**RIGHT TO PRIVACY**

**Abstract**  
A very fascinating development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in post-Maneka era. The Supreme Court has asserted that Art. 21 is the heart of the Fundamental Rights. Article 21 has proved to be multi-dimensional. The extension in the dimensions of Art.21 has been made possible by giving an extended meaning to the word ‘life’ and ‘liberty’ in Article 21. These two words in Art.21 are not to be read narrowly. These are organic terms which are to be construed meaningfully.  
  
The Supreme Court has asserted that in order to treat a right as a fundamental right, it is not necessary that it should be expressly stated in the constitution as a Fundamental Right. Political, social, and economic changes in the country entail the recognition of new rights. The law in its eternal youth grows to meet the demands of society.  
  
Right to privacy is one such right which has come to its existence after widening up the dimensions of Article 21. The constitution in specific doesn’t grant any right to privacy as such. However, such a right has been culled by the Supreme Court from Art. 21 and several other provisions of the constitution read with the Directive Principles of State Policy. In this paper we will be discussing over a new dimension of Art. 21 that is the Right to Privacy and also the conflicts related to it.  
  
**Introduction**  
Before we get into a complete discussion of Right to Privacy first of all we need to know what does the word Privacy mean. 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”.  
  
Article 21 of the Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. After reading the Article 21, it has been interpreted that the term ‘life’ includes all those aspects of life which go to make a man’s life meaningful, complete and worth living.  
  
Like everything mankind has ever achieved, there has been a positive and a negative side to it. Technology has invaded every part of our lives whether the invasion was desired or not, we cannot be sure whether what we say has been heard by a third party as well whether that was desired or not. The proverbial Hindi saying of even walls having ears has never rung truer. The principle of the world today can be: whatever you may do, the world will get to know before you realize, ask a certain Tiger Woods about it.  
  
In the earlier times in India, the law would give protection only from physical dangers such as trespass from which the Right to Property emerged to secure his house and cattle. This was considered to be the Right to Life. As the ever-changing common law grew to accommodate the problems faced by the people, it was realized that not only was physical security required, but also security of the spiritual self as well as of his feelings, intellect was required. Now the Right to Life has expanded in its scope and comprises the right to be let alone the right to liberty secures the exercise of extensive civil privileges; and the term “property” has grown to comprise every form of possession — intangible, as well as tangible.  
  
The strategy adopted by the Supreme Court with a view to expand the ambit of Art. 21 and to imply certain right there from, has been to interpret Art.21 along with international charters on Human Rights.  
  
The Court has implied the right of privacy from Art.21 by interpreting it in conformity with Art.12 of the Universal Declaration on Human Rights and Art.17 of the International Covenant on Civil and Political Rights, 1966. Both of these international documents provide for the right of privacy.  
  
Right to privacy is not enumerated as a Fundamental Right in the Constitution of India. The scope of this right first came up for consideration in Kharak Singh’s Case which was concerned with the validity of certain regulations that permitted surveillance of suspects. The minority decision of SUBBA RAO J. deals with this light. In the context of Article 19(1) (d), the right to privacy was again considered by the Supreme Court in 1975. In a detailed decision, JEEVAN REDDY J. held that the right to privacy is implicit under Article 21. This right is the right to be let alone. In the context of surveillance, it has been held that surveillance, if intrusive and seriously encroaches on the privacy of citizen, can infringe the freedom of movement, guaranteed by Articles 19(1)(d) and 21. Surveillance must be to prevent crime and on the basis of material provided in the history sheet. In the context of an anti-terrorism enactment, it was held that the right to privacy was subservient to the security of the State and withholding information relevant for the detention of crime can’t be nullified on the grounds of right to privacy. The right to privacy in terms of Article 21 has been discussed in various cases.  
  
**International Concepts of Privacy**  
Article 12 of Universal Declaration of Human Rights (1948) states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks.”  
  
Article 17 of International Covenant of Civil and Political Rights (to which India is a party) states “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation”  
  
Article 8 of European Convention on Human Rights states “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others.”  
 **Right To Privacy In India**  
As already discussed Article 21 of the Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The right to life enshrined in Article 21 has been liberally interpreted so as to mean something more than mere survival and mere existence or animal existence. It therefore includes all those aspects of life which makes a man’s life more meaningful, complete and worth living and right to privacy is one such right. The first time this topic was ever raised was in the case of Kharak Singh v. State of UP where the Supreme Court held that Regulation 236 of UP Police regulation was unconstitutional as it clashed with Article 21 of the Constitution. It was held by the Court that the right to privacy is a part of right to protection of life and personal liberty. Here, the Court had equated privacy to personal liberty.  
  
In**Govind v. State of Madhya Pradesh** , Mathew, J. accepted the right to privacy as an emanation from Art. 19(a), (d) and 21, but right to privacy is not absolute right. “Assuming that the fundamental rights explicitly guaranteed to a citizen have penumbral zones and that the right to privacy is itself a fundamental right, the fundamental right must be subject to restriction on the basis of compelling public interest”. Surveillance by domiciliary visits need not always be an unreasonable encroachment on the privacy of a person owing to the character and antecedents of the person subjected to surveillance as also the objects and the limitation under which the surveillance is made. The right to privacy deals with ‘persons not places’.  
  
In **Smt. Maneka Gandhi v. Union of India & An**r.,(1978) in this case SC 7 Judge Bench said ‘personal liberty’ in article 21 covers a variety of rights & some have status of fundamental rights and given additional protection u/a 19. Triple Test for any law interfering with personal liberty: (1) It must prescribe a procedure; (2) the procedure must withstand the test of one or more of the fundamental rights conferred u/a 19 which may be applicable in a given situation and (3) It must withstand test of Article 14. The law and procedure authorising interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.  
  
In **Naz Foundation Case** (2009) Delhi HC gave the landmark decision on consensual homosexuality. In this case S. 377 IPC and Articles 14, 19 & 21 were examined. Right to privacy held to protect a “private space in which man may become and remain himself”. It was said individuals need a place of sanctuary where they can be free from societal control- where individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that may reflect the values of their peers rather than the realities of their nature.  
  
It is now a settled position that right to life and liberty under article 21 includes right to privacy. Right to privacy is ‘a right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. Any person publishing anything concerning the above matters except with the consent of the person would be liable in action for damages. Position however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.  
  
**Right To Privacy-Permissible Restriction**  
Intrusion into privacy may be by- (1) Legislative Provision (2) Administrative/Executive order (3) Judicial Orders. Legislative intrusion must be tested on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the Court can go into proportionality of the intrusion vis-à-vis the purpose sought to be achieved. (2) So far as administrative or executive action is concerned it has to be reasonable having regard to the facts and circumstances of the case. (3) As to judicial warrants, the Court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for protection of the particular State interest. In addition, as stated earlier, common law did recognise rare exceptions for conduct of warrantless searches could be conducted but these had to be in good faith, intended to preserve evidence or intended to prevent sudden anger to person or property.

**Tapping of Telephone**  
Telephone tapping constitutes a serious invasion of an individual’s right to privacy. Is it constitutionally permissible in India? If so, within what limits and subject to what safeguards?  
  
The questions posed above have been fully considered by the Supreme Court in **People’s Union for Civil Liberties v. Union of India**. In this case Public Interest Litigation was filed protesting rampant instances of phone tapping of politician’s phones by CBI. The court ruled that ‘telephone conversation is an important facet of a man’s private life’. The right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as “right to privacy”. So, tapping of telephone is a serious invasion of privacy. This means that telephone tapping would infract Article 21 unless it is permitted under the procedure established by law. The procedure has to be “just, fair and reasonable”.  
  
The Court laid down exhaustive guidelines to regulate the discretion vested in the State under Section 5 of the Indian Telegraph Act for the purpose of telephone tapping and interception of other messages so as to safeguard public interest against arbitrary and unlawful exercise of power by the Government. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the Act. “Occurrence of any public emergency” or in interest of public safety” are the sine qua non “for the application of provisions under section 5(2) of the Act unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said legislation. The Court said public emergency would mean the prevailing of sudden condition or state of affairs affecting the people at large calling for immediate action. The expression ‘public safety’ means the state or condition of grave danger or risk for the people at large. When either these two conditions are not in existence, the Court said, the Central Government or the State Government or the authorised officers cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interest of sovereignty and integrity of the country. In other orders, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of the country or the security of the State or friendly relations with foreign States or public order or for preventing for incitements to the commission of an offence it cannot intercept the message or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires.  
  
The Court has laid down the following procedural safeguards for the exercise of power under Section 5(2) of the Indian Telegraph Act-  
· 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 the Home Department of the Central and the State Governments not below the rank of Joint Secretary.  
  
· The copy of the order shall be sent to the Review Committee within one week of the passing of order.  
  
· The order shall, unless renewed, cease to have effect at the end of two months 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.  
  
· The authority issuing the order shall maintain the record of intercepted communications, the extent the material to be disclosed, number of persons, their identity to whom the material is disclosed.  
  
· The use of intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) the Act.  
  
· 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.  
  
· 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 the intercepted material.  
  
· If on 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.  
  
The Court noted that with the growth of highly sophisticated communication technology the right to hold telephone conversation in the privacy of one’s home or office without interference is increasingly susceptible to abuse. In view of this, the Court’s ruling laying down detailed guidelines for the exercise of power under the relevant Act is timely and of historic importance.  
  
**Divorce Petition: Husband Tapping Conversation Of His Wife With Others Seeking to Produce In Court, Violates Her Right To Privacy Under Article 21**In**Rayala M. Bhuvneswari v. Nagaphomender Rayala** 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 conversation of his wife recorded in U.S. with others. She denied some portions of the conversation. The Court held that the act of tapping by the husband of conversation 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 if 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. The Court observed that the purity of the relation between husband and wife is the basis of marriage. The husband was recording her conversation on telephone with her friends and parents in India without her knowledge. This is clear infringement of right to privacy of the wife. If husband is of such a nature and has no faith in his wife even about her conversations to her parents, then the institution of marriage itself becomes redundant.

**Later Developments In Right To Privacy**  
Right to privacy, once incorporated as a fundamental right, is wide enough to encroach into any sphere of activity. The conferment of such a right has become extremely difficult with the advancement of technology and the social networking sites. But the other side of the picture is that right to privacy of a person includes the right to seclude personal information. The extent to which the realm of privacy of each person should remain is subjective, which might differ from person to person. The recognition of right to privacy can also be seen in the S. 43 of Information Technology Act which makes unauthorised access into a computer resource invoke liability.  
  
Today, each person is a press, taking in view the emergence of blog spots and social networking sites. Many a times, the right to privacy may come in conflict with the right to press the right to press is a right derived from Article 19 (1) (a) in particular. The right to expression of a person may come in conflict with the right to privacy of another person. The question, where there is a conflict, which should prevail over the other, is well explained by bringing in the concept of ‘public interest’ and ‘public morality’. The publication of personal information of an individual without his consent or approval is justified if such information forms part of public records including Court records. Each case is distinct and each right is special.  
  
Any right derived from Article 19 can be derived from Article 21 too, under the wide interpretation of ‘personal liberty’. Though the Court generally applies the test of ‘public interest’ or ‘public morality’ in case of conflict between two derived rights, another interpretation is also possible. A right derived under Article 21 is superior to a right derived under Article 19, since the state enacting law in contravention of such right can be saved under the reasonable restrictions under 19(2) to (5). The position was different in the Pre-Maneka era, when Article 21 was not a source of substantive right.  
  
The right to privacy may come in conflict with the investigation of police in several aspects. Narco-analysis, polygraph test and brain mapping tests, in application, make unwarranted intrusion into the right to privacy of a person. The Supreme Court was acknowledging the individual right to privacy by declaring these tests inhuman and unconstitutional. The Supreme Court in Directorate of Revenue and Anr v. Mohammed Nisar Holia cited the US Supreme Court judgement which held ‘thermal imaging’, a sophisticated sense enhancing technology which when kept outside the residential house of a person can detect whether the inmate has kept narcotic substance within as infringement on the right to privacy of the said person. The Court discouraged the unnecessary infringement of the right to privacy of a persons and held that no authority shall be given untrammelled power to infringe the right to privacy of a person, the Court held while reversing the conviction for non-compliance of statutory requirement of search and seizure. Although a statutory power to make a search and seizure by itself may not offend the right of privacy but in case of this nature, the least that a Court can do is-to see that such right is not unnecessarily infringed.