

RIGHT TO PRIVACY: A COMPARATIVE STUDY

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ABSTRACT

The term 'Privacy' is derived from the Latin word 'Privatus' which means separated from the rest. Though it is a variable concept and varies with cultural or social context, but actually it means, the right to be left alone. The need for Privacy is to create a balance between individual and social interests, which is equally applicable to past, present and future society. In this sense, the necessity of Privacy was found in the dawn of human civilization. The idea of Privacy is as old as Biblical periods. Also, the growth and expansion of Privacy varied according to the variation in different stages of human civilization. Hence, the description of origin and history of Right to Privacy should proceed from the ancient period to the modern period. In fact, the idea of Privacy was originated in the animal society and gradually it has been incorporated into the human society.

The idea of Privacy, which was originated in the animal society, has been adopted in the primitive human society, where the traces of it were first found. According to different Anthropological studies, the idea of Privacy varied in respect of different primitive societies. With the evolution of primitive society to ancient society and then gradually to modern society, the idea of Privacy has been developed to get its present shape. The root of Privacy and its protection is embedded in the history of human civilization, which is characterized specially by transformation of primitive society into modern society. The social transformation has increased both the physical and psychological opportunities for Privacy and also proved to be fruitful for conversion of these opportunities into choices of values in the context of socio-political reality. Social transformation is the responsible factor for changing nature of Privacy as well as the changing character of Privacy violations from primitive societies to modern societies

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INTRODUCTION

The origin of Privacy in ancient India was culminated into the term 'Avarana', in the idea of Meditation in Vedas and Upanishads and embedded in the idea of 'Dharma'. The history of Privacy in India was divided into the Hindu and Muslim periods, both of which were enriched with the rules and regulations of Privacy. Privacy was never an alien in India; rather it was embedded in the deep-rooted custom of the rich cultural heritage of India. The development of Right to Privacy in U.S.A. in the modern period has been based on the Warren-Brandeis article and the search and seizure cases under Fourth Amendment of the U.S. Constitution, the final result of which is the Privacy Act, 1974. U.K. had no law of Privacy; instead, there was the law of breach of confidence. With the help of various legal developments, the Younger Committee Report was submitted in 1972, the final outcome of which is the Data Protection Act, 1998. Though India is lagging far behind U.K. and U.S.A. for protection of Privacy in the modern period, but it is also enriched with various legislative and judicial developments, which ultimately has given rise to the Right to Privacy Bill, 2011, now known as Privacy Bill, 2014. Right to Privacy is an important right under the Right to Life and Personal Liberty as also an integral part of Human Rights Law which is a matter of concern for everybody in the contemporary social scenario. Privacy does not only mean leading an isolated life, but specifically it denotes freedom from unauthorized and unwarranted interference into one's private life. Currently violation of Right to Privacy is an important issue in the modern democratic societies, because technological advancements in the communication and information systems are creating serious threats to the individual Right to Privacy by making it practically impossible. A major factor of the Privacy problem is the absence of legislation and organizational rules ensuring Privacy, confidentiality and due process to the subjects of computerized information. Data banks have been established at all levels of government, business and the military services without any real knowledge or concern for their potential impact over individual rights. This is the situation all over the world. The need of the hour calls for an extensive work on existing legislations protecting the Right to Privacy in different legal

systems confronting challenges in making new laws covering every aspect of Right to Privacy. Hence this comparative study of U.S.A., U.K. and India is taken up the concept of privacy can be traced out in the ancient text of Hindus. If one look at the Hitopadesh it says that certain matter (worship, sex and family matters) should be protected from disclosure. But in modern India first time the issue of right to privacy was discussed in debates of constituent assembly were K.S. Karim Uddin moved an Amendment on the lines of the US Constitution, where B.R. Ambedkar gave it only reserved support, it did not secure the incorporation of the right to privacy in the constitution. Right to Privacy is not explicit in the Constitution of India, so it is a subject of judicial interpretation. The judicial interpretations of fundamental right bring it within the purview of fundamental right.

INTERNATIONAL INSTRUMENTS

Right to Privacy is a part and parcel of right to Life and Personal Liberty. As such this right is guaranteed under the various Constitutional provisions of U.S.A., U.K. and India, like First, Fourth, Fifth and Ninth Amendments of the U.S. Constitution and Articles 19 and 21 of the Indian Constitution. There are various cases, by the judgments of which this right has been enriched and developed. But a separate law covering the Right to Privacy guaranteeing the personal liberty is absent everywhere. Apart from the specific aspects of Right to Privacy mentioned above, there are also various other facets of the Right to Privacy which are required to be adequately protected by express legislations in these three countries. The intention of this study is to highlight those aspects also and to suggest appropriate legislations covering all aspects of Right to Privacy.

After comparing the legal provisions in U.S.A., U.K. and India, it is found that the Constitutional and other legal provisions in U.S.A. and U.K. are much developed than in India. Though in India, the concept of Right to Privacy is found from the ancient period, but there are no such developments in the modern times. As stated above, this right is neither expressly guaranteed in the Indian Constitution nor in any other Indian Statute. Above all, a large section of the Indian masses are not even fully aware of their Right to Privacy. As such, they said right is not being exercised in totality. Here lies the need of a proper research work in this field.

Article 17 of the International Covenant on Civil and Political Rights states about the right to privacy, it says "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honor and reputation". Whereas Article 12 of the Universal Declaration of Human Rights 1948, states "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks". Both instruments provide the right to privacy to the citizen, and the states, who are signatory to it, are expected to fulfill these rights. Since India is a signatory to the International Covenant on Civil and Political Rights and Universal Declaration of Human Rights, 1948, India has the obligation to enforce these rights. In the lack of enabling legislation, the ICCPR can have the legal force as the other laws in India. And the UDHR is a mere declaration, and it does not have the legal force. But the courts has used provisions of ICCPR and UDHR to make its argument stronger; and also in order to make realized the government about his obligation toward it citizen and towards international instruments.

EVOLUTION OF RIGHT TO PRIVACY

In **M.P. Sharma v Satish Chandra** (here in after M.P. Sharma Case) were Supreme Court on the issue of 'power of search and seizure' held that they cannot bring privacy as the fundament right because it is something alien to Indian Constitution and constitution maker does not bother about the right to privacy.

After M.P. Sharma Case in Kharak Singh Case Supreme Court on the issue of whether surveillance, defined under Regulation 236 of the U.P. Police Regulations is amount to infringement of fundamental right and whether right privacy is come under the purview of fundamental right; they denied the right to privacy as fundamental right and they concluded that "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"

The next case was the *Govind v State of MP*, where the right to privacy was discussed in detailed. The issue was quite similar to the *Kharak Singh v State of UP*, but this time the approach of judgment was rather different. They upheld the validity of Madhya Pradesh Police Regulations, 855 and 856, made under Section 46(2) (c) of Police Act, 1961, under the reasonable restriction. Judges were unable of deciding that whether the Right to Privacy is a fundamental right or not and they pass on the burden to the next cases through saying that the "The right to privacy in any event will necessarily have to go through a process of a case-by-case development". It is right one good concept of law cannot be developed through one case, because it is very hard to see the exceptions and consequences of that concept of law through one case.

In *Maneka Gandhi v Union of India*, Supreme Court interpreted the Article 21 in broad sense. They said that both the rights of personal security and personal liberty recognized by what Blackstone termed 'natural law' are embodied in Article 21. *Maneka Gandhi Case* started the wide interpretation of Right to Life, which actually helped the Right to Privacy to fall into to the scope of Right to Life.

Rajagopal alias R. R. Gopal v State of Tamil Nadu was the first case which explained the evolution and scope of right to privacy in detail. In order to attain this question, Supreme Court went through the entire jurisprudence of right to privacy, its evolution and scope; and this fulfills gaps of *Govind Case*. To explain evolution it mainly discussed the **Govind Case** and follows the almost same approach. This Court held that the right to privacy is implicit in the right to life and liberty guaranteed by Article 21. Reached on the conclusion, that right to privacy no longer subsists in case of matter of public record.

People s Union for Civil Liberties (PUCL) v Union of India is related to phone tapping and it discussed that whether telephone tapping is an infringement of right to privacy under Article 21. Supreme Court argued that conversations on the telephone are often of an intimate and confidential character and telephone-conversation is a part of modern man's life. Supreme Court also said that whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case.

In **State of Maharashtra v. Bharat Shanti Lal Shah**, A 3-judge bench held that "the interception of conversation though constitutes an invasion of an individual right to privacy but the said right can be curtailed in accordance with procedure validly established by law. Thus, what the court is required to see is that the procedure itself must be fair, just and reasonable and non-arbitrary, fanciful or oppressive."

Justice K. S. Putt swamy (Retd.) and Anr. vs Union of India and Or's is a landmark judgement of the Supreme Court of India, which holds that the right to privacy is protected as a fundamental constitutional right under Articles 14, 19 and 21 of the Constitution of India. The judgement of the 9-judge bench contains six concurring opinions affirming the right to privacy of Indian citizens. It explicitly overrules previous judgements of the Supreme Court in Kharak Singh vs. State of UP and M.P Sharma v Union of India, which had held that there is no fundamental right to privacy under the Indian Constitution.

EVOLUTION OF RIGHT TO PRIVACY IN UNITED STATES OF AMERICA

In order to have a categorical understanding of right to privacy in Indian constitution, it is indispensable to have a thorough knowledge about USA Privacy laws since Indian judiciary relied upon those laws for the interpretation of private matters. "Warren and Brandies" discussion was a commencement of deliberation on inalienable right of privacy in USA. The constitution of USA mentions about plenty of inalienable rights including the right to liberty and pursuit of happiness and these rights should be protected by statutes, rules and regulations by the government but privacy laws were lacking in USA and then warren and brandies mentioned about application of common laws for the protection of these rights in order to protect the privacy of an individual. The help of common laws was obtained because common laws contained the right to be free from the harassment and exposure and it was the only available remedy for protection of private matters. Right to privacy was subject to the explicit right to free speech and it was unequivocally mentioned in the first amendment of bill of rights,

so from this point the inference can be drawn that right to privacy was an implicit one USA constitution

Warren and Brandies contentions were mainly concentrating upon protection of privacy from technological advancement and the advent of photography. Unauthorized Publication of individual portraits and photographs in the newspaper was an invasion into the privacy of an individual and a suit was brought by an avid writer in the New York court of appeal regarding violation of privacy and the question was raised about dearth of laws that could provide protection to the privacy of an individual from unauthorized publication of instantaneous photos.[4] This legal action brought awareness regarding safeguarding of right to privacy in American system.

The discussion of Warren and Brandies on right to privacy explained the actions that fall under the ambit of privacy invasion, and those actions are following;

1. Intrusion into one's private life and affair;
2. Public disclosure of embarrassing private facts;
3. Unwanted publicity of private individuals;
4. Misappropriation of a name or likeness for financial advantage

The aforesaid points have specifically explicated the category of actions that could infringe right to privacy. Apart from identifying the actions that could hamper privacy of an individual, they set forth the remedies as well and that was true basis of privacy. Warren and Brandies propounded certain remedial mechanisms with respect to publication of one's private affairs with certain exceptions.

1. Privileged communications are the domain of libel/slander;
2. Speaking gossip and oral communication are outside the purview of privacy rights;
3. Consent to publication is an outright defense; while Truth; and Malice are irrelevant to a breach of privacy action.

Through the aid of above mentioned discussion, we all would have understood the rudimentary idea behind creation and beginning journey of right to privacy within USA & UK constitution.

CONCLUSION

The inference can be drawn from the above-mentioned discussion that India relied upon the USA & UK constitution for the interpretation of right to privacy within Indian sphere therefore it can be uttered that American constitution has played pivotal and significant role in molding of right to privacy in accurate shape. It was always observed that right to privacy is derived from right to life and personal liberty and the recent judicial precedent about recognition of fundamental status of right to privacy has provided a constitutional protection to private and confidential information and violation of said right will result in stringent legal action against the infringer. The purpose behind establishment of right to privacy is with respect to protection of personal information shared on digital platform and since India doesn't have privacy law as such, fundamental status of privacy will protect this right from being contravened by others. Right to privacy which was pronounced as "right to be let alone" by Justice Subba Rao while dissenting the majority judgement in the case of *Kharak Singh v. State of U.P.*, has finally obtained the correct place in the Indian constitution after various discussions and deliberations took place in numerous cases which dealt with various aspect of right to privacy in Indian constitution.

Therefore the effort of apex court should be commended because providing the fundamental status was a daunting task and despite plenty of protest and problems, the supreme court succeeded in giving the right space to the right to privacy and now a confidential and covert information of private individuals will be under the protection and unauthorized intrusion in private matters will result in rigid punishment.

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