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RIGHT TO PRIVACY IN INDIA: A STUDY WITH SPECIAL REFERENCE TO PRISONERS RIGHT

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Abstract

India is governed by constitution and constitution provides fundamental rights. These fundamental rights are available to all citizens including prisoners. The right to privacy is a fundamental human right that protects citizen's personal dignity by restraining unwarranted interruptions into their personal lives. This abstract defines the concept of the right to privacy, especially as it relates to the rights of prisoners within the Indian legal system. The right to privacy is deep-rooted in international human rights contexts, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It includes various dimensions, including personal liberty, bodily integrity, and privacy of personal information without unnecessary interference. Prisoners in India, regardless of their confinement, retain various basic human rights, including the right to privacy. However, the rights to privacy along with certain other rights are available subject to restrictions. The right to privacy is essential not only for human beings living in outside but for the prisoners in order to maintain prisoner's dignity and secrecy. In this article I will try to study and analyze the rights are available to prisoner or not. The preamble to Indian constitution provides its citizens with liberty of thought, expression, belief, faith and worship as Fundamental rights also give the right to life and personal liberty. Indian constitution has made our society gender friendly. This paper examines the right to privacy under Indian constitution as well as it examines the provisions of prisoner's right under Indian legal system. It tries to find out the relation between right to privacy and rights of prisoners.

Keywords - Constitution, Fundamental Rights, Right to Privacy, Prisoners Right, Legal Rights and etc.

Introduction

In the Indian legal system, the concepts of privacy and defamation are considered separate entities, each possessing unique consequences. Each component will be expounded upon individually and their interrelation will be examined. In India, the idea of privacy is widely acknowledged as a fundamental human right. This includes a person's capacity to manage their personal data and uphold confidentiality. The Universal Declaration of Human Rights and the European Convention on Human Rights are two examples of international laws that acknowledge the right to privacy. The right to privacy means that your private messages are safe and nobody can see them without your permission. The privacy of individuals is crucial for safeguarding their freedoms and self-respect.

The Indian Constitution does not specifically say that people have the right to keep their personal information private. The apex court in Justice K. Puttaswamy case important decisions that about right to privacy in India. A very significant court decision was made in the case of Puttaswamy (Retd.) This decision made the right to privacy a crucial part of the Indian constitution. Privacy is a fundamental right for people in India and the Constitution safeguards it. The Supreme Court's ruling in this case emphasized the importance of finding a balanced and fair solution between protecting personal privacy and addressing government concerns. In 2017, India said that everyone has the right to keep their personal information private. This right is closely related to other rights that are also important. The right to privacy means we can keep our personal information private, protect our bodies and personal space, and have control over our own lives. People can decide who gets to see their secret information and they should not be spied on without a good reason.

Defamation is when someone spreads lies about a person, business, or organization that damages their reputation or morals. Libel and defamation (also called slander) are two different kinds of saying harmful or false things about someone. The purpose of defamation law is to protect people from being harmed by untrue statements made about them, and to ensure that people have the ability to defend their reputations against false accusations. The complicated legal problem of defamation is about finding a fair balance between keeping individuals and groups safe from harm, while also allowing freedom of speech. Defamation means saying or writing things that aren't true about a person and it hurts their image or how people think of them. In India, saying something bad about someone can be against the law and lead to punishment in both civil and criminal cases. The Indian Penal Code explains what counts as defamation. Civil libel means that if someone's

reputation is harmed, they can go to court to ask for compensation. Criminal defamation is more serious because it can result in going to jail or having to pay money as a punishment.

In the context of the association between the entitlement to privacy and defamation, it is imperative to acknowledge that the right to privacy is not an unequivocal and unrestricted right, but rather is subject to rational limitations. Within the framework of defamation law, the entitlement to privacy rights may be invoked in circumstances where inaccurate and derogatory remarks are disseminated pertaining to an individual's private life or personal matters. In instances where this occurs, individuals might contend that their right to confidentiality has been infringed upon, as well as their standing in society. Achieving a harmonious equilibrium between the right to privacy and the liberties of speech and expression, involving the ability to make just and evaluative remarks, is of paramount importance. In cases of defamation, courts take into account various factors including but not limited to the degree of public interest involved, the use of truth as a viable defense, and the underlying intention behind the expressed statements.

Evolution to Right to Privacy

Indian constitution is not limited to liberty but it has provided its citizens with some fundamental rights which are considered to be the backbone for the growth of an individual. These rights are given to both male and female. One of those important rights is the right to privacy. Now we will discuss the growth of right to privacy in Indian society.

Ancient India

The concept of privacy can be traced from the ancient Indian not as law but from the orthodox observations of society. At that time there were certain matters which were not considered as reasonable for public discussion such as worship, sex and family matters. The women were bound to be in pardhah and it was a way be in private state, much exposure was not their right. Over time, the developments go through a transformation. Although the concept is not entirely unfamiliar to Indian cultures, the observations of certain legal scholars, such as Sheetal Asrani-Dann, have sparked ambiguity concerning the right of privacy in India. In search of this objective, the author avails reference of **Upendra Baxi's** perspective. However, it must be acknowledged that Baxi is visibly taken aback by what he perceives as excessive and intrusive solicitude, characterized by a relentless inquisitiveness. The matter at hand relates not to malice. In time immemorial, the concept of privacy was filled with a connotation of virtue or "positive morality." Wearing Pardhah was commonly regarded as a representation of demonstrating deference to

individuals of seniority in traditional cultural contexts. The concept of privacy was not discernible in ancient Indian texts, yet it was deemed a moral imperative to uphold.¹

Modern India

Currently, the right to privacy is now a fundamental right under the Indian constitution as enshrined in Article 21 i.e. right to life and individual liberties. During the constituent assembly debate, **K. S Karimuddin** proposed an amendment that addressed this issue, marking the first time it was brought up. **Dr B R Ambedkar** was also involved in this discussion. **Dr B R Ambedkar** gave only elitist backing, and the concept of privacy rights was not included in the Constitution of India. Privacy has been addressed as a basic Constitutional right and a customary law right since the 1960s. The Supreme Court initially did not recognize privacy as a basic right until 1954 when an eight-judge panel declared it as such. **M.P. Sharma v. Satish Chandra**² When confronting the ability to explore and confiscate files from the Dalmia Group, the notion of the right to privacy was disregarded as the creators of the constitution would have explicitly included it as a fundamental right if they intended for it to be one, and Article 21 does not allude to it.

In **KharakSingh v. State of U.P.**³The Supreme Court in its interpretation of the terms "life" and "individual liberty" in section 21. Despite the fact that the constitution makes no mention of "privacy," most people believe the right Individual liberty should be broadly interpreted to include the right to respect for human dignity. She argues that "unlawful entry into a person's home and consequent disturbance to him is like a violation of ordinary human rights - an ultimate essential element of orderly freedom.", if not from the very concept of civilization."

In **Naaz Foundation Case**⁴ Delhi High Court examines section 377 Indian penal Code and articles 14, 19 and 21. The concept of the right to privacy was established to safeguard an exclusive domain where individuals can fully express and maintain their true identities. According to some opinions, people require a safe haven to escape from the restrictions imposed by society. This sanctuary would allow individuals to remove their façade and take a break from projecting an image that is acceptable to their peers but doesn't necessarily represent their true selves. Such an image might be based on the values of their social group rather than their genuine personality.

¹Shubham Mongia, Legal analysis of Right to Privacy in India, <http://legalserviceindia.com/article/-676-legal-analysis-of-right-to-privacy-in-india.html>

²AIR 1954 SCC 1077

³AIR 1963 SCC 1295

⁴ (2009) 160 Delhi Law Times 277

Recently, in **K.S.Puttaswamy (Retd.) v Union of India**⁵ The Supreme Court in this case acknowledged the fundamental right to privacy as legally valid. A single order signed by all nine judges declared:

The Constitution guarantees the right to privacy as an inherent aspect of the right to personal liberty and life, as well as a part of the freedoms ensured.

Nature of Right to Privacy

Right to privacy is a fundamental right that permits to an individual's ability to keep their personal information, thoughts, and activities private and free from unwarranted intrusion. This right is of very wide scope. The nature of the right to privacy is multidimensional. The right to privacy India recognizes the inherent value of individual autonomy. The concept of privacy allows individual to make personal choices, express them, and lives their lives without unnecessary interference from others or the government. The right to privacy also extends to the medical aspect as well. This aspect of privacy protects an individual's physical body from intrusion, such as unwanted searches or medical procedures without consent. Decisional privacy refers to the right to take decisions, especially those related to one's own body health and lifestyle without external interference or judgment.

The right to privacy protects an individual's right to keep their sexual orientation, gender identity and personal relationships private, especially in contest where discrimination or harm could result from disclosure. Couples have a right to be free from unwarranted government surveillance or monitoring of their activities without justifiable cause.

Due to the advancement of science and technology, the concept of privacy has expanded to include protection of digital communications, online activities and personal data at the digital platforms. The nature of the right to privacy is deeply interconnected with individual dignity, personal freedom, and the ability to lead a fulfilling and meaningful life without constant scrutiny or interference by unnecessary person or the government.

Statutory Provision

The right to privacy in India was recognized as a fundamental right in a landmark case of **Puttaswamy**. Prior to the decision in this case no express provision was available to recognize

⁵ AIR 2017 10 SCC 1

privacy as a fundamental right.

In the landmark case of **Puttaswamy v. UOI**⁶ A nine judge bench of the Supreme Court unanimously declared that the right to privacy is a fundamental right protected under Article 21 of the Indian Constitution. Further, the court held that privacy is instancing to the protection of life, liberty and it recognized privacy as multidimensional concept that includes various dimensions such as bodily integrity, informational, privacy decisional, individual autonomy and many more.

The right to privacy itself is not clearly mentioned in the Constitution of India, it is Article 21 of Indian constitution, which guarantees Life and personal liberty. The **Puttaswamy** judgments in 2017 reinforced this interpretation and emphasize the importance of protecting an individual's privacy to uphold their dignity and personal autonomy. The Information Technology Rules 2011 were formulated under the IT Act 2000. These rules aimed at safeguarding personal data and information collected and processed by various entities. While these rules primarily focus on data protection and security practices, they reflect growing recognition of the importance of privacy in the present digital era.

The Digital Personal Data Protection Bill 2023 is introduced by the government. It is a bill that allows for the processing of digital data in a way that acknowledges both the rights of individuals to protect their personal data and the necessity of processing such personal data for legitimate purposes. The Advanced Individual Information Insurance Bill makes sense of individual information as any data that can be utilized to distinguish an individual straightforwardly or by implication, for example, their email address or biometric information. The bill additionally characterizes information trustee as any individual who, either alone or together or working together with others, decides the reason and the method for handling individual information. Individuals are granted certain rights over their personal digital data by the Digital Personal Data Protection Bill 2023, such as the Right to Know regarding the collection and use of their personal data. It likewise gives right to demand that their own information be amended or erased. In addition, it allows individuals to object to the processing of their personal data for specific purposes.

⁶AIR 2017 10 SCC 1

Right to Privacy of Prisoners

The right to privacy for people in India is a basic human right. It applies to everyone, even prisoners. Jail means some limits on personal freedom for security reasons. But prisoners should still expect some privacy in jail. Respecting prisoners' privacy rights is important. It helps them keep their dignity and be treated like humans and it can help them rehabilitate. The approach of Indian judiciary to the right to privacy is still evolving. However, the Supreme Court has made it clear that the right to privacy is a fundamental right which is a very important for the protection of individual liberty and autonomy. Recently, the Digital Personal Data Protection Bill 2023 is a significant that is designed to protect the liberty and privacy of individual and promote the responsible use of personal data. This bill is based on the judicial approach to the right to privacy and expects to further strengthen the protection of privacy rights in India for the citizens.⁷

General Rights of Prisoners

Prisoners in India, like in other legal systems, got certain basic rights so they're treated and kept safe and their dignity or whatever when they're locked up. These rights try to balance out the punishment of being in jail with normal human rights ideas and rehab and stuff. The normal rights of prisoners in India are protected by their Constitution, and also some international human rights laws.⁸

Right to Fair and Speedy Trial

The Supreme Court of India held in **Hussainara Khatoon v. State of Bihar**⁹ recognized the prisoners right of fair and speedy trial. This case is landmark regarding the rights of under-trial prisoners. In this case Supreme Court recognized that the right to speedy trial is an important part of the fundamental right to life and personal liberty given under Article 21 of the Constitution. LongTerm detention without trial of the prisoners violates the Article 21of the Constitution. Furthermore the Court highlighted the necessity for giving legal aid to economically weaker under-trial prisoners. The judgment focuses that legal services should be offered to those prisoners to safeguard their rights are protected and to prevent unjust and unlimited confinement.

⁷Prisoners Right in India, available at: www.legalservices.com (Visited on Aug 28, 2023)

⁸*Ibid*

⁹ AIR 1979 SC 1369)

Right to Legal Aid

Right to Legal Aid is an important right as provided under Article 39A of Indian Constitution. This right is available to the prisoners for their legal representation before the court of law. The right to Legal Aid is available without any discrimination and even if the prisoners do not have the means to pay for it. It is the duty of government to provide Legal Aid.¹⁰

The abovementioned rights are general which are available to prisoners in India. Despite these rights other rights are also available to the prisoners in India to maintain their dignity and privacy.

Rights to Privacy of Prisoners

The issue of prisoner's privacy is very complex in India. From many last years it is a debate between Human rights activists and legal scholars. Many argue that prison convicts have lost certain rights as a result of their confinement, so the government must keep an eye on them to ensure their safety and stop criminal activity. On the other hand, many argue that inmates still have certain fundamental rights, like the right to privacy. The Indian Constitution doesn't unequivocally specify prisoner's right to privacy. The Supreme Court of India has declared it as an integral part of the right to life and personal liberty (under Article 21). As a result, prisoners' right to privacy cannot be violated by the government without a valid justification.

The observation of the court in case of **Sunil Batra v Delhi Administration**¹¹ is significant. In this case court highlighted the importance of the prisoners' rights and recognized that even in prison it does not that prisoner loses their basic rights. The apex court specified that prisoners still have certain rights like the right to life and personal freedom as well as right to be treated respectfully and with dignity.

In **Francis Coralie Mullin v. Administrator Union Territory of Delhi**¹² the observation of the Supreme Court established that the protection of life and freedom given in Article 21 of the Indian Constitution covers to every person, including prisoners. It highlighted that any act which disrespects or contains a risk to a person's dignity and privacy is conflicting to the principles stated in Article 21.

¹⁰Article 39A of Indian Constitution

¹¹ AIR 1978 SC 1675

¹²AIR 1981 SC 746

The Supreme Court decided in **Ramamurthy v State of Karnatka**¹³ that the right to privacy of prisoners is conditional and it is subject prison rules. The government might curtail right to privacy for safety and law and order with reasonable cause.

In case of **R Rajgopal v State of Tamilnadu**¹⁴ one of the landmark judgments in India. The Supreme Court of India recognized the right to privacy as a fundamental right under article 21 of Indian constitution. Mr R Rajgopal wrote a biography of **former chief minister of Tamilnadu**. The Chief Minister filed a case against Rajgopal against violation of right to privacy. The Supreme Court held that right to privacy is fundamental right within the framework of article 21 of Indian constitution. In this case, the right to privacy was conferred and the Supreme Court held that the right to privacy is a fundamental right that is provided under Article 21 of the Indian Constitution. Therefore, every citizen has a right to be left alone and so they have a right to try to safeguard their and their family's privacy.

The Supreme Court in the case of **R. Rajagopal v. State of Tamilnadu**, first time clearly linked the right to privacy with Article 21 of the Constitution. For this situation the right of protection of a the detainee was in issue. One sentenced prisoner, Auto Shankar, wrote his autobiography while incarcerated and gave it to his wife for delivery to an advocate so that it would be published in a specific magazine edited, printed, and published by the petitioner. According to this autobiography, the prisoner had a close relationship with a number of officers, including IAS and IPS officers, some of whom were, in fact, his partners in several crimes. This autobiography was controlled in multiple ways before it could be published. It was on these realities that the solicitor tested the limitations forced on the distribution under the steady gaze of the High Court.

In the context of an analysis of case law from other common law countries, such as the United Kingdom and the United States, Justice B.P. Jeevan Reddy held that the right to privacy can certainly be inferred from Article 21 of the Constitution, even though it is not listed as a fundamental right.

A prisoner's autobiography could be published by a magazine, the Indian Supreme Court ruled, even without his permission or consent. Jail authorities endeavored to keep the magazine from distributing the life account, by driving the detainee to demand that the auto-memoir was not

¹³ AIR 1997 SC 1739

¹⁴ AIR 1995 SC 264

distributed. The Court made sense of that it was critical to work out some kind of harmony between the opportunity of the press and the right to protection, and found that the state and its authorities don't reserve the privilege to force earlier limitations on the distribution of materials that might be stigmatize the State.¹⁵

Conclusion

Although India is actively working towards the development and formulation of privacy and data protection laws there are still areas that require attention. It is crucial for our Indian Legislature to integrate insights, from data protection and privacy laws across the globe taking a stride in implementing and advancing this emerging field of law given its utmost importance at present. Various data protection regulations exist worldwide which if enacted and strictly enforced in India could help address data protection challenges. The Indian Constitution recognizes the right to privacy under Article 21 as a prerequisite for safeguarding life and liberties. To better understand the term "privacy" it is important to clarify that it is not a concept with implications as per the provisions of the Indian Constitution nor does it extend to aspects like torture law, criminal law and property law. Also encompasses an individual's personal sphere that should be protected even before landmark cases such as K.S. Puttaswamy, vs Union of India come into play.

¹⁵ AIR 1994 SCC (6) 632