



RIGHT TO PRIVACY UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION

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ABSTRACT

They laid the groundwork for all other liberties, justice, and peace in the world by recognizing the inherent dignity and fundamental freedoms of all members of the human family. They sprang from people's desire to live in a society that values them for who they are and takes their innate worth into account. The most prized and central of all human rights was the right to life and personal liberty, around which all other rights of the individual centered. The protection of one's own life has become a cornerstone of human rights and a cause for celebration. Article 21 of the Indian Constitution was the most well-known since it protected the rights to life and freedom of all citizens and legal residents, and it could be enforced by the government. When Article 21 was reinterpreted in the Maneka Gandhi case, it ushered in a new era of expanding the scope of the right to life and personal liberty. The expansive treatment given this issue at the moment included a broad range of facets that the Constitution's framers may or may not have envisioned.

KEYWORDS Constitution, Article 21, Right to Privacy, judicial philosophy

INTRODUCTION

Every people were born with the same set of unalienable rights. Many significant national, regional, and international measures ensured the protection of "privacy" as a fundamental human right. Personal privacy, the confidentiality of one's communications, the security of one's private information, and the integrity of one's home territory were all aspects of this broader concept. The development of one's character, integrity, and dignity was profoundly influenced by the right to privacy, which was a crucial component of one's existence and personal liberty. Nonetheless, there were risks to the privacy of communications due to tactics like bugging, telephone tapping, and interception. Defining privacy was not a straightforward task. The pursuit of legal safeguards for it unavoidably ran counter to competing ideals. The right to privacy included a wide range of problems, some of which were more significant than others, such as the right to privacy in one's home and the freedom to make one's own choices in matters of marriage, contraception, and abortion. As privacy was a very personal and often even emotional problem, one person's invasion of privacy could not be another's worry at all. His need for seclusion extended to many facets of his life, including his sexual life, company secrets, and the personal space of those around him. It included ideas of privacy, independence, and discretion. In every culture, the concept of privacy was ingrained in the language. The idea of "privacy" had expanded and become pervasive. The idea of privacy was confined by social norms. It changed depending on



the era, the level of culture, and the dominant judicial ideology of the period. Culture, circumstance, and social structure have had a significant impact on the norms around personal space.

LITERATURE REVIEW

Hussain, Sanowar& Islam, Md. (2021)"Rights" are the "social circumstances of existence without which no one may strive himself to be at his best," as Laski so astutely put it. Human rights are, like rights, crucial to a person's maturation. The modern understanding of human rights is the result of centuries of incremental development. The term "human rights" itself is relatively new, yet the principles behind it go back to the dawn of civilisation. While the notion of human rights may seem to be a new development, it may be noticed by the idea that man, a social animal, has always inhabited groups such as tribes, communities, families, towns, and countries, and portrayed these groups as individuals to the rest of the world. In his classic work "Arthashastra," Kautilya lays forth and describes the basic rights of captives in combat. The ancient era saw the development of human rights as distinct categories, including civil rights, political rights, personal rights, legal rights, natural or divine rights, and economic and social rights. As a result, the rights that humans have are sometimes described in many ways, with phrases like "inherent rights," "natural rights," "inalienable rights," and "basic fundamental rights" all being equivalent.

Yadav, Rahul (2020)The term "human rights education" refers to the study of human rights legislation, as well as its philosophy and history. Human rights and basic freedom may be strengthened via education, which is also essential for the development of the individual's personality. The value of a human rights education is emphasized in this essay. UNESCO is involved in human rights legislation in India. It discusses how the UDHR (Universal Declaration of Human Rights) and UNESCO (United Nations Educational, Scientific, and Cultural Organization) inform and assist India's human rights education system. The need of human rights education in a dynamic and difficult culture is also discussed. The emphasis here is on India. In this post, we'll take a quick look at India's parliamentary education commissions and the national education policies they've crafted. Finally, it will argue that India's K-12 and higher education systems should make human rights education mandatory.

Gauthier, Janel (2018)In psychology, human rights are referenced in codes of ethics. Some psychologists who are committed to defending and expanding civil liberties have called for human rights to be specifically included in all ethical guidelines for the profession. In spite of this, human rights discussions in ethics papers have received little attention in psychological ethics. Part one of a two-part essay series discussing the importance of human rights references in psychologists' ethical codes and providing suggestions for how the fields of psychological ethics and human rights activism might collaborate for the greater good of society. The first part of this series of articles analyzes debates about the inclusion of human rights language in ethical guidelines for psychologists, as well as the rationale for doing so. The second part of this series of articles delves into the ways in which the Universal Declaration of Ethical Principles for Psychologists can be used to extend or supplement codes of ethics in psychology, the ways in



which ethical principles and human rights differ from one another and complement one another, and the ways in which psychological ethics and the human rights movement can work together to serve humanity and improve the welfare of both individuals and societies.

Pandey, Amrisha (2017) Is access to safe drinking water a "fundamental human right?" — the honest and heartfelt response. is yes, but the answer in a legal sense is unclear. As the right to water is so hotly contested, it has risen to the top of the agendas of national and international organizations. The complexity of classifying this resource from a legal standpoint arises from the resource's vitality and its far-reaching effect on many aspects of human existence. Its significance is recognized on a worldwide scale, but the means to ensure everyone has access to clean water are not yet fully understood or perfected. Unique among human rights is the "right to water," whose fulfillment is hampered by the fact that the resource can only be distributed fairly and equitably if there is enough of it to go around. So, the resource's conservation and restoration must be controlled in a way that ensures the laws and regulations pertaining to the resource are consistent and long-lasting. In light of this, the study contends that the resource's governance and the rights-based strategy to realizing it are mutually supportive. The focus will be on the judicial interpretation of the right to water in India, and an attempt will be made to project the common links between the governance of the resource and the realization of the right, emphasizing the similarities in their historical development and their conceptualization of water.

THE BASIC STRUCTURE OF THE INDIAN CONSTITUTION

The Constitution of India grants legislative authority to both Parliament and the state legislatures. That kind of authority is not unchecked by any means. The authority to rule on the constitutionality of legislation is vested in the courts by the Constitution. The Supreme Court has the authority to declare a statute of Parliament or a state legislature illegal or extra vires if it is found to contradict any provision of the Constitution. Notwithstanding this safeguard, the Constitution was not intended to be an inflexible blueprint for government. Hence, the ability to change the Constitution was given to Parliament. If you read Article 368 of the Constitution at face value, you would think that Parliament has the ability to change anything in the Constitution. Since independence, however, the Supreme Court has operated as a check on Parliament's legislative zeal. The highest court ruled that Parliament may not use the pretense of changing the Constitution to distort, destroy, or change the Constitution's core elements with the goal of maintaining the original objectives envisioned by the constitution's framers. Basic structure is not a term that appears anywhere in the Constitution. In the landmark KesavanandaBharati case decided by the Supreme Court in 1973, this idea was finally acknowledged. From its inception, the Supreme Court has been responsible for determining how the Constitution should be interpreted and how parliamentary changes should be applied.

Roping In Article 21 Of the Indian Constitution: Right to Privacy A Lodestar for Legalizing Euthanasia:

The Preamble to India's Constitution, among other places, makes it clear that protecting people's dignity is a priority for the country's leaders. Article 1 of the Universal Declaration of Human



Rights states, "All human beings are born free and equal in dignity and rights." This idea of dignity is consistent with this statement. They have the ability to think and conscience, thus they should treat one another with kindness. As envisioned in the Constitution's Preamble and Directive Principles of State Policy, the Charter of the United Nations strengthens the belief in basic human rights and the dignity and value of the human person. Constitutions across the world guarantee citizens the right to privacy, but the right to die is not among them. The Latin roots of the English word "privacy" are "privatus" and "privo," both of which mean "to deprive." The root of privacy is the same as in the word "privilege," which implies a "favorable chance," and both terms highlight the uniqueness of each person.

The "right to privacy" is the only recognized common law right that can be traced back to a particular time and place. The interests in both "repose," or the absence of intrusions, and "autonomy," or the right to think as one pleases, are safeguarded by the state. Louis Brandies first proposed the legal notion of a "right to privacy" as simply a "right to be left alone," but in the century since then, the term has been significantly expanded to include broader philosophical concepts like human integrity, dignity, and autonomy. Each person's right to freedom and privacy is protected by Article 21 of the Constitution, yet these rights are not without limits since we all share in the responsibilities of society. No matter how loudly liberties and rights are declared to be "self-evident," they are always the outcome of social compromises, often painfully arrived at, on subjects of common interest. Our right to privacy safeguards our autonomy and the integrity of our personal, professional, and political networks.

Article 21 Of the Indian Constitution And Right To Die

In India, neither the courts nor the legislation recognize the right to suicide. Yet, Article 21 of the Constitution guarantees the concept in terms of the right to autonomy, self-determination, or the ability to choose and live a decent life. Rights inherent to all citizens of a democratic state are enshrined in the Indian Constitution. Among them, the right to freedom stands out as paramount. An individual's freedom to make medical decisions for themselves is recognized as a basic right in India under Article 21 of the Constitution, as stated by R.K. Bag. The Bombay High Court was the first to consider the question of whether or not the right to die is included in Article 21 of the Constitution. In the case of *State of Maharashtra v. MarutiSripatiDubal*, the Court ruled that the right to life guaranteed by Article 21 includes the right to die, and accordingly, the Court struck down Section 309 of the Indian Penal Code, which provides punishment for the attempt to commit suicide by a person, as unconstitutional. The court held that when living conditions become intolerable, people should have the option to end their lives if they so choose.

GENESIS OF RIGHT TO PRIVACY: THE INDIAN SCENARIO

The right to privacy was a universal human right that applied to both natural and juridical individuals. It contributed to the reestablishment of their self-respect. If privacy were breached, sensitive information that was meant to remain secret may leak out. Throughout history, societies have always recognized the need of protecting personal information and affirmed that the right to privacy is a fundamental human right. An individual's "right to privacy" is the protection of his



or her identity against unauthorized disclosure or use. An absence or avoidance of publicity or exhibition; a situation of isolation from other people or the focus of public attention is one definition of privacy. "The eyes of both were opened," the Bible says, "and they recognized that they were nude; and they wove fig leaves together and fashioned themselves aprons." Without the assurance of anonymity, these foundational connections could not even be conceived of. Their very survival was contingent on their being some degree of anonymity or seclusion present. To explain why a breach of privacy seems to be a breach of one's basic identity, one must first demonstrate the importance of privacy in fostering respect, love, friendship, and trust.

Concept of Privacy in Hindu Period

India's culture and history have developed on communal life, with cooperation and community above competitiveness and isolation. This led some to question whether or not the right to personal privacy was held in high regard in Indian culture. It was unjustified to assume that Indians had no idea of personal space.

For this reason, privacy was given a significant place in the Griha Sutras, Arthashastra, and the Ramayana and Mahabharata epics, all of which included detailed guidelines for building a home. Hence, a serious effort has been undertaken to trace the evolution of personal privacy in India over time:

- (i) Griha Sutras and Privacy
- (ii) Privacy in the Epic Period
- (iii) Privacy in Manusmriti
- (iv) Privacy in Arthashastra

Right to Privacy Under Islamic Law

In Islam, the individual's right to personal privacy was held in the highest regard and was considered holy and inalienable. Islam recognizes the right to privacy as a fundamental virtue. The right to privacy was respected and protected, and it could not be infringed upon without good cause. In Islam, a person's right to privacy is not absolute; it may be violated with due process of law. Islamic law was a complete system that governed both public and private concerns, as given by God. Shariah was a term that referred to the correct course of action. It was a philosophy of responsibilities, a set of obligations," Fyze said. The propensity toward a theological appraisal of all concerns of life took precedence over legal considerations and individual rights."

LEGAL FRAMEWORK OF RIGHT TO PRIVACY IN INDIA

The right to privacy was not mechanical; it was vital and evolving. In India, people's right to privacy was guaranteed by a number of different societal norms. The same constitutional



safeguards that had safeguarded this right also did so for this. Several legislation existed as well, which either explicitly or implicitly acknowledged the right to privacy.

(a) Privacy as a Customary Right

Indian custom law was regarded as one of the country's primary legal sources. For the most part, individuals in a given community or geographical region tend to follow the same norms and practices throughout generations. A body of law known as "customary law" developed when such precedent was codified after being recognized as valid by a higher authority. Information on the norms and practices of a society may be found in great detail in its customary laws. It wasn't a rigid set of laws, but rather a collection of social conventions and regulations that had developed over centuries. Ancient, certain, logical, and unchanging were common adjectives used to describe longstanding cultural norms. Both law and custom developed as separate guiding principles throughout time.

(b) Privacy as a Statutory Right

Article III of India's Constitution, which was adopted in 1950, includes a chapter on Basic Rights with the intention of protecting the things that are necessary for a free society. The purpose of a declaration of fundamental rights was to establish a set of rights as absolute and unchangeable, such as the right to life, liberty, freedom of speech, freedom of religion, and so on, so that the whims of the union legislature's ever-changing majority could never be allowed to trample on them.

Yet, the Indian Constitution does not include the right to privacy among the guaranteed rights. In addition to the law of torts, the right to privacy was the social value that needed to be protected. The guarantee against self-incrimination in Article 20 (3) of the Constitution of India was enacted primarily for privacy protection.

STATUS OF PRIVACY UNDER THE CONSTITUTION

In 1888, an American scholar by the name of Judge Thomas Cooley gave the vague notion of privacy a name: privacy. He defined it as simply as "a right to be allowed alone," and the idea took root in the United States. Due to the recent communication boom and revolutionary improvement in communication technology, the concept's development has proceeded at a breakneck rate. All modern democracies have now come to terms with the fact that individual privacy is fundamental to protecting other civil liberties.

The Indian right to privacy was a weird mashup of constitutional, customary, and common law rights spread out over many areas of law. It was seen as emblematic of the expansion of human rights and fundamental freedoms, since it was a component of our constitutional right to life and liberty. The right to privacy is not explicitly stated as a basic right in India's Constitution. Several fundamental rights, such as the right to a healthy environment and a quality education, have been established by India's constitution since the country's independence. At this time, the right to privacy was among those guaranteed by the constitution.



It was from the common law of torts and the constitutional law that India's right to privacy emerged. Section 327 of the Code of Criminal Procedure (1973), Sections 3 and 4 of the Indecent Representation of Women (Prohibition) Act (1980), Section 71(c) of the Medical Termination of Pregnancy Act (1971), Section 22 of the Hindu Marriage Act (1955), Section 33 of the Special Marriage Act (1954), Section 36 of the Children Act (1960), and Section 36 of the Juvenile Justice Act (1986) all contained provisions meant to safeguard women and children.

CONCLUSION

The protections afforded by the Declaration of Human Rights permitted people to flourish intellectually, morally, and spiritually while simultaneously meeting their basic material necessities. They laid the groundwork for all other freedoms, justice, and peace in the globe by affirming the worth and basic rights of every person on the planet. Each individual was born with an inalienable set of rights known as human rights. The right to privacy, sometimes referred to as the "golden rule," is guaranteed by a number of landmark laws and treaties at the state, regional, and international levels. Person, communication, data, and geographical privacy were all included. Yet, there were risks to communication privacy due to tactics like bugging, telephone tapping, and interception. In accordance with the Indian Constitution's Section 21 (which deals with matters of celebrity) and as a fundamental right to hold a special position. Individuals' lives and freedoms are protected by these guarantees, and the state must uphold them. A new era has begun with the Supreme Court's decision in the case of Maneka Gandhi, which provides a novel interpretation of Section 21 of the right to life and personal liberty of the Constitution. It was impossible for the Constitution's drafters to convey the full scope of its implications to the public at the time.

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