



Research Paper

## “PRIVACY – THE NEED TO PROTECT”

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*Received 15 May, 2024; Revised 26 May, 2024; Accepted 28 May, 2024 © The author(s) 2024.*

*Published with open access at [www.questjournals.org](http://www.questjournals.org)*

From the episode of throwing pen drives in public places containing explicit visuals involving a Member of Parliament from South India; to a former ministers' intimate moments captured by the female counterpart, flashed across news channels; to audio and video calls between two individuals having private conversation recorded by one and posted across social medial platforms; to several instances of *peeping toms* capturing private moments or otherwise of others persons and using the contents to blackmail or for extortion throughout country, has made the citizens to think – Do we have *privacy* and should it be protected?

The facet of privacy of an individual in the modern world was first discussed in the European Convention of 'Convention for Protection of Human Rights and Fundamental Freedom in 1950'. Article 8 provided for a right to every human being in respect of his private and family life, his home and his correspondences. Several countries developed or otherwise, in their respective jurisdictions, have made efforts to protect privacy by enacting statutes. In Bharat as well, the Legislative bodies have incorporated certain safeguards to protect privacy of its citizens. Broadly, the facets of privacy can be in terms of health, residence, communication and such other avenues. The Indian Penal Code has made offences such as public nuisances, criminal trespass, house trespass, house breaking etc., which more or less have covered all the aspects of human privacy. Similarly, Evidence Act seeks to protect communications during marriage, professional communications, restrain on interpreters, official communications, information as to commission of offences etc. One or the other provisions are provided for that are aimed to protect the Right of Privacy of individual in statutes like Right to Information Act, 2005, the Banking Book Evidence Act of 1891, Indian Telegraph Act, 1885, the Easements Act of 1882 and such other enactments.

Privacy, since protected, is no doubt a right, the debate then is – is it common law right or fundamental right? An analysis of the statute enacted in the jurisdiction of different countries gives an indication that though the statutory protection has been afforded to privacy, however, constitutional protection is not given. The Apex Court of England in *Wain Wright -Vs- Home Office* Reported in (2004) 2 AC 406 refused to formulate general principle of invasion of privacy from the constitution prism. It came to this conclusion as there existed no judicially enforceable standards. Hence, the right to privacy was not declared as a fundamental right. The courts of United States of America, have formulated '*third party doctrine*' whereunder in respect of voluntary disclosure of information to a third party, one cannot have a legitimate expectation of privacy as against the Government access to such information from that third party. As such, even in a highly evolved liberal society like United States, privacy has not been elevated to constitutional status. Similar is the position in Singapore as well. The basic argument against the elevation of this right to be a fundamental right is –

- (a) concept of privacy is so inherently vague that even judiciary trained minds can come to opposite conclusions of same set of facts;
- (b) there are no yardsticks or standards to precisely measure the aspect of such right of privacy;
- (c) protecting said the right between two individuals would be an impossibility since limits of lawful conduct which one must not transgress cannot be laid down with certainty;
- (d) if the Right is given constitutional status then State is mandated to enforce the right by providing for penal consequences for breach thereof, which would again be impossible since the very concept of privacy is ambiguous, vague and uncertain.

With the above concerns and many other related intrinsic issues, our Supreme Court navigated the concept and contours of “The Right of Privacy” in a reference made to a nine Judge bench in the case of Justice *Sri.K.C. Puttaswamy (Retd) & Another -Vs- Union of India & Others*, reported in (2017) 10 SCC 1. The earlier judgment of Apex Court in *M.P.Sharma -Vs- Sathish Chandra* reported in AIR 1954 SC 300 and *Kharak Singh-Vs- State of Uttar Pradesh* reported in AIR 1963 SC 1295, had held that Right to Privacy is not protected by the constitution. In that context, doubting the said view, in the present times, the reference to the larger bench became warranted. The Bench went on a exploration of the tenets and antecedents of the concept of privacy as considered by different jurisdiction of various countries and whether there is a need in present day, to read this Right of Privacy into fundamental right of Article 21 – Right of Life of the Constitution. Upon detailed consideration of all the contentions, illustrations and otherwise, for and against, the elevation of Right to Privacy, the Apex Court authoritatively held that the Right to Privacy is protected as an integral part of Right of Life and personal liberty under Article 21 and as a part of the freedoms guaranteed by the Part III of the Constitution. Court took note of technological developments, intrusive journalism and the dawn of the digital age to elevate the right to constitutional status. It also took note of interesting fact that “Uber” the worlds largest taxi Company, owns no vehicles; “Facebook” the worlds most popular media owner, creates no contents; “Alibaba” the most valuable retailer has no inventory; and “Airbnb” the world’s largest accommodation provider, owns no real estate. It observed that however, Uber knows our whereabouts & places we frequent; Facebooks knows who we are friends with; Alibaba knows our shopping habits; Airbnb knows where we are travelling to. The social network providers, search engines, email providers, messaging application, today have extensive knowledge of our movements, financial transactions, conversations, health and mental status, interests, shopping habits and the like. These also weight in the mind of Apex Court to make privacy as a fundamental right.

Though privacy was given constitutional protection by the verdict of Supreme Court on August 29<sup>th</sup>, 2017; by virtue of Article 141 of the Constitution, the law declared by Apex Court became the law of the land; and the Right of Privacy became fundamental right, despite the lapse of seven years, privacy of an individual hasn’t received the attention it deserves at the hands of the State as well as legislative bodies. A Right for which no formal method of enforceability is provided for & no penal consequences for any infringement of such rights is provided for, it is as good as no right at all in the hands of citizens of the country. Though a fundamental right, the right to privacy has been reduced to a dead letter. In recent times, as narrated in the introductory paragraph, instances of rampant invasion of privacy are taking place in the country. Even though every citizen enjoys the freedom of privacy, however, is subject to humiliation & ignominy by publication of recordings of his private acts or conversations without his consent.

It can be observed that though certain provisions of Information Technology Act, 2000, provide for penal consequences in respect of publication of obscene materials or sexually explicit materials, however the safeguards do not cover all aspects of an individuals’ privacy. The need of the hour is either to bring in a comprehensive enactment addressing all facets of Right to Privacy or to propose amendments to existing statutes to cover up the left out portions of the privacy.

To safeguard citizens from getting entrapped into evils of digital age, to being with, the state is obligated to see the mischief happening and plug the holes in the statutes, on a war footing. One way of doing it is to amend the Information Technology Act, 2000 and insert provisions entailing penal consequences upon any

person who captures, records, transmits, reproduces or publishes a private conversation or private moments of two or more individuals without the knowledge or consent of such individuals. This one legislative step would come as a reprieve to gullible citizens who are today constantly living in fear and becoming target of extortion at the hands of unscrupulous elements. We need to remember, the issue is not only affecting the elite or political class who with their clout can still ‘manage things’ to their advantage, but the most affected are the common citizens whose lives go on a downward spin with no getting back up. Many have succumbed to these acts of invasion of privacy and the perpetrators are living a life of merry. Making legislations to safeguard this Fundamental Right of Privacy is not only constitutional obligation of the State but also a compliance of dictum of the Supreme Court. The citizens of the country are eagerly awaiting for their lives to be made more secure and to have their freedoms given to them which they expected while giving themselves THE CONSTITUTION.