

## ASSIGNMENT ON RIGHT TO PRIVACY UNER ARTICLE 21 OF THE INDIAN CONSTITUTION

NEHA DATTA

(Amity Institute of Advanced Legal Studies)

*According to Black's Law Dictionary "right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned."*

"Each person of life, liberty and security of person is." Every individual is entitled of life, liberty and security, the same has been guaranteed by the state of the country under Article 21. This Article has achieved eminence amongst all other provisions of the Indian Constitution and has special position as a Fundamental Right. This Article 21 has been given wide scope in our Constitution that has extended over multiple aspects which at the time of its drafting might have not been realized by the makers of the Constitution. Within the Article 21 the most talked about or controversial aspect is Right to privacy as the ambit of the same under this Article is very wide. The new interpretation of article 21 in the case of Maneka Gandhi<sup>1</sup> ushered in a new era of expansion of the horizons of the right to life and personal freedom. Therefore, the right to privacy implies freedom, a non-restrictive intimate private life in which there is freedom in the personal relationship of the government, the freedom of an individual to involve himself, his family and his relationship with others.

It is pertinent to mention that laws are meant for the welfare and protection of life of citizen. Laws are meant to serve people; people should not be made to serve laws. In order to make a human life worth of living fundamental right has been drafted under Article 21 of the Constitution and right to privacy is one of them. Unfortunately, it was not credited as much as it should have been. There are circumstances where a person under his professional capability intrude in the houses. Excessive use of power or misuse of power can lead to violation of the fundamental Right. *Can we call it as infringement to right to privacy under Article 21?*

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<sup>1</sup> Maneka Gandhi vs Union Of India,1978 AIR 597, 1978 SCR (2) 621

In the case of *Kharak Singh v. State of UP*<sup>2</sup>, first time an issue was raised with regard to right to privacy where it was held by the Supreme Court that the regulation 236 of the UP Police regulation was not constitutional as it was in clash with Article 21 because their night visits to Appellant's house was disturbing their privacy which policemen were doing under the shield of surveillance. It was an unauthorized intrusion in people's home was ordered as Violation of Liberty. This appeal was denied by the Supreme court as it was upheld that regulation of police are not guaranteed under the constitution, that is why, the provision is not unconstitutional. Justice Subbarao's opposed to the above mentioned judgment of the Supreme court and held that, *"although the right to privacy was not expressly recognized as a fundamental right, it was an essential ingredient of personal liberty under Article 21."*

In another landmark case of Supreme court passed a unanimous judgement wherein the Indian biometric identity scheme Aadhaar was called into question for invasion of privacy of Indian citizen which was unconstitutional. Defying to all the arguments of not considering right to privacy as a fundamental right proposed by the opposite party, the Hon'ble Supreme Court passed the judgement for considering the Right to Privacy as a fundamental right. The judgement was proved as a watershed moment in the Indian constitution.

The right to privacy is and inherent part of the Article 21 holding as importance as the right to life and personal liberty has in the part III of the constitution. The right to privacy in India has been developed in succession over past 60 years. The interpretation of this provision has been improvised and modernized as they are been interpreted in conformity with the international human rights instruments, ratified by India. It has been concluded to interpret and understand the right to privacy as an imperative part of the constitution.

In tussle between right to privacy and fair trial, the right to privacy will have to surrender for the survival of justice. The concept of fair trial is based on justice as it is the very essence of democracy and rule of law. The right to a fair trial is a concept which is essentially incorporated into the Indian Constitution. In a democratic country like India, not even a defendant can be denied the right to life and personal freedom. The Indian constitution

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<sup>2</sup>Kharak Singh vs The State Of U. P. & Others on 18 December, 1962

through its article 21 makes the fair trial a part of life and personal freedom. It has been observed in the case of Supreme Court that fair trial is the essence of criminal jurisprudence. It is the fundamental right that flows from the Article 21 else it is denial of justice under human rights.

*“Although today, privacy is recognized as a fundamental right, that alone would not make evidence collected in breach of that right, inadmissible. Much less would it negate the specific statutory dispensation contained in section 14 of the Family Courts Act, which says that evidence would be admissible, whether or not the same is otherwise relevant or admissible under the Evidence Act. while the right to privacy is essentially a personal right, the right to a fair trial has wider ramifications and impacts public justice, which is a larger cause”<sup>3</sup>*

The crux of the matter is whether it is such a substantial injunction that affects the fate of the process beyond any redemption or, for that matter, it is an omission or an act that defeats the basic conception of the fair trial. Basically, a fair and impartial process has a sacrosanct purpose. He has a demonstrable object that the accused should not be harmed. A fair trial is required that totally excludes injustice, prejudice, dishonesty and favoritism.<sup>4</sup> Evidence Act under section 3 allows the collection of evidence but if it hampers someone’s reputation then it mandatory to go under through the relevancy rule i.e. it should in connection with the “fact – in – issue. But section 14 of the Family courts Act, 1984 empowers the Family Court to “receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

The only test is based on the RELEVANCY of the evidence that makes the evidence admissible. The effect of ignorance of a fair trial is much more detrimental than respecting a human right which is not even an absolute one and it impact the larger public justice.

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<sup>3</sup><https://www.barandbench.com/news/litigation/are-family-courts-empowered-to-receive-evidence-which-is-collected-in-breach-of-privacy-of-a-party-delhi-hc-answers>

<sup>4</sup>Rattiram & Ors vs State Of M.P., 17 February, 2012

Right to privacy is not just a concept utilized (now) not only against the state but also against the individuals<sup>5</sup>. Article 21 is a fundamental Right that and is not an absolute one, it is ultimately to prevent miscarriage of justices or to protect the rights and freedoms of others. There are certain limitations to right of privacy

Intervention to right of privacy of any citizen can be done by:

1. Legislative powers,
2. Executive orders,
3. Judicial orders.

The legislative intervention can be done on the basis of reasonableness as given in the constitution, the executive order can be achieved on the basis of facts and circumstances if the case and the court must have sufficient reasons to issue Judicial warrants for the purpose of search and seizure that may corroborate to the evidences concerned with the regards to good faith and in the interest of State. It should be assured that no harm is caused to the person or the property. In the case *People's Union for Civil Liberties v. Union of India*<sup>6</sup>, there was an uncontrollable protest by politician because CBI had tapped their phones. The Public Interest Litigation was filed claiming intrusion in the privacy of the politicians. Telephonic conversations are import part that shows man's private life. So, tapping of telephone was considered as invasion into the privacy. Hence, telephonic conversation cannot be considered legal until and unless the conversations are not permitted under due process of law which must just, fair and reasonable.

There are three conditions for the admissibility of the evidence presented in the court which is otherwise inadmissible but is allowed in certain case for providing justice namely, (a) relevance, (b) voice identification and (c) proof of accuracy. Hence, tape conversations are admissible and can be used to corroborate as well as contradict evidence.<sup>7</sup> It is totally dependent on the ultimate intention of the parties to invade into anyone's privacy. The evidences must be very much in connection with the issue of the case in between the parties

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<sup>5</sup> Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., 24 August 2017

<sup>6</sup> *People's Union for Civil liberties v. Union of India*, (2003) 2 S.C.R. 1136

<sup>7</sup> *S. Pratap Singh vs. State of Punjab* : (1964) 4 SCR 733

and should contribute as an evidence that can change the mindsets of the judges towards the other party.

In light of Indian Evidence Act, under section 3 of the Evidence Act, 1872 the evidences have been divided into oral evidences and documentary evidences. Oral evidences include all the statements recorded by the due permission of the court made by the witnesses in relation to the matter. Wherein documentary evidences are those electronic records produced for the investigation of the case in the court.<sup>8</sup> The Indian Evidence Act protects has provided the ultimate protection to certain communications in between the parties having different nature of relationships in between them. These kinds of conversations are called as privilege conversations under section 122 of the Indian Evidence Act, 1872<sup>9</sup>. However, the privilege has certain limits to maintain the privacy of the parties and sanctity of the court. It may be possible that there is violation of this provision under various circumstances.

Privilege communication is the communication between parties that has some kind of professional or personal relationship, the details of such communication has to be kept private in order to maintain the confidentiality of the conversations. The disclosure of such conversation or information has been prohibited under section 122 of the Indian Evidence Act, 1872 to protect the privacy of the parties. The most controversial conversation is spousal conversation because intimate or personal relationships are the most sensitive issue that as to deal by the courts with utmost adherence. The spousal communication is the communication are the marital conversation between a man and his wife. Imparting of any information to anyone from the parties in wedlock may ruin the existing marriage. This concept in Indian Jurisprudence has characterized the word “expectation” of maintaining secrecy in between the parties and information been imparted to any third party may ruin the whole family structure for life.

The ambit of the section 122 of the Indian Evidence Act has been regarded as very narrow as it limits to be admitted as evidences in any case which can be crucial to any case. But exceptions are everywhere, if in any case the spouse is involved in any practices that are not considered regular or normal are comes under section 122 of the Indian Evidence Act. In case there is a requirement of testimony of a wife in case of murder by the husband then he can

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<sup>8</sup> Section 3 of the Indian Evidence Act, 1872

<sup>9</sup> Section 122 of the Indian Evidence Act, 1872

point at the conduct of the husband in that period<sup>10</sup>. The communications in between the husband and wife has been referred as privilege communications under section 122 of the Evidence Act. Further, that any party to the marriage should not be compelled for disclosure of any information without the consent. The parties are not allowed to share the communication even if they are willing to. The notion behind this provision is to protect the peace and harmony in marriage and also to prevent family arrangements.

The best part is yet to come, this provision isn't very rigid which means it is not an absolute right. Though the privilege under section 122 is for the welfare of the marriage between the spouses in the families. The information can be disclosed if there is any suit in between the married couple or the person gives his or her consent to disseminate the conversation or the other partner has been prosecuted for any crime against the other. Any information given to court in the aforesaid circumstances are admissible if it corroborates to the fact – in - issue of the suit. Further it is pertinent to mention that this provision of the act is barred only till the time the marriage exists and not any time before or after the dissolution of marriage. Thereafter, the parties are not bound to provision of the privilege communication as in they are free to divulge the information.

This provision is brought up to protect the public interest, the information could be of public interest which must be prevented from getting leaked and hamper the security of the country. Also, letting husband and wife testify against each other would make their family relationships weak and they would lose their faith in the relationships.

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## FACTS OF THE DEEPTI KAPUR v. KUNAL JULKA

PARTIES:

PETITIONER  
KAPUR

..... DEEPTI

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<sup>10</sup>[Bhalchandra Namdeo Shinde v. the State of Maharashtra](#), 2003 (2) ALD Cri 84, 2003 BomCR Cri, 2003 (2) MhLj 580



VERSUS

RESPONDENT

..... KUNAL

JULKA

The petitioner/ wife and respondent / husband has filed a divorce petition bearing no. HMA no. 609/2012, that is pending before the Family court.

1. The petition for divorce was filed on 26.9.2012 by the Respondent/husband seeking for dissolution of marriage on the grounds of cruelty under section 13 (1)(ia) of Hindu Marriage Act, 1955. In order to prove cruelty by Petitioner/ wife the husband had filed a Compact Disc(CD) operating to consist of a audio – video recordings of wife, having conversation with her friend, named Sugandha, in which she was talking in defamatory and derogatory manner about her husband and her family.
2. That the written statement was filed by the wife in which she refused to accept the recordings and the transcript of the same to be purported on record. She stated following grounds for the non-acceptance of audio – video recordings to the court:
  - Wife questioned the authenticity of the recordings and stated that they are tampered.
  - She defied to accept her ‘personal conversation’ with her friend because it was secretly recorded by the husband and there was no consent given to the husband for the same. Hence, it is infringement of her fundamental right and should not be admissible in the court as evidence.
3. In response to the objections raised by the wife, husband moved an application in the Family court to prove the authenticity of the CD for the purpose of bringing it on record as evidence. Relying on the contentions made by husband, the court issued an impugned order on 24. 12.2018 wherein Family Court allowed the Family Court that husband shall be allowed to bring on the CD on record as evidence for the purpose to assess the genuineness of the recording.
4. Then, the court directed to assess the content of the CD to Forensic Science Laboratory (FSL) and to render the opinion on the following aspects:

“FSL shall report:

- Whether the contents of CD and the original recording in the recording device are at variance?
- Whether the original recording has been tempered with?
- Whether the transcript relied upon by the petitioner is correct, as per original recording?"

## **SUBMISSIONS BY BOTH THE PARTIES:**

### **Petitioner's submissions:**

- The objection was raised on the basis of the infringement of her basic human right guaranteed by the constitution under Article 21. The husband had recorded the audio - video by the means of a CCTV camera installed by him without her consent in the bedroom of the parties. Accordingly, wife contended that recording of her private conversations with her friend is unethical.
- In the context of judgement Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors., 24 August, 2017, she has now contended that privacy has been exclusively recognized by the Supreme Court as a fundamental right. hence, the recordings cannot be brought in for the evidence because secretly recording of any conversation via CCTV installation in bedroom is illicit and that is why it shouldn't be allowed as an evidence in court.
- That it shouldn't be allowed to be accepted under section 14 of the Family court Act as it is attained in illicit manner that abridges the fundamental right of the wife.
- It has been urged by the wife that husband's act of secrecy clearly implicated that he has done something illicit. Recording of telephonic conversation has been considered an offence under section 354 – D of the Indian Penal Code, 1860. Clearly, he has committed a crime and it should be punishable by law and accordingly inadmissible evidence in the court of law.

### **Respondent's submissions:**



- The husband has contended that the fundamental right has not be recognized as an absolute right, exemptions can be made on the basis of the merit of case. Relying on prior judicial precedents, he urged that to in order to establish evidences against his wife for cruelty done by her to him for the ultimate purpose of dissolution of marriage on the grounds of cruelty.
- That just like the wife husband under Article 14 also entitled for his fundamental right as a citizen of India. The husband should het his justice through fair trial that has been guaranteed under Article 21 of the Constitution.
- Section 14 of the Family court empowers the Family Court to receive the evidences, that corroborates to the dispute, regardless whether it is admissible according to the provisions of Evidence Act or not.

### **OBSERVATION OF THE COURT:**

- Delhi High court stated that laws related to ‘admissibility’ of evidence has been “crisp, clear and consistent”, referring to judgments passed by the Supreme court, quoting the 5-Judge Constitution Bench decision in “*Pooran Mal vs. The Director of Inspection (Investigation), New Delhi & Ors*”<sup>11</sup>. It was inferred that until and unless there is no prohibition that exclusively restricts the evidence to be inadmissible because it was obtained through legal means, it shall not be ostracized.

*The admissibility is merely based on the relevancy of the evidence, i.e., it should corroborate to the fact in issue of the case – court added.*

- That the Court considered the ambit of the section 14 of the Family Courts Act and observed that the lawmakers need to expand the ambit of the section in order to let it work independently without ant intervention of law of evidences.
- The sole ground based on which evidence shall be admitted under section 14 of the Family Court is its subjectivity satisfaction where the evidence is effectful to prove anything been dealt within the suit. It is irrelevant that how the evidences have been obtained unless it is useful to the dispute.

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<sup>11</sup>*Pooran Mal vs. The Director of Inspection (Investigation), New Delhi & Ors*

- Stating that an opinion to the contrary would render section 14 nugatory and dead-letter, the Court remarked,

*"Family Courts have been established to deal with what are essentially sensitive, personal disputes.. matters, by the very nature of the relationship from which they arise, involve issues that are private, personal and involve intimacies. It is easily foreseeable therefore, that in most cases that come before the Family Court, the evidence sought to be marshalled would relate to the private affairs of the litigating parties. If section 14 is held not to apply in its full expanse to evidence that impinges on a person's right to privacy, then section 14 may as well be effaced from the statute."*

In the view of the aforesaid opinion of the High court of Delhi has mentioned certain safeguards which Family court is required to use at the time of accepting the evidences.

**The safeguards are as follows:**

- Family Court must consider two main aspect while choosing the evidence one is authenticity and genuineness, depending upon the circumstances of the dispute.
- family courts must consider aesthetics of the court when they are taking the evidences. Of in the opinion of court the evidences are derogatory to someone's image or inappropriate or otherwise sensitive. Then the court must consider viewing the evidences in-camera proceedings or in any other way possible.
- In blatant cases, the family court may observe or direct the legal observation intervention against a party who may appear guilty of obtaining by illegal means. Any party affected by the production of such evidence would also be free of appropriate procedures.

*"As far as the present case was concerned, the Court stated that the contents of the CD would be a 'relevant fact' in terms of sections 5, 7 and 8 of the Evidence Act and could be received by the Family Court."*

In end the Appeal was denied by the court as Delhi High Court dint find any infirmity in the decision of Family court.

## CONCLUSION

The concept of privacy cannot be precisely defined. In public law, traditionally "privacy" means freedom from official intrusion. However, today with the development of science and technology and other pressures, the term "privacy" has received a broader meaning. Privacy in general means "the right to be alone".

The introduction of the Right to Privacy was introduced after a lot of Political, social and economic changes. This right contributed to the growth of the society as it broadened the ambit of privacy especially amongst our youth. In very ancient times, the interference was merely limited to physical intrusion in life and property. Subsequently, the spiritual nature of man, his feelings and his intellect were recognized. The scope of laws has broadened with the change in the society like now right to life has become the right to enjoy life, the right to be left alone.

Privacy is the result of a person's desire to hide from others some knowledge about their past and present experiences and actions and their pretend intentions. The desire for privacy expresses the desire to be an enigma to others or, more generally, the desire to control the perception and beliefs of others in front of the person hiding. The major impact of the privacy is mental distress and to protect that it through laws because it is done without knowledge of the occupier.

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There are two stages of Right to Privacy: The first of these is the absence of interference in oneself, home, family and relationships. The second is the confidentiality of information, that is, the right to independently determine how and to what extent the information themselves communicate to others. An individual keeps on changing their emotional mechanism on the basis of their social life and personal barrage in their daily life. Everyone has their personal needs of expressing themselves in their relationships and it is the other person's responsibility

to maintain the privacy. It is very important in professional relationship to maintain the confidentiality of the information else there are dire consequences of the same. But on personal level one cannot be bound to maintain the privacy of other person in the relationship because everyone's emotional aptitude and social life, so it is not necessary that what is necessary for one is not necessary for the other. A free society leaves this choice to the individual, as this is the core of the "right to individual privacy": the right of the individual to decide for himself, with extraordinary exceptions in the interest of society, when and under what conditions to do so documents must be disclosed to the public.

The right to privacy is a right whose contours still remain Undefined. Of the right to live one's life, it is stated that one has the the right to do what you like to do with your life without interference. The insistence has always been for a private space in which man can turn around and remain himself. While the common law principle in democratic countries make every man's house their castle, Kantian Philosophy emphasizes the spiritual aspect of life in addition to the mere physical one. Existence has the right to the personal dignity necessary for the spiritual realization of man developing. It is a purely material aspect, it underlines the right to privacy personal intimacy of home, family, marriage, motherhood, procreation 72 and also motherhood, in line with the concept of personal dignity. In the roughest terms, the right to privacy emphasizes the right to use contraceptives, use or abuse of sex and the right to personal habits unpleasant as it is.

The right to freedom of speech and expression and the right to privacy are two sides of the same coin. A person's right to know and to be informed can violate another's right to be left alone. Just as freedom of expression is vital for the dissemination of information on matters of public interest, it is equally important to safeguard a person's privacy as long as it is not linked to duties public or matters of public interest. Privacy law seeks a balance between these competing freedoms.

Privacy as a fundamental human right touches basic needs e values associated with the gregarious nature of man. Today everything is democratic Corporations have understood that

privacy is at the heart of all human rights. Certainly, the level of technological and economic development creates lobbying to protect these privacy values through legal enforcement Techniques But even in the absence of such development, the value e the fundamental human right to privacy can prevail regardless of laws recognition. On the other hand, the active requests for the legal application of the law appears to have a very direct relationship with the degree of threat it poses their survival. Of course, this relationship remains on a legal level develop and support the thesis that human rights such as privacy, Although recognized by law, they are applied only when danger the underlying values are perceived. The values themselves can also be shared and implicit in cultural norms, but often not articulated as even threatened.