

Right to Privacy with Special Reference to Recording Calls Without Consent is a Violation of Article 21 in the Indian Constitution

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ABSTRACT:

The right to privacy is a fundamental right guaranteed to every individual and is protected by the Indian Constitution. It is enshrined in Article 21, which states that “no person shall be deprived of his life or personal liberty except according to the procedure established by law”. The right to privacy encompasses the protection of personal information, communications, and the autonomy of an individual. In today’s digital age, where communication occurs predominantly through telephonic conversations, the issue of tapping phone lines or recording calls without consent has become a matter of concern.

KEYWORDS: Privacy, Fundamental Right, Article 21, Information Technology Act(2000), Personal Liberty, Life.

INTRODUCTION:

A definite legal definition of ‘privacy’ is not available yet some legal experts tend to define privacy as a human right enjoyed by every human being by virtue of his or her existence. It depends on no instrument or charter. Privacy can also extend to other aspects, including bodily integrity, personal autonomy, informational self-determination, protection from state surveillance, dignity, confidentiality, compelled speech and freedom to dissent or move or think. In short, the right to privacy has to be determined on a case-by-case basis. Privacy enjoys a robust legal framework internationally. Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR), 1966, legally protect persons against “arbitrary interference” with one’s privacy, family, home, correspondence, honour and reputation.

METHODOLOGY:

This present study is based on secondary data. For this present qualitative study many journals, newspapers, laws, judgments, articles have been analyzed and noted.

A BRIEF HISTORY OF RIGHT TO PRIVACY :

The Right to Privacy was not directly envisaged by the Constitution makers and as such does not find a mention in Part III of the Constitution relating to Fundamental Rights. The judiciary has deliberated upon the matter, and has interpreted privacy from the very beginning. However, it was in 1954, just four

years after the Constitution came into being, that the Supreme Court had to deal with the question of privacy. In the MP Sharma vs Satish Chandra case, the Supreme Court decided in favour of the practice of search and seizure when contrasted with privacy

In 1962, while deciding the Kharak Singh vs State of UP (AIR 1963 SC 1295), the Court examined the power of police surveillance with respect to history-sheeters and it ruled in favour of the police, saying that the right of privacy is not a guaranteed right under the Constitution.

It was 1975 that became a watershed year for the right to privacy in India. The Supreme Court while hearing the Gobind vs State of MP & ANR [1975 SCC(2) 148] case introduced the compelling state interest test from the American jurisprudence. The court stated that right to privacy of an individual would have to give way to larger state interest, the nature of which must be convincing. With time, the domain of privacy has expanded and it has come to incorporate personal sensitive data such as medical records and biometrics.

In 1997 in the matter of PUCL vs Union of India , commonly known as telephone tapping cases, the Supreme Court unequivocally held that individuals had a privacy interest in the content of their telephone communications. Thus, through a series of cases, it can be observed that the right to privacy was being recognized, but its exceptions were also given due place.

In the second decade of the 21st century, questions with respect to the right to privacy have centred around Aadhaar, a government scheme in which residents get a unique ID after giving their biometrics such as fingerprints and iris scan and demographic details. Aadhaar was challenged in court on the grounds of violation of privacy and its usage was limited by the Supreme Court through its order in September 2013, with Aadhaar being allowed in public distribution system and LPG subsidy only. However, in October 2015, it amended its order and said that Aadhaar can be used to deliver services such as Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA), Pradhan Mantri Jan-Dhan Yojana, pension and provident fund schemes but no person should be deprived of any service in absence of Aadhaar .

DOMESTIC LAWS RELATED TO PRIVACY:

The Constitution of India does not specifically guarantee a right to privacy. However, through various judgements over the years the Courts of the country have interpreted the other rights in the Constitution to be giving rise to a (limited) right to privacy – primarily through Article 21 – the right to life and liberty. In 2015, this interpretation was challenged and referred to a larger Bench of the Supreme Court in the writ petition of Justice K.S Puttaswamy & Another vs. Union of India and Others [Writ Petition (civil) No. 494 of 2012] .

The Court in a landmark judgement on 24 August, 2017 unanimously ruled that privacy is a fundamental right, and that the right to privacy is protected as an intrinsic part of the right to life and personal liberty, as a part of the freedoms guaranteed by Part III of the Constitution. The Bench also ruled that the right to privacy is not absolute, but is subject to reasonable restrictions (as is every other fundamental right) .

EXISTING LAW ON PRIVACY:

In the absence of a specific law on privacy, this right is legally viewed under the Information Technology Act, 2000. The Act has some express provision guarding individuals against breach of privacy by corporate entities. The Act was amended in 2008 to insert Section 43 A which made the Companies compromising sensitive personal data liable to pay compensation. Exercising its powers

under Section 43A of the IT Act, 2000, the Government framed eight rules to protect privacy of an individual. These all relate to seeking permission by a company before accessing privacy data of individuals and fixing liabilities for violation of the same .

PUNISHMENT OF RECORDING CALLS WITHOUT CONSENT :

According to Information Technology Act, 2000, punishment of recording calls without consent is given below:

Section 72. Breach of confidentiality and privacy:- Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuant of any of the powers conferred under this Act, rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Section 72 A. Punishment for Disclosure of information in breach of lawful contract (Inserted vide ITAA-2008):- Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.

PRIVACY AND THE SUPREME COURT :

In the following seven cases, the Supreme Court had upheld the Right to Privacy:-

1964	KHARAK SINGH VS STATE OF UP & OTHERS (1963 AIR SC 1295)	SURVEILLANCE INTRUDES INTO PRIVACY: This case is among the most cited cases in India when it comes to privacy. Here, a majority of a six-judge bench held that unlawful intrusion into the home violates personal liberty.
1997	PUCL VS UNION OF INDIA (AIR 1997 SC 568)	TELEPHONE TAPPING INVADES PRIVACY: A division bench held that a telephone conversation is an exercise in freedom of expression, and that telephone tapping is an invasion of privacy.
1998	MRXVS HOSPITAL Z (1998 (8) SCC 296)	PRIVACY ISN'T ABSOLUTE: The case concerned revealing the HIV status of a patient by a doctor. A division bench held the right to privacy isn't absolute. A doctor may disclose a patient's HIV status to the partner.
2008	HINSA VIRODHAK SANGH VS MIRZAPUR MOTI KURESH JAMAT (AIR 2008 SC 1892)	CHOICE OF FOOD PERSONAL: A division bench upheld the closure of slaughterhouses in Ahmedabad during the Jain Paryushan festival. It also observed that what one eats is part of one's right to privacy.
2009	JAMIRUDDIN AHMED VS STATE OF WEST	RAID WITHOUT REASON NOT OKAY: A division bench ruled that search/seizure without recording valid reasons violates

	BENGAL (CRIMINAL APPEAL NO. 1535 OF 2008)	the right to privacy.
2011	RAM JETHMALANI & OTHERS VS UNION OF INDIA (2011) 8 SCC 1	CAN'T REVEAL BANK DETAILS WITHOUT VALID GROUNDS: Popularly known as the "Black Money Case", here the Supreme Court held that revealing an individual's bank account details without establishing grounds to accuse them of wrongdoing violates their right to privacy.
2012	SUPREME COURT TAKESUO MOTU NOTICE OF THE RAMLILA MAIDAN INCIDENT	RIGHT TO SLEEP IS PART OF RIGHT TO PRIVACY: The Supreme Court took suo motu cognizance of the crackdown on sleeping anticorruption protesters camping at Ramlila Maidan led by Baba Ramdev. Identifying Right to Sleep as an aspect of the Right to Dignity and Privacy, the court refused to permit "illegitimate intrusion into a person's privacy as right to privacy is implicit in the right to life and liberty".

SUPREME COURT VERDICT ON RIGHT TO PRIVACY (2017):

A nine-judge Constitution Bench headed by Chief Justice, J.S. Khehar on 24th August, 2017 gave a landmark decision on Right to Privacy. Supreme Court ruled that Right to Privacy is "intrinsic to life and personal liberty" and is inherently protected under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. Reading out the common conclusion arrived at by the nine-judge Bench, the Chief Justice said the Court had overruled its own eight-judge Bench and six-judge Bench judgements of M.P. Sharma and Kharak Singh cases delivered in 1954 and 1961 respectively that privacy is not protected under the Constitution. To overcome these two precedents, a five-judge Bench led by Chief Justice J.S. Khehar had referred the question whether privacy is a fundamental right or not to the numerically superior nine-judge Bench.

The verdict could now test the validity of Aadhaar, the biometric identification project. Issuing the ruling, the nine-Judge Bench said right to privacy was at par with right to life and liberty, and that the verdict will protect citizens' personal freedom from intrusions by the state.

FINAL ORDER OF THE SUPREME COURT:

The judgment on behalf of the Hon'ble Chief Justice Shri Justice Jagdish Singh Khehar, Shri Justice R K Agrawal, Shri Justice S Abdul Nazeer and Dr Justice D Y Chandrachud was delivered by Dr Justice D Y Chandrachud. Other judges delivered separate judgments.

The reference is disposed of in the following terms:

1. The decision in M P Sharma which holds that the right to privacy is not protected by the Constitution stands over-ruled;
2. The decision in Kharak Singh to the extent that it holds that the right to privacy is not protected by the Constitution stands over-ruled;
3. The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.
4. Decisions subsequent to Kharak Singh which have enunciated the position in (iii) above lay down the correct position in law.

Implications of the Judgement

The historic fallout of the nine-judge Bench judgment, declaring privacy as intrinsic to life and liberty and an inherent right protected by Part III of the Constitution, is that an ordinary man can now directly approach the Supreme Court and the High Courts for violation of his fundamental right under the Constitution.

By making privacy an intrinsic part of life and liberty under Article 21, it is not just a citizen, but anyone, whether an Indian national or not, can move the constitutional courts of the land under Articles 32 and 226, respectively, to get justice.

By declaring that privacy is inherent to each and every fundamental freedom in Part III of the Constitution, the Supreme Court has made privacy an essential ingredient of other important fundamental freedoms, including right to equality, free speech and expression, religion and a myriad other important fundamental rights essential for a dignified existence subject to reasonable restrictions of public health, morality and order.

RECORDING PHONE CONVERSATIONS WITHOUT CONSENT VIOLATES RIGHT TO PRIVACY UNDER ARTICLE 21 OF THE CONSTITUTION: CHHATTISGARH HIGH COURT:-

In a case wherein, the petitioner-wife had challenged the order dated 21-10-2021, whereby the application filed by the respondent-husband under section 311 of the Criminal Procedure Code, 1973 ('CrPC') was allowed, Hon'ble Shri Justice Rakesh Mohan Pandey opined that the husband had recorded wife's conversation without her knowledge and behind her back, which amounted to violation of her right to privacy and the right guaranteed under Article 21 of the Constitution. The High Court opined that the Family Court, Mahasamund, Chhattisgarh (Family Court) had committed an error of law in allowing an application and thus, set aside the order passed by Family Court on 21-10-2021.

THE HIGH COURT OF DELHI : SANJAY PANDEY VS. DIRECTORATE OF ENFORCEMENT :-

In the case of Sanjay vs. Directorate of Enforcement, the High Court of Delhi rendered a judgment on December 8, 2022. In this case, High Court of Delhi made significant observation regarding the violation of the right to privacy through the tapping of phone lines or recording of calls without consent. The court held that such activities amounted to a breach of privacy, violating the fundamental right enshrined under Article of the Constitution. The court emphasized that phone calls should not be recorded unless there is consent from the individuals involved.

CONCLUSION:

The judgment in the case of Sanjay vs. Directorate of Enforcement highlights the paramount importance of privacy protection and the right to privacy enshrined in Article 21 of the Constitution of India. The court's observations establish a clear stance on tapping phone lines or recording calls without consent as a breach of privacy and a violation of the fundamental right guaranteed under Article 21 of the Constitution. The judgment emphasizes the importance of consent and proper authorization when engaging in activities that infringe upon an individual's privacy.

In the digital era, where personal communication often occurs through telephonic conversations, the protection of privacy is crucial. The High Court of Delhi's observations, in this case, provides clarity and guidance regarding the legal provisions surrounding such activities. The judgment sets a strong precedent in upholding the right to privacy and reinforces the need for a robust framework to protect individuals from unwarranted intrusion into their personal communications. It sends a clear message

that any violation of privacy through the tapping of phone lines or recording of calls without consent will not be tolerated and will be considered a breach of the constitutional rights of individuals.

REFERENCES

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2. The Hindu, dated August 24, 2017
3. Indian Penal Code, 1860
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6. The Indian Wireless Telegraphy Act
7. The Prevention of Corruption Act,1988
8. Prevention of Money Laundering Act, 2002
9. 2022 SSC OnLine SC 929