

Right to Privacy and State's Obligation

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Right to Privacy: Philosophy

- Jurisprudence of Right to Privacy- Since 17th Century
- The Universal Declaration of Human Rights, 1948.
- Re-enforcement of Natural Law Philosophy in the 20th Century- importance of individual freedom and liberty.
- Making of constitutions in many countries after second world war.
- Right to life and liberty becomes utmost importance to determine relations between state and individuals.
- Right to privacy becomes part of right to life and liberty in many jurisdiction.

Right to Privacy in India

- Pre-Independence Era- No discussion on point.
- Post-Independence Era- No specific term is used in the Constitution.
 - Right to privacy has been culled by the Apex Court under Article 21.
 - *Kharak Singh* case (1963)- “Our Constitution does not in term confer any like constitutional guarantee.” Justice Subba Rao (minority opinion) was in favour of referring right to privacy from the expression ‘personal liberty’.
 - *Govind case* (1975)- The court accepted limited fundamental right to privacy as an emanation from Articles 19(1)(a), 19(1)(d), and 21. However, Right to Privacy is not absolute is not absolute.

Right to Privacy in India...

- Post-Independence Era-
 - *R. Rajagopalan* case (1995)- Right to privacy has acquired constitutional status. It is implicit in the right to life and liberty guaranteed to citizens under Article 21.
 - It is “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.”
 - Information concerning above matter can be published without consent:
 - Based upon public records, and
 - Reasonable verification of the facts
 - *K.S. Puttaswamy* case (2017)- Privacy is constitutionally protected right. It includes at its core the preservation of personal intimacies. It is not absolute right.

Restrictions and Contents

- Right to privacy is not absolute- Permissible restrictions on Right to Privacy.
- *K.S. Puttaswamy* case, invasion of privacy must be justified (just, fair, reasonable) on the basis of:
 - Legality (postulates the existence of law)
 - Legitimate State Aim (defined in terms)
 - Proportionality (rational nexus between object and means)
- Privacy has positive and negative contents.
 - Positive content imposes obligation on state to protect privacy
 - Negative content restrains the state from committing an intrusion

Privacy in Information Age

- Knowledge based economy- Information Age
- Development of technology- information is easily available
- Danger to Privacy in Information Age
 - State Actors
 - Non-State Actors
- Informational Privacy as Right to Privacy
- Need for Robust Regime for Data Protection Law
- Data Protection Regime Requires balance Between
 - Individual Interests and
 - Legitimate Concerns of State
- Legitimate concerns put restrictions on right to privacy.

Democracy, Election and Privacy

- Free and Fair Election- must for survival of democracy.
- Invasion on Right to Privacy during Election and its validity:
 - **Legality-** Article 243ZA and the Bihar Municipal Act, 2007, the Bihar Municipal Election Rules, 2022 (clause 63) the State Election Commission Bihar intends to adopt Face Recognition Technology to identify the voter.
 - **Legitimate State Aim-** To conduct elections in a free and fair manner. To identify bogus and duplicate voters who are obstruction in fair election. Security of booth.
 - **Proportionality-** the use of data is defined as per the retention policy of data and grievance redressal mechanism of the State Election Commission.

Thank You!