

PHILOSOPHICAL JUSTIFICATION OF PRIVACY

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ABSTRACT:

The Great political thinkers like ARISTOTLE. JOHN STUART MILL, and KANT , right from the beginning emphasized that Right to Privacy is inherent and inalienable for human beings which shows that it is natural and inclusive of self determination. When researching upon the philosophical justification of Privacy, I have come across some evidence in the 18-19th century in Germany. This made me think about the relationship between moral and Law regarding Right to Privacy. This forced me to ponder about the MORALITY. Morality includes Self dignity, Self-development, and Self-realisation which is the determining factor for Privacy. Every Human being is required to be conscious about one's inherent 'SELF'. In this external materialistic world, one needs to be extraordinarily aware and conscious to focus on Self development in upholding dignity and maintaining privacy to achieve eternal happiness. The wholesome development of a man is utilised for the collective interest of the society which is the principle of Utilitarianism leading to the Law of Privacy.

Recent Landmark Judgement, Justice. K.S. Puttaswamy (RTD) and another Vs Union of India, cleared many doubts regarding Right to privacy with elaborate interpretation. Now the legal system has developed in such a way that State has the duty to protect the person and his personal data to uphold the dignity which is the core element of privacy otherwise it will lead to arbitrariness.

Key words: Inalienable, Morality, Self-dignity, self-development, self-realisation, eternal, utilitarianism.

INTRODUCTION:

Morality is the root of laws. Generally, the positive morality gives birth to the various kinds of laws.ⁱ "If the law is based on public policy, Public policy itself is based on some healthy principles dear to the community concerned at the given time and in a given place." Right to Privacy is under Fundamental Right under Article 21 of the Indian Constitution. So, the Right to privacy ought to have been based on some moral principles which is philosophy of privacy. In ancient Indian period there is hardly any justification for Right to Privacy. Now the Right to Privacy is recognised and accepted as basic human right all over the world.

Then a question arises as to what is the principle lying behind the privacy, how do it become the prominent feature of one's life?

PHILOSOPHICAL EVIDENCE OF PRIVACY IN 19TH CENTURY:

Self-dignity and respect are the focus in the broader philosophical arguments about the ideal nature of law. Right to be respected, and Right to be dignified and right to privacy are self-intricated. The idea of reflecting and protecting the value of dignity and number of cases in 18th and 19th century resulting to include "dignity as constitutional right in Art 1 of the post war basic law of Federal Republic of Germany 1949"ⁱⁱ. "It is an idea of German Scholarship provided the intellectual basis of argument for the right to privacy Propounded by Samuel Warren and Louis Brandies in 1890."ⁱⁱⁱ

The idealism of a mankind who is a means to his own end is a basic philosophy behind Right to privacy. It relates to the view of Jurist Bentham's concept of Utilitarianism which suggests the collective interest of society but Jurist Kant draws a proposition from the theory of "modern utilitarianism" written by **Johnstuart Mill** that "Human beings as ends in themselves and not means to other's ends"^{iv}. And "The rule of shaping one's conduct which all rational beings might adopt with benefit to their collective interest".^v

In my view, the rule of shaping one's conduct is depending on the self of individual which is the justified philosophy for the Right to Privacy.

INHERENT SOURCE OF PRIVACY:

For each individual the secret of birth and death is embedded in his privacy. According to the Principle of Lord Ramanujan, "The purpose of birth of human being is to attain the eternity of peace. Every human being has inherent source to find the relationship of body with soul."

This body soul relationship could be identified by all human being by self observation and introspection. The means adopted to identify oneself is his 'self' is privacy. The privacy is the core essence of life and it must be protected in all spheres of life.

In ancient period, to attain the eternity of peace one had to renounce all his materialistic desires and led the holy life in his complete privacy. It is found that it is the hardest way of leading life and everyone could not adopt in the world of opportunities. So, there was need of a system for a man and women to lead a life with happiness based on the principle of dharma. Family is considered as the privacy of man, where Husband and Wife were considered as soul mates. So they were able to adopt each other for their wax and wane. Their privacy is protected as a privilege in the eye of law.^{vi}

The children who grow in the evolved system of family was able to identify their intellectual sphere leading to the development of one's personality. One of such examples is The Great Mathematician Ramanujan. During his childhood he was able to connect his skill with number and number only. Moreover, he expressed that "The numbers as it is, is the answers for the mathematical problems are coming automatically in his tongue". This intellectual privacy of that great man helped him to reach his milestone.

It is well said in a case that "Individual autonomy, perhaps the central concern of any system is protected in part under our constitution, of course privacy primarily concerns the individual. It therefore relates or overlaps with the concept of liberty"^{vii}. Now the scope of privacy is almost occupied in all domestic and international laws.

PRIVACY IS THE ESSENCE OF LIFE:

Privacy of an individual is his inner morality. The law of privacy plays main role in protecting, preserving and developing the inner morality of every individual. There cannot be a stable legal system unless it gives protection to life, liberty and property of the people. In this connection Prof. Ralph Newman says "In spite of wide difference of opinion as to what is right or wrong in many situations, in spite of need of law for uniformity, there remains a wide area in which, the enforcement of moral standards, which are generally accepted is perfectly practicable."^{viii} There cannot be stable legal system unless it gives protection to life, liberty and property of the people.

In the traditional educational system, the evaluation method was adopted by ranking system. Now the evaluation method is based on grading system, which is to be followed in school upto 10th standard. This system gives good space for the students, who are not good at academics to show their talents in other co and extra-curricular activities. "Authorisation of a formula program and several competitive grant programs for Indian children and adults were implemented".^{ix} This system ensures now the privacy in learning which enlightens every student to identify their unique skill and improve them.

Remembering Dr Abdul Kalam's achievements, it is necessary to mention here that from childhood onwards he was able to follow his intuition which led him to reach his glory. In his early years he had a glimpse of flying birds on the sky and was fascinated which made him to think a human would also fly. In his later years he became missile man of India.

Thus an Individual's privacy is intrinsic, inherent, inalienable and natural human right which is established and recognised once again clearly in the judgement of, "*K.S. Puttuswamy (RTD) and another Vs Union of India*".^x

PRIVACY AND HUMAN RIGHT JURISPRUDENCE:

It is very well legally established now that Right to Privacy of an individual is fixed upon Human right jurisprudence. The human dignity is the essence of human privacy. "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."^{xi} "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks."^{xii}

It is very well discussed in the following manner in the case of *Common Cause (A Regd. Society) vs Union Of India on 9 March, 2018*. "Dignity of an individual has been internationally recognized as an important facet of human rights in the year 1948 itself with the enactment of the Universal Declaration of Human Rights". Human dignity not only finds place in the Preamble of this important document but also in Article 1 of the same. It is well known that the principles set out in UDHR are of paramount importance and are given utmost weightage while interpreting human rights all over the world. The first and foremost responsibility fixed upon the State is the protection of human dignity without which any other right would fall apart. Justice Brennan in his book *The Constitution of the United States: Contemporary Ratification* has referred to the Constitution as "a sparkling vision of the supremacy of the human dignity of every individual".^{xiii}

"In the European Court of Human Rights, speaking in the context of the Convention for the Protection of Human Rights and Fundamental Freedoms, has gone to the extent of stating that the very essence of the Convention is respect for human dignity and human freedom".^{xiv}

In the Constitutional Court of South Africa, it was held and justified that "without dignity, human life is substantially diminished".^{xv}

The right to privacy is also included in:

Article 14 of the United Nations Convention on Migrant Workers;

Article 16 of the UN Convention on the Rights of the Child;

Article 10 of the African Charter on the Rights and Welfare of the Child;

Article 4 of the African Union Principles on Freedom of Expression (the right of access to information);

Article 11 of the American Convention on Human Rights;

Article 5 of the American Declaration of the Rights and Duties of Man,

Articles 16 and 21 of the Arab Charter on Human Rights;

Article 21 of the ASEAN Human Rights Declaration; and

Article 8 of the European Convention on Human Rights."

CONCLUSION:

When the dignity is justified as human right, automatically it refers to individual autonomy which relates to right to privacy. In my view the right to privacy is internationally accepted as one of the core principle but the harmonious

relationship of integrity and individuality was a challenge before higher judiciary when it warrants the judicial interpretation..

The Supreme court, justified Right to privacy, philosophically and protected as a fundamental right which is not limited to article 21 but resonates through the entirety of Part III of the constitution, particularly under Article 14,19, and 21 of the Indian constitution.^{xvi}

It is concluded that dignity is the element of natural law by which Right to privacy is the natural right which is in alienable and inseparable from oneself.

ⁱIntroduction to jurisprudence by Dr Avatar Singh and Dr Harpreet Kaur, Law and Morals, pg. No. 142

ⁱⁱ Para1, page 8 of the Right to privacy origin and influence of a nineteenth century idea - Megan Richardson

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^{iv}Paton 1948, 91

^vUtilitarianism 1861, 308.

^{vi}section 122 of Indian evidence act

^{vii}Gobind vs state of MP. (1975)2scc 148

^{viii}Introduction to jurisprudence pg. No 143 by Dr Avatar Singh.

^{ix}Indian education act 1972.

^xAIR 2017 SC 4161

^{xi}United Nations Declaration of Human Rights (UDHR) 1948, Article 12

^{xii}International Covenant on Civil and Political Rights (ICCPR) 1966, Article 17

^{xiii}WRIT PETITION (CIVIL) NO. 215 OF 2005, civil original jurisdiction, in the supremecourt of India.

^{xiv}Christine Goodwin v. the United Kingdom

^{xv}South African case of S v. Makwanyane by Justice Regan'

^{xvi}AIR 2017 SC 4161