

RIGHT TO PRIVACY IN A CONTEXT OF SEARCH AND SEIZURE

ANINDITA SAHA

SHASHANK KHATI

**Abstract:**

*In India privacy is a crucial aspect of life and liberty, and it is established in the Constitution as one of the fundamental freedoms. It exists in all people, regardless of class, socioeconomic status, race, or sexual preference. It is critical for the growth of one's self, ethics, and dignity. However, because privacy is not an inherent right, any violation must be founded on validity, necessity, and balance in order to protect this prized right, and such a breach must be supported by law. Whereas, in criminal investigations, in the United States, the 4th Amendment limits the power. The Supreme Court has taken this to mean that before conducting a search, authorities must first obtain a warrant and to remove illegally taken evidence from trial. Tort responsibility for police personnel has emerged as a preferable approach of discouraging excessive searches in the legal and economic literature. The writers of this research examined the beginnings of privacy via different court decisions, acknowledging Article 21 of the Indian Constitution includes the right to privacy as a component and 4<sup>th</sup> Amendment of United States Constitution with this 21<sup>st</sup> century.*

**Keywords:** *Fundamental Right, Article 21, 4<sup>th</sup> Amendment, Search and Seizure, Life and Liberty*

**Introduction**

The term privacy is derived from Latin word “Privatus” which means “freed” or “released” or “set apart” or “separated from the rest”. And it is individual who is the one who wants to share about his private things. This concept states that one should be left alone or freedom from any kind of interruption. Although the exists legal definition of privacy, it may be characterised as an individual's right to keep domain around him, including his body, possessions, feelings, identity, and secrets. In other words, individual has right to keep in his personal information, possession of goods, bodily integrity, dignity, confidentiality and protection from state surveillance. If state or anyone tries to interfere such privacy then they may amount of privacy has been invaded.

In the framework of privacy rights, search-and-seizure is the provided an individual who has been subject to illegal search and seizure or without any proper authority if any search and seizure has been conducted. It has violated an individual right. According to a Constitution And The bill proposal, a freedom of citizens to be protected throughout their individual lives, residences, documents, as well as impacts toward unlawful search and seizure shall not be breached, and no authorizations issued, except with reasonable suspicion, assisted by Affidavits, and particularly explaining the spot to be searched, and the individuals or objects to be seized" shall not be breached. "The primary purpose of this clause is to defend people's right to privacy and liberty against government invasions. However, the 4th Amendment does not guarantee citizens from all searches and seizures; it only protects individuals from those conducted by the government that are ruled excessive under the constitution. To have sufficient standing to claim protection under the 4th Amendment as a basis for concealing important evidence, the tenant had to demonstrate that he had become the casualty of a privacy invasion. Nevertheless, the Apex Court has overruled this demand, holding that issue of isolation must be decided purely on the basis of whether the accused's Fourth Amendment rights have been breached, which requires the accuser to show that he or She had a legitimate, claim of confidentiality which was violated at unexpected times by the police.

'The privacy rights is protected as an inherent component of health and individual freedom , under Article 21 and as one of the rights guaranteed by Part III of the Indian Constitution.' Furthermore, the constitution provisions must be studied and construed in a way that improves their compliance with international human rights treaties approved by India. The Court also states that privacy is a fundamental prerequisite for exercising other protected freedoms meaningfully.

## Statement of Problems

In the regard of verdict given by Supreme Court in the case of **Justice K.S. Puttaswamy v.UOI**<sup>1</sup> has provided the right to privacy and given it in an extended form but in no where it was acknowledged by case of M.P Sharma<sup>2</sup>, the judges held that the makers of the Constitution did not specify to subject the power of search and seizure to a fundamental right of privacy due which lack of individual's are subjected to violation of their private rights as there is no proper authorization of any body for protection of privacy of individual. The USA and Indian government have provided with provision of right privacy but in very limited scope as

---

<sup>1</sup> (2017) 10 SCC 1.

<sup>2</sup> AIR 1954 SC 300

there is no specific mentioning by the makers of the Constitution which specify to subject the power of search and seizure to a fundamental right of privacy.

## Hypothesis

- As per in Indian Constitution Right to Privacy rights which are not directly established rather it is in extended right provided to the constitution of India.
- There is gross violation of Right to privacy which is generally conducted by the executive in search and seizure.
- The judiciary plays an active role in safeguarding the privacy rights from illegal search and seizure in USA.
- There is an urgent need of implications of laws against the violation of Right to privacy in search and seizure without proper authorization of law.

## Objectives

The purpose of the present study is to contribute to an understanding of the judgment of the Supreme Court on the content of Right to Privacy in reference of Search and Seizure in India and U.S.A.

Specific objectives are:

- To understand and analyse various emerging dimensions of right to privacy.
- To make a comparative study of various aspects of Right of Privacy in India and U.S.A.
- To make a comparative study in current amendment or article with past amendment or article.
- Remedies against the violations of Right of Privacy in Search and Seizure.
- To review the role of the judiciary in U.S.A. and India on protection of Privacy rights in aspect of Search and Seizure.
- Provide certain suggestions in Search and Seizure which keeps violating by government employees.

## Research Methodology

Due to the pandemic and COVID-19 it is very hard or difficult to conduct an interview or even a survey or experiments, as search and seizure needs more field work. So, the methodology adopted for the research is purely doctrinal. Here both the researchers had adopted the method by referring to various legal books, journal, legal web sites to assemble knowledge on the particular subject and the laws associated to it.

## Limitation

The whole research is claustrophobic to itself in analyzing the legal protection availability regarding to right to privacy in search and seizure in public and worldwide regime. The concept of protection of right to privacy is studied with the acknowledging to American and Indian Laws.

The view of the whole is restricted with doctrinal research involving books, article, Worldwide documents and relevant statutory material.

## Review of Literature

The researcher has analyzed constitutional provisions and landmark judgments given by the Supreme Court of India and U.S.A. The examination of the right to privacy in search and seizure verdict of the Supreme Court of India, constitutional provisions of the Constitution of India and judgments of U.S.A. Supreme Court and interpretation from various books on Constitution, aids in analyzing the implication of the right to privacy judgement and the recent implication of 4<sup>th</sup> amendment of the U.S.A till present day and its situation. So, some of the cases and author who tell or define right to privacy in a context of search and seizure or right to privacy and search and seizure differently:

- **Warden v. Heyden**,<sup>3</sup> the US Supreme Court declared that the position of the property interests are majorly controlled by the right of the Government to search and seizure has been a dishonour. The court also subjected that we have give recognition to that of the principal object of the fourth Amendment in USA constitution is the protecting the privacy of its citizen not the property and have also disregarded procedural barriers rested on property concept.
- **In M.P. Sharma v. Satish Chandra**<sup>4</sup>, in this case the power given that 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. 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.

---

<sup>3</sup> 387 US 294.

<sup>4</sup> AIR 1954 SC 300

- **Kazi Syed Karimuddin<sup>5</sup>, in his work in Constituent Assembly debates the** Kazi Syed made a modification to embedded safeguards rights against arbitrary search and seizure in the Indian Constitution. His proposed text was as followed: "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 seized".<sup>6</sup>
- **Warren and Brandeis (Right to be let alone)<sup>7</sup> in this paper the researcher means** more than to have one's papers secure from official scrutiny or one's photographs reserved for one's friends. It means a right to choose a way of life in which sequestration is possible, and it means that that choice is in some way acceptable to liberal society, a good choice. It means the association of what may be distinct things: the private sphere as against publicity, the private life as against the public life, and a private task as against a public task. In that association there must be something so valuable that it can represent a "right against the world," or the "most comprehensive of rights" as Brandeis called it.<sup>8</sup>

### Concept and Nature of Seclusion

Again the expressions "privacy" and "right to privacy" cannot be normally envisage. Different situation has build up numerous ways, as Tom Gaiety said that the right to privacy necessarily encompasses the inviolable and integrity regarding the body, as well as the privacy of personal identity, including privacy in marriage". Basically, right to privacy means that let someone to stay alone or let that person to be alone for his/her peace of mind. Privacy is also known as data protection in some fields and it's also known as freedom in some cases.

Data protection is a indifferent relation between people or between different groups of people. Data protection lies within individually oriented value, a social state or a state for collective autonomy, which differs from society to society.

In today's life privacy has generally include in many things which is as followed in a category:

<sup>5</sup> Amendment 512 moved by Kazi Syed Karimuddin, Constituent Assembly Debates, Volume VII, Constituent Assembly of India (3-12-1948).

<sup>6</sup> Ibid.

<sup>7</sup> Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," in Harvard Law Review, vol. 4 (December 15, 1890) pp. 193, 195.

<sup>8</sup> Olmstead v. United States, 277 U.S. 438, 478.

- **Home confidentiality, or domestic privacy** - dealing with activities within the territorial limits of the home, workplace and including public places.
- **Confidentiality of information or confidentiality of data** - Dealing with the legal framework regarding the management of personal data (storage and dissemination of data).
- **Body protection or physical intimacy** - Dealing with freedom from physical self-invasion.
- **Communication Privacy** - Dealing with communication protection through known legal means.

However, there are many privacy definitions in this whole world with that no one applies it as everyone have their own privacy definition. There was a case where a teen girl have filed a case against her partner as they upload her born photos on their Facebook, the apex court also can up with their statement that its violating her privacy.

## International Privacy Concepts

There is some of rights which have mentioned about privacy and what rights do people have are stated herein below:

- *“Nobody should be exposed to unlawful interception of their personal, relatives, residence, or communications in order to protect their honour or honor Everybody has the right to be protected by the law against such interference or attack.”<sup>9</sup>*
- *“Nobody should ever be forced to unjustified or illegal intrusions into their personal, home, land, or communication, or to illegal strikes upon their honour and reputation.”<sup>10</sup>* As India being a part of this convention with that both these institutions gave the right to privacy to citizens of both states and central. So, whoever have signatory to it, are expected to have full right.
- *“All of us have the privilege to have their individuals' personal living, home, and communications respected; an authority should not intervene unless it is consistent with a free system and is essential in the name of public safety, community security, or perhaps the institutional well-being of the inhabitants, to risks to their health or ethics, or to defend the liberties of everyone else.”<sup>11</sup>*

## The Elements of Privacy

<sup>9</sup> The 10 article of the Declaration Of human Rights.

<sup>10</sup>The International Covenant on Civil and Political Rights, Article 17.

<sup>11</sup> The eighth article of the European Convention on Human Rights.

In its decision in the matter of *M Nagaraj v. Union of India*, the Supreme Court stated that it was the obligation of the state not only to safeguard human dignity, but also to facilitate it by taking actual action in this regard.<sup>12</sup> There is no specific definition of human dignity. It refers to the inherent worth of every human being, which must be recognised. It is unremovable. Because of his or her existence, every human being has dignity. The right to privacy entails reserving a private place for the person, sometimes known as the right to be even less. The notion is founded on the individual's autonomy. Individual decision-making skill lies at the heart of human individuality. Individuals may establish and regulate their indivisible human essence, their individuality, through the idea of privacy. The ability to make judgments on problems fundamental in human life exemplifies the inviolability of the human psyche. Those are all real issues for which there is a reasonable expectation of privacy. Physical purity and mental purity can coexist if each individual has the innate ability and right to maintain a private space in which the human behavior can flourish. The inviolability of personality would be brought into doubt if one lacked the ability to make judgments.<sup>13</sup>

Recognize an area of Data protection is just an acknowledgment that every individual should have the right to prosecute and prosecute course of personality development. So it can be portrayed that Privacy is a fundamental right to human dignity. An individual's intimate thoughts and behaviour are eligible to a region of privacy where an individual is free from societal demand. A person is not in this confidentiality zone judged by others. In era of e-commerce this is not the case. Every pattern of behaviour and habit are being assessed by a company or organization unknown to us. Confidentiality allows everyone individual to make decisive decisions that are expressed within the individuals personality. It allows man-to-man to reserve their opinion, thoughts, expressions, sentiment, orientation, and option in view of societal demands for homogeneity. Data protection is an constitutional acknowledgment of the law of being different of the individual and creating a zone of solitude.

It's also tries to safe every individual from the searching fierce way to social side in a matter of which personal risk to anybody life. Privacy has not attached to the place or object of where things have started, it is attached to the person. Privacy is the basis of all freedom of a an person and how freedom is exercised. The dignity of an person or individual and both privacy are permanent united in manner of woven structure from a yarn of heterogeneity in the weave of a singular civilization. Individual privacy is a vital characteristic of human dignity.

---

<sup>12</sup> *Union of India v. M Nagaraj* (2006) 8 SCC 212.

<sup>13</sup> *M Nagaraj v. Union of India* (2006) 8 SCC 212.

## In the American Legal System, Search and Seizure

The freedom among the citizens in case of search and seizure in their objects, house, documents and consequences, as well as unlawful searches and seizure is very big issue in USA, because it violates people's fundamental rights and sometimes police goes without warrants into any people's house. Due to it privacy of people also effecting. As we all know that search and seizure mean going into any people private things and this thing can't be tolerated in point of that US courts have made an amendment which is known as **fourth amendment**<sup>14</sup> which talks about protection of US citizens from an unreasonable searches and seizure by any government body.

"The freedom of individuals to be safe for themselves individuals, homes, documents, and possessions against unlawful searches and seizures must be not exploited," declares its 4th amendment. 4<sup>th</sup> amendment change had a dual purpose which are:

- Acknowledge man's jurisdiction in his home.
- To Reject the notion of "police government" in which a law enforcement officer, acting without a warrant, can enter any room or house at any time, break any drawer and seize any paper or other item he deems appropriate. "

The 4<sup>th</sup> amendment also seeks online stored information. As it's says that "the right to feel safe" sensory words are clearly applicable to "In such an online space, there is a "fair" presumption of privacy. The 4th Amendment safeguards citizens "Unfair searches, arrests, and searches of individuals, homes, books, and items shall be prohibited. "4<sup>th</sup> Amendment was presented even as freedom that prevents and does indeed protect persons and places, leaving a lot of room for interpretation of the change's language. Plus, the company did not reach a clear consensus on privacy expectations regarding (and developing, in the future) the forms of information registered and / or transmitted.

People have the freedom exist secure their own homes, documents, or possessions, but inappropriate searches and arrests must not be carried out. and not any assurances would arise in the given most common reason, accompanied by oath or affirmation, in particular the definition of the location where the registration was made and the individuals or property to be taken.<sup>15</sup> The 4<sup>th</sup> Amendment Bill of rights protects people from unwarranted searches and seizures of their belonging along with premises understands their houses. The

<sup>14</sup> Fourth Amendment, US constitution (Bills Rights).

<sup>15</sup> Ibid.



purpose of this provision is to protect citizens of intrude on their lives. The fourth reform requires courts to decide what defines a search or seizure. Uncertainty challenged activity does not come under the limits of the 4<sup>th</sup> Amendment, the plaintiff would not be protected by it.

## Search

Search always happens when a government worker or any authority body tries to violate any person privacy or he/she individual's reasonable presumption of privacy.<sup>16</sup> A person is sensible expectation of privacy means someone who makes unreasonable and serious compromises another person's interest in not disclosing their affairs may be held responsible for such exposure or burglary.

## A Person's Seizure

According to the 4th amendment, a person is seized at the police station, and the action is conveyed to a competent individual, which takes consideration along with conditions of incident, that besides it is not permissible for a person to overlook the appearance of the cops and abandon the property.

In the light of **Olmstead v. U. S**<sup>17</sup> the Apex Court has decided that the judges have passed a rule which says that wiretapping federal agents without judicial authorization are Discussions captured without accessing the defendant's house are not a search or arrest by the authorities, and the conversations do not pick the items to be collected. Again, this case rule was used in **Katz v. United States**<sup>18</sup> Justice Brandeis justified his dissent and wrote that "the creators of our constitution is committed to creating favorable conditions for the pursuit of happiness. You awarded against that government, the right, let alone the most complete right and the most cherished right to be of civilized men. He said it looks like the constitutional right to privacy will stay here. The presumption of privacy test was suggested again in the same case of **Katz v. United States**<sup>19</sup> Justice Harlan has consensual opinion stated this test. The test says that the individual has a fair presumption of secrecy, and the test must have accepted by society. A person who expects privacy in an open space is therefore not a reasonable expectation privacy and therefore citizens cannot expect the government to protect their privacy.

<sup>16</sup> Cornet Law School's Legal Information Institute, [https://www.law.cornell.edu/wex/fourth amendment](https://www.law.cornell.edu/wex/fourth%20amendment) ( last visited on December 24,2020).

<sup>17</sup> Supra note 56.

<sup>18</sup> United States v. Katz 389 U.S. 347.

<sup>19</sup> Ibid.

In **United States v. Jones**,<sup>20</sup> The consensus found that high tracking would be accomplished by the use of a GPS detector bending up on a metal post as a check due to physical interference into the fender. Again, Judge Sotomayor agrees and Judge Alito agrees with Judges According to the decision, Ginsburg, Breyer, and Kagan proposed that the aggregation of extremely large amounts of data would individually reflect a quest (as far as the fourth change is concerned) physical penetration. By focusing too much on the information being collected and not how it is being collected, Endeavours to maintain fair confidentiality are jeopardised by emerging encryption technology, which would destabilise the rights and interests of both knowledge consolidators and its content.

## Search and Seizure in Indian Legal System

If we carefully view the human rights are not bodied in the constitution and the law or even if assurances are not appreciated then any citizen would be safe in inconsistency of domination and dictatorship of the government which in functioning. The Criminal Justice system's ideology which they possess also protects the right of the person and his or her personal liberty. Earlier to the beginning of the Indian Constitution which came into force after the Independence the whole supervision of criminal justice system was brought into action or is governed by the by the provisions of the Criminal Procedure Code and the Evidence Act. The Criminal acts are mainly apprehensive not with the person's liberty but with safety of the state and public peace and security. Late to the independence the Part III and Part IV of the Indian Constitution conserved the prolonged exquisite requirements of the people of India in the form of fundamental rights and directive principles of state policy. With that there was functioning of Article 20,21 and 22 of the Indian constitution<sup>21</sup> especially to safeguard and protect the respect for human nature and personal life and liberty. The Articles 20 of the constitution provides "*protection in respect of conviction for offence*:"

*(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence*

*(2) No person shall be prosecuted and punished for the same offence more than once*

*(3) No person accused of any offence shall be compelled to be a witness against himself which acts an immunity.*"<sup>22</sup>

<sup>20</sup> United States v. Jones 132 S. Ct. 945.

<sup>21</sup> Constitution of India 1949 <https://legislative.gov.in/constitution-of-india>

<sup>22</sup> Article 20 in Indian Constitution 1949 <https://legislative.gov.in/constitution-of-india>

The Article 21 of India Constitution proclaims in plain expression that *“No person shall be deprived of his life and personal liberty except according to procedure established by law”*. This article also gone through the substance of one of most surprizing expansions of law in current years of time. The Hon’ble Apex Court of India had taken elongated period taken to interpret the article purely demonstrates the Dicey’s concept of rule of law i.e., *“the executive cannot interfere with the life or personal liberty of a citizen except by authority of law”*<sup>23</sup>. The interruption regarding individual liberty is connected with Draconian the law. When there was introduction of time of the case Maneka Gandhi case, it was held by the Hon’ble Supreme Court held that it is not adequate just that there is a law authorizing shortage of life or personal liberty but such law should prescribe a procedure for doing so and such procedure should be reasonable fair and just. During the understanding of article 21 a person cannot be deprived of his life or personal liberty except under the authority of law which proposes a reasonable fair and just procedure.<sup>24</sup>

The Indian Constitution’s Article 22 provides *‘protection against arrest and illegal detention in certain cases. Clause 1 of that article provides that arrested person shall be informed about the grounds of arrest without unnecessary delay and the person arrested shall have a right to consult and be defended by a legal practitioner of his choice which further provides that no arrested person shall be kept in police custody beyond a period of 24 hours without the authority of a Magistrate’*<sup>25</sup>. The basic philosophies of Criminal Legal attitude which rules our criminal law is that each and every person is supposed to be innocent unless proved guilty. This is basic principle finds place in our criminal justice system is theme to certain prohibitions in case of weaker section of the society i.e., women where there are certain assumptions against the theory of innocence and the accused have to prove that he is not guilty as in cases of rape and dowry deaths.

It was described that the powers of search and seizure is given to the government of the state is recognized for the interest of people at large and of care of the society in specific. The powers regarding the search unconditional in the administration directly affects the personal liberty and right to privacy of an individual. The idea of personal liberty comprises in respect of the right of privacy is still today undetermined. Under the Indian Constitution there is no guaranteed right to privacy but attempt have been bought forward to evolve the concept from Article 21. It was also observed that Apex Court had extent of expanded the scope and

---

<sup>23</sup> Dicey on Writing the "Law of the Constitution" Mark D. Walters, Oxford Journal of Legal Studies, Vol. 32, No. 1 (Spring 2012), pp. 21-49 (29 pages)

<sup>24</sup> A.I.R. 1978 S.C. 597

<sup>25</sup> Article 22 in Indian Constitution 1949 <https://legislative.gov.in/constitution-of-india>

domain of the personal liberty. In one of the famous case *Puran Mal*<sup>26</sup> case the court moped upon uplifting the right to privacy to the status of fundamental right in the constitution. There was also restriction by the Supreme Court int right to privacy regarding search and seizure. But in Present day the major question rises is that whether the search directed under the provisions of the criminal law is hit by article 20(3) of the Constitution of India? In one of the well known cases i.e, *M.P.Sharma* case it was held by the judges of the court that after reading historical background of Indian criminal procedural law which is concerning searches, intervention of the judicial functions while ordering searches and the person to whom the orders regarding searches are made, such searches were not equivalent to endorsement pressure to the accused person and for that reason there was no invasion of fundamental right guaranteed by article 20(3) of the Constitution of India. They declared that the Constitution of India does not have any language similar to the Fourth Amendment of the US Constitution, and found no justification to import the concept of a fundamental right to privacy in search-and-seizures, through what they called a 'strained construction. As per Indian Constitution it is an right in each and every case of arrest the person arresting shall communicate to the arrested each one, without delay, the grounds of his arrest. This is fundamental right of the arrested person under article 22. There is also application of Article 32 and 226 of Indian Constitution as writ of Habeaus Corpus which the person can use as defence.

It was seen that most of the times the police uses different forceful way by that are seen by the police for procurement evidence by searching the premises engaged by a person is a serious upon the rights of an individual but such violation will have to be endure in the larger interests of the people living in the society. An endeavour shall be made to strike a stability among the interests of the individual and society by providing certain safeguards in favour of the individual.

In the case of the **State v. Shewani Singh** it has been observed, “ An Indian citizen's house it must always be remembered that it is his castle because next to his personal freedom comes the freedom of his house”<sup>27</sup>. No citizen within the territory of India cannot be deprived of his personal liberty except under authority of law as well any officer of the administration has a privilege right to forcibly enter a citizen's house except under the authority of law. In India there is penal laws I.e, Code of Criminal Procedure 1973, where there is given special statute provides regarding the search and seizure to its citizen.

## **Procedure Needed for the Presentation of Material in Possession**

<sup>26</sup> A.I.R.1974 S.C.348

<sup>27</sup> A.I.R. 1968 Delhi\* 208

The Police officer of any court may under certain circumstances may issue of an order by magistrate or a summon will be served for the producing of any documents or other things if it is related to the investigation, inquiry or trial throughout the case and its is established under the following section 91 of the Code of Criminal Procedure, 1973.

### **Search with a Warrant**

As per the procedure of search an search warrant is produced and given to a police officer or by a competent magistrate where the court is directing the search of any place in bringing up the documents or the things which are wrongfully detained in their possession. As we have already discussed that the search and seizure of documents from the accused does not amount to infringement of fundamental rights under Article 20(3) of the Constitution. It is, therefore, necessary that the power to issue search warrant 58 should be exercised with all care and circumspection. According to the provisions of the Code of Criminal Procedure 1973 search warrants may be issued under sections 93,94,95, 97 and 98.

### **Power to Seizure**

The power regarding the search carries with it the power to seize the documents or things anyhow the fact that this provision has not been specified in the section itself.<sup>28</sup> The power of seizure has been discussed in the Section 93(1) (c) based only not on examination of the place but seizure of written document or things which the court considers necessary or needed. It has been seen that illegal search even does not invalidate the seizure<sup>29</sup>.

### **Discarding of things seized**

If any papers is seized by any police for inquiry and the court feels that it is unneeded for inquiry it may be handed back to the person from whom it was seized during the process. Ordinarily the seized property shall be returned back to the individual from whom it was condemned there also another addition to it any property is discovered from their it shall not be returned back<sup>30</sup>. The whole disposal of property seized under the various of the code governed under section 451,452 and 457 of the Criminal code.

<sup>28</sup> Calcutta cycle company v. collector of customs A.I.R. 1956

<sup>29</sup> Radhakrishnan v. state

<sup>30</sup> State Bank v. Rajendra A.I.R 1969 S.C.401

## Role of Judiciary in Enhancing Right to Privacy in India and America

### Explanation in the light of India

Later on after a decade or more the Judgement of the Honourable Supreme Court where a bench of judges who were again challenged with a same kind of case as like of the case I.e, Gobind v. State of Madhya Pradesh<sup>31</sup> were it was held that exist the concept of right to privacy as fundamental right under Article 21 of the constitution. With evolution of time privacy had established in our fundamental rights. The concept of privacy has ever featured such a hefty challenge of its existence as it faced before the judgement of the case of K.S. Puttaswamy v. Union of India in the year 2017 which was overruled by the judgement M.P. Sharma case and case of Kharak Singh<sup>32</sup>. Later on the with passing of the judgement of 2017 it was crystal clear that right to privacy is our fundamental right and it will never lose the status under three well known the Golden Trinity of Article 14 (Right to Equality), Article 19 (Right to Freedom) and Article 21 (Right to Life and Personal Liberty).

We can regard that this circumstance is the major turning point in the Indian judiciary in the light of right to privacy.

### Gobind vs. State of Madhya Pradesh<sup>33</sup>

In the current case also the Hon'ble court trace any reference related Right to Privacy in the Constitution but pointed out that certain rights should be protected as fundamental privacy rights. The court said that privacy should be dealt with care and can only be denied when the superior show counterbalancing interest is important. The law infringing the fundamental rights should full fill the need of the state. The question can be raised that State interest is of that importance that it can justify the infringement of rights. By means of the right to privacy was not mentioned in the Constitution from the beginning, the Court tried to give it a broader view. It founded that right of privacy overlaps with liberty. On the Justices explained explained that any right to privacy must encompass and protect the intimacies of the home, the family, marriage, motherhood, procreation and child rearing<sup>34</sup>. Court further said that in any event, the right to privacy needs to go through

---

<sup>31</sup> 1975

<sup>32</sup> 1965

<sup>34</sup> Justice Mathew

case-by-case development. When we make the assumption that the right to personal liberty, right to move freely, freedom of speech develops the independent right of privacy which can be said as fundamental right still we cannot assume it is an absolute right.

The Court also mentioned that fundamental right must be subjected to limitations on the basis of public interest. Therefore, it held by the court that the fundamental right which was provided under Article 21 was not violated in the present case as it says, no person shall be deprived of his life or personal liberty except by the procedure established by law<sup>35</sup>.

### **The famous AADHAR CASE: (Justice K.S. Puttaswamy v. Union of India)**

The recent case related to Right to Privacy which was brought by an 91-year-old retired to Karnataka High Court in-front Judge Puttaswamy against the Union of India b of the Supreme to ascertain whether the Right to Privacy was secured as a fundamental right under the Indian Constitution . These case which directly concerned with an issue to a challenge to the government Aadhaar scheme (a form of uniform bio metrics-based identity card) which was made the government made compulsory for getting the benefits of government an =d its services. Which was regarded that there is gross violation of right to privacy of a person. Accordingly, a Constitution Bench said that fundamental Right to Privacy within the provision of Article 21 of Constitution of India. After which the Supreme Court recognized the existence of Right to privacy under Article 21 which is the inherent part of it.

### **Privacy in patient's Information**

The main matters neighbouring right to privacy is the revelation of patient's personal information by medical practitioners. In Indian laws it strictly adhere that no medical practitioner should not reveal the identity of its patient and it is against the regulations of Indian Medical Council of Regulations. It also put forward that until and unless the it effects the public welfare it will fall under the ambit of Right to privacy. Therefore, the set-out rule would always remain the same that public welfare will prevail over individual interest. There was 2011 amendment brought to IT act which defined "sensitive personal data" for the first time and also

---

<sup>35</sup> Article 21 of the Indian Constitution

mentioned that such type of data cannot be revealed without the prior consent<sup>36</sup> of the patient. This right also comes under privacy and it falls under Article 21 of the Indian Constitution.

### Reasoning in the context of America

If we consider in present day the 4th Amendment's scriptural precedent is among the strongest illustrations of a Constitutional like a dynamic instrument in which broad rules are constantly adapted to new and complex situations. Also surely no authors of the amendment nor the national of the eighteenth century expected the "unreasonable search and confiscation" protection to be applied to eavesdropping devices and low-flying helicopters at high altitude.

The actual importance of the decision of the Attorney General is evidence of the 4th Amendment. These determinations seek to strike a proportionate in the middle of the lawful law enforcement's interests along with that sensible demand respect for people' privacy. To achieve this careful balance, it seems that Supreme Court judges and the American citizens today are ready to give away their privacy issues in order to increase security of the general public. Some would argue that by reaching this conclusion, we are ignoring our country's history, while others will argue that we are safeguarding our common future.

They citizens of America conducted is a great public debate happened about the laws relating to searches and seizures. A 1993 investigation found: "Americans are so eager to lock up crimes that they really are ready to give up fundamental liberties in order to keep the life easier."<sup>37</sup> Many of them believe that the limits of search and seizure protect criminals' rights at the expense of innocent civilians Others feel that restricting police searches and seizures saves innocent persons from excessive mistrust as well as the absence of fair justice delivery.

### Courts view on Fourth Amendment:

Throughout the time the courts have been asked many times to use the fourth amendment to restrict police activities While judges frequently highlight that search and seizure judgments are made on a case-by-case basis, a thorough analysis of the circumstances in each case is required helps to identify certain principles in existing Fourth Amendment case law. The exemplary case of the fourth amendment occurs if a person in a

<sup>36</sup> NOTIFICATION FROM THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DEPARTMENT OF INFORMATION TECHNOLOGY) The 11th of April, 2011 in New Delhi.

<sup>37</sup> The Second American Revolution, by James Patterson and Peter Kim (New York: Wm. Morrow and Company, 1994), p. 165.



criminal trial claims that the acquisition of evidence by the police (government) violates their constitutional rights. The defendant challenges to the activities of the police at a pretrial hearing known as a deportation petition, while the state (the prosecutor) defends the search as legitimate and not violative of the 4th amendment. So when evidence is thought to be in violation of the constitution, the exclusion rule is invoked.

This exclusion policy applies to appeals from violations of the 4th Amendment (and some other Constitutional infractions) enacted by the United States Supreme Court. This guideline was always a source of contention. Professionals have said that it merely serves to shield crooks. Its supporters argue that it serves as an effective deterrent to police misconduct and that the use of unlawfully obtained evidence would jeopardise the integrity of the legal process.

### Conclusion and Suggestion

The recognition of privacy as a key and basic right of a person in India that can be jeopardised. The Apex Court maintained the verdict, which is legitimate and in line with the developing trend in information technology. The right to privacy must be recognised as a basic right. There should be hard-and-fast laws needs to be introduced. A professional panel should be constituted to investigate how many cases of privacy infringement occur in India in regard of search and seizure and accordingly government wholly dealing with such difficulties must be enacted. There shall be strict action taken in place of illegal search and seizure and new laws shall be specially added for the police inaction who regularly violates the privacy of general public in India. All the procedure should be followed as per Criminal Code Procedure for any kind of search and seizure. Correspondingly, the laws related to American i.e enforcement power to warrant less search technology is still developing. It conclude that both India and USA have a very powerful past of preserving citizens privacy and the major question lies that how far each government will be going to sudden trend in growing technology. And basically with traditional and societal pressures will help keep the balance between the need to administer justice and the need to retain society's rights to privacy.

Where as in America there is only one right to privacy law which is followed the most in cases. So, there should be more laws or act related to right to piracy so that it will be easy for everyone to understand the meaning of privacy. The more laws people have the better and faster results they will get. Also, there should be a separate Search and Seizure law which can properly describe its meaning which also include the prison penalties more than 3 to 5 years and if some government agent tries to do unreasonable search and seizure, they agent should be suspended for at-least 12 months so that he/she can understand the issue. Government

agents also need to change their mentality as for the record of 2019 survey 60% of black African American people are getting arrest and their houses are been search and seizure for unreasonable. At the end there should a law which defines proper penalties and describes human rights in right to privacy.

