RIGHT TO PRIVACY

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INTRODUCTION

Right to privacy in lay mans language can be understood as an individual right to safe guard certain personal data relating to own self from its use in the public.

Right to privacy is a result of detailed interpretation of Art. 21 of the Indian Constitution as the apex court of India have constructed it in such a manner that it is a part of Art21 which states protection of life and personal liberty. Few time back this right has been recognized as a Fundamental right by the the Hon'bl Supreme Court in the case of K.S. Putthaswamy V. Union of India. Jjustice Khanna has stated that human existence is not mere animal existence, every person deserves to live a dignified life and term privacy is the utmost significant factor regarding enjoyment of life. Although this is right had covered a long journey to attain the status of a fundamental right. Abundance no of cases are pending before the judiciary which are praying to accept while some to deny such right.

WHAT IS RIGHT TO PRIVACY?

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

The term LIFE mentioned in the article 21 of the Indian Constitution has been liberally interpreted that the term Life means all those aspects of life which make a man's life Meaningful , complete and worth living. The Hon'bl Supreme Court vide its judgment in Ram Jethmalani V. Union of India where in the court said that Right to privacy is an integral part of the right to life. It is necessary that human beings must be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner.[4] This strategy followed and adopted by the Apex court had a clear intention to expand the area of Art.21 along with international charters on human rights

[1] Student, School of Law, UPES
[2] Student, School of Law, UPES
[3] Black's Law Dictionary 8th ed. (West Group, 2004), Bryan A. Garner
[4] http://www.legalserviceindia.com/legal/article-276-evolution-of-right-to-privacy-in-india.html

The emergence of Right to Privacy can be seen from the cases of :

Kharak singh v. State of Uttar Pradesh[5] where in the apex court has stated that Regulation 236 of UP Police regulation act was unconstitutional as it clashed with article 21 of the constitution.[6] Many cases saw the development of this right as:

In Govind v. State of Madhya Pradesh the court held that right to privacy is born out of art. 19(a), (d) and 21 of the Indian constitution moreover by endless debates inside the court rooms the judiciary is of the view that This particular right deals with persons (human beings) not Places.[7]

In Smt. Maneka Gandhi v. Union of India & Anr.5,(1978) Under this case the 7 judges bench delivered that 'personal liberty' in article 21 covers a variety of rights & some have status of fundamental rights and given additional protection u/a 19. Triple Test for any law interfering with personal liberty:
(1) It must prescribe a procedure
(2) the procedure must withstand the test of one or more of the fundamental rights conferred u/a 19 which may be applicable in a given situation and
(3) It must withstand test of Article 14. The law and procedure authorizing interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.[8]

In NAZ Foundation case (2009) Delhi high court had gave its landmark judgment on consensual homosexuality. This cases saw a detailed examination of S.377 IPC and Art. 14, 19 & 21. The Right to privacy in existence is suppose to protect a "private space in which man may become and remain himself."

NEW DIMENSIONS OF PRIVACY

On 24 August 2017, the Supreme Court of India in a historic judgement declared the right to privacy as a fundamental right protected under the

[5] M.P. Sharma v. Satish Chandra, District Magistrate, Delhi, (1954) SCR 1077 (India); Kharak Singh v. State of UP, (1964) 1 SCR 332 (India).
[6] Right to Privacy, NARENDRA REDDY . K
[7] 1975 AIR 1378, 1975 SCR (3) 946
[8] 1978 AIR 597

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Indian Constitution. In declaring that this right stems from the fundamental right to life and liberty, the Court's decision has far-reaching consequences.

A nine-judge bench of the Supreme Court in the case of ***Puttuswamy v. Union of Indi[9]a*** has declared that the right to privacy is a fundamental right protected under Part III of the Constitution of India. While primarily focused on the individual's right against the State for violations of their privacy, this landmark judgment will have repercussions across both State and non-State actors and will likely result in the enactment of a comprehensive law on privacy.

Key Findings in the Judgment

The judgment was unanimous with all nine judges concurring with the final order. However, six judges - Justice Chandrachud, Justice Nariman, Justice Chimaleshwar, Justice Kaul, Justice Sapre and Justice Bobde, wrote separate opinions covering a wide range of issues.

The key points of the judgment are summarized below:

(a) Right to Privacy - A Fundamental Right

The Supreme Court confirmed that the right to privacy is a fundamental right that does not need to be separately articulated but can be derived from Articles 14, 19 and 21 of the Constitution of India. It is a natural right that subsists as an integral part to the right to life and liberty. It is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes[10]. It protects an individual from the scrutiny of the State in their home, of their movements and over their reproductive choices, choice of partners, food habits, etc. Therefore, any action by the State that results in an infringement of the right to privacy is subject to judicial review.

(b) Not an Absolute Right - Subject to Reasonable Restrictions

The Supreme Court was at pains to clarify that the fundamental right to privacy is not absolute and will always be subject to reasonable restrictions. It held that the State can

[9] K. S. Puttaswamy v. Union of India, Writ Petition (Civil) No. 494 of 2012 (Sup. Ct. India Aug. 24, 2017).
[10] Right to Privacy ,Rajesh Cheemalakonda

impose restrictions on the right to privacy to protect legitimate State interests but it can only do so by following the three-pronged test summarized below:

i. Existence of a law that justifies an encroachment on privacy;
ii. A legitimate State aim or need that ensures that the nature or the content of this law falls within the zone of reasonableness and operates to guard against arbitrary State action; and
iii. The means adopted by the State are proportional to the objects and needs sought to be fulfilled by the law.

Consequently, all State action that could have an impact on privacy will now have to be measured against this three-fold test. This is likely to have an impact on several ongoing projects including most importantly, the Aadhaar identity project.

(c) *Other Incidental Implications*

There are several additional implications of this judgment on matters incidental to the principal issue decided by the Court:

i. By expressly recognizing an individual's right to privacy regarding his sexual choices, the judgment is likely to have an impact on the petition pending before the Supreme Court on the de-criminalization of homosexuality in India.
ii. To the extent that the judgment has stated that the State cannot interfere in the food choices of an individual it will have an impact on the various cases protesting the ban on beef imposed by certain States.
iii. The judgment has also made several observations on the complex relationship between personal privacy and big data, particularly in the context of how the judicious use of these technologies can result in the State achieving its legitimate interests with greater efficiencies.
iv. It has also recognized the impact that non-State actors can have on personal privacy particularly in the context of informational privacy on the Internet. While fundamental rights are ordinarily only enforced against actions of the State, given the broad language of the judgment and the extent to which informational privacy has been referred to in the judgment, there is concern amongst certain experts that these principles will extend to the private sector as well.

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Recognizing the complexity of all these issues, the Court highlighted the need to enact a comprehensive legislation on privacy and noted that the government has already appointed a committee under the chairmanship of retired Justice BN Srikrishna to look into these matters. Given this strong direction from the Supreme Court, it is likely that the Government of India will double down on its efforts to enact comprehensive privacy legislation.

Individual right to safe guard certain personal information

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. The rejection of the State's claim based on M.P. Sharma and Kharak Singh was only half the story. The affirmative case for why privacy is a fundamental right remained to be made. At the bar, privacy was argued to be latent within liberty, autonomy, and human dignity, apart from being foundational towards ensuring that the freedom of speech, expression, association, and religion, remained meaningful. All these arguments figure, in different ways, in each of the six opinions. Justice Chelameswar, for example, grounded his opinion in the concept of liberty. Defining "privacy" as comprising of three aspects – "repose", "sanctuary", and "intimate decision", he held that each of these aspects was central to the idea of liberty guaranteed by both Articles 21 and 19 (paragraph 36). He then took a series of examples of privacy violations (forced feeding, abortion, telephone tapping, and intimate association, to name a few), and grounded them within the broader rights to freedom of the body (Article 21) and freedom of the mind (Article 19) (paras 38 – 40). Justice Bobde founded his judgment on "two values… the innate dignity and autonomy of man" (para 12), which he located in the overarching structure of the Constitution. In addition, he held that privacy was a "necessary and unavoidable logical entailment of rights guaranteed in the text of the constitution" (para 35). In Justice Bobde's opinion, we find the important insight that to be effectively exercised, the liberties in Article 19(1) (speech, expression, association, assembly, movement) and 21 (personal liberty) require, on occasion, to be exercised in seclusion. Privacy, therefore, was "an enabler of guaranteed freedoms" (para 29) and "an inarticulate major premise in Part III of the Constitution." (para 25) Justice Nariman made an overarching argument, linking the three aspects of privacy (bodily integrity, informational privacy, and the privacy of choice) (paragraph 81) with the preamble of the Constitution, which guaranteed democracy, dignity, and fraternity (paragraph 82). It was here that the constitutional foundations of privacy could be found. The connection was drawn by him in

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this manner: "The dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorized use of such information." (para 85) In other words, individual self-development – which lay at the heart of democracy, dignity, and fraternity – was simply meaningless without a right to privacy that guaranteed, at the minimum, security of the body, security of personal information, and security of intimate choices. Very similar reasoning – based on dignity and individual self-determination – was employed by Justice Sapre, who noted that dignity imposes "an obligation on the part of the Union to respect the personality of every citizen and create the conditions in which every citizen would be left free to find himself/herself and attain self-fulfillment." (para 8) It was also employed by Justice Kaul, who brought dignity and liberty together, noting that "privacy… is nothing but a form of dignity, which itself is a subset of liberty" (para 40) and "key to the freedom of thought (para 52). These complementary strands of reasoning were brought together by Justice Chandrachud in his judgment. He grounded privacy in dignity (paras 32, 107, and 113), "inviolate personality… the core of liberty and freedom" (para 34), autonomy (paras 106 and 168), liberty (para 138), bodily and mental integrity (para 168), and across the spectrum of protected freedoms (para 169). Therefore: "The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha suffixed right of privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognized. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-

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determination." (para 169) There is something of tremendous significance here. Even as it agreed with the Petitioners that privacy was a fundamental right, the Court could have chosen to give it a narrow cast and frame The Court may have limited it to an aspect of dignity, or restricted it to a derivative right under Article 21. This would have thrown up difficult initial barriers in future cases, compelling petitioners to shoehorn their claims within the shifting and largely symbolic concept of dignity (and jurisdictions such as Canada provide salutary warnings about how easy it is to constrict rights by pegging them to dignity), or the (diluted) umbrella of Article 21. The Court, however, did the exact opposite. Starting with the basic idea that privacy encompassed the body (and bodily integrity), the mind (and informational self-determination), and intimate choices, all nine judges agreed that privacy was at the heart of individual self-determination, of dignity, autonomy and liberty, and concretely, inseparable from the meaningful exercise of guaranteed freedoms such as speech, association, movement, personal liberty, and freedom of conscience. Privacy, therefore, was both an overarching, foundational value of the Constitution and incorporated into the text of Part III's specific, enforceable rights. This, in my view, is at the heart and soul of Puttaswamy, and the primary reason why this judgment deserves to be a landmark, not only in the annals of Indian constitutional jurisprudence, but across the world. The verdict locates privacy in the grand sweep of democracy and within the core human values of autonomy, dignity, and freedom, while also placing it within the realm of the concrete, the flesh-and-blood relationship between the individual and the State. In its attention to the abstract and to the world of concepts, it does not ignore the world in which individuals struggle against coercive State power; and in its care to outline how privacy is concretely meaningful, it does not forget to include it within that constellation of ideas that fame this reality and give it meaning.[11] This is a difficult path to travel. However, all nine judges have demonstrated the intellectual courage required to travel it, and the result is a ringing endorsement of the central place of privacy in a modern, constitutional, democratic republic.

Conclusion

Right to privacy has turned out to be one of the essential elements of right to life and personal right under article 21 of the Indian constitution. This could arise out in various no of ways which can be matrimonial, political, commercial etc. it is subject to reasonable restrictions for prevention of crime, disorder or protection of health or morals or protection of rights and

[11]http://www.mondaq.com/india/x/625192/Data+Protection+Privacy/Supreme+Court+Declares+Right+To+Privacy+A+Fundamental+Right

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freedom of others. In the present World Politics right to Privacy have is becoming essential with the busy life schedule and increasing aspect of social media, we all encountered by many spy cams. and various stances of sharing our personal information to many sites and what we need is that data being shared must be protected so that we can function in a way we want to and not think of others before our actions. The upcoming generations can see the advancement in many fields of this right as the progress have already started and the Indian judiciary are witnessing a lot no of cases regarding to Privacy. Moreover this right has been embodied in the constitution to give a meaningful Life not for the purpose of attaining the goal of Public Welfare.

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