
PRE-EMINENCE OF STATES INTEREST OVER RIGHT TO PRIVACY: A JUDICIAL OVERVIEW

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ABSTRACT

Human right is a right guaranteed from womb which aids in living a worthy life. A person's right ends where other person's right starts. Our constitution has guaranteed a wide array of fundamental rights such as Right to privacy, Right to Information etc. Art 19 (1) (a) guarantees Freedom of Speech which includes Freedom of Press. India being a democratic country, people should be permitted to voice out their opinion for which access to information is required. Art 21 guarantees Right to Dignity. Privacy is an extension of Art 21 which is a necessity for leading a dignified life. As quoted by Justice Cooley Right to Privacy is to protect "Inviolable Personality". Sec 69 of the Information Technology Act, 2000 provides for interception or monitoring or decryption of any computer resource by the Central Government or State Government or officers specially authorized for it in light of national interest. Thus, there arises a conflict between Right to Privacy and Right to Information. This research seeks to establish the constitutionality of Sec 69 of the Information Technology act, 2000.

Keywords: Privacy, Dignity, Information, Speech, Sec 69 of Information Technology Act, 2000.

1. INTRODUCTION

The constitution guarantees the fundamental rights under part three. These are the basic rights of an individual and the state is responsible for violation of any of these rights guaranteed under part three of the constitution. One of such rights is Right to Information. All the citizens of India have the Right to Information that is Right to access Information they wish to. This has been introduced by the legislature in the form of Right to Information Act, 2005. The Right to Information Act 2005 enables the citizens of this country to get any information from the public authorities.

Since 1990's the process of formulation of a law relating to Right to Information has begun in India. The 179th report of 2001 of The Law Commission of India and other several committees had enlightened upon the need of a law to ensure proper access to information, this resulted in the enactment of The Freedom of Information Act, 2002. This Act was enacted to make sure that every citizen has freedom to secure access to information under the control of public authorities.

However, The National Advisory Council suggested some important changes that have to be made in the law for more efficient and smoother functioning of the Act, the following are the changes

- a) An appellate authority with investigating powers;
- b) Penal provisions in case of failure to provide information;
- c) Provisions that make sure maximum disclosure and minimum exemptions.

After the incorporation of these changes the Indian parliament enacted the Right to Information Act, 2005. This act repealed and replaced the Freedom of Information Act, 2002.

2. SCOPE OF ACT

The preamble of the Act states that it is an Act to provide for setting out the practical regime of Right to Information for citizens to secure access to Information under the control of public authorities. The main objective of this Act is to promote transparency and accountability in the working of every public authority. The constitution of India has established democracy so for its vital functioning it requires informed citizenry and transparency of information.

Chapter II Sec 3 of this Act states that subject to the provisions of this Act, all the citizens shall

have the Right to Information. The Right to Information has also been recognized in the International arena. Article 19 of the Universal Declaration of Human Rights, 1948 states that “Everyone has the Right to freedom of opinion and expression; this Right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

The International Covenant on Civil and Political Rights (ICCPR) UDHR, UN and many such laws and legal treaties recognize Right to Information as an essential right.

Though the constitution of India has no specific provisions for guaranteeing Right to Information as a fundamental right, the judiciary in a plethora of cases had recognized the Right as implicit in art 19(1)(a) which guarantees to all citizens the Right to Free speech and Expression and also art 21 of the constitution which guarantees right to life. Art19(1)(a), 19(2), and 21 of the constitution of India provide the basis of right of a person to seek information about government’s decision.

Even before the enactment of the Right to Information of Act, 2005 the Hon’ble Supreme Court of India in the case of **State of U.P. Vs Raj Narain**¹ held that people of this country will have a right to know every public act, everything, that is done in a public way. They are entitled to know the particulars of every public transaction. In the case of **Dinesh Trivedi Vs Union of India**² the Hon’ble apex court held that “every citizen has the right to know about the government’s decisions and actions”.

In **Jyothi Basu Vs Debi Ghoshal**³ the Hon’ble Apex court held that “securing information on basic details concerning the candidates contesting for elections to parliament or the state Legislature promotes freedom of expression and therefore the Right to Information is qualitatively different from right to get information about public affairs or right to receive information through press and electronic media”. The Hon’ble supreme court in the case of **M. Nagaraj Vs Union of India**⁴ elaborately dealt with the Right to know and access the Information. From all the above decisions of the Hon’ble court the Right to Information though not specifically incorporated in the art 19(1) (a) Right to Information is brought under the ambit

¹ AIR 1975 SC 865

² (1997) 4 SCC 306

³ (1982) 1 SCC 691

⁴ (2006) 8 SCC 212

of this article.

In **Reliance Petrochemicals Ltd Vs Proprietors of Indian Express Newspapers Bombay Pvt Ltd. & amp**⁵; *others* the supreme court recognized that the Right to Information is a fundamental right under art 21 of the constitution. And also, in the case of **Civil Liberties and Anr Vs Union of India and Ors** ⁶ the supreme court said that the Right to Information is another fold of Right to freedom of speech and expression as under art 19(1) (a) of constitution of India and held that Right to Information is a fundamental right. So, the Right to Information and art19(1)(a) of the constitution are complimentary to each other and under clause 2 of article 19 the reasonable restrictions are applicable.

3. RIGHT TO PRIVACY

Man is a social being. The need to be socially accepted is a basic human desire. He mingles with the society for physical and psychological support. But this does not mean that he has his gate open all the time. He has his personal space as well. Every human being desire's for a life in which he is able to carry out his activities without unnecessary intrusion. Thus, privacy has become a part and parcel of one's life. Black's law dictionary defines Right to Privacy as the right to be let alone and to have freedom from unwarranted publicity or interference by the public.⁷

In **Kehar Singh And Anr. Etc Vs Union of India And Anr**⁸ it was observed that Right to Life and Personal Liberty should be given utmost importance. In **R. Rajagopal Vs State of T. N**⁹ it was held that Right to Privacy is a part of Right to Life and Personal Liberty. In **Kharak Singh Vs The State of U. P. & Others** ¹⁰ it was held by Justice Subba Rao, that Right to Privacy is essential for exercising Right of Personal Liberty.

4. THE INFORMATION TECHNOLOGY ACT, 2000

The Information Technology act, 2000 deals with E-commerce and cybercrimes.

Sec 69 of the Information Technology Act, 2000 allows for encroaching privacy for protecting

⁵ (1988) 4 SCC 749

⁶ (2004) 2 SCC 476

⁷ Black's Law dictionary

⁸ 1989 AIR 653, 1988 SCR Supl. (3)1102

⁹ 1995 AIR 264, 1994 SCC (6) 632

¹⁰ 1963 AIR 1295, 1964 SCR (1) 332

the national interest.¹¹

- A. As per Sec 69 (1) of the IT Act,
1. The following authorities have the power to issue directions-
 - a) Central Government or
 - b) State government or
 - c) Officers appointed by the former or the latter as the case may be exclusively for this purpose.
 2. Direction may be issued to any agency authorized by the appropriate government for interception or monitoring or decryption of any data in the computer or cause to be intercepted or monitored or decrypted any information generation, transmitted, received or stored in any computer resource. The above shall be given by way of order in writing.
 3. This interception, monitoring or decryption shall be done only when there is an expediency or necessity to do so for
 - a) Protecting sovereignty or integrity of India or
 - b) Protecting State's security or
 - c) The sake of defense or
 - d) The sake of public order or
 - e) Maintaining harmonious relationship with foreign States.
 - f) Averting incitement which might lead to commission of any cognizable offence concerned with the above-mentioned matter or
 - g) Investigation of any offense.
 4. All the above shall be subject to Sec 69 (2).
- B. As per Sec 69 (2) the procedure shall be carried out in the prescribed manner.
- C. As per Sec 69(3) the agency referred to in Sec 69 (1) may call for the subscriber or intermediary or any person who is in charge of the computer resource for extending all amenities and technical aid with respect to-
- a) Getting access, or information stored in the computer resource or
 - b) Intercept, monitor or decrypt the information.
- D. As per Sec 69(4) of the IT Act the subscriber or intermediary who does not abide by 69(3) shall be punished with imprisonment which may be up to seven years and fine may also

¹¹ Sec 69 of The Information Technology Act, 2000

be imposed.

5. SECTION 69 OF IT ACT, 2000 - IS IT VIOLATIVE OF RIGHT TO PRIVACY?

Sec 69 of the IT Act, 2000 is not violative of Right to Privacy due to the following reasons-

5.1 Right to privacy is not absolute

India is a welfare State. In **Paschim Banga Khet Mazdoor Samity & Ors Vs State of West Bengal & Ors**¹² it was observed that the government has the duty to secure the welfare of the people.

Welfare can be achieved when people exercise their right harmoniously with each other. If they are left to exercise their right as per their whims and fancies it will lead to absolute chaos. Keeping this in mind our constitutional makers did not guarantee absolute fundamental rights.

In the landmark judgment of **Kesavananda Bharti Vs State of Kerala**¹³ it was held that *fundamental rights are not absolute in nature*. In **Golak Nath Vs State of Punjab**¹⁴, **Justice Subba Rao** quoted that fundamental right in consonance with social control is assimilated in the rule of law. Privacy which is a fundamental right is not absolute in nature. In **Ramlila Maidan Incident Vs Home Secretary, Union of India**¹⁵ it was held that Right to Privacy is not an absolute right. In **Ritesh Sinha Vs State of UP**¹⁶, **Modern Dental College and Research Centre and others Vs State of Madhya Pradesh and others**¹⁷, **Gobind Vs State of Madhya Pradesh and Anr**¹⁸ and the Nine Judge's Bench of this Court in **K.S. Puttaswamy and another Vs Union of India and Ors**¹⁹ etc. it was held that Right to Privacy is not absolute but is subject to compelling public interest.

5.2 Public Interest: A Subject of Paramount Importance

The maxim "**Salus Populi Est Suprema Lex**" means that public welfare is of supreme importance. If necessity arises life, liberty and property of an individual may be jeopardized

¹² 1996 SCC (4) 37, JT 1996 (6) 43

¹³ (1973) 4 SCC 225; AIR 1973 SC 1461

¹⁴ 1967 AIR 1643, 1967 SCR (2) 762

¹⁵ (2012) 5 SCC 1

¹⁶ (2013) 2 SCC 357

¹⁷ AIR 2016 SC 2601

¹⁸ AIR 1975 SC 1378, 1975 CriLJ 1111, (1975) 2 SCC 148, 1975 3 SCR 946

¹⁹ 2017 10 SCC 1

for the sake of public good. In **Competent Authority Vs Baran gore Jute Factory and Ors, Rekharani Maitra and Ors Vs Additional District Magistrate and Ors** it was observed that if need arises individual welfare should succumb to public welfare. Sec 69 of the IT ACT, 2000 interferes with Right to Privacy only when there is a necessity to protect the national interest. In the historic judgment of **Puttaswamy** it was held by the honorable court that life or personal liberty can be infringed in the light of State's interest. In **District Registrar and collector, Hyderabad Vs Canara Bank**²⁰ it was observed that in case of legitimate State aim, Right to Privacy can be interfered with. Thus Sec 69 of IT Act is not unconstitutional in nature.

5.3 It is not unreasonable in nature

In **Maneka Gandhi Vs UOI**²¹ it was held that regulating, restricting or rejection of the right under Art 21 should be fair. The procedure which curtails the right should not be arbitrary in nature. In **Francis Coralie Mullin Vs Union Territory of Delhi, Administrator**²² it was observed that when a person is deprived of his life or personal liberty, the court has to decide whether such deprivation is in accordance with a law which is just and fair. In **Sharma Transport Vs Government of A.P**²³ it was held that the term "Arbitrariness" means something which is not reasonable. Protection of national interest is of paramount importance. Just as the emergency provisions are important for State, protection of its security is also of utmost importance. Thus, for the same Right to Privacy can be infringed and it is not violative of Art 14 and 21.

5.4 State has the power to interfere with privacy

In **P. Sharma & Others Vs Satish Chandra & Others**²⁴ it was held that the State has the power to carry out search and seizure under any jurisprudential system for protecting social security. The power that the State has should be governed by law. In **R.M. Malkani Vs state of Maharashtra**²⁵ the court held that protection from tapping of telephonic conversation is extended only to innocent citizens. This cannot be used as shadow by the guilty citizen against police investigation. In **Ram Jethmalani Vs UOI**²⁶ it was observed that humans have freedom

²⁰ 2005(1) SCC 496

²¹ 1978 AIR 597, 1978 SCR (2) 621

²² 1981 AIR 746, 1981 SCR (2) 516

²³ 2002 2 SCC 188

²⁴ 1954 AIR 300, 1954 SCR 1077

²⁵ 1973 AIR 157, 1973 SCR (2) 417

²⁶ (1984) 3 SCC 571

from public scrutiny only when they act lawfully. Surveillance in accordance with statutory provisions in exceptional cases is not violative of Right to Privacy. Sec 69 of the Act, infringes Right to Privacy only when it is expedient or necessary to do so for national interest. It does not infringe innocent people's rights. Hence it is not unconstitutional.

6. CONCLUSION

Though it is not particularly mentioned under the fundamental rights in the constitution the Right to Information is a fundamental right and the hon'ble court in plethora of cases has confirmed that. Hence the State is responsible for the protection of Right to Information and the state interalia has reasonable restrictions on the exercise of the Right. The Right to freedom of speech is incomplete without the Right to Information because justice can be served with proper Information and every citizen of the State has the Right to access secure information under the Right to Information Act, 2005. Though Right to Privacy is a fundamental right it can't be protected at the cost of the State interest. When State's interest is in threat, the State for the sake of extracting information may intercept, decrypt or monitor the computer resource. In such cases Right to Information takes the upper hand. Therefore Sec 69 of IT Act, 2000 is not unconstitutional.