the privacy of an individual, this law passes the test of reasonability that protects individual from the arbitrary action of the state, and finally, procedure and method adopted by the state under the law should be in pursuance to fulfill the object of the law.*
5. *The court further made observations and comments on specific spheres of life and protecting individual choices under those spheres.⁸ (which in detail are covered hereinafter).*

2) A) Right to privacy in Information Technology-

In today's world by advancements in online platforms such as various social media platforms gather personal information of individual and there is scope for violation of individual's right to privacy by getting access to this information without will or permission of the individual. In India, the Information Technology Act, 2000⁹ (IT Act) governs in general rules and regulations for technology related issues on the internet. Section 72¹⁰ of the IT Act plays a vital role in protecting the privacy of the individual. This act put restriction on the person in whose authority the information gathered and states that if without consent of the individual if the person in authority does any act through which privacy of an individual may get violated. This section tries to protect information on platforms as to any electronic record, book, register, correspondence, information, document, or other material. Another provision under the IT Act which protects tries to protect the dignity of an individual and in a way, privacy is enshrined under section 66 E of the IT Act as law for Cyber Voyeurism which means by any act of voyeurism in the online platform which is results in affecting dignity and

⁸ Available at: <https://www.mondaq.com/india/privacy-protection/625192/supreme-court-declares-right-to-privacy-a-fundamental-right> (Last Visited on March 26, 2021).

⁹ Available at: <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf> (Last Visited on March 27 2021).

¹⁰ Information Technology Act, 2000 (Act 21 of 2000), s. 72.

in subsequent privacy of an individual gets punished. So here it can be seen the expended meaning of Privacy.¹¹

So here it can be seen that in the context of the IT Act, it is regulating through rules and regulations to protect individual privacy. Here is today's world, most of the work and tasks are done through the internet and a person has to make available his/her information on the internet. So, IT Act and privacy rules of IT Act take care that this information must be in control of the individual as its individual's liberty to whom and what extent information should be made available, without permission and consent of the individual if such information can be accessed then its violation of an individual. It puts an obligation on the authority who collects the information that they do not make information available to any other without consent and there should be transparency that whom this information is made available and to what extent. And about the KS Puttuswamy case, if any agency such as WhatsApp/ Facebook¹² wants to introduce a new policy regarding data protection or which is related to data and privacy of the individual then it has to pass the test of reasonability.

2) B) Privacy at Public Places

As defined earlier privacy is seen from different perspectives and in different spheres. One of them is privacy in public places. The issue here is as to whether firstly privacy needs to be protected in public places? The answer to this question is positive as every individual has the right to live life with dignity which is protected under Art. 21 of the Indian Constitution and privacy plays important role in protecting the dignity of an individual. The person may lose his dignity in case the privacy is not protected in an ay public place as it degrades the reputation of the person n public at large which the individual may not seeks to do. The instances where an individual may lose their privacy in public places can be seen from the instances where the state has surveillance over activities of an individual in public places and in case individuals don't want to make actions under state surveillance. It was observed that states have the defense of security reasons and in the public interest. Further discussing particular views of the court and instances where this issue arises.¹³

¹¹Available at: <https://www.mondaq.com/india/data-protection/655034/data-protection-laws-in-india--everything-you-must-know> (Last Visited on March 27 2021).

¹²Available at: <https://indianexpress.com/article/explained/how-private-is-whatsapp-7143928/> (Last Visited on March 27 2021).

¹³ *Id.* at 10.

As discussed above in Puttuswamy's judgment SC discussed privacy in public places, but here the court was taking into consideration and reference of couples at public places, but in this reference court neither made any final order not mentioned as to consider privacy at public places. But Justice DY Chandrachud commented that it is not restricted that privacy is limited only in a private place, as well as it does not get surrendered merely because the individual is in a public place. No further cases came forward, as the court were to discuss the case where Delhi Police were questioned when they were using CCTV footage to identify people who participated in the riot and were to be questioned and arrested.¹⁴ Does the issue arise whether CCTV surveillance by the state at public places violates the privacy of the individual? The court answered this question in a balanced form and observed that CCTV surveillance at public places is used for security and public interest. So even in the Puttuswamy case court thought that though privacy is considered a Fundamental Right under Art. 21 but at the same time, it's not an absolute right and imposed with reasonable restriction. Here particularly court observed that collecting CCTV footage and using it for security and in public interest won't violate privacy but if it is used beyond these purposes then it violates the right to privacy of the individual.¹⁵ It can be even instances where it's already written that a particular area is under surveillance won't act as a blanket restriction on privacy but should fulfill the reasonability test.¹⁶

2) C) Privacy and Press (Media)-

In India, Fundamental Rights are considered of utmost importance for the life of an individual with dignity. A person can approach SC in its original jurisdiction for this cause. So, in court defenses can be given of two types firstly if action is of reasonable restriction and secondly whether action is protected under other fundamental rights and the complex situation may arise. The reasonable restriction is itself mentioned in the constitution. And the second issue arises in cases of privacy and actions of the press. As if parties approach court against media for violation of privacy for the content shown by media (both print and visual). Here in these cases, the media takes defense that it acted in exercising the fundamental right of media protected under 19(1) an of the Indian Constitution. As under Art. 19, media have

¹⁴ Available at: <https://www.mondaq.com/privacy-protection/894268/cctv-and-invasion-to-privacy-in-the-gcc> (Last Visited on March 27 2021).

¹⁵ Available at: <https://www.indialegalive.com/special/privacy-in-public-space/> (Last Visited on March 27 2021).

¹⁶ Available at <https://law.nirmauni.ac.in/data-privacy-protection-in-india-technology-vis-a-vis-law/#:~:text=Section%2043A%20of%20the%20Information,procedures%20relating%20to%20such%20data> (Last Visited on March 27 2021).

the right of free speech and expression as well as media particularly have freedom of the press. Now in this complex situation where one of the parties has approached the court for violation of the fundamental right and another party is giving a defense of another fundamental right. Now here main issue raises whether media is even entitled to the personal information of the individual which may violate privacy? to answer this question referring to the landmark case of *State of Uttar Pradesh v Raj Narain*¹⁷ where the court thought that though media has right to freedom of speech and expression this does not mean that media have right to every information but only information where matter is related to public concern. In the case where Ratan Tata filed a before SC for violation of privacy when the media broadcasted the personal conversation with Nira Radia. Here when the same information was used by the Directorate-General of Income Tax to record the private conversations for investigations was not covered under the ambit of the privacy cases as it comes within reasonable restriction but the issue was only when media used this information. As further developments were seen in this area as telephone tapping cases were considered as infringement of privacy of an individual and the liberty of the individual. As article 21 protects the liberty of every individual except the procedure established by law, in that way everyone has the right to secure liberty from phone tapping except in cases where the state is exercising this right according to principles of law. Ex- For security reasons, Public welfare.

Other instances where freedom of the press in question was seen where media publishes or broadcasts a life story/ autobiography on the person when the same person is in question for some acts and when his story and personal life is shared by media then Public form's opinion about such person which may lead to more problems to a person. Ex- persons alleged in crime/ scams. So more importantly rather than these problems a person faces another main issue is that the privacy of that person gets infringed as his personal life gets public without the consent of the person. In the case of *R. Rajgopal vs State of Tamil Nadu*¹⁸ where a similar type of facts was discussed as media made autobiography on accused of six murders and then he approached the court for violation of the right to privacy and the court held that- the life of an individual which includes several aspects such as marriage, procreation, children, relationships, education as in anything which relates to his life and journey of life. But in cases of Media even one more perspective arises that can we file a case against a juristic

¹⁷ 1975 AIR 865, 1975 SCR (3) 333

¹⁸ 1995 AIR 264, 1994 SCC (6) 632

person, but is an issue of jurisdiction but from point of view of privacy Press and Media don't have absolute freedom.¹⁹

2) D) Privacy and Rules of Evidence –

we know that evidence plays an important role in deciding the dispute irrespective of whether Civil or Criminal. But under Evidence law, not all types of evidence are allowed as it has to pass the test of credibility and competency. The privacy must yield the right to a fair trial²⁰, so here unless the statute itself mentions the competency of evidence based on the ground that it infringes privacy court cannot avoid such evidence because privacy is a private right whereas a fair trial is affecting society and public at large. So as mentioned above “unless statute mentions” which means if statute mentions particular evidence to be incompetent to be made in court for reason being violative of privacy then only parties are protected. So, by even judicial observations and procedures continued in the trial court, it can be seen that courts make evidence admissible though it is taken illegally conditions are that it should be relevant to the issue in fact and should not cause harassment to the accused. The reason behind these type of agendas by the court is that though Right to Privacy is a Fundamental Right under Constitution of India but still as we know that no right is absolute and have to carry some reasonable restriction. In the sphere of evidence law, the reasonable restriction carried over the Right to Privacy is that there is a need to be a balance between Public welfare and Privacy.²¹ A fair trial is important to maintain Public Welfare.²²

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3) International Law Perspective -

Nowadays even if Supreme Court is dealing with any issue constitutional issue, we take into consideration international conventions and laws in other countries. So here referring to the international perspective on privacy laws. In the international sphere Right to Privacy is covered under mainly two conventions like Universal Declaration on Human Rights (UDHR)²³ and International Covenant on Civil and Political Rights (ICCPR)²⁴. The

¹⁹ Available at: <https://lawshelf.com/videocoursesmoduleview/freedom-of-the-press-and-the-right-to-privacy-module-5-of-5/> (Last Visited on March 27 2021).

²⁰ *Deepti Kapur v. Kunal Jhulka*, [CM(M) 40/2019 and CM APPL.No.1226/2019]

²¹ *Regina vs. Maqsood Ali*, [47 Crim App R 319 1962]

²² Available at: [https://www.lexology.com/library/detail.aspx?g=43191c48-aabb-451c-99ec46d3dff6e99d#:~:text=%2DA%20Family%20Court%20may%20receive,1872%20\(1%20of%201872\)](https://www.lexology.com/library/detail.aspx?g=43191c48-aabb-451c-99ec46d3dff6e99d#:~:text=%2DA%20Family%20Court%20may%20receive,1872%20(1%20of%201872)) (Last Visited on March 27 2021).

²³ Universal Declaration on Human Rights, Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last Visited on March 27 2021).

protection under Art. 12 and Art. 17 of the UDHR and ICCP contains a similar line of reasoning as Art. 21 of the Indian Constitution as it more deals with the dignity of the human being as states that no one should attack over honor and reputation of others, further it also states that no one can arbitrarily interfere into the personal matter of the person which comprise of aspects like- family, home or correspondence, etc. in another aspect ambit of Art. 21 of Indian Constitution is similar that even these two articles cover aspect that lawful invasion of anyone's privacy will not amount to infringement of Right to Privacy. These conventions are significant because India has signed these conventions. So here noteworthy point is that the laws of Privacy covered under the Indian constitution are the same in nature, objective, and scope of the International Conventions signed by India.²⁵

OBSERVATIONS, CONCLUSION, AND SUGGESTIONS

So as mentioned above though here I have discussed different spheres but they all are under the ambit of Privacy in spheres of Public. Other than this about KS Puttuswamy's judgment and other judicial developments it is observed that the issue of Privacy even exists in cases like imposition of Emergency, in the context of sexual identities, in the health of the individual, within the personal laws of any community. I covered these aspects so that legal analysis of Privacy could be understood by observing the role and position of Privacy in different spheres. The *Observation* by legal analysis is as following-

Firstly, we should follow the general rule regarding the Fundamental Rights that no right is absolute but must contain some reasonable restriction. So here in the case of Right to Privacy, from the above discussion, the reasonable restriction could be drawn as actions done in Public welfare, security of the state to maintain the sovereignty and integrity of India, and done in good faith for purpose of Public administration. Other than this another main restriction that could be drawn would be that if the law expressly mentions or if action done is in pursuance to law then such instances may not be covered under cases of infringement of Right to Privacy. But to rebut the restrictions or defense for Right to Privacy could be understood from the perspective that at the same time we should understand that Right to Privacy or any other Fundamental Right cannot be construed in water-tight compartments²⁶

²⁴ International Covenant on Civil and Political Rights, Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (Last Visited on March 27 2021).

²⁵ Available: <https://privacy.sflc.in/universal/#::~text=Article%2012%20of%20the%20Universal,against%20such%20interference%20or%20attacks>. (Last Visited on March 27 2021).

²⁶ *AK Gopalan vs State vs Madras*, [1950 AIR 27, 1950 SCR 88]

but should give humanistic perspective and have seen that life of the person under Art. 21 is not merely animal existence but meaningful and with the essence of dignity.²⁷ So *Concluding* that if we have to understand what and how the scope of privacy will be decided in the different circumstances then we can say that privacy is a personal right and if it conflicts with the public moral and public welfare at large then privacy will be compromised. Here we can see privacy has given a degrading position. In my opinion, this position of privacy is not due to personal rights but because most of the times losses suffered by the parties in infringement of the privacy cases are neither financial physical but emotional or mental loss. But in today's world, we need more concern about the issues regarding the Right to Privacy because of dignity and liberty of an individual play an overall important role in life.²⁸ So here I thought there could be some *Suggestions* to make better clarity and transparency in privacy-related laws in India. Firstly, there is a need to have separate privacy laws based on a specific statute which will decide the nature, scope, and extent of the laws,²⁹ secondly government should ask social media platforms and other apps to make available their privacy policy beforehand so that individual using their service would be aware of the consequences. Thirdly as a state have some wide powers to invade privacy then there must an authority to be constituted to review and to put check on actions of the state. So hereby ending the discussion we can say that though privacy is not embodied in any law still we have to read it within the scope of the law- as we should concern ourselves to the *Spirit of the Law and not the Letter of the Law*.

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²⁷ *Maneka Gandhi vs Union of India*, [1978 AIR 597, 1978 SCR (2) 621]

²⁸ Available at: <https://blog.ipleaders.in/know-the-right-to-privacy-in-india-its-sanctity-in-india/> (Last Visited on March 27 2021).

²⁹ Available at: <http://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html> (Last Visited on March 27 2021).