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LAWS PERTAINING TO RIGHT TO PRIVACY AT THE INTERNATIONAL SCENARIO

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Laws Pertaining To Right to Privacy at the International Scenario

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Abstract – “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others.”

India is a signatory to the International Covenant on Civil and Political Rights and Universal Declaration of Human Rights, 1948, India has the obligation to enforce these rights. In the lack of enabling legislation, the ICCPR can have the legal force as the other laws in India. And the UDHR is a mere declaration, and it does not have the legal force. But the courts have used provisions of ICCPR and UDHR to make its argument stronger; and also in order to make realize the government about its obligation towards its citizen and towards international instruments.

Keywords – Privacy, Right, Human

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1. INTRODUCTION

In France, the scope of privacy includes the private life of persons and personal information related to the field of love life, sexuality, health, religion or finance (New York Times, Griggs). French Civil Code, states that “everyone has the right to respect for his private life”, by which the French legislation forbids the publication of photographs against individual's will and consent. The French jurist Perrault classified the right to privacy under main idea of respect of the individual himself as a citizen and member of family. He advocates that the right of individual can be divided into three groups; these are firstly, rights concerning the recognition of human being, including the use of the name. Secondly, rights related to the “physical individuality”, such as the right to life; health; corporal integrity; sacredness of the personal images and pictures and thirdly, rights concerning the “moral individuality” that include rights against breaches to personal freedoms, honour, intellectual work (Gupta, 1986). On the same context, Nelson, a French jurist, based his theory in clarifying the scope of right to privacy under French legal system on the idea of “patrimony” that defined by him as “totality of property belonging to an individual and of obligations which may be charged against him”. The International Covenant on Civil and Political Rights (Article 17 of) states about the Right to Privacy. It says “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, or to unlawful attacks on his honors

and reputation”. Whereas Article 12 of the Universal Declaration of Human Rights 1948, states “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation Everyone has the right to the protection of the law against such interference or attacks”. Both instruments provide the Right to Privacy to the citizen, and the states, who are signatory to it, are expected to fulfill these rights.

According to Nerson, the individual privacy may include the right to one's name, occupation, honour, domicile, moral rights, legal capacity, physical security, right against defamation, right to family graves and souvenirs, right to one's likeness, right to private life, right to happiness, right to love, right to be alone and right to strike (New York Times, Griggs).

➤ In US Legal System:

In USA, the right to privacy is not explicitly provided under the US Constitution, but still can be inferred through the First, Third, Fourth, Fifth, and Ninth Amendments of this Constitution. The right of Americans to privacy has been assured by wide variety of cases, as the Supreme Court of USA has admitted the notion of a “Zone Privacy” in *Griswold v. Connecticut* [429 US 589, 1977], and the motion of the right to privacy was recognized also in *Whalen v. Roe*, as well as it has been recognized by several courts of appeal in the country (Hoofnagle, 2010).

The Judicial Aptitude in USA towards “privacy” is based on the theory of Dean Prosser, who advocates that the privacy is composed of four separate elements, which they emerge from the notion of “right to be left alone”. Under US legal system, there are various approaches to the protection of individual privacy that include physical space or things, personal information and protection against the collection and use of personal information; defamation, illegal use of personal names and pictures; interference with personal matters and decisions; family affairs and tapping of telephonic or electronic communication (New York Times, Richmond, 2011). In USA, Informational and data protection has been admitted by the Privacy Act of 1974, but the problem with this Act that it was not applied to private sector databases, while the personal information of the drivers is protected under the Driver’s Privacy Protection Act of 1994, which was held later unconstitutional by the Supreme Court of USA. Electronic communications of persons is guaranteed under the Electronic Communications Privacy Act of 1986, and protection of family and privacy of student’s records in educational institutions against intrusions is safeguarded by the Family Educational Rights and Privacy Act of 1974. On the same context, the financial privacy of persons has been protected under set of legislations in United States of America, such as the Fair Credit Reporting Act of 1970, the financial Modernization Act of 1999 and the Identity Theft and Assumption Deterrence Act of 1998. Personal privacy of individuals is protected by different legislations including the Cable Communication Policy Act of 1984, the Telephone Consumer Protection Act of 1991, the Videotape Privacy Protection Act of 1988, the Telecommunications Act of 1996, the Health Insurance Portability and Accountability Act of 1996 and the Children’s On-line Privacy Protection Act of 1998.

American Law so far could not give any explicit position to the Right to Privacy in any of its statute as Justice Blackman in *Roe v. Wade* observed that the US constitution did not explicitly mention any right of privacy (Burns, 2001).

However, the US Judiciary recognized this right of personal privacy and declared that such a right already exists in the Constitution. *Stanley v. Georgia*, *Griswold v. Connecticut*, *Meyer v. Nebraska* are some of the cases decided by the US Courts in which they found the traces of Right to Privacy, in different constitutional amendments as well as in the form of touching from a distance of the Bill of Rights (Rights, 2006).

Clinton rossitor was of view that privacy is a special kind of independence, which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns, if necessary in defiance of all pressures of modern society. (Christensen, 2011)

It is submitted that privacy is such an essential component of human dignity without which human

dignity cannot be maintained and enjoyed. I O Mathew J has also said that there can perhaps be no objection in regarding intrusion upon our privacy as a tort offending dignity. The harm caused by this intrusion is incapable of being repaired and the loss suffered in dignity is not susceptible of being made good in damages. The injury is to the spiritual element in our otherwise mundane composition. Almost in all the democratic set-ups it may be hoped from every individual that he would recognize and respect a person because of his being a ‘person’. This respect of ‘person’ is closely related with the concept of privacy (Christensen, 2011).

2. REVIEW OF LITERATURE

In the recent history also Justice Cooley used this expression of “right to be let alone” in 1888. Samuel Warren and Louis Brandeis followed this abbreviated meaning of privacy in 1890 in one of their articles. They were of view that object of privacy is to protect ‘inviolable personality’. They elaborated the proposition and said that in early times the law gave remedy only for interference with life and property, for trespasses. Then the right to life served only to protect life from battery in its various forms; later there came recognition of spiritual nature and the feelings of the person and his intellect. Gradually the scope of these legal rights came to mean the right to enjoy life and the right to be let alone. The pith of the concept of society lies in the exclusion that means exclusive access of an individual into a realm of his own. It is the privacy that enables a person to exclude all others from beholding his owns -his private universe. Despite most of legal scholars argue that the legal right to privacy is usually traced back to the late 19th Century (Winn, 2010), the concept of “right to privacy” is found not totally of modern origin, and it is traced back to time immemorial. In ancient Mesopotamia, there is evidence that the concept of individual privacy was well known as Article of the Code of Hammurabi (Alexandra, 2013) (Gondwe, 2011) protected the home against intrusion (Daniel, 2011). The right to privacy was preserved also by the Ishnuna Code of Law, as it imposes harsh penalties for breaches to the individual privacy and the sanctity of dwelling houses of both freemen as well as slaves (Christensen, 2011). In ancient India, the concept of privacy has had a deeply traditional concern of both Hindu and Muslims cultures. The common features of the right to privacy, such as the privacy of homes, professional secrets and bodily privacy were recognized in ancient civilization of India by the Hindu “Dharmasastras” and the “Arthasastra” and other legal treaties (Gondwe, 2011). The same concept has been existed within the old traditions and legal systems of ancient Egypt, as harsh punishments were imposed on people who violate the privacy of homes, holy places and confidential secrets. On this context, it was proved that the old legislations of ancient Egypt contain punishments and penalties for violations of the person’s right to privacy. In ancient western civilization, an example to the evaluation of the concept of

"privacy" was made by ancient Greece, where a known physician called Hippocrates adopted an oath for physicians in order to protect the information and secrets transmitted to them by patients (Gupta, 1986). The legislations of ancient Greece recognized a private domain by making a clear distinction between private sphere of family and public sphere of people, which means that the notion of "privacy" was well known and protected in ancient Greece (Christensen, 2011). The notion of "privacy" was mainly based on the idea of refusing to seek or accepting public office, by which anyone who seeks privacy and withdraws into the private space was "no better than the Greek slave, female and child who had no role in public life". In ancient Rome, the term of "privacy" was drawn from the Latin words "to be let alone", but the applicability of the essence of this concept was legally designed merely for wealthy statesmen and other people were excluded, as the public and private sphere's spilt was recreated.

In present days, the norm of "privacy" becomes a global notion adopted by the constitutions and national laws of nearly every state in the world. The right to individual privacy has been guaranteed also by human rights conventions, including Universal Declaration of human Rights, the International Covenant on Civil and Political Rights (art.17), the European Convention on Human Rights (art.8), the American Declaration of the Rights and Duties of Man (art. 5, 9, and 10), and the American Convention on Human Rights (art.12), etc. (Jethmalani V. 2011).

"Gradually the scope of legal rights broadened; and now the right to life has come to mean the right to enjoy life – the right to be let alone."

– Louis Brandeis, J. (1890)

With robust growth and comparatively stable economy, India continues to be a key and fast developing market across the world. Number of foreign companies operating in India grows 100% every year. Yet India is left to embark upon a law that matches to developed nations' legal system and meets investors' expectations. However, the courts in India have used existing laws to afford protection and confer rights to secure a fair privacy to everyone.

3. FORMS OF THE RIGHT TO PRIVACY UNDER COMPARATIVE LAW:

Right to housing is considered, as one of human rights and basic human needs, the right to adequate housing is necessary for each person in order to live in dignity and peace. It has been emphasized that the right of persons to have their own homes and houses is well linked with other rights, such as the right to be protected in private life, family and life in general.

➤ In France:

Under French legal system, the right of Sanctity of the home and private places is protected of the Civil Code, which states, "everyone has the right to respect for his private life..." This ensures the individual privacy in private spheres against violation, as any invasion on one's privacy is considered as a criminal offence. The meaning of dwelling house under French criminal law covers all places used by individuals as private domiciles that may consists private place, rooms in hospitals, ships and hotels, etc. As the inviolability of the home is derived from the right to privacy of the owner, the meaning of housing includes every place where a person resides in permanently or temporarily, and therefore under French legal Jurisdiction the concept of "home" expands to its tabernacle appurtenances, such as gardens and stores, as well it is extended to the private places of residence, even for a limited period of the day, because dwelling house is well known under Article 122 of the French Civil Code as "the principle place where a person set up", while the meaning of dwelling house under the French Penal Code is somehow different, it is broader than in French civil law, it includes every place used by an individual as private (TNN, 2014).

➤ In USA:

In USA, the concept of "dwelling house" is defined under Fair Housing Act as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence". Thus, it can be inferred out of the American law's definition that the term of "dwelling house" includes only traditional dwellings, such as apartments, family houses, trailers, mobile home parks, cooperatives, condominiums, courts and time-sharing properties, and excludes properties such as motels and hotels from the scope of private homes or places. Under the legislation of North Carolina, the term of "dwelling house" means "any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose" [North Carolina General Statutes § 160A-442]. American jurisdiction and courts in deciding the dwelling nature of places and spaces of relies on many factors such as "the normal length of stay intended by the facility, the institutional or residential nature of the facility and whether the purpose of the facility to provide housing, or whether housing is linked to some broader purpose" (New York Times, Richmond, 2011).

The protection of personal conversations is a significant aspect of the person's right to privacy, which means that each person has the right to be

protected against undue invasion to the privacy of his or her conversation. This right covers the protection of the privacy of personal conversation against any eavesdropping of such conversation made either by laymen or official authorities. Every person has the right to privacy in his own telephonic conversations against any illegal and arbitrary records. Thus, call records are prohibited unless carried out by the concerned agencies, such as police or investigating officers and upon the consent of the party as well as within the sanction of the concern authority. The individual privacy sold telephone conversation, either made in office, home, public or tapping it can violate private place. However, this right is not an absolute one where many restrictions may be imposed on it even in the democratic countries for the purposes of security, intelligence or investigation. The act eavesdropping can be done through instant messaging, email, telephone lines and other means of communication viewed as private conversation. Listening to telephonic conversation is called "phone tapping", which means the secretly monitoring of conversations made through telephone and internet with the purpose of having information and knowledge about the transmitted conversations and/or altering them (Canadian Personal Information Protection and Electronic Documents (New York Times, Griggs).

4. Other International Instruments protecting Right

Other International instruments protecting Right to Privacy are:

- Article 17 The International Covenant on Civil and Political Rights 1966
- Article 16 The Convention on the Rights of the Child 1989
- E/CN.4/1990/72: Guidelines for the regulation of computerized personal data files 1990
- Article 8 Convention for the Protection of Human Rights and Fundamental Freedoms 1950
- Council of Europe: Recommendations and resolutions of the Committee of Ministers
- Council of Europe: Recommendation No.R(99) 5 for the protection of privacy on the Internet 1999
- OECD Guidance on Policy and Practice: Privacy Online (book)
- OECD Guidelines on Cross-Border Privacy Law Enforcement 2006-ongoing
- OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security 2002

- Article 18 The Cairo Declaration on Human Rights in Islam 1990
- Article 4.3 Declaration of Principles on Freedom of Expression in Africa 2002
- Article 5 American Declaration of the Rights and Duties of Man

CONCLUSION

The Supreme Court of India has construed a general Right to Privacy from the Constitution. However, this Right is not absolute as it can be curtailed according to a procedure established by law or when there is a superior countervailing interest. This right is also limited to the first generation of rights (the first cases of the Supreme Court only involve domiciliary visits). No general right relating to personal data protection has been developed so far; The Indian conception of privacy is rather different from the European one. From this perspective, it is interesting to note that the Right to Privacy is also used in India to protect women's right as well as to protect home from police intrusion; The Indian Contract Act provides for an alternative solution for European data exporters. As explained above, Indian data importers may be asked to sign a contract imposing them duties pertaining to data protection. Nevertheless, this remains a subsidiary solution. They have been engaged in discovering, verifying or testing the old social facts or discovering new ones; analyzing sequence of these facts, finding their relationships and causal explanations, and developing new scientific concepts and theories about human behavior. The right to life served only to protect life from battery in its various forms; later there came recognition of spiritual nature and the feelings of the person and his intellect. Gradually the scope of these legal rights came to mean the right to enjoy life and the right to be let alone. The pith of the concept of society lies in the exclusion that means exclusive access of an individual into a realm of his own. It is the privacy that enables a person to exclude all others from beholding his owns - his private universe. (Mechanics, 2011. See Network World, Neagle, 2012).

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