

esteemed Judges of Hon'ble Supreme Court, India's Muslim women have achieved equality which was sought as unattainable since India's independence. This decision has established a sound relationship between Constitutional guarantees given to all irrespective of gender and religious structures of Islam.

But surely we should also ask the Hon'ble Supreme Court that why it chose to ignore other heinous practices like nikaah halala and polygamy raised by the petitioners with the issue of Triple Talaq. Also, we are concerned about the lack of gender diversity within the august benches of our Supreme Court. Inclusion of women Judges and their perspective should have been welcome to arrive at holistic conclusion on this matter.

As we celebrate this judgment but still there might be several claims and debates

against intrusion/intervention of the Courts in the personal laws of the Muslim community and the way Islam accords women. However, we think that any interpretation of any faith based on personal laws that degrades and emphasis on any anti-women practices should be fought with courage just like petitioner *Shayara Bano* has done in this case. There are rays of hope that Supreme Court in future will again give fair consideration with respect to sex. India since three decades has been changed after the *Shah Bano* judgment in the domain of the Muslim Women Rights. The same difference and changes can be seen in future after this historic judgment which has in response to a new generation of women who will not suffer in silence any longer irrespective of the religion or community in which they are born.

RIGHT TO PRIVACY: INDIAN PERSPECTIVE ON ITS RELEVANCE TO HUMAN RIGHTS

By

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"The right to privacy is protected as an intrinsic part of the right of life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part-III of the Constitution".

Introduction:

Privacy is a qualified fundamental human right that is essential for the protection of human dignity which is the basic foundation upon which many other human rights are built. The right to privacy protects one from unwarranted interference and against arbitrary and unjustified use of power. Every individual has a right to privacy as part of his or her overall right to live with dignity without being interfered by any exercise of any fundamental freedom. Any unjustifiable interference with his right to privacy has to necessarily lead to legal consequences, if not there will be no meaning for individual rights

at all. According to Black's law dictionary, privacy is referred as "right to be left alone", the right of a person to be free from unwarranted publicity and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned." This right is incident to person and not to property.

Privacy is generally a claim about the individual's right to restrict the availability of information about himself or herself. The justification for such restriction is typically couched in terms of a natural need for personal space, or control over the presentation of one's identity or self to the outside world.

1. *Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017 SCC Online 996.

According to *Gibbons*: “protection of privacy may be overridden by an appeal to a significant public interest in disclosure. Intrusions or deceptions, for example in the form of snooping, surreptitious surveillance, trespassing, or intercepting letters and telephone conversations, may be justified if keeping the material relatively secret would adversely affect the public at large, notwithstanding the harm or distress which may be caused to the individuals concerned”.

A right to privacy is explicitly stated under Article 12 of the 1948 Universal Declaration of Human Rights “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” The Constitution of India does not explicitly provide the right to privacy as a fundamental right, but the Courts have protected this right to privacy to some extent under Article 21 and under the reasonable restrictions enumerated in Article 19(2) of the Constitution.

A nine Judge Bench of the Supreme Court headed by Chief Justice *J.S. Kehar*, ruled on August 24, 2017 that Right to privacy is a fundamental right for Indian citizens under the Constitution of India under Article 21. This clarification was crucial to prevent the dilution of the right in the future by the wrongful use of the Government in power. India is the world’s largest democracy and with this ruling it has joined United States, Canada, South Africa, The European Union and the United Kingdom in recognizing this fundamental right. In the light of the recent Supreme Court decision, conferring the Right to privacy as a fundamental right, it is pertinent to study the evolution of this Human right elevated to the status of a fundamental right.

Constitutional basis for the Right to privacy:

The Indian Constitution does not expressly confer privacy the status of a fundamental

right. While the freedom of the speech and expression is given protection under Article 19(1)(a), Privacy is not even enumerated among the reasonable restrictions to the right of the freedom of speech and expression enlisted under Article 19(2). Nevertheless the Courts have protected the right to privacy to some extent not just under tort law but also under Article 21 and under the reasonable restrictions enumerated in Article 19(2) of the Constitution. Under the tort law a personal action for damages would be possible for unlawful invasion of privacy.

A Seven Judge Bench in *Maneka Gandhi v. Union of India* (1978), while elaborating on the concept of ‘Personal liberty’ in Article 21 observed that personal liberty covers a variety of rights and some have the status of fundamental rights and given additional protection under Article 19.

The Court in this case laid down Triple test for any law interfering with personal liberty:

- (i) It must prescribe a procedure
- (ii) The procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situations and
- (iii) It must withstand test of Article 14.

The law and procedure authorizing interference with personal liberty and right to privacy must be right, just and fair and not arbitrary fanciful or oppressive.

Evolution of the Right to privacy in India

UDHR 1948 in Article 12² and ICCPR

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2. Article 12 of the Universal Declaration of Human Rights (UDHR) which states : “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

1966 in Article 17³ give protection to the concept of privacy. Even before India became independent, it had already become party to the UDHR 1948. This was indicative of its future plans and visions for a free and democratic Government. After independence, the Constitution of India adopted the basic principles of the UDHR 1948. But when we look at the concept of privacy in the context of the Indian Constitution, we do not find privacy being given any separate Constitution status.

In *Nibal Chand v. Bhagwan Dei*, AIR 1935 All. 1002, during the colonial period as early as in 1935, the High Court recognized the independent existence of privacy from the customs and traditions of India.

In the case *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300, the Bench held that the drafters of the Constitution did not intend to subject the power of search and seizure to a fundamental right of privacy. They argued that the Indian Constitution does not include any language similar to the fourth amendment of the U.S. Constitution and therefore questioned the existence of a protected right to privacy. But privacy got recognition in free India for the first time in *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295. It was in the minority view given in this case by Justice *Subba Rao*, that privacy got a recognition as a right included in Article 21 of the Constitution. In this case the apex Court recognized privacy as a part of right of life and personal liberty.

The Supreme Court continued to elaborate on the concept of privacy. In a series of cases concerning journalists seeking permission from the Court to interview and

photograph prisoners, the Court held that the press had no absolute right to interview or photograph a prisoner unless consented to it. The right to privacy was not the question, the Court impliedly acknowledged the right to privacy.

In the case of *R. Rajgopal v. State of Tamil Nadu*, (1994) 6 SCC 632, the Supreme Court discussed the right to privacy in the reference to Media. The Supreme Court held that the press had every right to publish the autobiography of *Auto Shanker* to the extent, as it appeared from the public records without any permission. In case the publication went beyond the public record and published his life story, it would amount to invasion of his right to privacy.

Right to privacy was read into Section 5(2) of the Telegraph Act, 1885, by the Supreme Court in *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568, which allowed interception of messages in cases of public emergency or in the interest of public safety. The Court held that the right to privacy included the right to hold a telephone conversation in the privacy of one's own home or office and that telephone tapping infringed this right to privacy.

The right to privacy though a fundamental right forming a part of life enshrined under Article 21 cannot be taken to be an absolute right. This Principle was laid down by the Supreme Court in *Mr. 'X' v. Hospital 'Z'*, AIR 1995 SC 495.

The latest unanimous judgment by the Supreme Court of India in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017 SCC Online 996, is a ringing endorsement of the right to privacy as a fundamental right. This marks a historic movement in the constitutional history of India. In a landmark decision that will affect the lives of all Indians, the Supreme Court unanimously declared that right to privacy was a fundamental right under the Constitution. A nine-Judge Constitution Bench headed by Chief Justice *J.S. Khehar* ruled that "right to privacy is an

3. Article 17 : The International Convent on Civil and Political Rights (ICCPR) in Article 17 has reiterated the aforesaid position of privacy as contained in the UDHR as a right that merits protection of law by stating : "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."

intrinsic part of Right to Life and Personal Liberty under Article 21 and entire Part III of the Constitution". The ruling on the highly contentious issue was to deal with a batch of petitions challenging the Centre's move to make Aadhaar mandatory for availing the benefits of various social welfare schemes. While the Centre had argued that right to privacy is not a fundamental right, the petitioners had contended that when a citizen gives his biometrics and personal details to the Government and when in turn it is used by commercial organizations, it is a breach of privacy.

The judgment was limited to the issue of right to privacy and the question whether Aadhaar violates right to privacy will be dealt with the five-Judge Bench which has been hearing the petitions since 2015. The nine Judges unanimously overruled the two earlier judgments of the apex Court that right to privacy is not protected under the Constitution.

The reference is disposed in the following terms:

- i. The decision in *M.P. Sharma's* case, which holds that the right to privacy is not protected by the Constitution, stands overruled.
- ii. The decision in *Kharak Singh's* case, to the extent that it holds that the right to privacy is not protected by the Constitution, stands overruled.

- iii. 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.

Scope of Right to Privacy in other legislation

- (1) Information Technology Act, 2000 (as amended) - Section 43, Section 43-A, Section 66-E & Section 72-A
- (2) Indian Penal Code 1860, Sections 228-A, 292(1)-294.
- (3) Right to Information Act, 2005 Section 8(1)(j).
- (4) Cr.P.C., 1973
- (5) Other enactments Section 53 of the Indian Divorce Act, 1869, Section 33 of the Special Marriage Act, 1954, Section 14 The Official Secrets Act, 1923, Section 4 & the Contempt of Courts Act, 1971 and so on.

Conclusion

Though right to privacy is not an express connotation in the Indian polity, its spirit has influenced the Indian Constitutional importance through UDHR and ICCPR and judicial process from *Karak Singh's* case to the present *Puttaswamy's* case. Further its scope in Indian legal system is exposed through various legal systems.

IMPLICATIONS OF NON-REGISTRATION OF PROPERTY DOCUMENT

By

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Registering the documents relating to the transfer, sale, lease, gift, mortgage or any other form of transfer of immovable property. Registration means recording of the contents of a document with a Registering Officer and preservation of copies of the original document.

The documents are registered for the purpose of conservation of evidence, assurance of title, publicity of documents and prevention of fraud. Also, registration helps an intending purchaser to know if the title deeds of a particular property have been deposited with any person or a financial