

manner. The primary duty of the judges is to uphold the constitution and the laws without fear or favours and in doing so they cannot allow political ideology or economic theory which may have caught their fancy to colour

the decision. The main emphasis is that the principle of judicial independence is not to be raised to the level of a dogma so as to enable the judiciary to function as a kind of super – Legislature or Super – Executive.

DIMENSIONS IN RIGHT TO PRIVACY

By

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Privacy has been an integral and an alienable part of human beings since long. Privacy is intricately connected with a man's dignity and liberty. Right to Privacy assumed much significance today with the advent of internet, gene banks, Business process outsourcing *etc.* The concern for the right to privacy is also felt these days in the context of large-scale anti-terrorist enactments that are allegedly infringing the privacy interests of the innocent individuals. Though, it is a legally protected human right, very often, this is violated very casually, often without the knowledge and consent of the victim. Many of the modern man's activities are intensively associated with internet in the present day global village. Now our personal information is not just confined to traditional desks but is connected to internet system largely spread throughout the world on account of its vast network, thus exposing the private life to the public domain.

The basic philosophy of the right to privacy enunciates that every person has right to enjoy privacy pertaining to one's person, property, place, information *etc.* its infringement by anybody is not justifiable, unless warranted by law and is inevitable in the larger interests of the society. Any disturbance to this privacy by anybody including the Government, without any valid justification strictly is

prohibited unless warranted by law. If interference is inevitable, due observance of certain norms and proper care is a must while doing so. In other words, a harmonious balance has to be maintained between the right to privacy of an individual and larger interests of the society, minimizing the friction to the possible extent between these two conflicting interests.

Origin and evolution of Right to Privacy

The United States of America is considered to be the motherland of right to privacy. The concept of privacy was discussed for the first time by *Warren* and *Brandy* in his article published in famous *Harvard Law Review* in the year 1890. "*Plessy versus Ferguson* (1896)" and "*Paolo Pavesich versus New England Mutual Life Insurance Company* (1905)" were the popular and pioneering cases in the USA representing the nascent stage of right to privacy.

In earlier days, the right to privacy was perceived in a very narrower sense and was thought to have included the 'right to be left alone'. Now with the increased awareness levels of the people living in the contemporary matured democratic systems and experience with the unprecedented scientific advancements of science and technology has further widened its scope to a great extent. As such, now the

right to privacy in its ambit, include many aspects such as control over one's body, identity, privacy at dwelling places, right to have control on one's own information, freedom from the surveillance, freedom from the searches and seizures and protection of one's reputation too.

International Regime on Right to Privacy

A number international instruments such as Article 12 of Universal Declaration of Human Rights 1948, Article 14 of the International Covenant on Civil Political Rights 1966, Article 16 of the United Nations Convention on Rights of the Child 1989 and Article 14 of the U.N. Convention on Migrant Workers 1990 dealt with the privacy rights. It has also been recognized in a number of regional instruments too, such as through Article 8 European Convention, Articles 11 and 14 of the American Convention on Human Rights 1978, Articles V, IX and X of American Declaration on Rights and Duties of Mankind. Certain guidelines governing privacy protection and trans-border transmission of personal information were framed by the Organization for Economic Co-operation and Development. Some efforts were also made by the European Union Council by devising data protection directives.

Privacy Infringements

After September 11 episode, Patriot Act 2001, a counter terrorism law was made in the USA that gave wide and sweeping powers to the Government and intelligence authorities to intercept communication for investigation purposes. Though the purpose for which it was intended was good, its operation attracted large scale criticism for the alleged violations privacy rights of the innocent individuals under the veil of sovereignty and security of a nation.

Spam mails

Of late, the modern neizen's e-mail box is flooded with a number spam mails.

Resulting into lot of inconvenience, in addition to the wastage of one's valuable time. This is certainly an invasion of one's right to privacy. Usually this is done by procuring e-mail addresses and using the same for sending unwanted and uninvited information. This amounts to violation of right to self determination of personal information that causes disturbance to private life of individuals in cyberspace. The e-mail inboxes are considered as a private and personal space from a functional perspective. Moreover, it is protected by User identity and pass word, which is purely of privacy nature.

Privacy violations at work places

In modern times, the employers are supervising the activities of their employees in bigger organizations using CCTV cameras both at work and non-work areas without the knowledge of the employees. So long the surveillance is confined to certain limits, it may be justifiable. But this became a problem when the cameras are placed at places like, locker rooms, lavatories *etc*, without any intimation to the employees as to the observation. This certainly affects privacy interests of the people working in an organization. Though monitoring to certain level is justified, but totally spying even on the personal activities of the individuals such as e-mail transactions and telephone tapping of the personal conversations of the employees certainly amounts to privacy violations.

Genetic Privacy

The analysis of DNA for resolving paternity disputes and criminal investigation purposes has become a popular technique today. Here the tissue, collected for DNA analysis of the suspicious persons remain unregulated in most of the countries today. This is causing apprehensions among the people as the DNA sample collected reveals the entire genetic history of a person. There is every possibility of its misuse in the context

of emergence of gene banks, if appropriate laws to regulate such samples are not made.

Right to Privacy in India

There are no exclusive provisions providing for the right to privacy in India. But Honourable Supreme Court of India in various cases pronounced that right to privacy is implicit in Article 21 of the Constitution of India.

In *Peoples Union for Civil Liberties v. Union of India*, AIR 1997 SC 568, the Honourable Supreme Court of India held the telephone tapping as a serious invasion of privacy of an individual which is a part of right to life and liberty as enshrined under Article 21 of the Indian Constitution. This case was brought before Apex Court, when a voluntary organization *i.e.*, Peoples Union for Civil Liberties has filed writ petition under Article 32 of the Constitution of India. This case reflects the awareness and concerns for the violations in India. In this case, the petitioner challenged the Section 5 of Indian Telegraphic Act 1885 that empowered the Central and State Governments to resort to phone tapping. This writ petition was filed in the context of large-scale reports on tapping of phones belonging to politicians by the Central Bureau of Investigation.

In this case, the Apex Court has given certain guidelines to be followed while intercepting the messages on the grounds of the national security and integrity *etc.*

Some of the important guidelines include,

- * Order authorizing tapping must be issued only by the Home Secretaries of the Central or State Governments respectively.
- * his order is required to be reviewed by a Committee constituted for the purpose.
- * This order ceases to have validity, unless renewed at the expiry of two months period, from the date is issued.

- * Further, the Review Committee has to investigate the orders as to its validity within a period of two months.

In *Malak Singh v. State of Punjab*, AIR 1981 SC 760 also, the Apex Court provided certain guidelines within which the surveillance by the law enforcement authorities can be carried out.

In *Surjit Singh Thind v. Kamaljit Kaur*, AIR 2003 P&H 353, The Punjab and Haryana High Court pronounced that, examining a woman to ascertain virginity amounts to violation of her right to privacy and personal liberty as provided under Article 21 of the Constitution.

The Apex Court in '*Raja Gopal v. State of Tamilnadu*' AIR 1995 SC 264 held that, the right to privacy is guaranteed under Article 21 to with regard to privacy of own, his family, marriage, procreation, motherhood and child bearing *etc.* Publication of any matter related to the above, without one's consent is strictly prohibited.

In *State of Maharashtra v. Madhukar Narayan Mardikar*, AIR 1991 SC 207, the Apex Court in its novel judgment held that, even a woman of easy virtue is entitled to enjoy right to privacy like all other citizens without any bias and no one can invade her privacy.

In all the above cases, the Supreme Court recognized the rights to privacy in India. More important aspect is the manner by which the individual's right to privacy and the nation's security are reconciled.

The existing scanty provisions in the Information Technology Act 2000 are not sufficient to deal efficiently the rampant privacy infringements in the context of increasing outsourcing business activities globally with other developed countries in general and India in particular. Many E.U. nations, the USA and other developed nations are reluctant to entrust their outsourcing business to the countries lacking data protection laws to take care of the protection and privacy aspects.

The advent of outsourcing industry, offering huge employment opportunities to the poverty stricken developing countries like, India. These opportunities are in the areas of insurance, law, finance and health sectors. In order to benefit out of the modern outsourcing business such as, BPO, medical transcription, legal transcription *etc*, and to enhance our business relations with the developed countries, it has become inevitable for India to take privacy protection measures especially to evolve data protection laws immediately without any further delay. Any indifference and delay on our part, resulting in loss of mass employment opportunities is inexcusable for a country that suffer from a massive unemployment problem like India.

References :

1. Green leaf (1998); Global Protection of Privacy in Cyberspace.
2. Samuel D Warren and Louis D

Brandeis "The right to privacy."
"Harvard Law Review: 2005; Vol. IV;

3. "Charles B Crover" *Privacy issues affecting employers, employees and labour organizations, Louisiana Law Review. Vol. 66, 2006;*
4. "Soon Chul Huh" *Invasion of privacy Versus Commercial Speech: Regulation of Spam with a comparative point of view; Albany Law Review; 2007*
5. "Dr. J.N. Panday" *Constitutional Law of India; 2005, Central Law Agency, Allahabad*
6. "Elizabeth Joh" "Reclaiming Abandoned DNA; The Fourth Amendment and Genetic Privacy; Northwestern Law Review; 2005.
7. Jonath Khan, "Controlling Identity; Plessey, Privacy and Racial defamation; 2005.
8. www.privacyrights.org
9. www.cyberlaw.harvard.edu
10. www.judiciary.house.gov

PROBLEM OF MONEY LAUNDERING – SOCIO-LEGAL DIMENSIONS

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Money laundering is an organized crime. It has become an international business round the clock with a global impact. 'Money laundering' is simply, cleaning the dirty money, just like our dirty clothes are cleared by laundry man. It is called dirty money, because it is procured through illegal activities. These illegal activities include, hawala transactions, corruption, drugs smuggling and sale, organizing prostitution rings, illegal sale of arms in violation of Arms Act, offences under the Wild Life Protection Act *etc*. Thus illegally gained dirty money is subjected to numerous transactions by using banks and financial

institutions because the illegal money cannot be used officially, legitimately as there will be every possibility of being caught by the Government Authorities especially the Income tax Department and the police *etc*. The person possession such assets has to account the source as to how he has gained such money. This may lead to disclosure of the illegal source from which they are originated, hence this money laundering activity. Therefore, this process is attempted by all the launderers to give the dirty money a clean shape and to hide its illegal source of origin. Money launderers try to distance such money from