

Fight between right to privacy and right to know



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In most of the common law constitutions, right to privacy is not given expressly to their citizens, but derived from judicial review and court decisions. The term “ privacy” has been described as “ the rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as he sees fit. It also means the individuals right to control dissemination of information about himself; it is his own personal possession. Privacy has also been defined as a Zero-relationship between two or more persons in the sense that there is no interaction or communication between them, if they choose. Numerous legal and moral philosophers have suggested that privacy is valued because it satisfies a number of primacy human needs. The Right to Privacy in India The right to privacy in India has derived itself from essentially two sources: the common law of torts and the constitutional law in common law, a private action for damages for unlawful invasion of privacy is maintainable.

The printer and publisher of a journal, magazine or book are liable in damages if they publish any matter concerning the private life of the individual without such person’s consent. There are 2 exceptions to this rule: First, that the right to privacy does not survive once the publication relates to the discharge of the official duties of a public servant, an action is not maintainable unless the publication is proved to be false, malicious or in reckless disregard for truth. In India, the Constitution does not expressly recognize the right to privacy.

The concept of privacy as a fundamental right first evolved in 1964 in the case of *Kharak Singh Vs. State of Uttar Pradesh*. The Supreme Court, for the first time, recognized that there is a right of privacy implicit in the Indian Constitution U/Article 21. The Court held that the Right to Privacy is an integral part of the Right to Life, but without any clear cut laws, it still remains in the grey area. An encroachment upon one's privacy is only shielded if the offender is the state and not a private entity.

If the offender is a private individual then there is no effective remedy except in tort where one can claim damages for intruding in his privacy and no more. In *R. Rajagopal Vs. State of Tamil Nadu (1994)*, the Supreme Court held that the right to privacy is a right to be let alone. None can publish anything concerning the above matters without his consent, whether truthful or otherwise. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.

Privacy and Sexually transmitted Diseases (STD) Fight between Civil Rights – Right to Privacy is the right to be let alone but no right is absolute. Every personal right has its own limitation for public safety and national security. There must be some checks and balances. At least since their appearance in Western Europe in the late 15th Century, STDs, or venereal diseases as they were once called, have been characterized by a remarkable paradox. Despite their endemic nature in Europe and North America, STDs were and still are a Secret Malady.

Persons have endeavored to keep their sexually transmitted infections hidden from the social world from their sexual partners, families and

communities. At the same time, prevailing social mores have kept STDs from the public consciousness and consequently have prevented STDs from receiving public action and effective intervention. The most venerable position in STDs is of life partner of infected person. From its origins in the practice to control the disease, partner notification has been motivated by the moral imperative to notify and to protect persons who are unaware of their risk of STD exposure.

Infected persons questioned the theories of disclosure and protection that justified partner notification because it cost to individuals in loss of privacy and discrimination. Disclosure of such record can result in discrimination of their family and friends too. Infected persons have right to privacy, but partners of infected persons too are at health risk. The partners of infected persons have an equally powerful claim of right to know or right to information. The right to know developed from the social movement of the early 1900s.

It developed under tort law that held that a person has a duty of care towards his sexual partner. Under the tort concept duty is a legal obligation to conform to a certain standard of conduct towards another person. This duty makes an obligation to disclose an STD to a sexual partner or to protect the partner from avoidable health risks. The Preamble of Indian Constitution indicates the life pattern to be adopted by the Indian citizens. This Preamble makes it clear that the pattern of governance is democracy and the state will be a secular one.

Democracy cannot succeed unless the people had the freedom to know.

Justice, Krishna Iyer, J. once narrated that, “ all the information that affected public. ” Every has the right to demand, how the power is being exercised?

No freedom of expression amounts to democracy. Without transparency the democracy is dead. The government serves the people best which has the least secret to hide. No taxation without representation was the main slogan which resulted in the American war of Independence.

So, the Right to know or Right to Information is the most important thing in a democracy and this fact was recognized by the Hon'ble Supreme Court in the case of Menaka Gandhi Vs. Union of India, AIR 19678 SC 597, it was held that “ a government which reveals in secrecy not only acts against democratic decency but buries itself with its own barrier. ” The Apex Court in the case of Union of India Vs. Association for Democratic Reforms, AIR 2002 SC 2112, held that a voter has a fundamental right U/A – 19(1)(a) of the Indian Constitution to know the antecedents of a candidate.

For this purpose the voter's right to know the antecedents including criminal past, of the candidates contesting elections for the parliament one Assemblies of States is much more fundamental and basic for the survival of democracy as it is vital for, the little man, to think once before making his choice of electing law-breakers as law-makers. All these decisions makes it clear that Right to Information, which is sine qua non of participatory democracy is implicit, inherent and intrinsic in the right to freedom of speech and expression as guaranteed U/A – 19(1)(a) of the Constitution of India.

Deprivation of Right to Know, amounts to denial of the right to live a dignified life guaranteed U/A - 21 of the Constitution. Recognizing the importance of Right to Know, the Government of India framed the " Right to Information Act, 2005" in the year of 2005. Such type of law was in existence at Sweden in 1766. 200 years thereafter such a law is promulgated in the year 1966 in America. The main purpose of the Information Act is to reveal the work done by the Government and the second purpose is to make the government accountable and to eradicate the corruption at all spheres including government level.

Under this Act only the citizens of India can get the information relating to government records, the the money spent for different purposes and about the functions of the governments. And such all information has to be supplied within 30 days and when the information relates to a personal matter, it has to be supplied within 48 hours. Sec. 7, 8 and 9 of the Right to Information Act, 2005 deals with the matter about which the information cannot be approached. As enshrined in the Art. 1 of our Indian Constitution as " Right to Life and Personal Liberty" every person is entitled to privacy and no person or any authority to look into the affairs of other person. No provision of Constitution provides any right amounting to disturb the privacy of others. The journalist, press and media person were not allowed to publish the matter, which affect the privacy of other person.

The journalist who do such thing is called practicing Yellow-Journalism.

Regarding to protect the interference of private affairs of others, Sec. 99 of IPC was incorporated which reads as follows: Section 499 IPC: - Defamation: -
Whoever, by words, either spoken or intended to be read, or by signs or by
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visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Sec. 499 IPC protects the privacy of individual and Sec. 500 prescribes the punishment. Similarly, Sec. 151 and 152 and the proviso of Sec. 46 prohibits to putting up questions which relates to private affair. To protect the dignity of the woman as well as their privacy Sec. 509 IPC was enacted. Section 509 IPC: - Word, gesture or act intended to insult the modesty of a woman: - Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to 1 year, or with fine, or with both.

This shows that due care is taken by enacting provision in different Acts to protect the privacy. Though it appears that “ Right to Know” and the “ Right to Privacy” stands in conflict with each other, but, actually it is not so. On the other hand that both are complementary to each other at the aim to achieve free and corruption-less society. In an effort to encourage the development of right to know legislations in developing countries, the UNDP propounded the theory of Progressive Development of Rights in its report.

So from the above graph it is clear that Right to Know or Information and Right to Privacy are not contradictory to each other, but complementary to each other. Not only that, but all the 8 species enumerated above are

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complementary to each other and if they all run collectively, then the generic term in the middle graph, that the “ Right to Life and Personal Liberty” would be undoubtedly properly executed and conclusively the effects made by our Constitution framers will be a successive one.