



COVID 19 , A GLOBAL PANDEMIC: A DISSERTATION WITH THE REFERENCE TO RIGHT TO PRIVACY

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ABSTRACT

India such sharing of patients personal medical report without consent of them by the Government of India violates their Right to Privacy and to Live with Dignity. Right to privacy should be considered as; the right of a person to be free from unwarranted publicity .It is considered as a natural and an absolute or pure right springing from the instincts of nature. In case of Kharak Singh v. state of U.P it was held that, the life guaranteed under Article 21 is not mere animal existence, and is something more than that. Moreover the exercise of right to privacy guaranteed by the Constitution of India is not absolute, and the government can impose reasonable restrictions as and when the situation arises in the interest of the community.¹It is essential for the Government of India to impose reasonable restrictions on the exercise of the Right to Privacy of its people, in view of larger public interest of strengthening the security and health of its citizens, Finally, Our dissertation does the complete analysis on both the aspects of the concerned topic as well as it basically tries to provide a transparent approach to its readers on both the aspects of the concerned topic.

¹ Gobind v. State of Madhya Pradesh & Anr., (1975) 2 SCC 148; See also, Kartar Singh v. State of Punjab, 3 SCC 569.. (1994)

SHARING OF MEDICAL DATA OF COVID-19 SUSPECTS VIOLATES THEIR RIGHT TO PRIVACY WHICH GUARANTEED UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA;

- **PRIVACY IS THE CORE OF HUMAN DIGNITY**

1. That sharing of medical data with US based company 'Dunder Mifflin' Laboratory Pvt. Ltd. is clearly violation of Right to Privacy which insures by Constitution of Union of India under Article 21 Which gives protection of Life and Personal Liberty to its citizens.
2. India such sharing of patients personal medical report without consent of them by the Government of India violates their Right to Privacy and to Live with Dignity. Right to privacy should be considered as; the right of a person to be free from unwarranted publicity. It is considered as a natural and an absolute or pure right springing from the instincts of nature. In case of Kharak Singh v. state of U.P it was held that, the life guaranteed under Article 21 is not mere animal existence, and is something more than that.²
3. That privacy is the Constitutional core of Human Dignity., private may vary from intimate zone to the private zone and from the private to the public areas, it is important to understand that privacy is not lost or surrendered merely because individual is in a public place. Privacy attaches to the person since it is an essential fact of the dignity of the human being.

- **IN THE CASE OF PUTTASWAMY COURT HELD**

4. That Right to Privacy, as we know, is a fundamental right. The Supreme Court's judgment³ of puttaswamy case that makes it clear that the right includes Right to Privacy is self-determination that is the authority of every individual to decide for him/herself, when and within what limits information about her private life should be communicated to others. The opinions of Justice Chandrachud, (on behalf of four judges each makes it clear that every person in India has a right to control the dissemination of information that is personal to her/his. Now, when governments disclose, information of people as, residential addresses, phone numbers and travel histories and

² Kharak Singh v. State of U.P AIR SC 1295 1963

³ Justice K.S.Puttaswamy and Ors. v. Union of India (UOI) and Ors.(24.08.2017-SC)

number of positive patients who have both been infected by Covid-19 or otherwise been quarantined there is a *prima facie* violation of the right to privacy.

5. held that in case of Justice K.S. PUTTASSWAMY v. UOI; the state must ensure that information is not used without the consent of person and that it is used for the purpose and to the extent it was disclosed⁴, thus for e.g., if the posting on social media websites number and place of stay of Covid-19 suspect patients and make open their personal health in public platform which is possible as per tools available, this is a huge violation of a patient's privacy especially in an atmosphere where epidemic is at this stage when if it proved that they were infected, they can be being bullied to being thrown out of their jobs, to being socially secluded and the level of stigmatization is unthinkable.

- **THREAT TO LIFE AND LIBERTY**

6. That medical data collected by Government and Private Laboratory is not safe and sharing it too with the private entities (DMPL), it can be use very easily threatening the Life and Liberty of the citizens of India and as of now 11,987 medical reports have been shared and many more to be share.
7. Cannot just delegate its work to private entities when Privacy of the citizen can be violated in case on any misuse. *In case of District Registrar and collector, Hyderabad v. Canara bank*,⁵ The Right to Privacy was construed as a right which attaches to the person. The significance of this is that the Right to privacy is not lost as a result of confidential documents, information being parted or for medical report.
8. Also contends that the collection of information by private entities and by Government is excessive and can be misused therefore it Violates Article 21 of the Constitution of India and also is not safe and stringent medical data protection laws should be complied. Since a large data is already given to US based company (DMPL).

- **DUTY OF GOVERNMENT TO PROTECT CITIZENS RIGHTS**

⁴ Justice K.S.Puttaswamy and Ors. v. Union of India (UOI) and Ors.(24.08.2017-SC)

⁵ Distt. Registrar and Collector v. Canara Bank etc. (civil) 6350-6374 of 1997.

9. Should take measures to somehow protect the privacy of citizens because it is duty of the Government to protect the right of its citizens and, in the 21st century a Government that cannot protect its citizens Right to privacy cannot credibly maintain a democratic regime of equal treatment under the law.

- **RIGHT TO PRIVACY ALSO INCLUDES**

10. It enjoyed by every human being by virtue of his or her existence, privacy extends to other aspects like including; Bodily integrity, Personal autonomy Informational self-determination, Protection from state surveillance, Dignity and Confidentiality and sharing of citizens personal medical reports without of their permission government of India fails to protect the right of privacy of its citizens.

11. That it also can mean that they have to share some of that information, including information about someone's health. Usually, people think about health privacy in terms of the relationship they have with their doctors and clinicians who have to keep the vast majority of information confidential -both legally and ethically.

- **INFRINGEMENT OF CITIZENS RIGHT AND EFFECTS ON THEIR MENTAL HEALTH**

12. Before the Honorable Supreme Court that "These measures are in direct violation of medical ethics and patients' Right to privacy and confidentiality. We have number of people whose medical reports are sharing and making number of patients publicly. We are afraid that this might breed wider stigma and deter people from reporting their illnesses and revealing their travel/exposure history for the fear of social intimidation. This, in turn, would make it even harder for the Government to trace cases and contain the virus. Such measures can cause potential harm and distress to patients and their families in both short and long term that is even if they are certified to be infection free".

13. That it can also be possibility that coronavirus suspects being bullied and stigmatized. They are getting hate messages from the societies in which they live and are being verbally abused for coming out as COVID-19 positive patients.

- **BORROWED DEFINITION ON RIGHT TO PRIVACY**

14. Before the Honorable Supreme Court that by taking view of globally borrowed definition in case of Right To Privacy Article 12⁶ of the Universal Declaration of Human Rights , 1948 and Article 17 ⁷of the International Covenant on Civil and Political Rights (ICCPR), 1966.- we can borrow from here the definition of Right To Privacy as; 'The above legally protect persons against 'arbitrary interference' with one's privacy ,family ,home, correspondence, honored reputation'.

15. Moreover it is submitted that Article 7 and 8⁸ of the Charter of Fundamental Rights of the European Union, 2012 recognizes the Respect for Private Life and Family Life, Home, and Communications. The Article 8 which mandates as Protection of Personal Data and its Collection.

before the Honorable Supreme Court that Union Of India being a democratic and republic country in South Asia not able to protect its citizens Right and also Government violates its citizens Right to Privacy under Article 21 by keep sharing citizens personal medical data without his or her consent and infringing Right to Live with Dignity.

OTHER DIMENSION OF THE DISSERTATION

SHARING OF MEDICAL DATA OF COVID-19 PATIENTS NOT VIOLATES THEIR RIGHT TO PRIVACY AND IT IS RESONABLE.

1. That exercise of right to privacy guaranteed by the Constitution of India is not absolute, and the government can impose reasonable restrictions as and when the situation arises in the interest of the community.⁹It is essential for the Government of India to impose reasonable restrictions on the exercise of the Right to Privacy of its people, in view of larger public interest of strengthening the security and health of its citizens.
2. That in case of Maneka Gandhi v. Union of India¹⁰ Supreme Court held that 'the procedure established by law under article 21 must be just, reasonable and fair and government of India take reasonable action by sharing medical data with US based company as it is for welfare of its citizen.

⁶ The Universal Declaration of Human Rights, 1948.

⁷ The International Covenant on Civil and Political Rights (ICCPR), 1966.

⁸ The Charter of Fundamental Rights of European Union, 2012.

⁹ Gobind v. State of Madhya Pradesh & Anr., (1975) 2 SCC 148; See also, Kartar Singh v. State of Punjab, 3 SCC 569.. (1994)

¹⁰ Maneka Gandhi v. Union of India, AIR 5971978,SCR (2) 6211978

3. That, European Convention on Human Rights also recognizes that Right to Privacy is not absolute and lays down certain circumstances which include national security, public safety and the economic well-being of the country, protection of health, rights and freedoms of others, *inter alia* under which the right can be interfered with, by the state.¹¹ And here Right to Privacy can be taken for public safety.
4. Lord Denning while stating that the English law must recognize right to privacy, also asserted that the exercise of the same cannot be free from limitations. Though right to privacy is an inalienable right; its curtailment is necessary for stability of the society¹². Following these principles, interception of telephone calls to prevent organized crimes in accordance with the provisions of MOCCA has also been held to be constitutionally valid by SC¹³.
5. That to begin with the options canvassed for limiting the right to privacy include an Art. 14 type reasonableness enquiry¹⁴ limitations per the express provisions of Art.19; a just, fair and reasonable basis for limitation per Art. 21; and finally, a just, fair and reasonable standard per Art.21 plus the amorphous standard of 'compelling state interest'. The last of these four options is the highest standard of scrutiny¹⁵ that a court can adopt. It is from this menu that a standard of review for limiting the right of privacy needs to be chosen.¹⁶

SUPREME COURT HELD IN VARIOUS CASES RIGHT TO PRIVACY AS:

6. That restrict the right legitimately the State must first show us that there exists a valid piece of legislation permitting it to place a constraint on the right. What is more, such a constraint, as judgments since (*Puttaswamy* have made it clear (including the verdicts in *Puttaswamy*, *Anuradha Bhasin v. Union of India* and *Internet and Mobile Association of India v. RBI*) must be proportionate in nature that is they must satisfy the test as propounded by the Court in *Modern Dental College and Research Centre v. State of Madhya Pradesh* (2016). There, the court held, that the doctrine of partakes four separate lines of analyses: (1) that the measure has to be designated for a proper purpose; (2) that the measure undertaken is rationally connected to the fulfillment of that purpose; (3) that there are no alternative and less intrusive measures available that may similarly achieve that same purpose with a lesser degree of limitation; and (4) that there needs to be a proper relation between the importance of achieving the aim and the social importance of preventing the limitation

¹¹ Art. 8, European Convention on Human Rights, 1953 (Adopted on September 3, 1953)., 1953

¹² R v. Director of Serious Fraud Office, Ex parte Smith AC 1. [1993

¹³ State of Maharashtra v. Bharat Shanti Lal Shah, 13 SCC 5. 2008

¹⁴ E.P. Royappa v. State of Tamil Nadu, AIR SC 555.1974

¹⁵ United States v. Carolene Products, 304 U.S. 144 (1938).

¹⁶ K. S. Puttaswamy and Anr. v. Union of India and Ors., AIR 2015 SC 3081.

on the constitutional right.

GOVERNMENT ACT ACCORDING TO PROCEDURE ESTABLISHED BY LAW PROVIDED UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

7. By the respondent that Right to Privacy has been culled from Art. 21 of the Constitution of India. Right to Privacy is a part of Right to life and Personal Liberty and it can be curtailed only in accordance with the Procedure established by Law, as provided under Art.21 of the Constitution of India¹⁷ held in case of people's Union for civil Liberties v. Union of India. International Convention on Civil and Political Rights also provides that liberty of the people can be restricted, in accordance with such procedure as are established by law.¹⁸
8. That the honorable SC in case of *Maneka Gandhi*,¹⁹ has laid down a triple test for any law to be considered to be in accordance with the 'Procedure established by law':
 - The law must prescribe by a procedure.
 - The procedure must satisfy the requirements of Arts. 14 and 19.
 - And, it should be just, fair and reasonable.

The sharing of medical data is for making its vaccine which is for public health it is reasonable and not violates the Right to Privacy of people.

PRINCIPLE OF INTELLIGIBLE DIFFERENTIA:

9. That the expression intelligible differentia means difference capable of being understood and should be reasonable and not arbitrary. The sharing of medical data is for the reason to aim at classifying people based on their needs for instance health disorders in pandemic to treat them from covid-19 and to make vaccine.

MAINTENANCE OF PUBLIC HEALTH

10. That Art. 47 talks about raising the level of nutrition and the standard of living of its people and the improvement of public health as its primary duties of government and for that very reason sharing of medical data is must aim at keeping record of diseases and disorders of covid-19 patients and save other citizens from being infected and help the needy, for the maintenance of public health.

¹⁷ People's Union for Civil Liberties v. Union of India, AIR SC 207 1991.

¹⁸ Art. 9, International Convention on Civil and Political Rights (Adopted by United Nations General Assembly on December 16, 1966)

¹⁹ Maneka Gandhi v. Union of India, AIR SC 597 1978

The purpose of the sharing medical data is reasonably classify people based on intelligible differentia and is therefore, not arbitrary and unreasonable. There is a close nexus between the objective of the Act and the classification. In such a pandemic situation, the government by directing all laboratories, private and government both, to maintain proper medical records including blood samples and DNA, government fulfill its duty and by sharing medical data which shall be stored with a US-based company “Dunder Mifflin Laboratory Pvt. Ltd” (DMPL). DMPL of COVID-19 patients as . Such data was collected for the development of vaccine and other research purposes pertaining to COVID-19 and it is completely reasonable and safe action taken by Government of India to save the citizens life , and not infringe citizens Right to Privacy.

CONCLUSION

India such sharing of patients personal medical report without consent of them by the Government of India violates their Right to Privacy and to Live with Dignity. Right to privacy should be considered as; the right of a person to be free from unwarranted publicity .It is considered as a natural and an absolute or pure right springing from the instincts of nature. In case of *Kharak Singh v. state of U.P* it was held that, the life guaranteed under Article 21 is not mere animal existence, and is something more than that. Moreover the exercise of right to privacy guaranteed by the Constitution of India is not absolute, and the government can impose reasonable restrictions as and when the situation arises in the interest of the community.²⁰It is essential for the Government of India to impose reasonable restrictions on the exercise of the Right to Privacy of its people, in view of larger public interest of strengthening the security and health of its citizens, Conclusively, Our dissertation does the complete analysis on both the aspects of the concerned topic as well as it basically tries to provide a transparent approach to its readers on both the aspects of the concerned topic.

²⁰ *Gobind v. State of Madhya Pradesh & Anr.*, (1975) 2 SCC 148; See also, *Kartar Singh v. State of Punjab*, 3 SCC 569.. (1994)