



## **PRIVACY IN SOCIAL-LEGAL AND CULTURAL MILEU**

*By Anuj Datta & Madhu Singh  
From Shambhunath Institute of Law*

### **INTRODUCTION**

#### **What do you mean by privacy?**

Regulation or statute that protects a person's right to be left alone and governs collection, storage and release of his or her financial, medical and other person information. Right to privacy is an right which an individual possess by birth. Privacy simply means the right of an individual to be left alone which is recognized by the common law.

#### **Need of Privacy**

Privacy is an inherent part of human personality and inalienable form of human being. Jurist like **Arthur Miller** have stated that privacy is difficult to define because it is ephemeral. Black's law dictionary define privacy as –'right to be let alone, right of a person to be free from unwarranted publicity and right to live without unwanted interference by the matters in which the public is not necessarily concerned. The essence of the law derives from a Right To Privacy, define broadly as the Right To Be Left Alone it usually excludes personal matters or activities which may reasonably be of public interest, like those of celebrities or participants in news worthy events.

Under the constitutional law, the right to privacy is implicit in the fundamental right

to life and liberty guaranteed by Article of the Constitution.

The Constitutional right to privacy flowing of Article 21 must, however, to be read together with the Constitutional right to publish any matter of public interest, subject to reasonable restriction.

Privacy is a fundamental human right recognized in the UN Declaration of human right, the international covenant on civil and political rights and in many other international and regional treaties. Privacy underpins human dignity.

#### **Types of Privacy**

##### **Physical Privacy**

Physical privacy could be defined as preventing "intrusions into one's physical space or solitude. Physical privacy may be a matter of cultural sensitivity, personal dignity, and/or shyness. There may also be concerns about safety, if for example one is wary of becoming the victim of crime or stalking. Civil inattention is a process whereby individuals are able to maintain their privacy within a crowd.

##### **Informational Privacy**

Information or data privacy refers to the evolving relationship between technology and the legal right to, or public expectation of privacy in the collection and sharing of data about one's self.

Various types of personal information are often associated with privacy concerns. For various reasons, individuals may object to personal information such as their religion, sexual orientation, political affiliations, or personal activities being revealed, perhaps to avoid discrimination, personal



embarrassment, or damage to their professional reputations.

### **Financial Privacy**

Financial privacy, in which information about a person's financial transactions is guarded, is important for the avoidance of fraud including identity theft. Internet Privacy Internet privacy is the ability to determine what information one reveals or withholds about oneself over the Internet, who has access to such information, and for what purposes one's information may or may not be used.

### **Medical Privacy**

Medical privacy allows a person to withhold their medical records and other information from others, perhaps because of fears that it might affect their insurance coverage or employment, or to avoid the embarrassment caused by revealing medical conditions or treatments. Medical information could also reveal other aspects of one's personal life, such as sexual preferences or proclivity. A right to sexual privacy enables individuals to acquire and use contraceptives without family, community or legal sanctions.

### **Political Privacy**

Political privacy has been a concern since voting systems emerged in ancient times. The secret ballot helps to ensure that voters cannot be coerced into voting in certain ways, since they can allocate their vote as they wish in the privacy and security of the voting booth while maintaining the anonymity of the vote.

### **Right to Privacy**

In recent years there have been attempts to clearly and precisely define a "right to

privacy." Some experts assert that in fact the right to privacy "should not be defined as a separate legal right" at all. By their reasoning, existing laws relating to privacy in general should be sufficient<sup>7</sup>. Other experts, such as Dean Prosser, have attempted, but failed, to find a "common ground" between the leading kinds of privacy cases in the court system, at least to formulate a definition<sup>8</sup>. One law school treatise from Israel, however, on the subject of "privacy in the digital environment," suggests that the "right to privacy should be seen as an independent right that deserves legal protection in itself." It has therefore proposed a working definition for a "right to privacy

Under the constitutional law, the right to privacy is implicit in the fundamental right to life and liberty guaranteed by Article 21 of the Constitution of India This has been interpreted to include the right to be let alone. The constitutional right to privacy flowing from Article 21 must, however, be read together with the constitutional right to publish any matter of public interest, subject to reasonable restrictions.

The right to privacy is our right to keep a domain around us, which includes all those things that are part of us, such as our body, home, thoughts, feelings, secrets and identity. The right to privacy gives us the ability to choose which parts in this domain can be accessed by others, and to control the extent, manner and timing of the use of those parts we choose to disclose.

According to recommendations of Venkata Chaliah Commission: It is proposed that a new article, namely, article 21-B of the



Constitution, should be inserted on the following lines: 21-B.

(1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.

After the delivery of landmark judgment known as *Maneka Gandhi v. Union of India*, the scope of Article 21 was enormously increased so that this Article could include certain rights as fundamental rights. And Right to Privacy is one of those rights which have been evolved by The Hon'ble Supreme Court of India and which is implicit in Article 21.

An attempt at defining privacy is of no use if the levels of abstraction do not translate into concrete specifics. Broadly speaking, privacy law deals with freedom of thought, control over one's body, peace and solitude in one's home, control of information regarding oneself, freedom from surveillance,<sup>11</sup> protection from unreasonable search and seizure, and protection of reputation.

"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."<sup>13</sup> However, Subba Rao, J. while partly concurring with the majority, stated: (AIR para 31) "It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but they said right is an essential ingredient of personal liberty. ... Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy.

"Privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child-rearing. This catalogue approach to the question is obviously not as instructive as it does not give an analytical picture of the distinctive characteristics of the right of privacy. Perhaps, the only suggestion that can be offered as a unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty."

However, the Court stated that the right to privacy was subject to "restrictions on the basis of compelling State interest".<sup>18</sup> Thus, the regulations were upheld since they applied to a limited class of citizens i.e. habitual criminals.

Similarly, in *Malak Singh v. State of Punjab* surveillance was held to be intrusive and an



encroachment upon the right to privacy and in *Sunil Batra v. Delhi Admn.* The Hon'ble Supreme Court considered the question of whether two individuals, sentenced to death, were entitled to privacy and human rights. The Court found that though a minimum intrusion of privacy may have been inevitable, the guards were under an obligation to ensure that human rights and privacy standards were observed.

**Search and seizure:** The Fourth Amendment of the US Constitution reads: "The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"When 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. Therefore, issue of a search warrant is normally the judicial function of the Magistrate. When such judicial function is interposed between the individual and the officer's authority for search, no circumvention thereby of the fundamental right is to be assumed.

### CONCLUSION

The cases that fall under this segment have further broadened the ambit of the reasonable restrictions which apply to the right to privacy. While the "larger public

interest" and the "security of the State" were considered to be restrictions on privacy, the right itself was interpreted in its informational context. The substantive interpretation of privacy is yet to make a formal appearance in Indian legal pronouncement.

Privacy had hardly a part to play in the decision, but the court recognized it as one of the ground on which the government could withhold information with holding such information cannot be traced to right to privacy which it self's is not an absolute right. Right to privacy is subservient to that of security of state.

Granted, it may not be against your parents. But some have questioned whether the court was right to endorse the enforcement of the Right to Privacy against non-State (private) actors. But has it done this? Probably not. The different opinions do discuss at length people's privacy rights vis-à-vis Internet companies (eg, justices Chandrachud and Kaul), and to a lesser extent, against publishers (eg, Justice Kaul). But while fundamental rights are no doubt enforceable against a State action, they can also be enforced with respect to private actions by asking the State to affirmatively act to uphold those rights. This happened in the famous *Vishaka* case of 1997 when the court noted a legislative vacuum on the subject of sexual harassment at workplace. This is also, for instance, what the petitioners seek in the pending Whatsapp case. Because they argue that the actions of Whatsapp infringe their privacy rights, they ask the State to protect their Fundamental Right to privacy by enacting a data protection law.



In the *KS Puttaswamy and others vs Union of India and others* case, the apex court seems to be reasoning on this basis. On the discussion of Hon'ble Judges Internet company profiling of users is largely in the context of the recommendation of a data protection law, which, in other words, is a recommendation that the State needs to safeguard users'.

Fundamental Right to Privacy vis-à-vis private companies. It is, therefore, likely not an endorsement that the right can be enforced against private companies. In other words, it is more a suggestion that we have a Fundamental Right to a data protection regime. Justice Kaul's have a separate discussion of publicity rights is admittedly tricky, but it may not be very difficult because:

- (1) He is alone in that view on the bench, so it is not binding law;
- (2) On a close reading, it could be understood as a discussion of the common law of Right of Privacy. The common law of the right of privacy applies to private persons.

\*\*\*\*\*

