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RIGHT TO PRIVACY

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Abstract:- Privacy is an important concept in democratic society. The Indian constitution does not expressly have a clause to guarantee the privacy. It is true that there is no specific law to protect this valuable right, still there is series of decisions of the Higher Courts which ensures this right as the Part and parcel of Right to life and personal liberty as enshrined under the category of fundamental Right's an Article 21 of the Constitution of India. In this way, there is special protection for the right to privacy, as the constitution guarantees this right under Article 32 of the constitution. This Right to privacy has been held to be fundamental Right the citizen an integral part of Article 21 of the Indian Constitution.

Keywords: Article 21, Virginty test, Telephone tapping, Right to Privacy and surveillance, facet.

INTRODUCTION

A Citizen has a right to safeguard the privacy of his own, his family, motherhood, child bearing and education among other matters. For the first time in *Raja Gopal vs State of Tamilnadu*.¹ (Famous Auto Shankar Case) the Supreme Court speaking through B.P. Jeevan Reddy.J. Expressly declared that even a prisoner condemned to death by the court, also has right to privacy, which is part of his right under Article 21. A citizen has a right to safeguard the privacy of his own, his family marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above issues without his consent whether truthful or otherwise and whether laudatory or critical. If the does so, he would be violating the right of the person concerned and would be liable and action for damage.

The right of privacy may arise from contract and also may arise from a particular specific relationship including matrimonial but when the right to privacy has become a part of public document, in the event a person concerned, indeed, cannot insist that any such test would infringe his/her right of privacy.

Right to privacy available to a women of easy virtues:-

In *State of Maharashtra Vs Modulkar Naryana*² it was held that the "Right to privacy" is available even into a women of easy virtue and no one can invade her privacy. In this case a police inspector visited the house of one Banubhai in uniform and demanded to have sexual intercourse with her. On refusing he tried to have her by force. She raised a hue and cry. When he was prosecuted he told that the court that she was a lady of easy virtue and therefore her evidence was not to be relied. The court rejected the argument of the applicant and held him liable for violating her right to privacy under article 21 of the constitution.

RIGHT TO PRIVACY NOT AN ABSOLUTE RIGHT:-

The Supremes Court has held that although the "Right to Privacy" is a fundamental right under Article 21 of the constitution but it is not an absolute right and restrictions can be imposed on it for prevention of crime, disorder or protection of health or morals protection of rights and freedom of other. In *mr "x" vs Hospital "z"*.³ The Supreme Court gave a landmark decision pertaining the rights of AIDS Patients in India. In this case, the appellant after obtaining the degree of MBBS in 1987 joined the Nagaland State Medical and Health Service as Assistant Surgeon grade I. A government servant was suffering from some disease. He was advised to go to the "Z" hospital at madras. The appellant was directed by the government of Nagaland to accompany the said patient a Madras for treatment. For the treatment of the disease the patient needed blood. The appellant was asked by the doctors to donate blood for the

patient. When his blood samples were taken the doctors found that the appellant's blood group was (HIV) (AIDS). In the meantime the appellant settled his marriage with one miss "y" which was to be held on December 12, 1995. But the marriage was called off on the ground that the blood test of the appellant conducted by the respondent's hospital was found to be HIV (+). As a result of this, he contended that his prestige among his family members were damaged. The appellant filed a write petition in the High court of Bombay for damages against the respondents on the ground that the information which was required to be secret under medical Ethics was disclosed illegally and therefore the respondents were liable pay damages.

The court held in this case that the right to life includes right to privacy but is not absolute and that disclosure by doctor that the patient who was get married has tested HIV+ve would not be violative of the patient's right to privacy and further the right to marry is not absolute. Therefore, if a person is suffering from a venereal disease or impotency his right to marry has to be treated suspended right till his is cured from the disease and the same cannot be enforced through the court. The Important of this case lies in the fact that the Supreme Court has clearly laid down the principle that in case of clash between fundamental rights, the right which would advance public Morality and public interest would alone be enforced.

VIRGINITY TEST VIOLATES RIGHT TO PRIVACY UNDER ARTICLE 21:-

In Surjit Singh Thind Vs Kanwaljit Kaur.⁴ Virginitiy test has been held to violative of right to privacy under article 21 facts of the case were that a petition was filed by to get decree of nullity of marriage on the ground that the marriage was not hitherto consumed by reason of her husband being impotent. The husband had taken the defence that the marriage has never been consummated because of the husband impotent. The husband had taken the defence that the marriage was consumed and he was not impotent. In order to prove that the wife was not Virgin the husband filed an application for her medical examination. The court held that allowing the medical examination of woman's virginitiy violates her right to privacy under Article 21 of the constitution. The virginitiy test cannot constitute the sole basis, to prove the consummation of marriage.

RIGHT TO PRIVACY AND SURVEILLANCE:-

In the case of Malak Singh Vs State of Punjab.⁵ The issue was whether a person whose name was included in the surveillance register had right of opportunity to be heard before such inclusion. In the case the court held that the rule of natural justice was not attracted but it made the law on the subject clear and laid down the guideline's regarding the mode of surveillance by the police. It held that under section 23 of the Punjab Police Act it was the duty of the police officers to keep surveillance over bad characters, and habitual offenders for the purposes of preventing crimes. So long as surveillance is for the purposes of prevention of crime's and confined to the limits prescribed by Rule 23(7) of the Punjab Police Rule, a person cannot complain against the inclusion of his name, in surveillance register. But if it is excessive and goes beyond the limits prescribed by Rules, i.e. surveillance of a person who does not belong to above categories, its validity may be challenged as infringing the right of privacy of citizen as his fundamental right personal liberty under Article 21 and freedom of Movement in Article 19(1)(d). In this case, on the basis of the relevant records court was satisfied that there was no sufficient ground for the inclusion of the petitioner's name in the surveillance register.

TELEPHONE TAPPING - AN INVASION ON RIGHT TO PRIVACY:-

In people's union for civil liberties Vs Union of India.⁶ The Supreme Court declared that telephone tapping violates the Right to Privacy which is part of Article 21. While speaking for the Bench, Justice Kuldeep Singh held that the right to privacy would include telephone Conversion in the privacy of home or office. Conversation's on the telephone are often on an intimate and confidential nature telephone conversion is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Thus telephone conversion is an important facet of Man's private life. In this case the petition was filed by way of a public interest litigation under Art 32 of the constitution by the people's union of civil liberties a voluntary organization highlighting the incident of telephone tapping in common to tape politician. The petitioners has challenged the constitutional validity of section 5 of the Indian Telegraph Act, 1885 which authorizes the Central or state governments to resort to phone tapping in the circumstances mentioned therein. The writ petition was filed in the wake of the report on Tapping of Politician Phone's by the central Bureau Investigation (CBI). The Court has expressed displeasure that the state has so far not framed rules to prevent misuse of the power.

The Court has laid down the following procedural Safeguards for the exercise of power under section 5(2) of the Indian Telegraph Act. -

1-An order for telephone tapping can be issued only by the Home Secretary of the Central government or the State Governments In an urgent case, the power may be delegated to an officer of Home department of the Central and State

Governments not below the rank of joint secretary.

2-The copying of order shall be sent to the Review committee within one week of passing order.

3-The order shall, unless renewed, cease to have effect at the end of the two month's from the date of issue. The authority making the order may review before that period if it considered that it is necessary to continue the order in terms of section 5(2) of the Act.

4-The authority issuing the order shall maintain records of intercepted communications, the extent the material to be disclosed, number of persons their identity to whom the material is disclosed.

5-The use of intercepted material shall be limited to the minimum that is necessary in terms of section 5(2) of the Act.

6-The Review committee shall on its own, within two months investigate whether there is or has been a relevant order under section 5(2) of the Act.

7-If on investigation the Review committee concludes that there has been a contravention of the provisions of section 5(2) of the Act, shall set aside the order. It can also direct the destruction the copies of intercepted material.

8-If an investigation the Review committee comes to the conclusion that there has been no contravention of the relevant provision of the Act, it shall record the finding to that effect.

Telephone tapping would, thus, infract Article 21 of the constitution of India, unless, it is permitted under the procedure established by law. The supreme court had not hesitation, in the instant case in holding that right to privacy is a part of the right to "Life and "Personal Liberty" enshrined under Article 21.

HUSBAND TAPPING CONVERSION OF HIS WIFE:-

The Act of tapping her conversion on telephone to others by her husband was held to be 'illegal' as it infringes the right to privacy of wife. In *Rayala M. Bhuvenshwari Vs Nagaphamendra Rayala*.⁷ The Petitioner filed a divorce petition in the court against his wife and to substantiate his case sought to produce a hard disc relating to the conversion of his wife recorded in US with others. She denied some portions of the conversion. The court held that act of tapping by the husband of conversion of his wife with others without her knowledge was illegal and amounted to infringement of her right to privacy under Article 21 of the constitution. These talks even of true cannot be admissible in evidence. The wife cannot be forced to undergo voice test and then asked the expert to compare portion denied by her with her admitted voice. In this case the husband was recording the telephone conversion of his wife which she was making with her friends and parents in India. This is clear infringement of Right to privacy of the wife.

Where is another case of *Sharda vs Dharmpal*.⁸ The Supreme Court can directed a party to divorce proceedings to undergo medical examination. This was a case where right to privacy was pleaded in case where the court had ordered medical examination of a spouse. It may became necessary in cases of matrimonial disputes, where divorce is sought on ground of impotency, Schizophrenia or for some other disease, to refer the party to a medical examination and Supreme Court upheld such powers of the court on the ground that such a course would be necessary to be adopted for the purpose of reaching to correct conclusion.

In *Directorate of Revenue Vs Mohd Nissar Holia*⁹ it was held that publication of any matter concerning the private life of a person without his consent may violate his right to privacy except where the publication is based on public or court records.

In democratic State "Right to Privacy" is an important private right of an Individual, Protected by the constitution. On the other way, common people has the right to get information. The need for privacy and its recognition as a right is a modern phenomenon. The right of privacy is the right of individual to decided for him how much he will share with others his thoughts, his feelings and the facts of his personal life with other.

*Ramlila Maidan incident Vs Hom Secreatary, Union of India*¹⁰ In the instant case, just after midnight, at about 12:30 AM. a huge contingent of about more than a thousand policemen surrounded the encampments while everybody was fast asleep inside and there were forcibly woken up by the police, assaulted physically and were virtually thrown out of their tents. This was done under exercise of the police power conferred under section 144 of code of criminal procedure but it was held malice in law.

In the above case's its is evident that right of privacy and right to sleep have always been treated to be a fundamental right like the right to breathe, to eat, to drink, to blink etc and an individual is entitled to sleep as comfortably and as freely as he breathes. To disturb sleep, therefore, would amount to torture which is now accepted as a violation of human right.

CONCLUSION:-

Right to privacy or the right to be let alone is guaranteed under Article 21 of the constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters none can publish anything concerning the above mater without consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he violates the right to privacy of the person concerned and, he will be liable for damages. Position may, however be different, if a person voluntarily thrusts

Right To Privacy

himself into controversy or voluntarily invites or raises a controversy.

The Indian, constitution does not explicitly guarantee this right as a fundamental right. But by various judicial pronouncements the right to privacy, or, the right to be left alone' is now accepted as a natural individual right implied under "Right to life" under Article 21 of the constitution of India. Any infringement of it should give rise to a cause of action for damages or an injunction as the case may require. It should also recognize a right of confidence for all correspondence and communication's which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to Exception. These Exception are to be allowed when ever the public interest in openness out weight the public interests in privacy or confidentiality.

NOTES AND REFERENCES:-

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- (3)AIR 1995 SC 495
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