

Limit of Right To Privacy (Curtailment in Welfare of State)

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2 INTRODUCTION OF RIGHT TO PRIVACY IN INDIA

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 Constitution³. the high purpose which the Constitution seeks to achieve by conferment of fundamental rights is not only to benefit individuals but to secure the larger interests of the community. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among many other matters, however any fundamental right under part III of the Indian Constitution is not absolute they are subject to some reasonable restrictions⁴. Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." In the landmark case of *Olga Tellis*⁵, the Hon'ble Supreme Court held that "the procedure prescribed by law must be fair, just and reasonable". In the landmark judgment of *Justice K.S.Puttaswamy(Retd) v. Union Of India And Ors.*⁶ The Constitutional Bench of Supreme Court held in Para 83 that "Let the right of privacy, an inherent right, be unequivocally a fundamental right embedded in part-III of the Constitution of India, but subject to the restrictions specified, relatable to that part".

THE RIGHT CAN BE CURTAILED FOR NATIONAL INTEREST

Right to Privacy is subject to public safety. In cases where competing rights are to be considered such as shaded glasses on motor vehicles, which facilitate criminal activities and individual privacy to obstruct inside view of vehicle, the safety of public or society outweighs individual privacy⁷. Privacy is the terrorist's best friend,

and the terrorist's privacy has been enhanced by the same technological developments that have both made data mining feasible and elicited vast quantities of personal information from innocents: the internet, with its anonymity, and the secure encryption of digitized data which, when combined with that anonymity, make the internet a powerful tool of conspiracy. The government has a compelling need to exploit digitization in defense of national security⁸.

Article 8 of the European Convention on Human Right which defines this right us follows:

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority With the exercise of this right except such as is in accordance with the law and is necessary in democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. (Indian Case where it was followed)

In India, the hon'ble Supreme Court has ruled that the criminal records of persons running for parliament should be released⁹. It is said that in a democracy the right to free expression is not only the right of an individual but rather a right of the community to hear and be informed¹⁰. The State is under an obligation not to infringe upon the rights of the individual. Similarly, the individual is obliged to contribute to the social welfare¹¹. Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued¹². Privacy-dignity claims deserve to be examined with

care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test.¹³ The distinction between the public and private realms has its limitations. If the reason for protecting privacy is the dignity of the individual, the rationale for its existence does not cease merely because the individual has to interact with others in the public arena. The extent to which an individual expects privacy in a public street may be different from that which she expects in the sanctity of the home. Yet if dignity is the underlying feature, the basis of recognizing the right to privacy is not denuded in public spaces. The extent of permissible state regulation may, however, differ based on the legitimate concerns of governmental authority. The public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India. In the case of *State of Maharashtra v. Himmatbhai Narbheram Rao*¹⁴, “While striking a balance between rights of individuals and rights of citizenry as a whole, the loss caused to individuals becomes insignificant if it serves a larger public interest”

National Interest where right to privacy may be curtailed

The legitimate aims of the state would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits

The exercise of governmental functions, statutory powers and duties.

Discharge of public functions, e.g. transport, hospital, health services or the official conduct of a public official.

Detection or investigation of crimes, as long as it does not come to Court, and does not constitute an interference with the ordinary course of justice.

Purity of food, drugs.

Financial affairs of companies in which the public have interest.

The State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State¹⁵: While stating that data relating to the use of electronic communications is particularly important and therefore a valuable tool in the prevention of offences and the fight against crime, in particular organised crime, the Court looked into the proportionality of the interference with the right to privacy¹⁶.

The action must be sanctioned by law.

The proposed action must be necessary in a democratic society for a legitimate aim.

The right to privacy must be considered in relation to its function in society and be balanced against other fundamental rights.

The extent of such interference must be proportionate to the need for such interference.

There must be procedural guarantees against abuse of such interference.

Cases Where Right to Privacy curtailed for larger or national interest

“Governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.”¹⁷

In the case of *Mr. X v. Hospital Z*¹⁸, where a doctor disclosed that the appellant was HIV (+) and his marriage was called off by he filed a writ petition before the Supreme Court of India to claim compensation due to the breach of duty

by the hospital authorities but the hon'ble court held that

Right of Privacy may, apart from contract, also arise out of a particular specific relationship which may be commercial, matrimonial, or even political. A Doctor-patient relationship, though basically commercial, is, professionally, a matter of confidence: and, there-fore, Doctors are morally and ethically bound to maintain confidentiality. In such a situation, public disclosure of even true private facts may amount to an invasion of the Right of Privacy which may sometimes lead to the clash of one person's "right to be let alone" with another person's right to be informed. Disclosure of even true private facts has the tenancy to disturb a person's tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. Though the Right of Privacy is an essential component of right to life envisaged by [Article .21](#) and one of the basic Human Rights, the right of privacy is not treated as absolute and is subject to such action as may be lawfully taken for the prevention of Crime or disorder or protection of health or morals or protection of rights and freedoms of others.

In an interesting case *Mr. Ansari Masud A.K v. Ministry of External Affairs*¹⁹, the Central Information Commission has held that "details of a passport are readily made available by any individual in a number of instances, example to travel agents, at airline counters, and whenever proof of residence for telephone connections etc. is required. For this reason, disclosure of details of a passport cannot be considered as causing unwarranted invasion of the privacy of an individual.

In the landmark case of *Suresh Kumar Koushal & Anr v. Naz Foundation & Ors*²⁰, where Section 377 of the Indian Penal Code which prohibits the LGBT relationships, it was held that the right to privacy does not mean

right to commit a crime and state can take effective measurements for the prevention of Crime, morality of the public and larger public interest. The security of one's privacy against arbitrary intrusion by the police is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. Section 91 of the Cr.P.C. provides that a house or premises may be searched either under a search warrant issued by a court, or, in the absence of a court issued-warrant, by a police officer in the course of investigation of offences²¹. A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. The right of the people to be secure in their persons, 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 seized²². In the Supreme Court clearly stated that a document which was procured by improper or even illegal means could not bar its admissibility provided its relevance and genuineness were proved²³. Depending on the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which surveillance is made, it cannot be said surveillance by domiciliary visits would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, which fundamental right must be subject to restriction on the basis of compelling public interest.²⁴None can publish anything concerning the above matters without his consent-whether truthful or otherwise and whether laudatory or critical. The rule aforesaid is subject to the exception, that

any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others²⁵.

In the famous American case of *Roe v. Wade*²⁶, a balancing test was set to resolve conflicts between individual privacy and legal state interests. The Court held that only a “*compelling state interest*” could justify an invasion of the “*right of privacy*.”

In *R. M. Malkani v. State of Maharashtra*²⁷ the petitioner’s voice had been recorded in the course of a telephonic conversation where he was attempting blackmail. He asserted in his defense that his right to privacy under Article 21 had been violated. The Supreme Court declined his plea holding that “The telephonic conversation of an innocent citizen will be protected by Courts against wrongful or high handed’ interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants.” in *Malak Singh v. State of Punjab & Haryana*²⁸, where the Supreme Court held that surveillance was lawful and did not violate the right to personal liberty of a citizen as long as there was no ‘illegal interference’ and it was “unobtrusive and within bounds”

Conclusion

In the fight with terrorism, government agencies, like RAW, CIA, NSA, have been engaging in mass, global surveillance, perhaps undermining the right to privacy of an individual for the security of the Country. The words ‘public emergency’ and ‘public safety’ does provide some legal buffer before the government may impinge on our privacy in the case of post and telecommunications. In a sense, they operate both

as limits on our privacy as well as limits on the government’s ability to impinge on our privacy -since the government must demonstrate their existence to the satisfaction of the court, failing which their actions would be illegal. Apart from national security, the state may have justifiable reasons for the collection and storage of data. In a social welfare state, the government embarks upon programmes which provide benefits to impoverished and marginalised sections of society. The security environment, not only in our country, but throughout the world makes the safety of persons and the State a matter to be balanced against this right to privacy.

(Endnotes)

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- 3 *Justice K.S. Puttaswamy. v. Union of India*, MANU/SC/1044/2017.
- 4 *R. Rajagopal v. State Of T.N.*, 1994 SCC (6) 632.
- 5 *Olga Tellis and ors v. Bombay Municipal Corporation and ors*, 1985 SCC (3) 545; *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621.
- 6 *Justice K.S. Puttaswamy. v. Union of India*, MANU/SC/1044/2017.
- 7 *Avishek Goenka v. Union of India*, (2012) 5 SCC 321.
- 8 Richard A. Posner, “*Privacy, Surveillance, and Law*”, The University of Chicago Law Review (2008), Vol.75, at page 251.
- 9 *Union of India v. Association for Democratic Reforms* (2002) 2 LRI 305.
- 10 Sujata V. Manohar, “*T.K. Tope’s, Constitutional Law of India*” Eastern Book Company, Lucknow, 2010, p. 143.
- 11 V.S. Deshpande, “*Right and Duties under the Constitution*”, 15 JILI (1973), p. 95.
- 12 Article 29 of the Universal Declaration of Human Right.
- 13 *Griswold v. Connecticut*, 381 U.S. 479 (more) 85 S. Ct. 1678.
- 14 AIR 1970 SC 1157, (1969) 2 SCR 392.
- 15 *Justice K.S. Puttaswamy. v. Union of India*, MANU/SC/1044/2017.
- 16 *Justice K.S. Puttaswamy. v. Union of India*, MANU/SC/1044/2017; The European Union Regulation of 2016
- 17 *Breard v. Alexandria*, 341 U. S. 622, 341 U. S. 626, 341

U. S. 644

- 18 1998 Supp (1) SCR 723.
- 19 CIC/OK/A/2008/987/AD dated December 22, 2008.
- 20 (2014) 1 SCC 1.
- 21 *Dr. Pratap Singh v. Director of Enforcement*, (1985) 3 SCC 72.
- 22 *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301.
- 23 *Megraj Patodla v. R.K. Birla*, A.I.R. 1971 S.C. 1295.
- 24 *Wolf v. Colorado*, (1949) 338 US 25.
- 25 *Khushwant Singh And Anr.v Maneka Gandhi*, AIR 2002 Delhi 58.
- 26 410U.S. 113(1973).
- 27 AIR 1973 SC 157; 1973 SCR (2) 417.
- 28 AIR 1981 SC 760.