

**RIGHT TOWARDS PRIVACY AND ITS
CONSTITUTIONAL VALIDITY**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE
AWARD OF DEGREE OF MASTER OF LAWS**

SUBMITTED BY

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CERTIFICATE

This is to certify that the dissertation titled, “RIGHT TOWARDS PRIVACY AND ITS CONSTITUTIONAL VALIDITY” is the work done by MOHD. ABDURRAHMAN under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

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LIST OF CASES

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LIST OF ABBREVIATIONS

A,I,R,	:~	All India Reporter
API	:~	Application Programs Interface
Art,	:~	Article
ASP	:~	Active Server Pages
CCPA	:~	Court of Customs, and Patent Appeals
Col,	:~	Column
CONTU	:~	Commission on New Technological Uses
CPU	:~	Central Processing Unit
D,L,T,	:~	Delhi Law Times
Del,	:~	Delhi
DMCA	:~	Digital Millennium Copyright Act
DRM	:~	Digital Rights Management
ECDR	:~	E-Commerce Directive Regulation
Ed, or Edn,	:~	Edition
EFF	:~	Electric Frontier Foundation
eg,	:~	Example Gratia (for example)
etc,	:~	et, Cetera (and the rest),
FSF	:~	Free Software Foundation
GATT	:~	General Agreement within Tariffs, and Trade
H,C,	:~	High Court
HLL	:~	Hindustan Lever Limited
I,L,R,	:~	Indian Law Report
IPR	:~	Intellectual Properties Right
IRM	:~	Information Rights Management
ISPs	:~	Internet Service Providers
JJ,	:~	Justices
MNCS	:~	Multi National Corporations
N,L,R,	:~	National Law Review
NAFED	:~	National Association of Fire Equipment Distributor
NFL	:~	National Football League
OS	:~	Operating System
P,	:~	Page
P2P	:~	Peer to Peer
PPL	:~	Phonographic Performers Ltd,
RAM	:~	Random Access Memory
ROM	:~	Read Only Memory
S,C,	:~	Supreme Court
S,C,C,	:~	Supreme Court Cases

S,C,J,	:~	Supreme Court Journal
S,C,R,	:~	Supreme Court Reports
SCIL	:~	Super Cassettes Industries Ltd,
SCMS	:~	Serial Copy Management System
TRIPS	:~	Trade Related Aspects of Intellectual Properties Rights
UCC	:~	Universal Copyright Convention
ULR	:~	Uniform Resource Locator
USDMC	:~	United States, and Digital Millennium
V,	:~	Versus
Vol,	:~	Volume
W,e,f,	:~	With effect from
WCT WIPO	:~	Copy Right Treaty
WIPO	:~	World Intellectual Properties Organization
WLR	:~	Weekly Law Reports
WPPT	:~	WIPO performers, and Phonograms Treaty
WTO	:~	World Trade Organization

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(ECHR) Article 8

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2,2,5, The organization for economic cooperation, and development Principles

2,2,6, European Convention on Human Rights

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INTRODUCTION

The recognition of 'Privacy's deeply rooted within history, and religion, Several religious Scriptures, texts,, and classical write-ups recognize the importance of Privacy, There's recognition of Privacy within the Quran¹, and within the sayings of Prophet Mohammed, The Bible has numerous references to Privacy, and the Jewish law has long recognized the concept of 'freedom from being watched', Fifties years ago, George Orwell, the English writer, whose fears for the loss of individual liberties dominated his novels, imagined a totalitarian state where advanced technologies would be used to monitor the people within all their endeavors, "Big Brother' would be watching us, and privacy would be a thing of the past", Orwell's fears have come true within this era of Information, and Communication Revolution (ICR),¹

Privacy's a fundamental human right recognized within the UN Declaration of Human Rights, the International Covenant on Civil, and Political Rights, and within many other international, and regional treaties, Privacy underpins human dignity, and other key values such as freedom of association, and freedom of speech, It has become one of the most important human rights issues of the modern age,

Nearly every country within the world recognizes a right of privacy explicitly within their Constitution, At a minimum, these provisions include rights of inviolabilities of the home, and secrecy of communications, Most recently-written Constitutions such as South Africa's, and Hungary's include specific rights to access, and control one's personal information,

Statement of the Problem

Even with the adoption of legal, and other protections, violations of privacy remain a concern, within many countries, laws have not kept up with the technology, leaving significant gaps within protections, within other countries, law enforcement, and intelligence agencies have been given significant exemptions, Finally, within the absence of adequate oversight, and enforcement, the mere presence of a law may not provide adequate protection,

There are widespread violations of laws relating to surveillance of communications,

¹ An-Noor 24:~ 27:~ "O you who believe! Enter not houses other than your own, until you have asked permission, and greeted those within them, that's better for you, within order that you may remember," (Yusufali),

An-Noor 24:~ 28:~ ", and if you find no one therein, still, enter not until permission has been given,, and if you are asked to go back, go back, for it's purer for you,, and Allah is, All-known of what you do," (Yusufali),

Al-Hujraat 49:~12:~ "O you who believe! Avoid much suspicion, indeed some suspicions are sins,, and spy not, neither backbite one another," (Yusufali)

even within the most democratic of countries, The U,S, State Department's annual review of human rights violations finds that over 90 countries engage within illegally monitoring the communications of political opponents, human rights workers, journalists, and labor organizers, within France, a government commission estimated within 1996 that there were over 100,000 wiretaps conducted by private parties, many on behalf of government agencies, within Japan, police were recently fined 2,5 million yen for illegally wiretapping members of the Communist party,

Objectives of the Study

The Primary objective of the study's to analyze the serious threat to right to privacy of individual by the Information Technology, and the effectiveness of the present legal mechanism to deal with it,

More specifically the objectives of the study were:~

- 1) To make a conceptual analysis of Right to Privacy;
- 2) To analyze the legal protection of right to privacy at national, and International level;
- 3) To evaluate the provisions of Information Technology Law via-a-via Right to Privacy;
- 4) To determine the liabilities of Internet Service Providers at national, and International Level;
- 5) To examine the Cloud Computing implications on the Right to Privacy;
- 6) To examine the National, and International Standards on Data Protection;
- 7) To focus on remedies against violation of Right to Privacy;
- 8) Lastly, to present the major findings of the study, and to offer pertinent suggestions to strengthen the legal system,

Significance of the Study

Although modem telecommunications technologies, such as computers, the Internet,, and wireless communications provide tremendous convenience, and tools for productivities they also raise numerous concerns, and legal issues, These concerns, and issues generate new responsibilities for system managers, new challenges for law enforcement,, and new questions for individuals, One of the most critical of these legal issues's privacy,

Research Methodology

The methodology adopted for the study's purely doctrinal, Various books, journals, School of Legal Studies, BBDU, Lucknow

magazines, International materials, treaties, and conventions etc., have been studied for the collection of the data, Materials from various websites have been visited & used to get the latest information within analyzing the problem, Secondary data available from various sources have been used to support some conclusions, and findings,

Chapterization

The Whole Study's presented within ten chapters,

Chapter I:~ Introduction

This chapter deals with introduction, historical, and conceptual overview of right to Privacy of the objectives of the study, its significance, and the methodology adopted for the study,

Chapter II:~ RIGHT TO PRIVACY within INTERNATIONAL PERSPECTIVE

This chapter deals with the concept of international perspective for the study,

Chapter III:~ NATIONAL LEGAL FRAMEWORK FOR PROTECTION OF PRIVACY

This chapter deals with the Legal Framework for the protection of privacy towards Information technology,

Chapter IV:~ RIGHT TO PRIVACY :~ JUDICIAL APPROACH within INDIA

This chapter deals with the Judicial approach, and case law of right to privacy,

Chapter V:~ INFORMATION TECHNOLOGY, and THREAT TO PRIVACY — AN ANALYSIS

This chapter deals with the Analysis of Information technology, and threat to the privacy,

Chapter VI:~ CONCLUSION & SUGGESTIONS

This chapter deals with the conclusion of the right to privacy,

CHAPTER-1
PRIVACY :~ MEANING, CLASSIFICATION, FUNCTIONS, and
PHILOSOPHICAL BASIS

1,0 Introduction

According to etymological meaning, privacy has been taken from Latin term *privatus* which means 'separated from the rest', deprived of something, esp, office, participation within the government', and from *privo* which means 'to deprive', 's the abilities of an individual or group to seclude themselves or information about themselves, and thereby reveal themselves or information about themselves, and thereby reveal themselves selectively, 'Privacy"s concerned with a man's dignity, and liberty, It's a fundamental human right guaranteed by International Laws, It has been an inalienable, and integral part of human life since long, Initially, it had a very narrower scope as such thought to be included only 'right to be let alone', Later, the increasing, maturities levels of the democratic systems, rapid strides within science, and technology, made its scope wider, Now the right to privacy covers many aspects such as, freedom of thought, control over one's body, identity, solitude within one's home, control over self information, freedom from surveillance, protection of one's reputation,, and freedom from searches, and seizures etc, The USA's the motherland of right to privacy, Privacy's origin can be traced back to an article written by Warren, and Brandeis published within 'Harvard Law Review' within 1890, within which the concept of Right to Privacy was discussed within detail for the first time, The concept was first proposed within December, 1890, within a Harvard Law Review article written by two young lawyers who had roomed together within Cambridge – Samuel Warren, and Louis Brandeis, Brandeis would later become one of the legendary justices of the U,S, Supreme Court, Warren's family was prominent within Boston society, They threw lavish parties, Press gossips constantly festered the family, and tried to spy on their parties, Warren, and Brandeis published their novel idea within a Harvard Law Review essay, "Instantaneous photographs, and newspaper enterprise," they wrote, "have invaded the sacred precincts, and domestic life,"

Once a civilization has made a distinction between the 'outer', and Inner man, between the life of the soul, and the life of the body, between the virtual, and the material, between the sacred, and profane, between the realm of God, and the realm of Ceaser, between the church, and the State, between rights inherent, and inalienable, and the

rights that are within the power of government to give, and take away, between public, and private, between society, and solitude, it becomes impossible to avoid the idea of privacy by whatever name it may be called- the idea of a private space, and remain himself²,

Privacy's the claim of individuals, groups or institution to determine for themselves when, how, and to what extent information about's to be communicated to others², Right to privacy's more of an implied obligation, It's the 'right to be let alone', Hence, 'Right to life'³, "the Right to be let Alone" has emerged⁴,

The concern for the Right to privacy was shown by Thomas M, Cooley at the end of the nineteenth century when he observed that privacy was synonymous with the right to be let alone⁵, Therefore, privacy as right's the right to be left alone without unwarranted intrusion by government, media or other institutions or individuals,

Thus, within common legal parlance, the right of privacy has one meaning i.e, a legal right to be left alone; the right to live life free from unwarranted publicity, within wider sense, privacy's the abilities of a person to control the availabilities of information about, and exposure of him or herself, It's related to being able to function within societies anonymously (including Pseudonymous or blind credential identification),

In the United Kingdom, The Justice Report, 1970, and The Younger committee Report, 1972 pointed out the difficulties of finding a precise, and logical formula which could either circumscribe the meaning of the word 'privacy, or define it exclusively, Each however suggested a working definition, Justice Report defines privacy as 'that area of man's life which within any circumstances, a reasonable man with an understanding of the legitimate needs of the communities would think it wrong to invade,

1,1 Definition of Privacy

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 others,⁶

It means his right to withdraw or to participate as he sees fit, It also means the individual's right to control dissemination of information about himself; it's his own

² Milton R, Konvitz, "Privacy, and the Law :- A Philosophical Preclude", Law, and the Contemporary Problems, (1966), p,no 273

³ Westin AF; *Privacy, and Freedom*, London,1967 visited at www.privacysymposium.com/reading/westin.pdf

⁴ Samuel D, Warren, and Louis D, Brandies, "The Right to Privacy" 4 Harvard Law Review (1890),p,no193

⁵ The phrase was coined by Thomas M, Cooley within his Treatise, *The Law of Torts* (2nd Ed, 1888)

⁶ Adam Carlyle Breckenridge :- "*The Right to Privacy*" (1971), Quoted within Madhavi Divam, "*The Right to Privacy within the Age of Information, and Communication*" (2002) 4SCC(J) 12,

personal possession"⁷,

In another view, privacy's a "Zero Relationship between two or more persons within the sense that there's no interaction or communication between them if they so choose"⁸,

Right of Privacy, the right of a person to be free from intrusion into or publicities concerning matters of a personal nature called right to privacy,

Privacy's the abilities of an individual or a group to keep their lives, and personal affairs out of public view, or to control the flow of information about them, Privacy's sometimes related to anonymities although it's often most highly valued by people who are publicly known them, Privacy's sometimes related to anonymities although it's often most highly valued by people who are publicly known,

The simplest definition of privacy was given by Judge Thomas Cooley within *Olmstead v. United States*⁸, he called it, "the right to be let alone", Invasion of privacy means "an unjustified exploitation of one's personalities or intrusion into one's personal activity, actionable under tort law, and sometimes under Constitutional law"⁹,

Rubinfeld defines privacy as "the right to make choices, and decisions" which forms "the 'Kernel' of autonomy"¹⁰, However, going a step further, he introduces the concept of personhood into the doctrine by stating:~ "Some acts, faculties, or qualities are so important to our identities as persons, and as human beings that they must remain inviolable, at least as against the State the right to privacy's a right to self definition," Thus, "where our identities or self definition's at stake, the state may not interfere"¹¹

The privacy can be defined further as 'As autonomy or control over intimacies of personal identity,' It can also be described as 'The Rightful claim of the individual to determine the extent to which he wishes to share of himself with other, and his control over the time, place, and circumstance to communicate with other, It also means the individual's right to control dissemination of information about him, it's his own personal possession', Another author defines privacy as a "Zero relationship between two or more persons within the sense that there's no interaction or communication between them if they so choose" Judge Cooley calls it 'the right to be let alone', According to Charles Fried, 'Privacy's not simply an absence of information about

⁷ Ibid

⁸ Edward Shills; "*Privacy :~ Its Constitution, and Vicissitudes, Law, and Contemporary Problems*", (Spring, 1996) vol,2 ,p,no31,

⁹ 277 U.S, 438 (1928)

¹⁰ Black's Law Dictionary, 7th Ed, Garner Bryan visited at www.barnesandnoble.com/,,,/blacks-law-dictionary-bryan-garner/11192 accessed on 21/04/16

¹¹ Jeb,rubinfeld-"*the right to privacy*" ,vol,102 yale law jouml ,february,1989

other; rather it's the control we have over information about ourselves,, The person who enjoys privacy's able to grant or deny access to others,,, Privacy, thus,'s control over knowledge about oneself,' Another Miller defines privacy as a control over information, Privacy's the individual's abilities to control the circulation of information relating to him, a power that often's essential to maintaining social relationship, and personal freedom,

As a young Boston lawyer within 1890, U,S, Supreme Court Justice Louis d, Brandeis co wrote a landmark Harvard Law Review article titled " The Right to Privacy," advocating that "the right to life has come to mean the right to enjoy the life- the right to be let alone,""

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attack upon his honour, and reputation, Everyone to the protection of the law against such interference or attack,¹²" The recognition to Right to privacy under Universal Declaration of Human Rights set forth the basic human requirement regarding the privacy about the =Ian of one's personalities & for preservation of one's self respect, Therefore are certain arenas of person's life which he wish no to be interfered by anyone Lord Denning has forcefully argued for the recognition of a right to thus¹³:~

1,2Classification of Privacy:~

- a, Intimate Privacy
- b, Family Privacy Social Privacy
- d, Individual Privacy
- e, Information Privacy 1,2,1 Intimate Privacy

According to the western view "intimacy's the sharing of information , one's action, beliefs, or emotions, which one does not share with me-, This would include sexual relations, the performance of bodily Aims, family relations,, and the like¹⁴,

The individual sharing these intimate information actions, beliefs, etc, mid not favour any leakage, disclosure or exposure to their privacy, The intimate privacy generally covers the grounds of sexual intimacies, personal **beliefs, and** such other things the societies would not approve,

¹² , Cozic,," *Civil Liberties, Opposing Viewpoints*", Greenhaven Press, U,S,A, 1994 12 of Universal Declaration of

¹³ Article 12 of Human Rights,1948 Resolution 217A (III) of 10 er 1948

¹⁴ *De shta Kiran; "Right to Privacy under Indian Law"*, New Delhi, Deep, and Deep Publication Pvt, lail(2(111), p,35

1 /,2 Family Privacy

A concept of family privacy can cover a wide area beginning from the privacy between a married couple, extend to a joint family living together, and ending with all the blood relations of the family though they may not be living together, The social customs, and the cultural background were such that the families were such that the families were auto adjusted to certain kinds of privacy, and the individuals never even felt the need of intervention of law or that of any court, The safeguards were within built within the very customs themselves, There was segregation of males, and females, and unwritten social rules automatically created, and granted privacy,

1,2,3 Social Privacy

This privacy can further be sub-divided into three categories-

- i. Political Legal Privacy
- ii. Professional Privacy
- iii. Communities Privacy

(i) **Political/Legal Privacy:~- within** this privacy the intrusions by the government are regulated by means of law, and the law within turn either gives or takes away rights to aeration liberties which will have considerable bearing on privacy, Examples- Procedure of search, and seizure; Publications of news; wire-tapping; taking photography, Public nudity, sexual relationship beyond marriage; Privacy of court proceedings etc,

(ii) **Professional Privacy:~- within** the case of professionals safe ground to privacy may become essentials on two scores:~ first's own professional privacy,, and secondly, the professional privates of his clients,

General within India, lawyer, doctor, chartered accountants, consultants etc, are the professionals who have the opportunities to posses knowledge about the privacy of their patrons,

In R,M, Malkanis v, State of Maharashtra,¹⁵ the coroner's attempts to extract bribe from Dr, Adatia has been a typical case of an attempt to violate professional privacy,

¹⁵ AIR 1973 SC 157

In the context of modern living, professionalism has come to stay within a long, and important way, and hence it would adequately need, and deserve all legal safeguards, By protecting professional privacy, we will be within a position to protect right to life, and personal liberty,

(iii) Communities Privacy:-- The concept of communities privacy has a very limited field because a society's composed of conglomeration of communities, and social laws general govern major aspect, But there are certain communities privacy which may need intervention of law for their safeguard, A Hindu Brahmin communities would not approve of a slaughter house he beef within the midst, and cluster of their business, and residential colony, Nor would Christians, and Muslims approve of a ban on cow slaughter for them beef eating's their privacy of food, and dietary habit, and they would not wish to surrender this communities privacy, Similarly every communities can have some peculiar customs, and rituals private to their own community, which they would not like to expose to public gaze or interference¹⁶,

1,2,4 Individual Privacy

The most susceptible area's the privacy of individuals, An individual by nature at some time or the other within his doily existence craves for brief periods of privacy for mental peace, quiet, mediation, enjoyment of hobbies, cultivation of personality, both by cosmetically means as well as by rehearsals, and practices such as well as by rehearsals, and practices such as speech modulation, physical exercise, etc,

1,2,5 Information privacy

Data privacy refers to the evolving relationship between technology, and the legal right to, or public expectation of privacy within the collection, and sharing of data about one's self, Privacy concerns exist wherever uniquely identifiable data relating to a person or persons are collected, and stored, within digital form or otherwise, within some cases these concerns refer to how data's collected, stored,, and associated, It can further be divided into-

- i. Financial privacy

¹⁶ McLaren John, *"An Alternative Approach to Communities Privacy, and Open Space"*, Washington, Universities of Washington, Third Edn, (2001), p, 281

In which information about a person's financial transactions's guarded,'s important for the avoidance of fraud or identities theft, Information about a person's purchases can also reveal a great deal about that person's history, such as places they have visited, whom they have had contact With, products they use, their activities, and habits, or medications they have used,

ii. Internet privacy

Is the abilities to control what information one reveals about oneself over the Internet,, and to control who can access that information, These concerns include whether email can be stored or read by third parties without consent, or whether third parties can track the web sites someone has

Visited, Another concern's whether web sites which are visited collect, store,, and possibly share personally indentifiable information about users, Tools used to protect privacy on the Internet include encryption tools, and anonymizing services,

1,3 Genesis of Right to Privacy:~ Indian Scenario

The distance from the biblical garden to the statutory wilderness may have taken thousands of statutory wilderness may have taken thousands of year to traverse because it's necessary to a secure relationship between man, and wife; it concretizes interpersonal relationship of love, friendship, and trust, Privacy's one of the concepts which's closely connected with human dignity, There are several recent which establish it beyond doubt that disturbing mediation was considered a wrong or a sin, Lord Shiva, while within meditation,'s said to have been disturbed by `Kamdev' the god of love, and sex within the Indian mythology, who was burnt as punishment there of when Lord Shiva opened his third eye¹⁷,

In matters of religious, and spiritual pursuits interference or disturbance of any kind was prohibited, The following text of Rigveda clearly established the concern, and awareness of privacy within the ancient India society, (one ought to build such house which may sustain, and protect the inmates within all seasons, and be comfortable, The passaaers- by may not see the inmates not the inmates see them,)

The Griha sutras, Arthashashtra, and the epics of the Ramayan, and the Mahabharata contain elaborate rules for the construction of a house so that privacy's prominently

¹⁷ Kalidas, Kumarasambhavam, 3/17,as cited within "the right to privacy:~ concept, and evolution "by Gaurav Goyal, and ravinder kumar, Partridge publication ed,lg 2015 p,no35

preserved, Since privacy's the essence of human beings its history begins with the history of human beings, Historical, evidence shows that it was prevailing as a social value within every civilization, Our ancient law of Dharmashashtra also recognized the concept of privacy,

i, Privacy within Hindu Period

India has essentially been gregarious societies wherein cooperation, and not competition,, Society, and solitude have been dominant themes of its culture, and civilization, Privacy's a value of human relation within India,

The ancient law giver of the Hindus declares "Sarvas Swe Swe Griha Rajya", Which means every man's a king of his own house, The king were bound to uphold Dharma, and to respect the privacy of the citizens¹⁸, Ancient Indian theory the privacy of knowledge based on Upanishads mind from external things, and direct it inward- to make him more, and more introspective so that he may get rid of his dependence on the objective world,

ii, Privacy under Islamic Law

Islamic law's a divinely ordained comprehensive system regulating public, and personal matters as well, It's called "Shariah' which mean the right path, The world Islam itself means total submission, and surrender to God alone, The Quran, the holy book of God revealed to the Prophet Mohammad, and traditions of Prophet Mohammad are the principal sources of Islamic law¹⁹,

Islamic law explicitly protects privacy of home a fundamental human right, The home thrives its importance as a sanctuary for the family, and carries with it associations, and meanings which make it particularly important, The peculiar immunities that law has thrown around the dwelling house's explicitly expressed within the famous maxim "a man's home's castle,"s a supreme, and valid truth which's valued within all cultures, and civilizations? The prophet Mohammed stated, if a person loose at you, without your permission, and pelt with a stone, and put on his eye, no guilt will be on you,

In Colonial era, within India right to privacy's protected from various statutes, such as the Indian Telegraph Act, 1885, Indian Penal Code, 1860, etc, through various provisions, After the Post-Independent within India, The Constitution does not grant within specific, and express terms any right to privacy as such, right to privacy's not

¹⁸ Rigveda, Mandal 7, sukta 55, hymn 6

¹⁹ Deshta Kiran;" *Right to Privacy under Indian Law*", New Delhi, Deep, and Deep Publication Pvt, Ltd, (2011), P,98

enumerated as a fundamental right within the constitution, However, such a right has been culled by the Supreme Court from Article-21, and several other provisions of the Constitution read with the Directive Principles of State Policy, The right to privacy has now become established within India, but as part of Article21,

CHAPTER-2
RIGHT TO PRIVACY within INTERNATIONAL
PERSPECTIVE

CHAPTER-2

RIGHT TO PRIVACY within INTERNATIONAL PERSPECTIVE

2,0 Introduction

In recent years right to privacy has gain much importance within international legal world, The united nation, and other agency working for the protection of human rights has worked for the protection of right to privacy within digital world, Due to technological advancements the right to privacy has emerged significantly, but also due to changes within the way people, markets,, and our societies function, The advancements of systems of communications for instance permits continual tracking, and enable always available communications habits, Advances within information communication technology are dramatically improving real-time communication, and information-sharing, By improving access to information, and facilitating global debate, they foster democratic participation,

But at the same time it has become clear that these new technologies are vulnerable to electronic surveillance, and interception, Recent discoveries have revealed how new technologies are being developed covertly, often to facilitate these practices, with chilling efficiency, As the UN High Commissioner has cautioned within her recent statements [September 2013, and February 2014], such surveillance threatens individual rights-including to privacy, and to freedom of expression, and association-and inhibits the free functioning of a vibrant civil society,²⁰

2,1 Privacy, and Human Rights at International Level

Privacy's a human rights recognized within the UN Declaration of Human Rights, the International Covenant on Civil, and Political rights, and many other international, and regional treaties, Privacy underpins human dignity, and other key blues such as freedom of association, and freedom of speech, It has become one of the most important human rights issued within the technological era, Many countries within the world recognized a right of privacy explicitly within their constitutions, At a minimum these provisions include rights of inviolabilities of the home, and secrecy of communication, The Legal protections of the right to privacy within General, and of data privacy within particular have various issues around the world, and have different directives on data privacy, The basic right to protect an individual's privacy has been enshrined within the

²⁰ www.un.documents.net/a6 I r I 06.htm, accessed on 08-02-16

Universal Declaration of Human Rights, 1948 (UDHR, 1948)²¹ as follows:~

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour, and regulation, Everyone has the right to protection of the law against such interference or attacks,"

This has also been articulated within various other International covenant, and treaties under which privacy's specifically mentioned as a right²²,

2,1,1, International Covenant on Civil, and Political Rights, 1966²³

This covenant has also said about right to privacy within the above language adopted by the UDHR, 1948, It says within its Article 17 as under:~

- 1, No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour, and reputation,
- 2, Everyone has the right to the protection of the law against such interference or attacks,

In addition, General Comment No, 16 to the ICCPR provides further specification data protection requirements under Article 17, It states, among other things, that

- The collection, and storage of personal information on computers, within data bases or other devices, whether by public or private bodies, must be regulated by law;
- States must take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process, and use it;
- Uses of this information for purposes incompatible with the Covenant must be prevented;
- Individuals should have the right to determine what information's being held about them, and for what purposes, and to request rectification or elimination of incorrect information:~
- Any "interference" with these rights must only take place on the basis or law which must comply with the Covenant,

2,1,2, Convention on the Rights of the Child 1989²⁴

Article 16-

- 1- No child shall be subjected to arbitrary or unlawful interference with his or her

²¹ Article 12; India's a signatory to the UDHR, 1948,resso no, ail-es/3/217A

²² Chandra umesh, "*Human rights*", Allahabad law agency,l' ed, 2012 p,no 124

²³ Jaya Wickrama, Nihal, "*The Judicial Application of Human Rights Law*", Cambridge Universities Press, (2002) p, 597,

²⁴ Adopted, and opened for signature, ratification, and accession by United Nation General Assembly resolution 14/25 of 20 November 1989

privacy, family, home or correspondence, nor to unlawful attacks on his or her honour, and reputation,

2- The child has the right to the protection of the law against such interference or attacks,

2,1,3, Convention on the Rights of Persons with Disabilities, 2006²⁵

Article 22 Respect for Privacy

1, No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour, and reputation, Persons with disabilities have the right to the protection of the law against such interference or attacks,

2, States Parties shall protect the privacy of personal, health, and rehabilitation information of persons with disabilities on an equal basis with others,

2,2, Regional Level

2,1,1, American Declaration of the Rights, and Duties of Man 1948²⁶

Article 5, Every person has the right to the protection of the law against abusive attacks upon his honour, his reputation, and his private, and family life,

Article 9 Every person has the right to the inviolabilities of his home,

Article 10, Every person has the right to the inviolability, and transmission of his correspondence,

2,2,2, American Convention on Human Rights 1969²⁷

Article 11, Right to Privacy

1, Everyone has the right to have his honor respected, and his dignities recognized,

2, No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation,

3, Everyone has the right to the protection of the law against such interference or attacks,

2,2,3, European Convention for the protection of Human Right, and fundamental Freedoms, 1950 (ECHR) Article 8²⁸-states

²⁵ U,N, General Assembly Resolution 61/106 (2006)

²⁶ Adopted by the Ninth International Conference of American States, Bogota, Colombia, 1948

²⁷ www.hrcr.org access on 20/11/13 at 9,50 p,m

²⁸ Council of Europe Convention for the protection of human rights, and fundamental freedom (ETSNO 005) :~yen for signature November 4, 1950, entry into force September 3, 1950,

1, Everyone has the right to respect for his private, and family life, his home, and his correspondence,

2, There shall be no interference by a public authorities with the exercise of this right except as within accordance with the law, and's necessary within a democratic societies within the interests of national security, public safeties or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health, and freedoms of other,

3, The convention created the European Commission of Human Rights, and the European Court of Human Rights to oversee enforcement of privacy rights, and have consistently, and restrictions expansively, and interpreted, and restrictions narrowly, The Commission found within 1976,

2,2,4, Arab Charter on Human Rights 2004²⁹

1, No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour, and reputation,

2, Everyone has a right to the protection of the law against such interference or attacks,

The concept of privacy differs from nation to nation within terms of the impact of culture on interpersonal relation, Indeed, the law of a nation reflects, and recognizes its fundamental norms, Obviously the right of privacy has been developing within many countries of the world to meet the needs to protect the individual from unreasonable intrusions into areas of intimate concern,

The right to privacy as an independent, and distinctive concept originated within the field of tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognized, The constitutional recognition of right of personal privacy, or more accurately, a guarantee of certain 'zones of privacy', was developed by the courts as an extension of constitutionally guaranteed rights of life, liberty, and securities of person³⁰

The United Nations has only focused on the human rights aspects of the use of computer technology comparatively recently, within 1989, the United Nations General Assembly (UNGA) adopted a set of drafts guidelines for the regulation of computerized personal data files³¹, These drafts guidelines were subsequently referred to the

²⁹ 22 may reprinted within 12 International Human Rights Reports 893 (2005),

³⁰ Jaya Wickrama, Nihal, *"The Judicial Application of Human Rights Law"* Cambridge Universities Press, :-02) p, 598,

³¹ Resolution 44/132, on 15 December, 1989

commission of Human Right's Special Rapporteur, Mr, Louis Joint, for redrafting based on the comments, and suggestions received from member government, and other interested international organizations, A revised version of the guidelines were presented, and adopted within 1990³², The guidelines are divided into two sections, The first section of these covers 'principle concerning the minimum guarantees that should be provided within the national legislation', These 'principles' echo these put forward by both the council of Europe Convention, and the OECD guidelines added three additional terms:~

- a, 'Principle of non-discrimination'-sensitive data, such as racial or ethnic origin, should not be compiled at all,
- b, 'Power to make exceptions' – justified only for reasons of national security, public order, public health, and morality,
- c, 'Supervision, and sanctions'-the data protection authorities 'shall offer guarantees of impartiality, independence vis-à-vis person of agencies responsible for processing, and technical competence,³³

2,2,5, The organization for economic cooperation, and development Principles

The Organization for Economic Cooperation, and Development (OCED) was established within 1961,, and currently comprises 30 leading industrial nations as its member, The nature of the organization has meant that interest within data protection has centered primarily on the promotion of trade, and economic advancement of Members States, rather than 'privacy' concerns,

In 1963, a Computer Utilization Group was set up by the third Ministerial Meeting, Aspects of the Group's work concerned with privacy went to a subgroup, the Data Bank Panel, This body issued a set of principles within 1977, within the same year, the working Parties of Information Computers, and Communications policy (ICCP), was created out of the Computer Utilization, and scientific, and technical policy groups, Within this body, the Data bank of

Panel became the 'Groups of Government Experts on trans border Data Barriers, and the Protection of 'Privacy',

Its remit was to develop guidelines on basic rules governing the Trans border flow, and

³² Adopted by the Commission on Human Rights, Resolution 1990/42 (6 March 1990); subsequently by the UN Economic, and Social Council, Resolution 1990/38, 14th Plenary Session (25 may 1990),, and finally by the UN General Assembly, Resolution 45/95, 68th Plenary Session (14 December 1990),

³³ Ian Walden, "Data Protection", within Chris Reed & John Angel (eds.), Computer Law, 447-448 4th ed., 2002

the protection of personal data, and privacy, within order to facilitate the harmonization of national legislation, The OECD guidelines on the protection of privacy, and Trans border Flows of personal information were drafted within 1979, and adopted within September 1980³⁴, The guidelines are based, as with the council of Europe Convention, upon eight, self-explanatory, principles of good data protection practices,

The guidelines are simply recommendations to countries to adopt good data protections practices within order to prevent unnecessary restrictions on Trans border data flows, and have no formal authority, However, some companies, and trade associations, particularly within the United States, and Canada, have formally supported the guidelines,

The OECD guidelines consist of eight basic principles which are as follows:~

1, Collection Limitation Principle:~ There should be limits to the collection of personal data, and any such data should be obtained by lawful, and fair means and, where appropriate, with the knowledge or consent of the data subject,

2, Data Qualities Principle :~ Personal data should be relevant to the purpose for which they are to be used, and, to the extent necessary for those purpose, should be accurate, compete, and kept up-to-date,

3, Purpose Specification Principle:~ The purpose for which personal data are collected should be specified not later than at the time of collection, and the subsequent use limited to the fulfillment of those purpose or such others as are not incompatible with those purposes, and as are specified on each occasion of change of purpose,

4, Use Limitation Principle:~ Personal data should not be disclosed, made available or otherwise used for purposes other than those specified within accordance with (Principle 3) except:~

- (a) With the consent of the data subject; or
- (b) By the authorities of law,

5, Securities Safeguards Principle:~ Personal data should be protected by reasonable securities safeguards against such risk as loss or unauthorized access, destruction, use modification or disclosure of data,

6, Openness Principle:~ There should be a general policy of openness about developments practices, and policies with respect to personal data, Means should be readily available of establishing existence, and nature of personal data,, and the main

³⁴ Organization for Economic Cooperation, and Development , Guidelines on the Protection of Privacy, and Trans border flows of Personal Data, Paris:~ OCED, 1980, www.oecd.org/sti/ieconomy/37626097.pdf,

purpose of their use, as well as the identity, and usual residence of the data controller,

7, Individual Participation Principle:~ An individual should have the right:~

- (a) To obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to him;
- (b) To have communicated to him, data relating to him
 - (i) Within a reasonable time;
 - (ii) At a charge, if any, that's not excessive;
 - (iii) In a reasonable manner; and
 - (iv) In a form that's readily intelligible to him;
- (c) To be given reasons if a request made under sub-para's denied, and to be able to challenge such denial; and
- (d) To challenge data relating to him and; if the challenge's successful, to have the data erased, rectified, completed or amended,

8, Accountabilities Principles:~ A data controller should be accountable for complying with measures which give effect to the principles stated above, The OECD guidelines were developed to harmonize national privacy legislations and, at the same time, have much relevance, and the directions may be taken by states for privacy protection,

2,2,6, European Convention on Human Rights

The council of Europe has been the major international force within the area of protection of privacy since 1968, The Council discussed within its forum whether domestic laws gave adequate protection for personal privacy within the light of modern s,scientific, and technical developments, and it saw insufficient protection within this area through domestic legislations,

A specialist Committee of Experts on the Protection of Privacy was subsequently asked to draft appropriate resolutions for the Committee of Ministers to adopt, within 1976, a Committee of Experts on Data Protection of privacy within petition to data processing broad, and Trans frontier data processing, within April 1980, text of the Conventions was finalized,, and opened for signature on 28th January 1981,

The Convention came into force of within October 1985 upon ratification by five countries, namely Sweden, Norway, France, Federal Republic of Germany ad Spain, and within total forty-one members of the Council of Europe has signed the & Convention,

The right to data privacy's heavily regulated, and rigidly enforced within Europe, Article 8 of the European Convention on Human Rights (ECHR) provides right to

respect for one's "Private, and family life, his home, and his correspondence", subject to certain restrictions, The European Court of Human Rights has given this Article a very broad interpretation within its jurisprudence, According to the Court's case law the collection of information by officials of the state about an individual without his consent always falls within the scope of Articles of the state about an information for the official census, recording fingerprints, and photographs within a police register, collecting medical data or details of personal identification have been judged to raise data privacy issues,

Any state interference with a person's privacy's only acceptable for the Court if three conditions are fulfilled,

- 1, The interference's within accordance with the law,
- 2, The interference pursues a legitimate goal,
- 3, The interference's necessary within a democratic society,

The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the European Commission was concerned that deserving data protection legislation would emerge, and impede the free flow of data within the EU zone, Therefore the European Commission decided to harmonize data protection regulation, and proposed the Directive on the protection of personal data, which member states had to transpose into law the end of 1998,

The directive contains a number of key principles which must be complied with, Anyone processing personal data must comply with the eight enforceable Principles of good practice,

They state that the data must:~

- I. Fairly, and lawfully processed,
- II. Processed for limited purposes,
- III. Adequate, relevant, and not excessive,
- IV. Accurate,
- V. Not kept longer than necessary,
- VI. Processed within accordance with the data subject's rights,
- VII. Secure
- VIII. Not transferred to countries without adequate protection,

2,2,7, The European Union

In 1976, the European parliament's adopted a resolution calling for a directive to ensure
School of Legal Studies, BBDU, Lucknow

that 'Communities citizens enjoy maximum protection against abuses of failures of data processing' as well as 'to avoid the development of conflicting legislation'³⁵, within 1977 the Legal Affairs Committee established the Subcommittee on Data Processing, and the Rights of the individual, The subcommittee, produced the 'Bayer 1 Reports' within May 1979³⁶,

The result debate within the European Parliament led or recommendations being made to the Commission, and the council of Ministers concerning the Principles that should form the basis of community's attitude to data protection¹⁸, These recommendations called on the European commission to draft a directive to complement a common communications system, to harmonized the data protection laws, and secure the privacy of information on individual within computer files, within July 1981, the European commission recommended that all Members should sign the council of Europe convention, and seek to ratify it by the end of 1982³⁷,

A second parliament report, the 'Sieglerschidt' Report, was published within 1982³⁸, The report noted 'that data transmission within general should be placed on a legal footing, and not to be determined merely by technical reason',

In July 1990, the European Commission finally published a proposed Directive on data protection, It was published as part of a package of proposal, which included a recommendation that the European Communities adheres to the Council of Europe Convention on data protection³⁹, a declaration applying data protection principles to Communities institutions⁴⁰, a draft directive addressing data protection issued within the telecommunications sector⁴¹, and a draft council decision to adopt a two-year plan

³⁵ Resolution on the protection of the rights of individuals within constitution with data processing; ojc100, 3 ma^y 1976, p. 27, Report on the protection of the individual within the face of the technical developments within data processing, 1979-1980 EUR, Parl, Doc, (no 100) 13 (1979),

³⁶ OJC140, 5 June 1979,p, 34,

³⁷ Commission recommendation of 29 July 1981, relating to the Council of Europe convention for the protection of individuals with regard to automatic processing of personal data, of 1247/31, 29 August 1979, 81/679/EC,

³⁸ Second report on the protection of the right of the individual within the face of technical development within data processing e,p,doc, 1-548/81, 12 October 1981,

³⁹ However, See the European court of justice opinion no-2/94 (1996) 2 emir 265 that the communities cnnto adhere to the European convention on human rights,

⁴⁰ Commission declaration on the application to the institution, and other bodies of the European communities of the principles contained int eh council directive concerning the protection of individuals within relation to the processing of personal data (com (90) 314 final, ojc 277/74, 5 November 1990,

⁴¹ Finally adopted within 1997; directive 97/66/EC of the European parliament, and of the council concerning the processing of personal data, and the protection of privacy within the

within the area of securities for information systems⁴², After considerable controversy, and political debate at all stages of the legislative process, the general framework Directive on data protection was finally adopted by the European Parliament, and council on 24 October 1995⁴³, Members states had to implement the directive by 24 October 1998, although only five managed to adopt legislation by that date⁴⁴,

In 1990 only eight of the (then) twelve Members states have passed data protection legislation,

2,3, National level

2,3,1, within United States of America

The US supreme court said that although the constitution of the USA does not explicitly mention any right of privacy, the united states courts recognized that a right of personal privacy, or a guarantee of certain 'zones of privacy' does exist under the constitution, and that the roots of that right may be found within the first amendment, within the fourth, and fifth amendments, within the penumbras of the bill of rights, within the ninth amendment,, and within the concept of liberties guaranteed by the first section of the fourteenth amendment, and that the right to privacy's not absolute⁴⁵,

The need for a law to protect privacy was articulated as early as 1890 when an article titled "The Right to Privacy" was published by Warren, and Brandeis this articles laid the intellectual foundations (jurisprudence) for the law on privacy,

"Recent inventions, and business method call attention to the next step which must be taken for the protection of the person,, and for securing to the individual what Judge Cooley Calles 'the right to be let alone', Instantaneous photographs, and newspaper enterprise have invaded the sacred precincts of the home private devices threaten to make good the prediction that 'what's whispered within the closed shall be proclaimed form the house tops', The press's overstepping within every direction the obvious bounds of propriety, and of decency, Gossip's no longer the resource of the idle, and of the vicious, but has become a trade, which's pursued with industry as well as effrontery, The intensity, and complexities of life attendant upon advancing civilization, have

telecommunication sector, oj124, 30 January 1998, Implemented within the United Kingdom by the telecommunication (data protection, and privacy) regulations 1999, si 1999/2093,

⁴² Adopted as council decision 92/242/EC of 31 March 1992, within the field of information security, oj1123, 8 May 1992,

⁴³ Directive 95/46/EC on the protection of individuals with regard to the processing of personal data,and on the free movement of such data, ljl 281, 23 November 1995,

⁴⁴ Greece, Italy, Portugal, Sweden,, and the United Kingdom (UK), although the UK had not implemented the legislation

⁴⁵ Jane Roe v, Henery Wade (1973), 410 US 113

rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude, and privacy have become more essential to the individual; but modern enterprise, and invention have through invasions upon his privacy, subjected him to mental pain, and distress, far greater than could be inflicted by bodily injury, It's our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of an individual; and, if it does, what the nature, and extent of such protection is,

In this case the constitutionalities of a law which prohibited the use of contraceptives was challenged, Upholding the notion of privacy, Justice Douglas held:~

"Governmental purpose to control or prevent activities constitutionally subject to State regulation may not be achieved by means which sweep unnecessarily broadly, and thereby invade the area of protected freedoms"⁴⁶,

Roe v, Wade⁴⁷

In this case it has been dealt that the right of an unmarried pregnant woman to an abortion, Upholding the woman's right to make that choice which affected her private life, the Supreme Court held that although the American Constitution did not explicitly mention any right of privacy, the Supreme Court itself recognized such a right as a guarantee of certain "zones or areas of privacy", and "that the roots of that right may be found within the First Amendment, within the Fourth, and Fifth Amendments, within the penumbras of the Bill of Rights, and within the concept of liberties guaranteed by the Fourteenth Amendment",

The Commission also expressed its desire to protect the right of individual data subject, 'and within particular their right to privacy' (Art 1 (1),

"Perhaps the most salient characteristic of legal protection of information privacy within the united states's its ad hoc nature, some types of information transfers are heavily regulated, while other types, seemingly no less significant to individual privacy interests, are unregulated, and left to the mercies of the marketplace"⁴⁸,

The issue of privacy within the area of communication started to develop within the US Legislations since the late 1960s, within 1968, the US congress enacted the omnibus crime control, and safe streets act, primarily focused on telephone wiretaps, Later, it

⁴⁶ Griswold v, Connecticut, 381 US 479 (1965)

⁴⁷ 410 US 113 (1973)

⁴⁸ Margaret Jane Radin, "Privacy Online, within Internet Commerce":~ The Emerging Legal Framework" 548, Newyork Foundation Press, 2002,p.no54

was broadened to include digital electronic communication⁴⁹, The Electronic Communication Privacy Act, 1968 (ECPA) within the US makes it illegal to intercept or disclose private communications, and provide victims of such conduct, a right to sue anyone violating his mandate,

At the same time, several legislations were enabled dealing with the online environment, Some of these Legislations are, the Fair Credit Reporting Act, 1970, the Family Education Rights, and Privacy Act, 1974, the Driver's Privacy Protection, 1974, the Fair Debt Collection Practices Act, the Right to Financial Privacy Protection Act, 1980, the Computer Fraud, and Abuse Act, 1986, the Telephone Consumer Protection Act 1991, the Privacy Act, 1994, and the National Information Infrastructure Protection Act, 1996,

The Federal Trade Commission (FTC) within the USA has been playing an important role within the development of a federal legal system towards the issue of information privacy, within June 1998, the FTC submitted a report to the congress, on which basis Online Privacy Protection act came into effect from April 2000, Now, intrusion into the privacy of children's allowed only after obtaining consent of parents,

The US senate judiciary committee approved hacker's bill within October 2001, It clarifies federal law enforcement authority's power to prosecute hackers, The US federal laws basically protect the privacy of financial information transmitted via telecommunications system,, and within recent years, its laws deal with the online privacy,

2,3,2, United Kingdom

In recent years, within the U.K., several steps have been taken with regarded to Data protection, But way back within 1961, Lord Mancroft introduced a right of privacy bill, this bill marked the beginning of a 23-year history which finally led to the successful passage of data protection act 1984, within May 1970, a committee on privacy was appointed under the chairmanship of Kenneth Younger, The Younger report was completed, and presented to the Parliament within July 1972,

In response to the Younger report, the government promised a white paper, 10 However, it was three years before the white paper on Computers, and Privacy (cmdnd6353) was presented to Parliament within December 1975, within it the government accepted the need for legislation to protect computer-based information,

⁴⁹ Vakul Sharma, "*Handbook of Cyber Law* " (1st Ed., Macmillan India Ltd., 2002),p,no93

The government felt that computers posed a special threat to individual privacy, The government also issued a second white paper, entitled computers:~ safeguards for privacy (cmnd6354), which agreed with the comments made by the Younger report, The creation of a data protection authorities was also proposed to supervise the legislation, and ensure that appropriate safeguards for individual privacy were implemented, The government came with a third white paper (cmnd 8539) within 1982, and the Data Protection Act of 1984 received royal assent on 12 July 1984, To comply with its obligations to implement EU directive 95/46/EC, the U,K, came out with the Data Protection Act, 1998, which received royal assent on 16 July 1998,

In case of *Albert v, Strange*⁵⁰ Involved the unauthorized copying of etchings made by Queen Victoria, and her husband for their private amusement, The etchings, which represented members of the Royal family, and matters of personal interest, were entrusted to a printer for making impressions, An employee of the printer made unauthorized copies, and sold them to the defendant who within turn proposed to exhibit them publicly, Prince Albert succeeded within obtaining an injunction to prevent the exhibition, The court's reasoning was based on both the enforcement of the Prince's properties rights as well as the employee's breach of confidence, This case's widely regarded as having inspired the development of the law of privacy within the United States,

Even as late as 1991, the law within England was found to be inadequate within protecting privacy, within that year, the Court of appeal within case of *Kaye v, Robertson*⁵¹,

The case concerned a well-known actor who had to be hospitalized after sustaining serious head injuries within a car accident, At a time when the actor was within no condition to be interviewed, a reporter, and a photographer from the Sunday Sport newspaper unauthorized gained access to his hospital room, took photographs, and attempted to conduct an interview with the actor, An interlocutory injunction was sought on behalf of the actor to prevent the paper from publishing the article which claimed that Kaye had agreed to give an exclusive interview to the paper, There being no right to privacy under the English law, the plaintiff could not maintain an action for breach of privacy, within the absence of such a right, the claim was based on other rights of action such as libel, malicious falsehood, and trespass to the person, within the

⁵⁰ (1849) 1 Mac & G 25 :~ 41 ER 117)

⁵¹ (1991) FSR 62

hope that one or the other would help him protect his privacy, Eventually, he was granted an injunction to restrain publication of the malicious falsehood, The publication of the story, and some less objectionable photographs were, however, allowed on the condition that it was not claimed that the plaintiff had given his consent, The remedy was clearly inadequate since it failed to protect the plaintiff from preserving his personal space, and from public glare, The court expressed its inability to protect the privacy of the individual, and blamed the failure of common law, and statute to protect this right⁵²

The Data Protection Act, 1998's concerned with personal data, Personal data' consists of data that relates to a 'living individual' who can be identified from that data, or information within the possession of the data user, 'Data' includes information processed by computers, 'relevant filing system', and 'accessible records',

This legislation was backed up by several court decisions, and the U.K, government has entered the world of cyber regulation with comprehensive guidelines,

2,3,3, Japan

The Japanese Constitution enshrines freedom of speech, assembly, and association, The 1988 Act for the Protection of Computer Processed Personal Data held by administrative organs, and 1990 Protection of Computer Processed Personal Data (based on the OECD guidelines) provide partial regulation for national government agencies vis-à-vis data protection, and privacy,

The national government has emphasized self-regulation by the private sector, especially regarding privacy aspect of electronic commerce, with a series of inspirational guidelines from the ministry of international trade & industry (MITI), and other agencies,

The Personal Data Protection Act, passed within May 2003, has established some general restrictions on the use, and sharing of personal data, also giving individuals the right to obtain information collected by some private sector bodies,

2,3,4, Bangladesh

The Bangladesh Constitution recognizes the right of privacy to home, and correspondence, Article 43 states that:~ Every citizen shall have the rights, subject to any reasonable restrictions imposed by law within the interests of the securities of the

⁵² Hopefully, the Human Rights Act within 1998 which imposes a positive obligation to act within accordance with Ewopean Convention on Human Rights will have a positive effect on the development of the law within the UK

state, public order public moralities or public health,

- 1, To be secured within his home against entry, search, and seizure and
- 2, To the privacy of his correspondence, and other means of communication,

In 2006 the Parliament of Bangladesh enacted the Information, and Communication Technology Act 2006, The ICTA 2006 touches on the issue of privacy within sections 78, and 79, which approximate section 72 of the Indian I,T, Act 2000,

2,3,5, Pakistan

Article 4 of the 1973 Constitution recognizes the right of every citizen, and of every other person for the time being within the Country to be protected, and treated within accordance with the law, Article 4 (2) disallows any action detrimental to the life, liberty, body, reputation, or properties of any person to be taken except within accordance with the law,

The Prevention of Electronic Crimes Ordinance 2008 (Ordinance No, IX of 2008) was approved within November 2008, The Penal Code limited protection of privacy, Pakistan Pena Code (Act XLV of 1860) :~ The Pakistan Penal Code (PPC)'s the primary law for all offences charged within Pakistan, It's applicable across the country, and has been within force since the birth of the nation, with a few modifications as per Islamic principles, Though there are some sections that are related to individual privacy, these are far from sufficient to guarantee the comprehensive protection of privacy, One explicitly mention of privacy occurs within Section 509 as substituted by Act 1 of 2010,

- 1, Intending to insult the modesties 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;
- 2, Conducts sexual advances or demands sexual favours or uses written or verbal communications or physical conduct of a sexual nature which intends to annoy, insult, intimidate or threaten the other person or commits such acts at the premises of workplace or makes submission to such conduct either explicitly or implicitly, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both,

1,3,6, Malaysia

Malaysia also proposed a Personal Data Protection Act recently within 2003, It breaks new ground within law making for cyber-privacy, According to the Malaysian soy School of Legal Studies, BBDU, Lucknow

ernment, the legislation's envisaged to be a world-class leading edge cyber by, that provides for higher level of personal data protection, This Act seeks to

- (a) Provide adequate security, and privacy within handling personal information;
- (b) Create confidence among consumers, and user of both networked, and non networked industries;
- (c) Accelerate uptake of e-commerce; and
- (d) Promote a secured electronic environment within line with multimedia super corridor (MSC) objectives,

The rationale, the government said,'s to promote Malaysia as a communization, and multimedia hub where the national adoption of e-based transactions's expected to be high⁵³,

2,3,7, China

The China's Internet law as well as the related information technology legal infrastructure as a whole's still not well developed, However, the China has got various types of measures to the protection of privacy⁵⁴,

Article 38 of Constitution provides that human dignities of citizens should not be infringed, Article 39 provides that he premises should not be trespassed, Article 40 stipulates that the freedom, and privacy of correspondence of citizens are protected by law, These are the parts of the privacy of citizens, and general principles set out by the Constitution as the basic law, Moreover, these provisions may provide the basis for the protection of privacy by other laws, and regulations⁵⁵,

In Civil Law, there are no explicit provisions identifying the right of privacy as the right of personalities of citizens within the General Principles of Civil Law, 1986,

The opinions of the Supreme People's Court of China on several issues, concerning the implementation of the General Principles of Civil Law of the People's Republic of China does not treat the right of privacy as a separate right of personality,

The Criminal Law of China provides that whoever conceals destroys or unlawfully opens another person's letter thereby infringing upon the citizen's right to freedom of correspondence, if the circumstances are serious, shall be sentenced to fixed term imprisonment of not more than one year of criminal detention⁵⁶,

The Criminal Law of China also provides that any postal worker who opens without

⁵³ [www ,mda.gov.my](http://www.mda.gov.my),pdf accessed on 17/3/16

⁵⁴ Internet Business Law Services, Inc. (2001-2208),visited at [www,ibls.com](http://www.ibls.com) accessed on 13/3/16

⁵⁵ [hups:~/www,ibls.com/internet_law_newsportal_view.aspx?s,,,id,,,](http://www.ibls.com/internet_law_newsportal_view.aspx?s,,,id,,,)accessed on 17/03/16

⁵⁶ Article 252

authorization or conceals or destroys mail or telegrams shall be sentenced to fixed term imprisonment of not more than two years of criminal detention⁵⁷,

The infringement's not convicted of the crime of invasion of privacy, but the crime of violation of freedom of communication, and the crime of opening, accealing, and destroying mails, and telegrams,

2,3,8, Internet, and Legal Protection to Privacy within China

In China, the provisions on the Technical Measures the Protection of the Securities of the Internet were promulgated by the Ministry of Public Securities on March 1, 2006, It requires that the provider of the Internet services, and entities users network should be responsible for carrying into effect the technical for the protection of the Internet security, and should guarantee normal functioning of the technical measures for the protection of the Internet security,

The providers of the Internet services, and entities users of the network should establish corresponding administration system, The information as registered by users should not be publicized or divulged without the approval of tic users unless it's provided for by any law or regulation,

The Measures for Securities Protection Administration of the international Networking of Computer Information Networks within People's Republic of China provides that user's freedom of communication, and communication secrecy are provided by law⁴⁰, No unit or individual shall use the international networking to infringe on user's freedom of communication, and communication secrecy within violation of the provisions of law,

Article 18 of the Implementations Rules for Provisional Regulations of the Administration of the International Networking of Computer Information within the People's Republic of China provides that it's prohibited to infringe on the privacy of others by accessing computer systems without authorization, tampering with the information of others or sending information within the name of others,

2,3,9, The Asia-Pacific Economic Cooperation (APEC) privacy initiative⁵⁸

The 21 APEC economic (Asia-pacific Economic Cooperation) commenced development within 2003 of an Asia-pacific privacy standard, This may become the most significant international privacy initiative since the European Union's Data

⁵⁷ Article 253

⁵⁸ Greenleaf graham "the apec privacy initiative :~oecd lite for the asia —pacia " - papers ,ssrn ,com VbI31, papers ,cfm? accessed on 2/2/16

Protection Directive of the mid-1990s on February 2003, Australia put forward a proposal for the development of APEC Privacy Principles using the 20 years old OECD guidelines on the protection of privacy, and trans border flows of personal data (1980) as starting point, A privacy sub group was set up comprising Australia, Canada, China, Hong Kong, Japan, Korea, Malaysia, New Zealand, Thailand, and the United States, within March 2004 version 9 of the APEC privacy principles was released as a public consultation draft, The history to date of the APEC initiative shows that the dangers are as outcome for privacy protection's still possible,

2,3,10, Warsaw declaration Warsaw, Poland-24 September 2013⁵⁹

Nowadays, mobile applications (apps) are ubiquitous, On our smart phones, and tablets, within cars, in, and around the house:~ a growing number of items have user interfaces connected to the internet, Currently, over 6 million apps are available within both the public, and private sector,

This number's growing by over 30,000 a day, Apps are making many parts of our day-to-day lives easier, and more fun, At the same time, apps also collect large amounts of personal data, This allows for continuous digital monitoring, often without the users being aware that this happens, and what their data are used for,

App developers are often unaware of the privacy implications of their work, and unfamiliar with concepts like privacy by design, and default, The main operating systems, and app platforms do offer some privacy settings, but do not allow for full control by the users to protect their personal data, and verify what information's collected for which purpose, During their 35th International Conference held on 23, and 24 September 2013 within Warsaw,

It's essential that users are, and will remain within charge within charge of their own data, They should be able to decide what information to share with whom, and for what purposes, To this end, clear, and intelligible information should be available including within an app-about data collections taking place before the actual collection starts, Users should be given the option to allow access to specific information like location data or address book entries on a case-by-case basis, Most importantly, apps should be developed on the basis of surprise minimization:~ no hidden features, nor unverifiable background data collection,

⁵⁹ "35th international conference on data protection, and privacy commissioners :~a compass within turbulent world :~warsaw," 23-26 september2013:~available at www.oas.org/en/sla/dil/docs/data-protectionconferences-warsaw-2013-declaration.pdf, access13 \ 4\16

CHAPTER-3
NATIONAL LEGAL FRAMEWORK FOR
PROTECTION OF PRIVACY

CHAPTER-3

NATIONAL LEGAL FRAMEWORK FOR PROTECTION OF PRIVACY

3,0 Introduction

Privacy's inherent within human behavior, It's a natural need of a man to establish individual boundaries, and to restrict the entry of other into that area, There are few moments within the life of every one when he does not want interference of others, and desires to be alone, The autonomy's an essential element for the development of one's personality, These areas may, within relation to a person, be the family, marriage, sex or other matters, Which requires, closed chamber treatment, within such areas an individual requires to be at liberties to do he likes,⁶⁰

Advances within information technology, and tele-communication networks have radically increased the amount of information, and data that can be stored, retrieved, accessed, and collated almost instantaneously, Technology blurs the boundaries, and move towards convergence of techniques ensure that every bit of information's extracted, and logged,

The Internet has facilitated this within an unprecedented manner as an information revolution within present scenario, The growth of technology within the modern world can be viewed as an irresistible drive for efficiency, a relentless urge to achieve the maximum production of goods, and services with minimum of human effort,

An element of technological injury appears as an inevitable consequence of this advancement, against which the benefits that flow from the technology have to be balanced, A society's a modern societies which exploits computer techniques, and where the flow of information's greater, and easily collected, recorded, evaluated, and transmitted,

Thus a societies within which the boundaries created to limit the flow of information may be superseded to the detriment of the privacy of the individual, The life of the individual within a societies has to strike a balance between freedom, and restrictions, It's inevitable that if any societies governed by law, there must be a degree of control of control depending upon the information regarding the past, present, and predicted behavior of the individuals, and groups within a particular system,

⁶⁰ Singhvi L,M., "Constitution of India Protection of Life, and Personal Liberty" New Delhi Volume-I Secone edn, (2008) p, 1071,

3,1, Right to Privacy-Constitutional Perspective

In most of common law constitutions right to privacy's not given expressly to their citizens, but derived from judicial review, and court decisions, The right to privacy within India has derived itself from essentially two sources-the common law of torts, and the constitutional law,⁶¹ However, this lacuna has not prevented the courts from carving out a constitutional right to privacy by a creative interpretation of the right to life, and the right to freedom of movement,

In common law, a private faction for damages for unlawful invasion of privacy's maintainable, The printers, and publishers of a journal, magazine or book are liable for damages if they publish any matter concerning the private life of the individual without such person's consent,

The constitution does not grant within specific, and express terms any right to privacy such, right to privacy's not enumerated as a fundamental right within the constitution, However, such a right has been culled by the Supreme Court from Article-21, and several other provisions of the Constitution read with the Directive Principles of State Policy,⁶²

Competence of Central, and state legislatures to enact legislation's derived from the Indian Constitution, The Seventh schedule of constitution of India has three lists-i.e, List I- Union list, List II- State list, List, List II- Concurrent list, These lists contain various entries, which can be subject matters of legislation, But, Privacy's not a subject within any of the three lists of Schedule VII of Constitution of India, Parliament has power to make law on subjects which are mentioned within any of three lists, But no legislative competence's found for subject of privacy, Under the constitutional law, the right to privacy's implicit within the fundamental right to life, and liberties guaranteed by Article 21 of the Constitution, This has been interpreted to include the "right to be let alone", The constitutional right to privacy flowing from Article 21 must, however, be read together with the constitutional right to publish any matter of public interest, subject to reasonable restrictions,

The Constitutional Assembly Debates on 'Fraternities clause' of the Preamble project

⁶¹ There are also a few statutory provisions contained within The Code of Criminal Procedure (Section 327 (1), The Indecent Representation of Women (Prohibition) Act, 1980 (Sections 3, and 4), the Medical Termination of Pregnancy Act, 1971 Section 7 (1)(c), The Hindu Marriage Act, 1955 (Section 22), The* Special Marriages Act, 1954 (Section 33), The Children Act, 1960 (Section 36),, and The Juvenile Justice Ihrz, 1986 (Section 36), all of which seek to protect women, and children from unwarranted publicity,

⁶² Jain M,P., Indian Constitutional Law, Nagpur, Lexis Nexis Butterworth Wadhwa, Sixth Edn, (2012), p, 1236,

the importance of the dignities of the individual, A few members, namely, B, Patabhi, Sitaramayya, Srimati Durga Bai, Thakurdas Bhargava, B,V, Keskar, T,T, Krishnamuriti, M, Anathasyanam, and K, Santhanam of the Constituent Assembly moved an amendment which sought to change the drafting of the clause to the following form:~ "Fraternities assuring unities of nation, and the dignities of the individual", The purposed amendment was negative, The reason for putting "dignities of the individual" first was that unless the dignities of the individual's assured, the nation cannot be united, Further, within the Constituent Assembly fourth an amendment on the lines of the United States constitution was moved by Kazi Karimuddin, and it was also supported by Dr, B,R, Ambedkar, Mr, Karimuddin had proposed addition of a clause to the Draft article 14 (now article 20) which was intended to serve the purpose of the right of privacy, The resolution provide "The right of the people to be secured within their persons, houses, papers,, and effects against unreasonable searches, and seizers shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized,⁶³

Though there was nothing novel within Karimuddin suggestion as the Cr,P,C, as a law of the land contained such procedural safeguard, yet Dr, Ambedkar, as the chairman of the Drafting Committee, has expressed his concurrence to the desirabilities of its incorporation⁶⁴, But the constituent assembly after a postponement of this question, issue of a parties whip, and tow calls division voted against the adoption of Karimuddin's resolution,⁶⁵ Therefore the right to privacy akin to the Fourth Amendment was denied, the constitution guaranteed the second right akin to the Fifth Amendment i.e, right against self-incrimination within clause (3) of Article 20 of the constitution, Therefore the right to privacy against the arbitrary arrest, search, and seizure of a person by the police or by any agency of the state having similarly with the fourth amendment could not become part, and parcel of the person's fundamental rights, Therefore the constituent assembly has failed to rise to the occasion,

Privacy as one of the necessary ingredient of personal liberties suffered heavily on that account, Whereas the Constitution does not mention expressly the right to privacy, Article 21 miraculously has been playing a major role within the safeguard of privacy

⁶³ CAD Vo,-VII p,794,

⁶⁴ CAD Vol, VII p, 796,

⁶⁵ CAD Vol, —VII p, 797 at p, 840-42,

as an essential ingredient of personal liberty, Article 21 by self has not been a potent enough weapon within the defense of privacy until it's harpended, and made effective by judicial activism, Whether the word privacy implies positive or negative meaning depends upon the social, and cultural background within which the concept of privacy has developed, It would be said that privacy's a dynamic concept, It starts with life, and protects human dignity, It's skin to the concept of natural justice which's within accordance with natural human one will agree to the privacy of a married couple within their conjugation, By ranting this privacy within our intellectual perception what's within fact we are doing granting the right to privacy to the couple, within other words, people imanimously recognize the right to privacy as inherent within human society, Privacy s a concept involves what privacy entails, and how it's to be valued, Privacy as a right involves the extent to which privacy is, -The law does not determine what privacy is, but only what situations of privacy will be afforded legal protection,⁶⁶

The Constitution of India, within its Preamble, inter alia, secures equalities of status to all citizens, and assures their dignity, Dignities of an individual has been adjudged as an essential feature of the constitution, Article 21 protects the right to privacy, and promotes the individual dignities mentioned within the Preamble to our Constitution⁶⁷, The Preambular purpose of our constitution's that it promises to assure the dignities of the individual, while stressing the right to privacy as a basis for the assurance of the dignities of the individual, and its autonomy,

3,1,1, Right to Information vis-a-vis Right to Privacy

The concept of an open government's the direct emanation from the right to know which seems to be implicit within the right of freedom of speech, and expression conferred under Article 19 (1) (a) of the Constitution of India,

3,1,1,1, Right to Privacy under Art 19 (1) (a)

Article 19 reads as follows:~ "19 (1) (a)-All citizens shall have the right-to freedom of speech, and expression; (2) Northing within sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making an law, insofar as such law imposes reasonable restrictions of the exercise of the right conferred by the said sub-clause within the interests of the sovereignty, and integrities of India, the securities of the State, friendly relations with foreign States, public order, decency or moralities or

⁶⁶ Deshta Kiran, "*Right to Privacy under India Law*" New Delhi, Deep, and Deep Publication Pvt, Ltd, (2011),p, 173,

⁶⁷ Subrahmanyam A.; "*Right to Privacy within India:~ A Constitutional Perspective*", Journal of Constitutional & Parliamentary Studies, Vol-44 No, 1-2, Jan-Jun-2010, p, 76,

within relation to contempt of court, defamation or incitement to an offence:~,

The result of the restrictions being exhaustively enumerated's that unless a publication that invades the individual's privacy's "immoral- or "indecent" it does not fall foul of Article 19 (2), Even the fundamental right "to freedom of speech, and Expression" as enumerated within Article 19 (1) (a) of Constitution comes with reasonable restriction imposed by State relating to

- (i) Defamation
- (ii) Contempt of Court
- (iii) Decency or Morality
- (iv) Securities of State
- (v) Friendly relations with foreign states
- (vi) Incitement to an offence
- (vii) Public order

However, within India, the right to privacy's not a specific fundamental right but has gained Constitutional recognition, Unfortunately, the infringement of right, to privacy's not covered by the expression "reasonable restrictions"⁶⁸ to the right to freedom of speech, and expression under Article 19 (1) (a),

The result of the restrictions being exhaustively enumerated in, that unless a publication that invades the individual's privacy's "immoral" or "indecent", it's not contrary to Article 19 (2), But this has not restricted the activism of the Courts from carving out a Constitutional right to privacy by a creative interpretation of the right to life as enshrined under Article 21 of the Constitution of India,

Coinciding with these legal implications, and technological developments a public spirited i.e, a participatory, and meaningful law was enacted within India on freedom of information, namely , the Freedom of Information Act, 2002 was enacted to provide for freedom to every citizen to secure access to information under the control of the public authorities, consistent with public interest, within order to promote openness, transparency,, and accountabilities within administration, and related matters⁶⁹, though

⁶⁸ Constitution of India, Article 19 (2):- "Nothing within sub-clause (a) of clause (1) shall affect the operation existing law, or prevent the state from making any law, within so far as such law imposes reasonable restrictions of the exercise of the right conferred by the said sub clause within the interests of the sovereignty, and integrities of India the securities of state friendly rlations with foreign state, public order, decency or moralities or within relation to contempt of court, defamation or incitment of an offence,

⁶⁹ See Government of India, Report of the Working Group on Right to Information, and Promotion of Open Transparent Government, May 1997,

it never came into force⁷⁰,

Thereafter, on the recommendations made by the National Advisory council, a more comprehensive law ensuring greater, and more effective access to information was envisaged, As a result, the Right to Information a Act, 2005 was -,acted by the Indian Parliament, and it received the President's assent on 6,2005,⁷¹

At the same time, it has also brought into confrontation between the right of public to know, and the right of the individual to be left alone (right to privacy)⁷²,The right to information act exempt to disclose the information which effects life, and personal liberties of the person,⁷³

3,1,1,2, Right to Privacy under Art, 21

The existing law just affords a principle which if properly invoked may protect privacy of the individual, and Indian judiciary has been using Judicial Activism to widen ambit of the constitution of India Article 21, Where seeds of the privacy right may be found, and extending protection granted by it, There are no express words within the Constitution of India about the right to privacy, and it's not to be found within any other statue, though interests similar to that were protected both under the civil law,

Article 21 Protection of life, and personal liberties "No person's hall be deprived of his life or personal liberties according to procedure established by law",

In, India judiciary has been playing a vital role within interpreting the concept of privacy as a fundamental right, High Court of Allahabad within case of Nihal Chand v, Bhawan Dei⁷⁴ took the first step within recognizing the right to privacy within India, After the independence of India the first case within which the issues of the right to privacy came specifically before Supreme Court was within M,P, Sharma v, Satish Chandra,⁷⁵ where the question involved was, whether the state power of search, and seizure authorized by section 96 of the Cr, P,C, was violate of individuals of individuals right of privacy, particularly enshrined within Article 19 (1) (f), and Article 20 of the Constitution of India, Kharak Singh v, State of Uttar Pradesh⁷⁶'s an important decision given by the Supreme Court of India on right to Privacy, within this case a question was

⁷⁰ Jai s, Singh "Human right to privacy", Indian journal of politics ,Department of political science, AMU, vol,, 2015, 87 p,no, 114

⁷¹ Act No, 22 of 2005, Section 1

⁷² Singh rajeev "*right to information empowerment, and good governance*" New Delhi Mewar Universities press,ed,1,2016/p,no87

⁷³ Right to Information Act ,2005,s8(1)(j)

⁷⁴ AIR 1935 All 1002,

⁷⁵ AIR 1954 SC 300

⁷⁶ AIR 1963 SC 1294 :~ (1964), SCR 332,

raised whether the right to privacy could be implied from the existing Fundamental rights, such as Arts, 19 (1) (d), 19 (1) (e), and 21, The majorities of judges participating within the decision said of the Right to Privacy that "our Constitution does not within terms confer like constitutional guarantee, On the other hand, Justice Subba Rao, who gave his minorities opinion, was within favour of inferring the right to privacy from the expression 'personal liberty' within Article 21,

In the words of J, Subba Rao:~ "Further, the right to personal liberty, takes's not only a right to be free from restriction placed on his movement, but also free from encroachments on his life, It's true our constitution does not declare a right to privacy as a fundamental right but the said right's an essential ingredient of personal liberty, Every country sacrifices domestic life,"

In *Govind v, State of Madhya Pradesh*,⁷⁷ the Supreme Court under took a more elaborate appraised of the right to privacy, within this case the court considered the constitutional validities of a regulation, The court upheld the regulation by ruling that article 21 was not violated as the regulation within question was "procedure established by law", within terms of Article 21,

The court also accepted a limited fundamental right to privacy "as an emanation" from Arts, 19 (1) (a), (d), and 21, The right to privacy's not, however, absolute reasonable restriction can be placed thereon within public interest article 19 (5), Thus Justice Mathew observed that "The right to privacy within any event will necessary have to go through a process of case by case development, Therefore even assuming that the right to personal liberty, the right to move freely through ought the territory of India, and the freedom of speech creates an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right's absolute," within this case he also formulated a dominant test known as the compelling state interest through which the state may have control over the man's privacy, Justice Mathew said "Assuring that the fundamental right explicitly guaranteed to to citizen have penumbral zones, and that the right of privacy itself a fundamental right the fundamental right must be subject to restriction on the basis of compelling public interest",

This shows that Justice Mathew has displayed his best judicial craft-man ship by holding the 'right to privacy' as a part of personal liberties within Article 21 Justice

⁷⁷ AIR 1975 Sc 1378

Mathew has within articulated manner determined a brand nature, and scope of the right to privacy, But the learned judge has not declared it an absolute right as no right can be has legitimately, and clearly advocated that the right to privacy may be trammel led by the compelling public interest he further emphasized the need of the reasonable restrictions legitimately required to be put within the enjoyment of the right of privacy, The right to privacy⁷⁸ has been held as an integral part of the fundamental right to life, and personal liberties under Article 21 of the Constitution, within Maneka Gandhi ease⁷⁹ Supreme Court accepted J, Subba Rao's view within Kharak Singh that the right to privacy's fundamental right,

In Maneka Gandhi vs Union of India,⁸⁰ within a seven-judge bench decision, Justice P,N, Bhagwati, held that he expression "personal liberty" within Article 21's of the widest amplitude, and covers a varieties of rights which constitute the personal liberties of man, Some of them have been raised to the status of distinct fundamental rights, and given additional protection under Article 19, The court ruled:~ "Any law interfering with personal liberties of a person must satisfy a triple test:~ (i) it must prescribe a procedure (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable within a given situation,, and (iii) it must also be liable to be tested with reference to Article 14 (the guarantee of equality), As the test propounded by Article 14 pervades Article 21 as well the law, and procedure authorizing interference with personal liberty, and right of privacy must also be right, and just, and fair, and not arbitrary, fanciful or oppressive, If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21", The net result's that he fundamental right to "personal liberty", embodied within Article 21, covers the right to privacy as well,⁸¹

State of Maharashtra V, Madhukar Naravan Mardikar⁸²

In this case a police Inspector visited the house of one banubai within uniform, and demanded to have sexual inter course with her, On refusing he tried to have her by force, She raised a hue, and cry, He's as prosecuted he told the court that she was a lady of easy virtue, and therefore her evidence was not to be relied, The court rejected the arguments of the applicant, and held him liable for violation her right to privacy, It was

⁷⁸ JainM,P"(indian constitutional law ",Lexis Nexis Nagpur, Sixth ed, 2012 p,no1240

⁷⁹ AIR 1978 SC 597

⁸⁰ Ibid

⁸¹ Noorani A,G., "Right to Privacy" Economic, and Political Weekly, February 26, 2005,

⁸² AIR 1991 SC 207

also held that right to privacy's available even to a woman of easy virtue, and no one can invade her privacy,

In *R, Raj Gopal v, State of Tamil Nadu*⁸³ within this case Supreme Court has asserted that within times the right to privacy has acquired constitutional status, it's implicit within the right to life, and liberties guaranteed to the citizens by Art-21, It's a "right to be alone,"

In *people's Union for Civil Liberties v, Union of India*⁸⁴ within this case SC has deserved that, "We have therefore; no hesitation within holding that right to privacy's a part of the right to "life", and "personal liberty" enshrined under Article 21's attracted the said right cannot be curtailed 'except according to procedure established by law", *Mr, 'X' V, Hospital "Z"*,⁸⁵

For first time Supreme Court articulated on sensitive data related to health, within this case the Appellant's blood test was conducted at respondent's hospital, and he was found to be HIV (+), His marriage which was already settled was called off after this revelation the appellant filed a writ petition within High Court of Bombay,

1, He contended that

- 1, His prestige among his family members was damaged and
- 2, Respondents were under a duties to maintain confidentialities on account of medical ethics formulated by Indian Medical Council,
- 3, His right to privacy has been infringed by respondents by disclosing that the appellant was HIV (+), and therefore they are liable within damages,

Supreme Court has held that although the right to privacy's a fundamental right under Art 21 but it's not an absolute right, and restrictions may be impose on it for prevention of crime, disorder or protection of health or morals or protection of right, and freedom of others⁸⁶,

*Ms, X,V, Mr, Z*⁸⁷ within this case, the wife filed a petition for dissolution of Marriage on ground of cruelty, and adultery against husband under section 10 of Divorce Act, Husband also asserted that his wife has adulterous affairs with one person which resulted within family way, Pregnancy of wife was terminated at all Indian Institute of Medical Sciences, and records, and slides of tabular gestation were preserved within

⁸³ (1994) SCC 632

⁸⁴ AIR 1991 SC 207

⁸⁵ AIR 1999 SC 495

⁸⁶ Jain *M,P*"(*Indian Constitutional Law* ",Lexis Nexis Nagpur ,sixth ed, 2012 p,no 1247

⁸⁷ AIR 2002 Delhi HC

hospital, Husband filed an application for seeking DNA test of said slide with a view to ascertain if husband's father of foetus,

The Court held that the right to privacy though a fundamental right forming part of right to life enshrined under Art 21's not on absolute right, When right to privacy has become a part of public document, within that case a person cannot insist that such DNA test would infringe his or her right to privacy, The foetus was no longer a part of body, and when it has been preserved within AIIIVIS, the wife who has already discharged same cannot claim that it affects her right of privacy, When adultery has been alleged to be one of the grounds of divorce within such circumstances application of husband seeking DNA test of said slides can be allowed,

District Registrar, and Collector V, Canara Bank⁸⁸

In this Court was held that "exclusion of illegitimate intrusions into privacy depends on nature of the right being asserted, and the way within which it's brought into play, it's at this point that context becomes crucial, to inform substantive judgment, If these factors are relevant for defining the right to privacy, They are quite relevant whenever there's invasion of that right by way of searches, and seizures on the instance of the state,

If one follows the judgment given by Hon'ble, Supreme Court, three themes emerge

- i, individual's right to privacy exists, and any unlawful invasion of privacy would make offender liable for consequences within accordance with law,
- ii, That there's constitutional recognition given to right of privacy which protects personals privacy against unlawful governmental invasion,
- iii, That person's "right to be let alone"'s not an absolute right, and may be lawfully for prevention of crime, disorder or protection of health or morals or protection or rights, and freedom of others,

All these rights are grouped within Part III of the Constitution as Fundamental right which can be remedied under Article 32 & 226 of the Constitution of India, As a safeguard the Supreme Court of India, and other High Courts exercise wide powers for enforcing these rights by issuing writs, Article 13 of the Constitution forbids the State from making any law or regulation within contravention of these rights may be declared void, Constitutional right of privacy's emanated under these provisions of the Constitution⁸⁹, The right to privacy has now become established within India, but as

⁸⁸ AIR 2005 SC 186

⁸⁹ Deshta Kiran, "Right to Privacy under Indian Law", New Delhi, Deep, and Deep Publication Pvt, Ltd, COW, p, 178,

part of Article 21, It's well established that's an essential human rights, Certain norms of privacy should be determined, and measured to a common standard, because a right without description's a right without protection, Conceptual basis of privacy, and its protection should be removed immediately⁹⁰,

3,2, Right to Privacy- Legal Framework

Several existing legislations within India as well as many proposed ones have rave privacy implications that are scarcely recognized, India's a very close-knit societies with strong ties of kinship, where the intensely private, and personal affairs of an individual may, more often than not, become the 'public' affairs of all, There's a fact, a lack of awareness among the people within general about these most fundamental rights concerning personal liberty, and freedom, This's reflected within the absence of any comprehensive, all-encompassing legislation dealing with all aspects of the law within relation to a person's right to privacy⁹¹, However, the legislators within India have not been completely obvious to the necessities of such a right, They have therefore, from time to time, included provisions relating to the right of privacy within various pieces of legislations, which govern or deal with special circumstances, and or special classes of people,

3,2,1, Information Technology Act, 2000 (as Amended 2008) :~ vis-a-vis Right to Privacy

The Act provides for a set of laws intended to provide comprehensive regulatory environment for electronic commerce, The Act also addresses the question of computer crimes, hacking,, and damage to computer source code, breach of confidentiality, and viewing of pornography, protection of privacy,

Section 43

This section provides protection against unauthorized access of the computer system by imposing heavy penalties up to one crore, The unauthorized downloading, extraction, and copying of data are also covered under the same Penalty, Clause 'c' of this section imposes penalties for unauthorized introduction of computer viruses of contaminants, Clause `g' provides penalties for assisting the unauthorized access,

If any person without permission of the owner or any other person who's within charge of a computer, computer system or computer network

⁹⁰ Subrahmanyam A.; -Right to Privacy within India:~ A Constitutional Perspective", Journal of Constitutional & Parliamentary Studies, Vol-44 No, 1-2, Jan-Jun-2010, p, 82,

⁹¹ Henary Michael, 'International Privacy Publicity, and Personalities Laws", London, Butterworth's, a division of Reed Elsevier Ltd, Halsbury House, London, (2001) p, 234,

- (i) Access such computer, computer system or computer network or computer resource;
- (ii) Downloads, copies or extracts of any data, computer data base or information;
- (iii) Introduces or causes to be introduced any computer contaminant or computer virus;
- (iv) Damages or causes to be damaged any computer, computer system or computer network data, computer data base or any other programmes;
- (v) Disrupts or causes disruption;
- (vi) Denies or causes the denial of access to any person authorize to access;
- (vii) Provides any assistance to any person to facilitate access within contravention of the provisions of this act;
- (viii) Charges the services availed of by a person to the account of another person by tempering with or manipulating any computer, computer system or computer network,
- (ix) Destroys deletes or alters any information residing within a computer recourse or diminishes its value or utilities or affects it injuriously by any means;
- (x) Steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code with intention to cause damage⁹²;

He shall be liable to pay damages by way of compensation to the person so affected, Section 43A's a proactive provision with the sole objective to protect personal data, and privacy, Though the Act, has not defined the term "data subject", but by default this section has articulated the term "data subject", It creates onus on "body corporate" to implement, and maintain "reasonable securities practices, and procedures" within order to protect sensitive personal data of an individual, The aforesaid section has identified "body corporate" as "data processor", and "data controllers" which would be possessing, dealing or handling any sensitive personal data or information within a computer resource which it owns, controls or operates⁹³,

In fact, this section has provided a redressal mechanism to any affected person to seek compensation from a body corporate, which has been negligent within implementing, and maintain reasonable securities practices, and procedures vis-à-vis 'any personal data, and information', and thus caused wrongful loss or wrongful gain to any such person,

⁹² Nandan Kamath, "Computers Interest, and E-Commerce", Universal Law Publishing co, ed,4,2009,p,no 114-15

⁹³ Sharma Vakul, "Information Technology Law, and Practice", New Delhi, Universal Law Publishing Co, Pvt, Ltd, Third edn, 2011, p, 127,

Liabilities for Body-Corporate under Section 43A

Sec, 43A of the Information Technology Act, 2000 reads as follows,

"Where a body corporate, possessing, dealing or handling any sensitive personal data or information within a computer resource which it owns, controls or operates,'s negligent within implementing, and maintaining reasonable securities practices, and procedures, and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected,

Explanation-for the purposes of this section

- i, "Body corporate" means any company, and includes a firm, sole proprietorship or other association of individuals engaged within commercial or professional activities,
- ii, "Reasonable securities practices, and procedures" means securities practices, and procedures designed to protect such information from unauthorized access, damage, use, modification, disclosure or impairment, as may be specified within an agreement between the parties or as may be specified within any law for the time being within force, and within the absence of such agreement or any law, such reasonable securities practices, and procedures, as may be prescribed by the Central Government within consultation with such professional bodies or associations as it may deem fit;"
- iii, "Sensitive personal data or information" means such personal information as may be prescribed by the central government within consultation with such professional's bodies or associations as it may deem fit,

Data Protection:~ Currently the strongest legal protection of personal information within India's through section 43A of the Information Technology (Reasonable securities practices, and procedures, and sensitive personal data information) Rules 2011,

The newly inserted section 43A⁹⁴ makes a start at introducing a mandatory data protection regime within Indian law, The section obliges corporate bodies who 'possess, deal or handle' an 'sensitive personal data' to implement, and maintain 'reasonable' securities practices, failing which they would be liable to compensate those affected by any negligence attributable or professional activities' that are the targets of this section, Thus government agencies, and non-profit organizations are entirely excluded from the ambit of this section, "Sensitive personal data or information"'s any information that the Central Government may designate as such, when it sees fit to, The "reasonable

⁹⁴ The Information Technology Act, 2000, As amended by The Information Technology (Amendment) Act, 2008 Came into force on 27-10-2009,

securities practices" which the section obliges body corporate to observe are restricted to such measures as may be specified either "in an agreement between the parties" or within any law within force or as prescribed by the Central Government, By defining both "sensitive personal data", and "reasonable securities practice" within terms that require executive elaboration, the section within effect pre-empts the courts from evolving an iterative, contextual definition of these terms⁹⁵,

Under Section 43A⁹⁶ within order to define "sensitive personal information", and to prescribed reasonable securities practices" that body corporate must observe within relation to the information they hold, Central Government of India draft rules, The Information Technology (Reasonable Securities Practices, and Procedures, and Sensitive Personal Data or Information) Rules, 2011,

Sensitive Personal Information

Rule 3 of these Draft Rules designates the following types of information as 'sensitive personal information'⁹⁷,

- (i) Password;
- (ii) User details as provided at the time of registration or thereafter, information related to financial information such as Bank account/credit card/debit card/other payment instrument details of the users;
- (iii) Physical, physiological, and mental health condition;
- (iv) Sexual orientation;
- (v) Medical records, and history;
- (vi) Biometric information;
- (vii) Information received by body corporate for processing stored or processed under lawful contract or otherwise; call data records;

This however, does not apply to -any information that's freely available or accessible within public domain or accessible under the Right to Information Act, 2005",

Mandatory Privacy Policies for Body Corporate

Rule 439 of the draft rules enjoins a body corporate or its representative who "collects, receives, possess, stores, deals or handles" data to provide a privacy policy "for handling of or dealing within user information including sensitive personal

⁹⁵ Iyengar Prashant, "Privacy, and the Information Technology Act- Do we have the Safeguards for Electronic Privacy"? visited at cis-india.org/internet-governance/blog/privacy

⁹⁶ The Information Technology Act, 2000, (as amended 2008),

⁹⁷ The Information Technology (Reasonable Securities Practices, and Procedures, and Sensitive Personal Data • or Information) Rules, 2011,

information", This policy's to be made available for view by such "providers of information", The policy must provide for

- i, and easily accessible of its practices, and policies;
- ii, Type of personal or sensitive data or information collected under rule 3;
- iii, Purpose, means, and modes of usage of such information;
- iv, Disclosure of information including sensitive personal data or information as provided within rule 6;
- v, Reasonable securities practices, and procedures as provided under rule 8,

Prior Consent, and Use Limitation during Data Collection

In addition to the restrictions on collective sensitive personal information, body corporate must obtain prior consent form the "provider of information" regarding "purpose, means, and modes of use of the information", The body corporate's required to "take such steps as are, within the circumstances, reasonable" to ensure that the individual from whom data's collected's aware of:⁹⁸

- a, The fact that the information's being collected;
- b, The purpose for which the information's being collected;
- c, The intended recipients of the information; and
- d, The name, and address of
 - (i) The agency that's collecting the information; and
 - (ii) The agency that will hold the information,

During data collection, body corporate's required to give individuals the option to opt-in or opt-out from data collection, They must also permit individuals to review, and modify the information they provide "wherever necessary", Information collected's to be kept securely, used only for the stated purpose, and any grievances must be addressed by the body corporate "in a time bound manner",

Section 65

This section provides for computer source code, If anyone knowingly or intentionally conceals, destroys, alters or causes another to do as such shall have to suffer a penalties of imprisonment of fine up to 2 lakh rupees, Thus protection has been provided against tampering of computer source documents⁹⁹,

Section 66

Protection against hacking has been provided under this section, As per this section

⁹⁸ Supra Mote, at 35

⁹⁹ Information technology act,2000

hacking's defined as any act with an intention to cause wrongful loss or damage to any person or with the knowledge that wrongful loss of damage will be caused to any person, and information residing within a computer resource must be either destroyed, deleted, altered or its value, and utilities get diminished, This section imposes the penalties of imprisonment of three years or fine up to two lakh rupees or both on the hacker¹⁰⁰,

Section 66C

This section provides punishment for identities theft whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, This section imposes the penalties of P imprisonment of three years of fine up to one lakh rupees, This section protects the identities of a user within the online medium, The purpose of the section's to protect the privacy of all or any web users, including their personal information or data¹⁰¹,

Section 66E

Sec, 66E of The Information Technology Act, 2000 reads as follows, Punishment for violation of Privacy-whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extended to three years or with fine not exceeding two rupees, or with both,

In this section world use 'private area's define under Explanation-"Private area" means the naked or undergarment clad genitals, public area, buttocks or female breast, Under circumstances violating privacy means circumstances within which a person can have a reasonable expectation that

- i, He or she could disrobe within privacy, without being concerned that an image of his private area was being captured; or
- ii, Any part of his or her private area would not be visible to the public, regardless of whether that person's within a public or private place,

Voyeurism :- Whoever intentionally or knowingly captures, publishes or transmits the image of a private of area of any person under circumstances violating the privacy of that person,, and without consent's held criminally liable with imprisonment for up to three years and/or with a fine not exceeding two lakh rupees, Though it's important that

¹⁰⁰ ibid

¹⁰¹ ibid

an individual's protected from the transmitting of invasive images without his/her consent, the provision's unclear if this applies to any other person, within other words, it's not clear if an individual can voluntarily transmit an image of his or genitals, Violation of privacy such as installation of spy cameras, hidden cameras, communication devices inside washrooms, bedrooms, changing rooms, hotel rooms, etc, for the purpose of violating bodily privacy of any users/occupant of such places,

Section 67C

In this section liabilities imposes on intermediary for preservation, and retention of information collected during transaction within the manner of Central Government may prescribe, within order to prescribe such duration, and within such manner, and format Central government draft The Information Technology (Intermediary Guidelines) Rules 2011,

Intermediary due diligence:~ The Information Technology (Intermediary Guidelines) Rule 2011 provides regulations for intermediaries to follow concerning the content that passes through their systems, The rules also establish what content's an's not allowed to be posted by individuals,, and holds intermediaries responsible for ensuring that websites are within compliance with the provisions, Aspects of the rules that are relevant to privacy include:~ provide regulations for intermediaries to follow concerning the content that passes through their systems, The rules also establish what content is, and's not allowed to be posted by individuals,, and holds intermediaries responsible for ensuring that websites are within compliance with the provisions,

Section 70

This section provides protection to the data stored within the protected system, Protected systems are those computers, computer system or computer network to which the appropriate government, by issuing gazette information within the official gazette, declared it as a protected system, Any access or attempt to secure access of that system within contravention of the provision of this section will make the person accessed liable for punishment of imprisonment which may extend to ten years, and shall also be liable to fine,¹⁰²

Section 72-Penalties for breach of confidentiality, and Privacy

This section provides protection against breach of confidentiality, and privacy of the data, As per this, any person upon whom powers have been conferred under IT Act, and

¹⁰² Ibid

allied rules to secure access to any electronic record, book, register, correspondence, information document of other material discloses it to any other person, shall be punished with imprisonment which may extend to two years or with fine which may extend to one lakh rupees or both, The purpose behind this section's that he person who has secured access to my any such information shall not take unfair advantage of it by disclosing party, An obligation of confidence arises between the 'data collectors/data controller', and 'data subject',

Section 72A-Punishment for discloser of information within breach of lawful contract:~

This section creates liabilities for service providers, including an intermediary, It's within fact a kind of data protection measure, wherein a service provider who has secured access to any material containing personal information about a person, discloses such information with the consent of the person concerned or within breach of a lawful contract, with the intent to cause or knowing that the's likely to cause wrongful loss or wrongful gain to such person, The issue of confidentiality, and privacy as enumerated within section 72, and section 72A of the Act should be read along with the eight reasonable restrictions imposed by article 19 (2) on right "to freedom of speech, and expression" as enumerated within article 19 (1) (a) of the constitution of India, If need be, 'data subject' may take advantage of Article 21 which states that "no person shall be deprived of his life or personal liberties except according to procedures established by law"¹⁰³,

After going through the discussion it's clear that the provisions contained within The Information Technology Act, 2000 (as amended 2008) it's does not contained adequate provisions for checking the violation of privacy within technological advancements age, within spite of this Act contains some novel provisions for protection of privacy within technological advancements era-like Sec, 72, 72A, 66E of I, T, Act 2000,

Internet Services License

In India interception powers are also given to the government through the Internet Services License Agreement, and the Unified Access Services Agreement for service providers, within practice, both licensed afford the government expansive access to communication data held by an accessible to ISPs,

¹⁰³ Sharma Vakul, Information Technology Law, and Practice, New Delhi, Universal Law Publishing Co, Pvt, Ltd, Third edn, 2011, p, 258,

Protection of Privacy

There's a responsibilities on the ISP to protect the privacy of its communications transferred over its network, This includes securing the information, and protecting against unauthorized interception, unauthorized disclosure, ensure the confidentialities of information,, and protect against over disclosure of information –except when consent has been given, within order to protect the privacy of voice, and data, monitoring shall only be by the Union, Home Secretary of Home Secretaries of the States/Union Territories,

3,2,2, The Indian Contract Act, 1872

These days' companies are relying on the contract law as a useful means to protect their information, The corporate houses enters into several agreements with other companies, clients, agencies or partners to keep their information secured to the extent they want to secure it, Agreements such as 'non circumvention, and non-disclosure' agreements, 'user license' agreements, 'referral partner' agreements etc, are entered into by them which contains confidentiality, and privacy clauses, and also arbitration clauses for the purpose of resolving the dispute if arises, These agreements help them within smooth running of business, BPO companies have implemented processes like BS 7799, and the ISO 17799 standards of information securities management, which restrict the quantities of data that can be made available to employees of BPO, and call centres, ¹⁰⁴

3,2,3, The Indian Penal Code 1861

It imposes punishment for the wrongs were expected to occur till the last decade, But if failed to incorporate within itself the punishment for crimes related to data which has become the order of the day, A section 292 dealt with sales, hire, distributes of obscene books etc., and section 293 provides sale of obscene objects to young persons, Both sections punish who violates these provisions, Some other provisions are also deals with privacy like provisions related house trespass, and house breaking,¹⁰⁵

Provision for Sexual Voyeurism:~ Section 345C of the IPC provides as follows--Whoever watches, or captures the image of, a woman engaging within a private act within circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the trpetrator shall be punished on first conviction with imprisonment of either description

¹⁰⁴ <http://www.legalserviceindia.com/article/137-data-protection-law-in-india.html> accessed on 21/3/16

¹⁰⁵ Sections 442, 443, 444, 445, and 446, The Indian Penal Code, 1860,

for a term which shall not be less than one year, but which may extend to three years,, and shall also be liable to fine,, and be punished on a second or Rthsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years,, and shall also be liable to fine",

Explanation 1:~ For the purposes of this section, "private act" includes an act of watching carried out within a place which, within the circumstances, would reasonably be expected to provide privacy,, and where the victim's genitals, buttocks or breasts are exposed or covered only within underwear; or the victim's using a lavatory; or the person's doing a sexual act that's not of a kind ordinarily done within public,

Explanation 2:~ Where the victim consents to the capture of images or any act, but not to their dissemination to third persons, and where such image or act's disseminated, such dissemination shall be considered an offence under this section,' This provision seeks to protect victims of voyeurism, from being watched, or recorded, without their consent under circumstances where the victim could reasonably expect privacy, A reasonable expectation of privacy implies to both public, and private places where the victim has a reasonable expectation that she's not being observed engaging within private acts such as disrobing or sexual acts, Similar provisions can be found within voyeurism laws across the world,, and section 66E of the IT Act, It's particularly important because voyeurism also takes place within public spaces where there's generally an expectation that exposed body parts are not being watched,

Provision for Stalking:~ Section 354D of Indian Penal Code, 1860 as follows

(I) Any man who

- i, a woman, and contracts, or attempts to contacts such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman:~ or
- ii, Monitors the use by a woman of the internet, email or any other form of electronic communication, Commits the offence of stalking,

Provided that such conduct shall not amount to stalking if the man who pursued it proves that

- i, was pursued for the purpose of preventing or detecting crime, and the man accused of stalking had been entrusted with the responsibilities of prevention, and detention of crime by the state; or
- ii, It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; 49or
- iii, In the particular circumstances such conduct was reasonable, and justified,

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine,

Cyber stalking:~"Cyber stalking" is one of the most widespread, and overlapping forms of personal online harassment. A simple definition of "cyber stalking" is:~ ".....the use of electronic communication emails, and the internet to bully, threaten, harass, and intimidate a victim", "Cyber stalking" can be perpetuated through email, online websites, social networking sites, message forums, and online gaming. Harassment is defined as any behavior that causes the victim distress, whether intentional or not. Social networking sites provide an example of online applications, with otherwise legitimate purposes, that can be used to facilitate direct, and indirect cyber stalking. Social networking sites are vulnerable to abuse by cyber stalkers because of the ease with which the sites enable subscribers, and sometimes non-subscribers, to access large amounts of personal information, usually voluntarily posted by a victim on its "profile". A "cyber stalker" may use social networking sites to follow a victim's actions, gain contact information, or to enact abuse on the person's identity,

3,2,4, Code of Criminal Procedure, 1973¹⁰⁶

Section 327 (1) provides that the place within which any criminal court is held for the purpose of inquiring into or trying any offence shall be an open court but the second sub-clause provides that any inquiry into, trial, and punishment for an offence of rape¹⁰⁷, or an offence involving intercourse by a man with his wife during separation, or an offence involving intercourse by a public servant with women within his custody or an offence involving intercourse by a superintendent of jail, remand home, etc, shall be conducted within camera, and only with the special permission of the presiding judge can any person be allowed to have access to, or be or remain in, the room or building used by the court. Further, within any proceedings under this sub-section it shall not be lawful for any person to print or publish any matter within relation to any such proceedings except with the prior permission of the court¹⁰⁸,

¹⁰⁶ The Code came into force with effect from 25 January 1974

¹⁰⁷ Sections 375, and 376 of the Indian Penal Code, 1860,

¹⁰⁸ Section 327 (3) of the Code of Criminal Procedure Code, 1973,

Thus code of criminal procedure, 1973's through this provisions protecting privacy of the victims or accused, within the court rooms trial,

3,2,5, The Hindu Marriage Act, 1955¹⁰⁹

Section 22-Every proceeding under this Act, shall be conducted within camera, and it shall not be lawful for any person to print or publish any matter within relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the court, If any person prints or publishers any matter within contravention of the provisions this shall be punishable by a fine which may extended to 1000, rupees, The provisions of this Act are applicable to marriages where both the parties are Hindus by religions,

Section 33 of the Special Marriages Act, 1954 though on the same terms as section 22 of The Hindu Marriage Act, 1955's less restrictive as it provides that a proceeding under that act shall be conducted within camera if either parties thereto, desires or if the District Court desires to do so,

3,2,6, The Juvenile Justice Act, 1986

This act's applies to a juvenile who's defined as a boy under the age of 16 years, and a girl under the age of 18 years, Section 36 of the Act provides that no report within any newspaper, magazine or news-sheet of any inquiry regarding a juvenile under this act shall disclose the name, address or school or any other particular calculated to lead to the identification of the juvenile, nor shall any picture of any such juvenile be published, Any person contravening the provisions of this section shall be punishable with fine, which may extend ti one thousands rupees, This sections with the intention of safeguarding the image of a child, and or juvenile who's particularly vulnerable to acquiring any stigma or disrepute which would jeopardize their chances of leading a normal life,¹¹⁰

3,2,7, The Indecent Representation of Women (Prohibition) Act, 1986

Section 3- "No person shall publish, or cause to be published or arrange or take part within the publication or exhibition of any advertisement which contains indecent representation of women within any form",

Section 4- "No person shall produce or cause to be produced, sell let for hire, distribute, circulate, or send by post any book, pamphlet, paper, slide, film, writing, drawing,

¹⁰⁹ The Hindu Marriage Act came into force on 18 May 1955

¹¹⁰ <http://www.vakilno1.com/bareacts/juvenilejusticeact/>,html accessed on 20/3/16at 5,57p.m

painting, photograph, representation or figure which contains indecent representation of women within any form, except if the said book etc,'s within the interest of science, literature, art or learning or other objects of general concern or for religious purpose", Indecent representation of women's defined within section 2 (c) of the Act to mean, the depiction within any manner of the figure of a women, her form or body or any thereof within such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or's likely to deprave, corrupt, or injure the public moralities or morals, Therefore this Act meant to protect bodily privacy of women through its provisions,

3,2,8, The Telegraph Act, 1885 (as amended) 2003, 2006

The Indian Telegraph Act was passed to govern telegraphy, phones, communication, radio, telex, and fax within India, The Act allows any authorized public official to intercept communication, within 2007 Telegraph Act (Interception) Rules 2007 were issued, Unauthorized interception of communications's punishable by imprisonment for up to one year, and a fine of INR 500, The Interception Rules further hold service providers responsible for the actions of their employees, who can be held criminally liable under the act, The following provisions relating to interception exist under the act:~¹¹¹

Lawful Interception:~ Communications can be intercepted under the Telegraph Act during public emergencies or within the interest of public softly, provided that certain other grounds also apply, namely, the sovereignty, and integrities of India, the securities of the State, friendly relations with foreign states, public order., and the prevention of the incitement of offences¹¹²,

3,2,9, The Medical Termination of Pregnancy Act, 1971

Section 7 (1) (c) of this Act, the State Government are empowered to make regulations prohibiting the disclosures, except to such persons, and for such purposes as may be specified within such regulations, of any information regarding the particulars of a women having undergone termination of any pregnancy under the act, Any person who willfully contravenes or willfully fails to comply with the any such regulations shall be liable to be punished with fine which may extend to 1,000 rupees, It's evident that these special provisions were enacted to essentially safeguard the special interests of women,

¹¹¹ Indian Telegraph Rules 2007 s, 15

¹¹² Sharma Vakul, Information Technology Law, and Practice, New Delhi, Universal Law Publishing Co, Pvt, Ltd,Third edn, 2011, p, 197

and children within extraordinary circumstances¹¹³,

3,2,10, The Right to Information Act, 2005

In many countries citizens are able to hold government transparent, and accountable through Freedom of Information laws, Access to Information laws,, and Public Information laws, within India, the Right to Information Act works to promote transparency, contain corruption,, and hold the Government accountable to the people, The RTI establishes a responsibilities on public bodies to disclose pre identified information, the right of citizens to request information held by public authorities from public information officers,, and creates a Central Information commissioner responsible for hearing/investigating individual complaints when information's denied, within the context of the RTI Act, every public authorities must provide information relating to workings of public authorities as listed under section 4 (1(b)) to the public on a suo motu basis at regular intervals, Section 8 of the Act lists specific types of information that are exempted from public disclosure within order to protect privacy, within this way privacy's the narrow exception to the right to information, When contested, the Information Commissioners will use a public interest test to determine whether the individual's right to privacy should be trumped by the public's right to information, There exist more than 400 cases where the Central Information Commissioner has pronounced on the balance between privacy, and transparency,

3,2,11, TRAI Regulations on Unsolicited Marketing Calls

In India, the Telecom Regulatory Authorities of India (TRAI)'s responsible for establishing Regulations for unsolicited marking calls, The first Regulation regarding unsolicited commercial marketing calls from telemarketers emerged within 2007, but were repealed, and replaced within 2010 by the Telecom Commercial Communications Customer Preference Regulations 2010, Since their enactment, the Regulations have been amended eight times, They work to regulate 'unsolicited commercial communications", which have been defined as any message which's transmitted for the purpose of informing, soliciting, or promoting any commercial transaction within relation to goods, investments or services etc, Excluded from this definition are 'transactional messages', which relate to:~ Information pertaining to the account of a customer, and sent by a licensee, bank, insurance company, credit card company, or depositories registered with Securities, and Exchange Board of India, or Direct to

¹¹³ Henary Michael, *"International Privacy Publicity, and Personalities Laws"*, London, Butterworth's, a division of Reed Elsevier Ltd, Halsbury House, London, (2001) p, 238,

Home Operators; any information given by airlines or Indian Railways or its authorized agencies to its passengers regarding travel schedules, ticket booking,, and reservation; information from registered educational institutions to parents or guardians of its students; any other message as may be specified by the Authorities from time to time as a "transactional message",

3,2,12, The Personal Data Protection Bill, 2006

Upon the footprints of the foreign laws, this bill has been introduced within the Upper House of Indian Parliament Rajya Sabha on December 08, 2006, The purpose of this bill's to provide protection of personal data, and information of an individual collected for a particular purpose by one organization,, and to prevent its usage by other organization for commercial or other purposes, and entitle the individual to claim compensation or damages due to disclosure of personal data or information of any individual without his consent, and for matters connected with the Act or incidental to the Act, Provisions contained within this Act are relating to nature of data to be obtained for the specific purpose, and the quantum of data to be obtained for the purpose, Data controllers have been proposed to be appointed to look upon the matters relating to violation of the proposed Act,

On comparing the Indian law with the law of developed countries the proper requirement for the Indian law can be analyzed, Data are not of same utility, and importance; it varies from one another on the basis of utility, So, we require framing separate categories of data having different utilities values, as the U,S, have, Moreover, the provisions of Information Technology Act, 2000 deals basically with extraction of data, destruction of data,

Organizations cannot get full protection of data through that which ultimately forced them to enter into separate agreements to keep their data secured, These agreements have the same enforceabilities as the general contract,

Despite the effort being made for having a data protection law as a separate discipline, the Indian legislatures have left some lacuna within framing the bill of 2006, The bill has been drafted wholly on the structure of the UK Data Protection Law¹¹⁴ whereas today's requirement's of a comprehensive Act, Thus it can be suggested that a compiled drafting on the basis of US laws relating to data protection would be more favourable to current legal requirements,

¹¹⁴ The U,K, Data Protection Act, 1998

Being one of the most concerned topics of discussion within the modern era, legislatures are required to frame more stringent, and comprehensive law for the protection of data which requires a qualitative effort rather than quantitative within modern context of developing technologies,

3,2,13, The Privacy Protection Bill (2013)

As the bill says that it's a bill "to establish an effective regime to protect the privacy of all persons, and their personal data from Governments, public authorities, private entities, and others, to set out conditions upon which surveillance of persons, and interception, and monitoring of communications may be conducted, to constitute a Privacy Commission,, and for matters connected therewith, and incidental thereto"¹¹⁵,

Following are the chapters of the privacy protection bill (2013):~

- 1, Preliminary
- 2, Right to Privacy
- 3, Protection of Personal Data
- 4, Interception of Communications
- 5, Surveillance
- 6, The Privacy Commission
- 7, Offences, and Penalties

This bill deals with all the major aspects of the privacy concern, It states that no person shall collect, store, process, disclose or otherwise handle any personal data of another person, intercept any communication on another person or carry out surveillance of another person except as provided within the act, 16 It also put a bar on collecting data or personal information of individuals without obtaining prior consent of the person whom it pertains, If made applicable privacy commission would be formed so that no one can carry out any surveillance of any person without taking permission from the privacy commission though it has some exceptions too,

3,2,14, National Cyber Securities Policy 2013¹¹⁶

For secure computing environment, and adequate trust & confidence within electronic transactions, and spread awareness regarding protection from cyber-attacks,

Cyber Security, and Cyber Defense:~ Cyber security's the activities of protecting information, and information systems (networks, computers, data bases, date centres, and applications) with appropriate procedural, and technological securities measures,

¹¹⁵ Preliminary of The Privacy Protection Bill, 2013

¹¹⁶ diety.gov.in/content/national-cyber-security-policy-2013-1 accessed on 11/0316

within that sense, the notion of cyber security's quite generic, and encompasses all protection activities, Cyber defense relates to a much more specialized activities linked to particular aspects, and organizations, The distinguishing factors between cyber security, and cyber defense within a network environment are the nature of the threat, the assets that need to be protected, and the mechanisms applied to ensure that protection, Cyber defense relates to defensive actions against activities primarily originating from hostile actors that have political, quasi-political or economic motivation that have an impact on national security, public safeties or economic wellbeing of the society, The cyber defense environment requires deployment of technologies, and capabilities for real-time protection, and incident response, Generally, cyber defense's driven by intelligence on the threat to achieve the kind of defense that directs, collects, analysis, and disseminates the relevant actionable intelligence information to the stakeholders concerned for necessary proactive, preventive, and protective measures, The effectiveness of cyber defense lies within the proactive nature of securities counter measures as well as within ensuring resilience, and continuities of operations, despite the possibilities of successful attacks, Some other Acts, and Bills which deals with privacy protections as follows-

- 1, The National Securities Act, 1980
- 2, The Indian Evidence Act, 1872
- 3, National Investigation Agency Act, 2008
- 4, The Unlawful Activities (Prevention) Act, 2002
- 5, UASL License,
- 6, Medical Council of India's Code of Ethics Regulations, 2002
- 7, Pre-Natal Diagnostic Techniques Act, 1994
- 8, The Official Secrets Act, 1923
- 9, The Prevention of Corruption Act, 1988
- 10, The Securities, and Exchange Board of India act, 1992
- 11, The Monopolies, and Restrictive Trade Practices Act, 1969
- 12, The Lok Pal, and Lokayuktas Act, 2013
- 13, The Public Interest Disclosure, and Protection to Persons Making Disclosures Bill, 2011, etc,

These all are Acts, and Bills which provide for protection of privacy within various modes through there provisions,

3,3, Complaint Procedure to combat privacy violation

Section 46, and the rules framed under that section provide elaborate guidelines on the procedure that's to be followed by the adjudicating officer, Thus, the adjudicating officer's required to give the accused person "a reasonable opportunities for making representation within the matter", Thereafter, if, on an inquiry, -he's satisfied that the person has committed the contravention, he may impose such penalties or award such compensation as he thinks fit within accordance with the provisions of that section,"¹¹⁷

In order to carry out their duties adjudicating officer have been invested with the powers of a civil court which are conferred on the cyber appellate tribunal, Additionally, they have the power to punish for their contempt under the Code of Criminal Procedure,

Rules framed under the section provide further details on the procedure that must be followed, and provide for the issuance of a "show cause notice", manner of holding enquiry, compounding of offences, etc¹¹⁸,

Section 47 provides that within adjudging the quantum of compensation, the adjudicating officer shall have due regard to the following factors, namely:~-

- The amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;
- The amount of loss caused to any person as a result of the default;
- The repetitive nature of the default,¹¹⁹

The complaint must be made to the adjudicating officer of the state or union territory on the basis of location of computer system, computer network, The complaint must be made on a plain paper within the format provided within the Performa attached to the rules,

In case the offender or computer resource's located abroad, it would be deemed, for the purpose of prosecution to be located within India¹²⁰,

The Rules direct that the whole matter should be heard, and decided "as far as possible" within a period of six months,

3,3,1, Appeals to the Cyber Appellate Tribunal, and the High Court

The act provides for the constitution of a cyber appellate tribunal to hear appeals from

¹¹⁷ The Information Technology Act 2000

¹¹⁸ Information Technology (Qualification, and Experience of Adjudicating Officers, and Manner of holding enquiry) Rules,2003Igsr220(e)lavailable at http://cca.gov.in/rw/resource/notification_gsr220e.pdf?download=true>accessedon11/0/16

¹¹⁹ *ibid*

¹²⁰ Section 75 of the Information Technology Act

cases decided by the adjudicating officer,

Within 25 days of the copy of the decision being made available by the adjudicating officer, the aggrieved parties may file an appeal before the cyber appellate tribunal, Section 57 provides that the appeal filled before the cyber appellate tribunal shall be dealt with by it as expeditiously as possible, and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal, Section 62 gives the right of appeal to a high court to any person aggrieved by any decision or order of the cyber appellate tribunal on any question of fact or law arising out of such order, Such an appeal must be filed within 60 days from the date of communication of the decision or order of the cyber appellate tribunal¹²¹,

3,3,2, Criminal Penalties

The process described above applies to "contraventions" under Chapter X of the Act, within addition to being liable to pay compensation, within the cases falling under section 43, such offenders may also be liable for criminal penalties such as imprisonment, and fines, ¹²²

3,3,3, Cognizance of offences, and investigation

Section 78 of the IT Act empowers police officers of the rank of Inspectors, and above to investigate offences under the IT Act,

Many states have set up dedicated cyber crime police stations to investigate offence under this Act, Thus, for example, the State of Karnataka has set up a special cyber crime police station responsible for investigating all offences under the IT Act with respect to the entire territory of Karnataka,¹²³

Although there's no time limit prescribed by the IT Act or the Code of Criminal Procedure with respect to when an FIR must be filed, within general, courts tend to take an adverse view when a significant delay has occurred between the time of occurrence of an offence, and it's reporting to the nearest police station,

The Code of Criminal Procedure forbids courts from taking cognizance of cases after three years "if the offence's punishable with imprisonment for a term exceeding one year but not exceeding three years", Where either the commission of the offence was not known to the person aggrieved, or where it's not known by whom the offence committed, this period's computed from the date on which respectively the offence or

¹²¹ The Information Technology Act

¹²² Sekar vs The Principal General available at <http://indiankanoon.org/doc/182565/>>

¹²³ Home, and transport3 Secretariat , Notification No,HD 173P0P99Banglore, available at<<http://cyberpolicebanglore.nic.in/pdf/notification-lpdf>>

the identities of the offender comes to the knowledge of the person aggrieved¹²⁴, No special procedure's prescribed for the trial of cyber offences, and hence the general provisions of criminal procedure would apply with respect to investigation, charge sheet, trial, decision, sentencing, and appeal,

3,4, International Obligations Pertaining to Privacy

India's a signatory to the International Covenant on Civil, and Political Rights which explicitly affirms the right to privacy within Article 17, As noted previously within this report, the Human Rights Act expressly permits individuals to approach the National Human Rights Commission or any of the State Human Rights Commissions for redress of human rights infringed under this convention,

Apart from this, there are no regional conventions that deal specifically with privacy, India has signed, and ratified the International Convention for the Suppression of Terrorist Bombings, and the International Convention for the Suppression of the Financing of Terrorism, India's a signatory to the SAARC Convention on Mutual Assistance within Criminal Matters as well as several bilateral treaties on mutual legal assistance, These treaties typically requires signatory states to provide mutual assistance within criminal matters, including, inter alia, "providing information, documents, and records," -providing objects, including lending exhibits", "search, and seizure", "taking evidence an obtaining statements;" etc¹²⁵,

India's a signatory to 85 agreements (81 DTAAs, and 4 TTEA agreements) on exchange of tax information, For instance, India has reportedly signed four tax Information Exchange Agreements (TIEAs) on the OECD Model each with the Governments of the Bahamas, Bermuda, Cayman Islands, and the Isle of Mann-popular 'tax havens', These agreements enjoin the 'competent authorities' of each country to provide information 'upon request' about a varieties of financial details including bank records, and corporate information, The request must be made on the basis of evidence, and fishing expeditions are not usually permitted, These agreements include standard Confidentialities clauses which require that the information only be disclosed to appropriate tax authorities for purposes of tax proceedings, They also exempt information disclosed to an attorney under attorney client privilege form being disclosed,

In addition, India has signed a number of Double Taxation avoidance Agreements

¹²⁴ Sections 468 and 469 of the code of Criminal Procedure, 1973.

¹²⁵ SAARC Convention on mutual Assistance within Criminal Matters (2008)

which include information-sharing clauses, within June 2010, the Government approached the governments of 65 countries to "specifically" provide for the sharing of bank-related information¹²⁶, Pursuant to this, most notably, within June 2011, the Indian Government entered into a revised DTAA with the Swiss government allowing India to "gain access to the details of Indians' money, which's not accounted for, stashed within Swiss banks, Similarly, within the same month, the government of Mauritius agreed to renegotiate its tax treaties with India, Mauritius accounts for more than 40% of total foreign direct investments (FDIs) to India most of which are suspected to be nothing more than treaties shopping arrangement to avoid paying tax, An OECD report on India's current DTA with Mauritius points to vast 'gaps' within the treaties including provisions requiring 'disclosure of information to the persons within respect to whom information or document had been sought', and that Mauritius has not exchanged information over the last three years,

These treaties seem to have resulted within some information being shared, within October 2011, Pranab Mukherjee, the Finance Minister reported that, pursuant to these treaties, "Specific requests within 333 cases have been made by Indian authorities for obtaining information from foreign jurisdictions, Over 9,900 pieces of information regarding suspicious transactions by Indian citizens from several countries have been obtained which are now under different stages of investigation,¹²⁷

Although information obtained under DTAASs cannot be used for purposes other than tax proceedings, within June 2011, the Income Tax Department announced that it would re-negotiate this clause within its agreements to enable it to share information with other law enforcement agencies like the Central Bureau of Investigation, and the Enforcement Directorate,

¹²⁶ Govt revises tax information exchange treaties with 65 countries , Economic Times ,June 27, 2010, <http://articles.economicstimes.indiatimes.com/2010-06-27/news/27596832-1-data-double-taxation-avoidance-agreement-check-tax-evasion> accessed on 15-11-2015

¹²⁷ Government successful within unearthing black money, The Hindu, October 19, 2011

CHAPTER -4
RIGHT TO PRIVACY :~ JUDICIAL APPROACH
within INDIA

CHAPTER -4

RIGHT TO PRIVACY :~ JUDICIAL APPROACH within INDIA

On August 24, 2017, a nine-judge bench of the Supreme Court of India delivered its decision in the important constitutional case of Puttaswamy v Union of India. In a remarkable, and wide-ranging 547-page judgement, the Court ruled unambiguously that privacy is a constitutionally protected right in India.

Background

The case arose out of a mission to a constitutional mission to the Aadhaar project, which aims to build a database of private identity, and biometric information covering each Indian, More than a billion Indians have to date been registered within the Aadhaar programme, which sees citizens issued with a 12-digit range that aligns to specific biometric statistics which include eye scans, and fingerprints, Registration's now grow to be obligatory for filing tax returns, opening financial institution accounts, securing loans, buying, and selling properties or maybe making purchases of 50,000 rupees (₹610), and above,

In 2012, Justice K,S, Puttaswamy (Retired) filed a petition within the Supreme Court challenging the constitutionalities of Aadhaar since it violates the right to privacy,

The Government argued that there has been no constitutional right of privacy within view of a unanimous decision of eight judges within M,P, Sharma v, Satish Chandra¹²⁸, Kharak Singh v, State of Uttar Pradesh, and a decision by a majority of four judges in Kharak Singh v, State of Uttar Pradesh ¹²⁹ ,

The case got here earlier than a 3 choose Bench of the Court which, on eleven August 2015, ordered that the problem need to be mentioned a bigger Bench of the Court, On 18 July 2017, a five choose Constitution Bench ordered the problem to be heard through a nine choose Bench, While it awaited clarification at the right to privacy, the bench hearing the constitutional undertaking to Aadhaar surpassed an interim order restricting obligatory linking of Aadhaar for benefits delivery,

Judgment

¹²⁸ [1954] SCR 1077

¹²⁹ [1964] 1 SCR 332

The nine judges of the Court gave six separate opinions, producing what have to be a contender for the longest reasoned judgment ever produced through a court, These judgments defy brief summary, and only some key topics may be picked out,

The leading judgment's a excursion de force, given on behalf of 4 judges through Dr D Y Chandrachud J within 266 pages, It deals, within detail, with the Indian domestic case regulation on privacy, and the character of constitutional rights, It additionally considers Comparative Law on Privacy (from England, the US, South Africa, Canada, the European Court of Human Rights, and the Inter-American Court of Human Rights), Various criticisms of the privacy doctrine – from Bork, Posner, and feminist critics – are addressed,

The trouble for the Petitioners turned into that the Indian Constitution [pdf] does now no longer contain an explicit privacy right, Nevertheless, the Indian Constitution's a living instrument, The Courts have sought to give impact to the “values” which the Constitution it contains through interpreting explicit essential rights protections as containing a wide variety of different rights, The crucial provision for this purpose's Article 21 which provides that “No character will be deprived of his life or non-public liberties besides according to technique established through regulation”

Chandrachud J points out that this provision has been interpreted as containing, inter alia, the rights to a fast trial, felony aid, shelter, a healthful environment, freedom from torture, reputation, and to earn a livelihood: Privacy's an incident of essential freedom or liberty,

In an important section of the joint judgment headed “Essential Nature of Privacy”, Chandrachud J analyses the idea of privacy as being based on autonomy, and as an essential factor of dignities ([168] to [169]):~

“Dignities can not exist without privacy, Both reside within the inalienable values of life, liberty, and freedom which the Constitution has recognised, Privacy's the ultimate expression of the sanctities of the individual, It's a constitutional cost which straddles throughout the spectrum of essential rights, and protects for the individual a area of choice, and self-determination”

In the following section of the judgment Chandrachud J considers “Informational Privacy”, referring to a number academic writing, within particular, the judgment includes an infographic from an article with the aid of using Bert-Jaap Koops et al., “A Typology of Privacy” to illustrate the essential notions of privacy,

M.P, Sharma v, Satish Chandra ¹³⁰ became the first case to deal with the issue of right to privacy, within this case, the Apex Court upheld search, and seizure while negating the right to privacy, It specifically said that:~

“When the Constitution makers have concept fit now no longer to difficulty such regulation to Constitutional limitations via way of means of recognition of a essential right to privacy, analogous to the American Fourth Amendment, we don't have any justification to import it, into a very different essential right via way of means of a few system of strained construction,”

However it needs to be stated that the case became involved with the right to property, and now no longer the right to privacy, The Supreme Court did now no longer altogether deny the existence of the right to privacy; it simply rejected it within the context of search, and seizure for documents,¹³¹

Kharak Singh v, State of Uttar Pradesh was the next case on the docket. ¹³², The Uttar Pradesh regulations governing domestic violence were overturned in this instance. Despite the fact that the right to privacy was once again denied by the majority, the majority opinion upheld the right by reading it into Art. 21. It should be noted that the two aforementioned cases were decided in 1954 and 1963, respectively, whereas the development of constitutional law from 1954 to 1970 followed the lines of A,K, Gopalan.¹³³, After Maneka Gandhi, there was a huge shift in approach. ¹³⁴, After Maneka Gandhi and R.C. Cooper, there was a shift from a state-centric to a citizen-centric position. In many circumstances, it has been clearly established that freedom or liberty does not exist without the guarantee of privacy.

State of Madhya Pradesh v. Gobind ¹³⁵, The most important case in privacy law with respect to nda was determined in 1975. The facts of the case were similar to those of Kharak Singh, in that it involved domestic violence against a story-home. sheeter's However, the regulations in this case lacked legal support. A handful of American cases were overturned by the Court.¹³⁶ The Court also relied on American criteria of compelling public interest and restricted tailoring to hold privacy as an interstitial right.

¹³⁰ 1954 SCR 1077

¹³¹ Gautam Bhatia, State Surveillance, and The Right To Privacy within India:~ A Constitutional Biography, 26 NLSI Rev, (2014), 128,

¹³² Kharak Singh v, State of Uttar Pradesh, 1964 SCR (1) 332,

¹³³ A,K, Gopalan v, State of Madras, 1950 SCR 88,

¹³⁴ Maneka Gandhi v, Union of India, 1978 SCR (2) 621,

¹³⁵ Gobind v, State of Madhya Pradesh, AIR 1975 SC 1378,

¹³⁶ Griswold v, Connecticut, 381 U.S, 479 (1965), and Roe v, Wade, 410 U.S, 113 (1973),

¹³⁷ The verdict with Gobind Singh was followed in the case of *Malak Singh v, State of Punjab and Haryana for justifying infringement of privacy.* ¹³⁸,

Around the same time, *Neera Mathur v, LIC*, a case involving the non-disclosure of health information, was heard. ¹³⁹, The petitioner argued that LIC required women applicants to provide personal information such as their menstrual cycles, conceptions, pregnancies, and so on at the time of appointment. This was found to be a breach of privacy, and LIC decided to eliminate such questions.

The next significant case in privacy law is *PUCL v, University of North Dakota.*¹⁴⁰, In this case, public interest litigation was conducted by an NGO, which brought to light the regular occurrences of the CB tapping the phones of politicians. In this case, the above mentioned American tests were upheld. Furthermore, the right to privacy was declared to be an integral part of Article 21, and specific guidelines were established for exercising interception rights under Section 5 of the Telegraphs Act, 1885.

Another aspect of privacy is the disclosure of sensitive health data. *Mr. 'X' v. Hospital 'Z'* was the first case to deal with this.¹⁴¹, In the case of *P, Rajagopal v, State of Tamil Nadu*, the respondent hospital disclosed to the appellant's fiancée that he was HIV (+), and as a result, his marriage was called off, and he was socially ostracised. The Court held the disclosure to be permissible because it concerned the interest of X's fiancée, and thus it did not amount to infringement of privacy.¹⁴², The right to privacy of a prisoner was recognised. Then, in 1999, an interesting case came before the Apex Court in which there appeared to be a conflict between the right to freedom of press and the right to privacy. In this case, *India Today* requested for interviewing an undertrial prisoner, and the court held that the right to freedom of press is subject to the personal rights of the prisoner.¹⁴³,

In 2010, another highly publicised case involving the conflict between the right to privacy and the involuntary application of scientific techniques to criminal matters came before the Supreme Court in *Selvi v, State of Karnataka.*¹⁴⁴, The Court stated that no one should be forced to undergo techniques such as narcoanalyses, polygraphs, or

¹³⁷ *Grutter v, Bollinger*, 539 U.S, 306 (2003)

¹³⁸ *Malak Singh v, State of Punjab, and Haryana*, 1981 SCR (2) 311,

¹³⁹ *Neera Mathur v, LIC*, 1991 SCR Supl, (2) 146,

¹⁴⁰ *PUCL v, Union of India*, (1997) 1 SCC 301

¹⁴¹ *Mr, X v, Hospital Z*, (1998) 8 SCC 296,

¹⁴² *P, Rajagopal v, State of Tamil Nadu*, 1994 SCC (6) 632

¹⁴³ *State through SUPTD, Central Jail (ND) v, Charulata Joshi*, AIR 1999 SC 1379,

¹⁴⁴ *Selvi v, State of Karnataka*, AIR 2010 SC 1974,

BEAP tests because everyone has the right to privacy in their own minds.

Recently, the issue of food sovereignty and the right to privacy has been at the centre of debate, particularly in relation to the beef prohibition. The Bombay High Court, in the case of *Shakh Zahd Mukhtar v, State of Maharashtra, and others*, has ruled in favour of the beef ban.¹⁴⁵, dominated that as a long way because the choice of eating meals of the citizens's concerned, the citizens are required to be permit alone, They in addition held it to be part of right to privacy below Article 21 of the Constitution, and for that reason sections 5D, and 9B of the Maharashtra Animal Preservation Act, 1976 had been struck down,

These had been a number of the important components of right to privacy, However those aren't exhaustive, As the idea of privacy itself's dynamic, and inclusive, it's impossible to ascertain the destiny demanding situations, The issues of mass surveillance, and leak of private information online are the cutting-edge demanding situations earlier than the Supreme Court within the Aadhar Case, and WhatsApp Case respectively, The outlook of Court within dealing with those issues will cross an extended manner within defining the privacy regime,

¹⁴⁵ *Shaikh Zahid Mukhtar v, State of Maharashtra, and others*, Writ Petition No,5731 of 2015,
School of Legal Studies, BBDU, Lucknow

CHAPTER -5
INFORMATION TECHNOLOGY, and THREAT TO
PRIVACY — AN ANALYSIS

CHAPTER -5

**INFORMATION TECHNOLOGY, and THREAT TO
PRIVACY — AN ANALYSIS**

5,0 Introduction

The internet permits to improve communication, erase physical barriers,, and use up our education, Its absorption into our societies has been extraordinary, It touches almost each a part of our lives from how we practice for jobs, and in which we get our news, to how we find friends, The internet has turn out to be the quickest growing method of communication via e-mails, chats, browsing, etc, There's an increasing reliance on computer systems concerning all sides of life, For example, we trade, and communicate with the assist of computer systems, and the Internet, obtain many services – medical advice, ticket reservation, ordering meals etc, – at the Internet, All this has modified the shape of the societies within a manner that the pc nowadays occupies a totally important vicinity within our lives, This ends in cyber paradox – on the only hand, the pc, and the Internet have accorded excessive privacy, and alternatively the identical gear of era permit the gagging of privacy, Today, information superhighway's now no longer honestly the most secure vicinity to be,

In 2003, a 24 12 months antique engineer from Delhi earned the dubious distinction of being the first man or woman within India to be convicted for a cybercrime, The case turned into registered following a complaint from Sony India Limited against the accused, It turned into alleged that this younger man, who turned into hired at a name centre of the electronics organization, controlled to talk with a girl within the USA, and obtain her credit card details at the pretext of updating her bills, He used the identical credit card range, and purchased himself a shade television, and a cordless telecellsmartphone via Sont-Sambandh.com, a Sony website for the NRIs, The value of each items turned into \$578, Barbara Campa, the holder of that credit card range complained to the organization that the transaction turned into 'unauthorised', After purchasing the items, the accused moved those to new deal with within Gurgaon, However, a photo taken through Sony officials whilst making delivery undid his plan, CBI officials

quickly traced the transaction to the decision centre via IP deal with, After a seven-month trial, the accused finally cracked,'

The cyber world, and its associated crimes don't have any territorial barriers,, and this makes everything complicated due to the fact evidence's very tough to return back through, As worldwide companies, and governments join e-marketplace places, and business will become borderless, their vulnerabilities multiplies, Privacy within those e-markets could be a prime location of difficulty within the coming days, with more diploma of damages, What's of a long way more serious difficulty's that cyber worms can flip everything upside down by myself with a computer as his weapon sitting within a basement or within a rest room connecting it with a mobile telecellsmartphone, and damages can take vicinity within a rely of some seconds, Along with those damages there may be harassment within numerous paperwork to an individual or a set of human beings online, breaking all barriers of privacy, With the privacy issue at centre stage, cookies, spamming, net tracking, and hacking – are important regions of discussion in which insecurities from the technological the front arises,¹⁴⁶

5,1 Threats to Right to Privacy through Technological means

a) 5,1,1 Signing up for Internet Service

b) If someone will pay for the Internet himself, he signs up with an Internet Service Provider (ISP), His ISP provides the mechanism for connecting his laptop to the Internet, There are heaps of ISPs round the arena offering a varieties of services,

c) Each laptop related to the Internet has a unique cope with, called an IP cope with (Internet Protocol Address), It takes the shape of 4 units of numbers separated with the aid of using dots, for example:~ 123,45,67,890, It's that wide variety that honestly permits sending, and receiving information over the Internet, Depending upon the form of service, the IP cope with can also additionally be "dynamic", that is, one which modifications periodically, or "static", one it really is completely assigned to you for so long as you maintain your service,

d) One's IP cope with with the aid of using itself would not provide for my part identifiable information, However, due to the fact one's ISP is aware of his IP cope with, it's a possible susceptible link while it involves protecting his privacy, ISPs have widely varying policies for a way lengthy they save IP addresses, Unfortunately, many ISPs do now no longer disclose their records retention policies, This could make it

¹⁴⁶ S,K, Verma& Raman Mittal, "Legal Dimensions of Cyber Space", New Delhi:~ The Indian Law Institute, 2004, p, 214,

difficult to buy a "privacy-friendly" ISP,

e)

f) 5,1,2 E-mail, and list-servers

g) When someone corresponds via e-mail he is absolute confidence conscious that he is giving information to the recipient, He might additionally be giving information to any wide variety of people, including his business enterprise, the government, his e-mail provider,, and absolutely everyone that the recipient passes his message to, within USA the Federal Electronic Communications Privacy Act (ECPA) makes it illegal beneathneath certain circumstances for a person to examine or disclose the contents of an electronic communication,

h) But, the ECPA's a complicated law, and contains many exceptions, ECPA makes a distinction among messages within transit, and people saved on computers, Stored messages are typically given much less protection than the ones intercepted during transmission, Here are a few exceptions to the ECPA:~

i) a) The ISP can also additionally view private e-mail if it suspects the sender's attempting to harm the machine or damage some other user, However, random monitoring of e-mail's typically prohibited,

j) b) The ISP can also additionally legally view, and disclose private e-mail if either the sender or the recipient of the message is of the same opinion to the inspection or disclosure, Many ISPs require a consent settlement from new participants while signing up for the service,

k) c) If the e-mail machine's owned with the aid of using an business enterprise, the business enterprise can also additionally inspect the contents of worker e-mail at the machine, Therefore, any e-mail despatched from a business location's in all likelihood now no longer private, Several courtroom docket instances have determined that employers have a right to monitor e-mail messages of their employees,¹⁴⁷

L) Services can be required to disclose private information within reaction to a courtroom docket order or subpoena, A subpoena can be obtained with the aid of using regulation enforcement or as a part of a civil lawsuit, The authorities can handiest get basic subscriber information with a subpoena, The authorities desires a seek warrant to get similarly data, A subpoena as a part of a private civil lawsuit can

¹⁴⁷ See PRC Fact Sheet 7 on employee monitoring

also additionally disclose greater private information,

e) The USA PATRIOT Act, handed with the aid of using Congress after the terrorist assaults of September 11, 2001,, and amended within 2006, makes it easier for the authorities to get entry to data approximately online activity, within an attempt to increase the rate within which data are acquired, the Act eliminates a great deal of the oversight provided with the aid of using different branches of the authorities,, and it expands the sorts of data that may be sought without a courtroom docket order,

5,1,three E-mail discussion lists, and list-servers

When participating within online discussion groups, which are sometimes called "list-serves," recall that either the sender or the recipient can consent to the inspection or disclosure of the e-mail, Additionally, if you're worried approximately junk e-mail, forwarded messages, or different unsolicited mail, you need to notice which you are giving your e-mail deal with to severa people,

On a lot of those discussion lists, the e-mail deal with of members's readily available, sometimes at the e-mails sent, and regularly via the group's Web site, Although a subscription, and sometimes a password's required to apply the list, there may be nothing to save you any other member of the list to collect, and distribute your e-mail deal with, and some other information you post, within addition, a few message boards, and list-serves can be archived,

5,1,four Browsing the Internet

Although it might not appear like you're giving very a great deal information, while you browse the Internet you're relaying private information to Web sites, Your browser likely provides your IP deal with, and information approximately which sites you've got got visited to Web site operators, As you flow from site to site online, severa companies utilize sophisticated strategies to track, and identify you, The Web Privacy Census¹⁴⁸ Measures traits within internet tracking on the 25,000 maximum famous websites,

Almost all browsers give you a few manage over how a great deal information's

¹⁴⁸ Chris Jay Hoofnagle& Nathan Good, The Web Privacy Census , October 2012, School of Legal Studies, BBDU, Lucknow

kept, and saved, Generally, you may alternate the settings to restrict cookies, and decorate your privacy, Note that if you pick out a high privacy setting, you could now no longer be capable of use online banking or shopping services, Most most important browsers now provide a "Private Browsing" device to increase your privacy, However, researchers have located that "Private Browsing" can also additionally fail to purge all strains of online activity, Many famous browser extensions, and plugins undermine the securities of "Private Browsing"

Most folks navigate the Internet through using seek engines, Search engines have, and use the abilities to music every one in all your searches, They can record your IP deal with, the quest phrases you used, the time of your seek,, and different information, The individual must be recommended to carefully review his seek engine's privacy policy,

Major seek engines have said they want to retain non-public records, within part, to provide higher services, to thwart securities threats, to maintain humans from gaming seek ranking results,, and to fight click fraud scammers, However, most important seek engines frequently have retained this records for over a year; seemingly nicely past the time body vital to deal with those concerns, Some seek engines have decreased the time that they retain customers' IP addresses, Major seek engines delete or anonymize IP addresses according to the following schedule:~

- a. Yahoo-18 months
- b. Bing (previously MSN/Windows Live)-6 months
- c. Google-nine months

A. Start web page:~ A seek engine operated through Ixquick, primarily based totally within The Netherlands, does now no longer document customers' IP addresses at all, The privacy policy become created partially within reaction to fears that if the enterprise retained the information, it could in the end be misused, The enterprise concluded, "If the records's now no longer saved, customers privacy cannot be breached," Start web page will dispose of all identifying information out of your query, and submit it anonymously to Google,

B. Online Privacy Tip:~ It's an awesome idea to avoid using the identical internet site for each your internet-primarily based totally email, and as your seek engine, Web email bills will usually require a few kind of a login, so if you operate the identical site as your seek engine, your searches may be linked for your email account, By using different internet sites for different needs -- possibly Yahoo on your email, and Google on your searches -- you may assist limit the whole quantity of information retained through someone site, Alternatively, log off of your email, and clean your browser's cookies earlier than going to different sites, in order that your searches, and browsing aren't linked for your email deal with,

Avoid downloading seek engine toolbars (for example, the Google toolbar or Yahoo toolbar), Toolbars can also additionally permit the collection of information approximately your internet surfing habits, Watch out which you do now no longer inadvertently down load a toolbar while downloading software, particularly unfastened software,

Google combines information approximately you from maximum of its services, including its seek engine, Gmail,, and YouTube, Be certain to disable automatic sign-ins through following the instructions at[http://support.google.com/bills/bin/answer.py?hl=en&answer= 39273,10](http://support.google.com/bills/bin/answer.py?hl=en&answer=39273,10) Also make certain to clean your browser's cache, and cookies through following the instructions

at<http://supportgoogle.com/bills/bin/answer.py?hl=en&answer=32050,eleven>

While you need to be signed within to get entry to Gmail, maximum Google services may be used without being signed within for your account,

five,1,five Cookies

Websites are increasing day-through-day, and maximum of the Websites dealing with e-business are getting technologically smarter, They understand greater approximately a visitor every time he visits the site, For example, while one visits an internet site, the pc on the alternative cease facts the time of the visit, whether or not or now no longer he has visited them earlier than, while he remaining visited, what he become trying to fnd out within that particular Web site, his e-mail deal with,, and different customisable information, There's a race to acquire greater, and greater

information approximately the prospective customers, and find out their consumption choices, and buying behaviour, All this records approximately someone can be accumulated without him knowing approximately it, Most Web sites achieve this stunning feat with cookies,

A cookie's information that an internet site places on one's difficult disk in order that it can recall something approximately him at a later time, More technically, it's information for destiny use it is saved through the server at the client side of a client/server communication, Typically, a cookie facts one's choices while using a particular site, Using the Web's Hypertext Transfer Protocol (HTTP), every request for an internet web page's independent of all different requests, For this reason, the internet web page server has no reminiscence of what pages it has despatched to a person previously or anything approximately your previous visits, A cookie's a mechanism that permits the server to save its very own information approximately a person at the person's very own pc, The person can view the cookies which have been saved on his difficult disk (even though the content material saved within every cookie won't make a great deal sense), The location of the cookies relies upon at the browser, Internet Explorer shops every cookie as a separate file beneathneath a Windows subdirectory, Netscape shops all cookies within a single cookies.txt file, Opera shops them within a single cookies,,¹⁴⁹

Cookies are widely used to cycle banner adverts that a site transmits so that the user does not receive the same ad every time the user requests a page. Cookies can also be used to personalise pages for users based on their browser type or other information they may have provided to the Web site. In general, cookies assist Web sites in better serving their visitors. Cookies' existence and use, on the other hand, are normally not hidden from users, who can also deny access to cookie information. However, to the degree that a Web site keeps information on you in a cookie that you are unaware of, the cookie's mechanism could be considered spyware.,¹⁵⁰

'Shopping Carts' are excellent instance of cookies within action, When a person

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¹⁵⁰Spyware's any technology that aids within gathering information about a person or organization without their knowledge, On the Internet, spyware's programming that's put within someone's computer to secretly gather information about the user, and rely it to advertisers or other interested parties, Spyware can get within a computer as a software virus or as the result of installing a new programme, Data collecting programmes that are installed with the user's knowledge are not, properly speaking, spyware, if the user fully understands what data's being collected with whom it being shared,

browses a series of internet pages for items to buy, and finds something he is looking for, he provides it to his shopping cart with the aid of using clicking a button at the web page,, and later, he can view these types of items together, The maximum important region of concern's that despite the fact that someone communicates thru an 'anonymous' connection, the internet site constantly is aware of precisely what is within one's private shopping cart, It does now no longer rely whether or not the individual clicked away to someplace else, and springs back, or maybe if the individual has absolutely close down his laptop, and returns days later, The internet site still is aware of who that individual is, and what he became shopping for, This's because; whilst someone visits the equal Web site again his browser sends the cookie to the Web server, The server can use this information to provide him with customised internet pages, within that case, instead of seeing only a generic welcome web page, he might see a welcome web page with his name,

"Once a site has assigned your laptop a unique identification code, it can acquire all the click circulation information created with the aid of using visits using your laptop,, and associate the ones information with your identification code, Thus a Web site can create a dossier of information that is associated with your laptop,, and may use this information to personalize its interaction with you",¹⁵¹

Cookies may be used to music humans to gain statistics as they undergo the Web site, Because each time humans visit a Web site, they go away a footprint of private information approximately themselves like their preferences, Web sites they visit, their financial count number etc, This alternatively simple capabilities has profound implications for the privacy of Web site visitors, While cookies do have makes use of for each the person, and Web providers, and are even helpful, they may be misused, Beneficial to the person whilst dealing with a organisation that has an excellent privacy policy within place, it's of questionable price whilst left open, and available to the world-at-large, The actual problem's with aggregation of facts from multiple reassets resulting within a person profile, Collected private information's now being dealt with as a commodities belonging to the collectors, Many customers do now no longer pass past the know-how that cookies exist, and Web sites take benefit of the person's inexperience, and collect, catalogue, and commodities information absolutely unwarranted,

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The IT Act, 2000 does now no longer deal with cookies directly however section 43(b) says that if any individual without permission of the proprietor or some other individual who is within price of a laptop, laptop or laptop community, downloads, copies, or extracts any facts, laptop database or information from such laptop, laptop device or laptop community including information or facts held or saved within any detachable garage medium, he will be liable to pay damages via way of means of manner of compensation now no longer exceeding one crore rupees to the individual so affected, Cookies are intended to extract facts from a laptop, and if planted without permission, should result in liabilities beneathneath section 43(b),

Further, section 43(c)¹⁵² Provides that if any individual without permission of the proprietor or some other individual who is within price of a pc, pc or pc network, introduces or reasons to be introduced any pc contaminant or pc virus into any pc, pc device or pc network, he will be liable,, pc contaminant has been defined as any set of pc instructions which can be designed to modify, destroy, record, transmit facts or programme residing within a pc, pc device or pc network, Cookies might come beneathneath the definition of pc contaminant as they're designed to record, and transmit facts residing within a pc, If a Web site sends cookies to a user's machine while he is visiting that Web site without his permission, the Website can be held liable beneathneath section forty three of the IT Act,

5,1,6 Web Bugs

A We bug, additionally called a Web beacon,'s a file object (commonly a graphic image which includes a obvious GIF)¹⁵³ functioning is a type of spyware that is placed on a Web page or in an e-mail message to monitor user behaviour.¹⁵⁴ The word "malicious program" this is being used to indicate a small, eavesdropping device, and's now no longer a euphemism for a programming error, Rather than the term "Web insects", the Internet advertising communities prefers the greater sanitized term "clean GIFs", Web

¹⁵² S, 43, IT Act, 2000,

¹⁵³ The GIF stands for Graphics Interchange Format, and's one of the two most common file formats for graphic images on the World Wide Web, The other one's JPEG, On the web, and elsewhere on the Internet (for example, bulletin board services), the GIF has become a de facto standard form of image,,

¹⁵⁴ Spyware's any technology that aids within gathering information about a person or organization without their knowledge, On the Internet (where it's sometimes called a spybot or tracking software), spyware's programming that's put within someone's computer to secretly gather information about the user, and rely it to advertisers or other interested parties, Spyware can get within a computer as a software virus or as the result of installing a new programme, Data collecting programs that are installed with the user's knowledge are not, properly speaking, spyware, if the user fully understands what data's being collected, and with whom it's being shared,

insects also are regarded as "1-with the aid of using-1GIFs", "invisible GIFs", and "beacon GIFs",

Unlike a cookie, which may be popular or declined with the aid of using a browser person, a Web malicious program arrives as simply some other GIF at the Web web page, A Web malicious program's typically invisible to the person due to the fact it's transparent (fits the shade of the web page background), and takes up handiest a tiny quantity of space, It can generally handiest be detected if the person appears on the supply version of the web page to find a IMG tag that hundreds from a different Web server than the relaxation of the web page,¹⁵⁵

A Web malicious program can ship numerous pieces of information to the server pc,, and people includes, the IP deal with of the pc that fetched the Web malicious program, the URL of the web page that the Web malicious program's placed on, the URL of the Web malicious program image which contains the information to be communicated among the Web web page visited, and the site collecting the data, the time the Web malicious program become viewed, the form of browser that fetched the Web malicious program image,, and the identification code contained within any cookie that become located with the aid of using the server, Web insects may be used to provide an independent accounting of what number of humans have visited a particular Web site, within addition, advertising networks can use Web insects to gather information on what sites a person's visiting to create a private profile which's saved within a database server belonging to the advertising network, and identified with the aid of using the browser cookie of the network, A Web malicious program's greater effective than a cookie due to its abilities to transmit information to a server apart from the only that holds the Web web page the visitor's viewing,

Technological innovations are very fast,, and now Web insects may be observed within various different applications like e-mails, files produced with the aid of using phrase processing, unfold sheet, presentation,, and different software program applications, "E-mail messages that display graphics, and styled textual content are built out of the identical HTML code that constitutes Web pages,, and are similarly able to harbouring Web insects, Such a malicious program might consist of an instruction to fetch an invisible graphic from the e-mail sender's server,, and while doing so transmit information lower back to the server",¹⁵⁶ For example, whilst an e-mail person opens

¹⁵⁵ S,70 IT Act, 2000 states:~

¹⁵⁶ Margaret Jane Radin et al, supra note 14 at 569,

his e-mail inbox, and reads the message the Web worm can "name home", and it can record again the time, and date the person opened it, The sender thereby involves realize this information,

Although proponents of Internet privacy item to the usage of Web insects within general, additionally they concede that Web insects may be positioned to positive use, as an example to song copyright violations at the Web,

Nobody can input a person's residence without his permission, Even if regulation enforcement agencies want to look a premise, they need to undergo a criminal process, and require seek warrant, But via internet insects a laptop may be subjected to look without following any criminal procedure, This's a gross violation of privacy especially at a time whilst a laptop has turn out to be the storehouse of someone's maximum precious information, If a Web worm's planted within a laptop without the permission of the proprietor of the laptop, it should result in liabilities below section 43(b), and (c) of the IT Act,"

5,1,7 Hacking

Hacking's 'unauthorised get admission to' to a laptop, and refers to get admission to to the entire or any a part of a laptop gadget without permission, Hackers worldwide try and hack into far off laptop structures for multiple functions like eavesdropping, facts theft, fraud, destruction of facts, causing harm to laptop structures, or for mere satisfaction or private satisfaction,

The meaning of the time period hacking has developed over time but's still applied really variably to a complicated mix of criminal, and illegal activities ranging from legitimate creative programming techniques to illicit lock picking, and manipulation of worldwide phone/laptop structures,²¹ At the basic level, hackers are considered to be learners, and explorers who need to assist instead of reason harm,, and who frequently have very high standards, A hacker won't indulge within vandalising or maliciously destroying facts, or within stealing facts of any kind, But the time period hacking has acquired twin meaning today, and a hacker might also additionally variably imply a cyber-burglar or vandal, an individual or organization who believes within causing malicious damage to a community or laptop, or to thief information like passwords, credit card numbers, names, and cope with, financial information, even the account information for the ISP,, and within brief anything saved on a laptop,

5,1,eight Spamming

Spamming's every other location of difficulty in which cyber privacy's at stake, and has

turn out to be a chief hassle for all Internet users, Spam's unsolicited e-mail at the Internet, and's the Internet version of 'junk mail', Spamming's a weapon to assist abusers, who again and again bombard an e-mail message to a particular cope with or addresses, It refers to sending e-mail to masses or lots of users, It's kind of equivalent to unsolicited smartphone marketing calls besides that the person will pay for a part of the message since every body stocks the value of maintaining the Internet," It's an try and deliver a message, over the internet, to a person who might now no longer otherwise pick to receive it, Almost all spam's commercial advertising, From the sender's point-of-view, it's a shape of bulk mail, frequently to a list obtained from a spambot or to a list obtained with the aid of using companies that specialize within creating e-mail distribution lists, Potential goal lists are created with the aid of using scanning UseNet postings, lifting Internet mailing lists, or searching the Web for addresses, The commercial Web sites additionally accumulate information with automatic searches to retrieve e-mail addresses, They use cookies, and get assist via facts mining, Suppose, someone desires to shop for a television, so he visits a Web site selling televisions, Suddenly, some days later whilst he browses the internet, he receives e-mails containing advertisements for televisions, So, there is anyone sitting on the alternative side collecting information approximately someone without

(1) The appropriate Government might also additionally, with the aid of using notification within the official Gazette, claim that any laptop, laptop gadget or laptop community to be a blanketed gadget,

(2) The appropriate Government might also additionally, with the aid of using order within writing, authorise the humans who're authorised to get admission to blanketed structures notified below sub-section (1),

(3) Any individual who secures get admission to or tries to steady get admission to to blanketed gadget within contravention of the provision of this section will be punished with imprisonment of either description for a time period which might also additionally increase to 10 years, and shall additionally be liable to fine,

This knowledge, The low value of e-mail spamming provided on the market with millions of e-mail addresses, coupled with the truth that the sender does now no longer pay greater to ship e-mail, has resulted within the modern-day explosive boom of junk e-mail, within many instances, the message can be large, and facts can be meaningless, The effort's to eat additional gadget, and community resources, thereby abusing multiple debts on the goal site, and increasing the denial of service impact, It annoys, it
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invades privacy, and creates online traffic jams,

Some states within America like Nevada, California, Virginia, Colorado, Maryland, Rhode Island, and Washington have exceeded anti-spamming legislation, i.e., legislations targeting handiest spamming. There are numerous different federal legislations, associated with spamming, and unsolicited commercial e-mails, within the pipeline within the US, which include:~ The Unsolicited Commercial Electronic Mail Act, 2001, The Can Spam Act, 2001, The E-Mail User Protection Act, The Inbox Privacy Act, 1999, The Controlling the Assault of Non-Solicited Pornography, and Marketing Act, 2000,, and the Internet Integrity, and Critical Infrastructure Protection Act, 2000,

In *CompuServe v. Cyber Promotions*¹⁵⁷, The defendant, Cyber Promotions, changed into an advertising company, which specialised within advertising at the Internet as a part of its activities. It frequently despatched unsolicited e-mails to various mailing lists. The plaintiff, CompuServe, a well-known online service provider within the USA, whose domain call changed into used as a part of the e-mail deal with of millions of human beings worldwide. Cyber Promotions were given applicable information from various places, and commenced sending hundreds of e-mails to the servers of CompuServe, finally going to the individual customers of the e-mails, with the end result that a number of area at the consumers' laptop changed into filled with the ones undesirable advertisements. They complained to CompuServe, and CompuServe itself changed into receiving a number of mail, and it contented that mail on its servers created a sort of jam. CompuServe went to the courtroom docket alleging the defendants have trespassed on their non-public property. The plaintiff predicted a motion for a preliminary injunction at the not unusualplace regulation principle of trespass to non-public properties or to chattels, asserting that defendants continued an actionable tort. The courtroom docket Personal information, voluntarily submitted via way of means of visitors to our site, inclusive of call, deal with, billing information, and shopping preferences,'s by no means shared with a third party,

The policy continued:~

When you register with Toysmart.com, you could relaxation confident that your information will by no means be shared with a third party,

¹⁵⁷ F,Supp,1015,1997U,S,Dist,http://www.casebriefs.com/blog/law/torts/torts-keyed-to-prosser/intentional-interference-with-person-or-property/compuserve-ine-v-cyber-promotions-ind visited on 30th

But while Toysmart.com went into liquidation, all of the property of Toysmart went to the official receiver, The receiver changed into within the system of selling all of the property of the company, while he determined this super database, So, he desired to commodify, and promote the database as well, Soon thereafter, the FTC found out approximately possible violation of Toysmart's privacy policy from TRUSTe, a non-profit privacy seal organisation that had licensed Toysmart to display its seal, FTC group of workers investigated this information, and discovered that the receiver changed into offering the database for sale, The FTC filed a suit against Toysmart, and there has been an out of courtroom docket settlement, It changed into agreed that every one the information of Toysmart will now no longer be given to everybody, and each person for a price without consulting the men and women who're the proprietors of that information,

During the World War II, the Dutch officials maintained population registers containing various details approximately individuals with the humblest objectives, But those databases regarding demographic distinctions at the basis of religion changed into misused via way of means of all invading Nazi armies to wipe out the entire population of Jews from their u . s . , Another instance of ways a amassed database may be placed to unimaginable use's that of a chain of ice cream parlours that introduced online their plan to distribute loose ice cream to individuals on their 181 birthday, So many human beings registered with them, and were given loose ice lotions on their 181 birthday, A database of one lakh sixty seven thousand younger men and women, 18 yr old, changed into amassed via way of means of the various ice cream parlours with their very own objectives of simply promoting the sale of ice lotions, Military service of that kingdom got here to understand approximately this information, and that they bought it from the ice cream parlours to find out who're the men and women who've now no longer registered for obligatory military training, It's so smooth to gather information on computer systems that no one ought to mind it,, and as soon as the information's amassed it might be placed to apply to which it changed into completely unrelated originally while it changed into amassed,

Concerns approximately non-public privacy are at the rise, with a big majorities of Americans saying the National Securities Agency's collection of phone, and Internet information intrudes on citizens' rights without clean improvements within U,S, security, according to a brand new Washington Post-ABC News Po11,

Nearly three-quarters of Americans say the NSA packages are infringing on a few
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Americans' privacy rights,, and approximately 1/2 of see the ones packages as encroaching on their very own privacy, Most of folks that see the packages as compromising privacy say the intrusions are unjustified,

The percent of Americans who placed a higher priorities on privacy protections than the investigation of terrorist threats has greater than doubled within a decade, and has hit the highest point within any Post-ABC News ballot dating lower back to summer time season 2002, Today, approximately 4 within 10 say it's greater important to guard privacy even if that limits the authorities's abilities to investigate possible terrorist threats,

Some of the discomfort stems from doubts that the packages are making the United States safer, Only forty two percentage say the packages make the u . s . safer, More, forty seven percentage, see the packages as making little difference within the u . s .'s security,, and five percentage say they really make the nation much less safe,

Details of the packages have been discovered earlier this summer time season via way of means of a former authorities agreement worker, Edward Snowden, The NSA has stated that it collects the phone facts of millions of Americans — information on telecellsmartphone numbers they've dialed, and the duration of their calls — however has said it does now no longer gather the contents of the conversations, The enterprise previously amassed a full-size trove of information on Americans' e-mail however ended that software within 2011,

The White House on Friday said the Obama administration changed into committed to ensuring intelligence packages do not violate Americans' privacy, following information that the National Securities Agency broke privacy policies, and passed its criminal authorities hundreds of times since it changed into given new powers within 2008, according to pinnacle mystery files leaked via way of means of Edward Snowden,³⁵

"This Administration's committed to ensuring that privacy protections are cautiously adhered to,, and to continually reviewing approaches to effectively beautify privacy procedures," the declaration from the White House read, The Post said maximum of the breaches involved unauthorized surveillance of Americans or foreign intelligence objectives within the United States, The paper said they ranged from "significant violations of regulation" to typographical mistakes that brought about the unintended interception of U,S, emails, and phone calls,

Staff on the National Securities Agency broke privacy policies hundreds of times,
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according to files leaked via way of means of former contractor Edward Snowden, An NSA audit obtained via way of means of The Post from Snowden said there have been 2,776 instances within the yr to May 2012 of unauthorized collection, storage, get right of entry to to or distribution of legally covered communications, Most have been unintended, it said, The paper said the maximum serious incidents included the unauthorized use of information approximately greater than 3,000 Americans, and those with inexperienced cards,, and a violation of a courtroom docket order,

In its media release, the White House said:~ "The files display that the NSA's monitoring, detecting, addressing, and reporting compliance incidents,"The NSA said, within turn, its "foreign intelligence collection activities" have been "continually audited, and overseen internally, and externally,"

Issues associated with privacy have a protracted historical history however within this age of Information, and Communication Revolution they've assumed extra proportions, Computers now no longer most effective save massive databases however additionally have the capabilities to system them within innumerable approaches, Falling into incorrect hands, such databases might be misused to jeopardise individual privacy, five,1,10 Children's privacy online

As computer systems, and the Internet end up ubiquitous children have increasingly end up uncovered to crimes inclusive of pornography, and stalking that employ their private information, The newly inserted section 67B of the IT Act (2008) tries to protect the privacy of children under 18 years via way of means of creating a brand new improved penalties for criminals who goal children,

The section firstly penalizes all people engaged within child pornography, Thus, any character who "publishes or transmits" any material which depicts children engaged within sexually explicit conduct, or all people who creates, seeks, collects, stores, downloads, advertises or exchanges this material can be punished with imprisonment upto five years (seven years for repeat offenders), and with a fine of as much as Rs, 10 lakh,

Secondly, this section punishes the online enticement of children into sexually explicitly acts,, and the facilitation of child abuse, which also are punishable as above, Viewed together, those provisions are trying to find to carve out a limited domain of privacy for children from would-be sexual predators,¹⁵⁸

¹⁵⁸ S X, Verma& Raman Mittal, supra note 2, p,224,
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The section exempts from its ambit, material which's justified at the grounds of public good, including the interests of "science, literature, art, learning or different gadgets of widespread concern", Material which's saved or used for bona fide "heritage or religious purpose"'s additionally exempt,

In addition, the newly launched Draft Intermediary Due-Diligence Guidelines, 2011 require Intermediaries to notify customers now no longer to shop, update, transmit, and shop any information it's inter alia, "paedophilic" or "harms minors within any way", An intermediary who obtains know-how of such information's required to "act expeditiously to paintings with consumer or proprietor of such information to do away with get right of entry to to such information it's claimed to be infringing or to be the concern of infringing activity", Further, the intermediary's required to inform the police approximately such information, and keep the facts for ninety days,

5,1,eleven Electronic Voyeurism

Although as soon as seemed as handiest the stuff of secret agent cinema, the explosion within customer electronics has reduced the costs, and the size of cameras to such an volume that the hazard of hidden cameras recording people's intimate moments has end up quite real, Responding to the growing fashion of such electronic voyeurism, a brand new section 66E has been inserted into the IT Act which penalizes the capturing, publishing, and transmission of images of the "private area"¹⁵⁹ "in circumstances threatening the privacy" of any person without their consent "¹⁶⁰ Of that man or woman, This offence's punishable with imprisonment of up to a few years or with a fine of as much as rupees lakh or both,

5,1,12 Phishing – or Identities Theft

¹⁵⁹ The Information Technology (Due Diligence observed by Intermediaries Guidelines) Rules, 2011 38`Intermediary' has been defined very expansively under section 2(w) of the Act to mean, with respect to any electronic record, "any person who on behalf of another person receives, stores or transmits that record, or provides any service with respect to that record, and includes telecom service providers, network service providers, Internet service providers, web hosting service providers, search engines, online payment sites, online-auction sites, online-market places, and cyber cafes

¹⁶⁰ See explanation to Section 66E:~ Defined as "circumstances within which a person can have a reasonable expectation that (i) he or she could disrobe within privacy, without being concerned that an image of his or her private area was being captured or (ii) any part of his or her private area would not be visible to the public regardless of whether that person's within a public or private place",

The word 'phishing' is usually used to describe the offence of electronically impersonating a person else for financial gain. This is often carried out either via way of using a person else's login credentials to gain get admission to to blanketed structures, or via way of the unauthorized application of a person else's digital signature within the path of electronic contracts. Increasingly a brand new form of crime has emerged wherein simcards of mobile telephones have been 'cloned' enabling miscreants to make calls on others' accounts. This is additionally a shape of identities theft,

Two sections of the amended IT Act penalize those crimes:~ Section 66C makes it an offence to "fraudulently or dishonestly" employ the electronic signature, password or different unique identification function of any man or woman. Similarly, section 66D makes it an offence to "cheat via way of personation" by way of any 'communication device' or 'pc resource',

Both offences are punishable with imprisonment of up to a few years or with a fine of as much as rupees one lakh,

5.2 Tools to defend the Right to Privacy

5.2.1 Encryption

Before trying to reply those questions, an aside on generation's warranted. Above, described how the brand new technologies of our on-line world threaten privacy. A balanced view additionally requires an understanding of ways new technologies can defend privacy,

1, Possibilities:~

The principal privacy-protecting generation's encryption, within basic terms, encryption makes use of a cryptographic algorithm, and a key to encode a message—plaintext—into something incomprehensibly garbled—cipher text. Once communicated to the intended recipient, the cipher text's decoded again into plaintext. If the cryptographic algorithm's strong, and the important thing well selected, and stored secret, it's infeasible for an unauthorized parties to intercept the cipher text, and decrypt it again into plaintext. This basic idea of encryption lies on the coronary heart

of multiple privacy-promoting technologies,"

Obviously, cryptography may be used to sell the confidentiality of a communication, Consider, for instance, how public key cryptography's integrated into popular Web browsers, inclusive of Netscape's Navigator, to permit confidential transmission of credit card numbers over the Internet,forty five Besides protecting the confidentiality of communications, encryption's additionally beneficial within creating sturdy the client, and the service provider are approximately to trade sensitive records, Netscape invokes steady communications protocol, This involves the following basic steps:~

(1) the client creates a random session key;

(2) the service provider sends the service provider's public key to the client within the clean with a certificate signed via way of a few relied on third party, inclusive of Netscape, confirming that the service provider's who it claims to be;

(3) the client verifies the signature at the certificate, and authenticates the service provider's public key;

(4) the client encrypts the session key with the service provider's public key, and sends it to the service provider;

(5) the service provider decrypts the session key with its private key;, and

(6) henceforth, all messages among client, and service provider are encrypted with that session key,

Two components of anonymities are important here:~ nameless communications, and nameless charge structures, Anonymous communications are made possible via, for example, using anonymizing intermediaries, inclusive of nameless e-mail remailers, These intermediaries are computer systems that, upon receipt of a communication, cast off any information identifying the sender of the communication, then ship it alongside to the recipient, With anew-mail message, for instance, an nameless remailer strips off header information identifying the sender,

replaces it with the information identifying the mailer, then sends the message to the intended recipient,"

One weak point of this arrangement is that certain intermediaries maintain lists matching the message, and the original sender, within element to permit smooth replies to nameless communications," within such cases, anonymity is placed at risk due to the fact the man or woman maintaining the intermediary can be forced to disclose the identities of the message sender," One manner to reinforce anonymity is to apply an intermediary that doesn't maintain any lines of information that identify the sender, within addition, you can use a successive chain of nameless intermediaries, One's anonyms could then be sacrificed simplest if each machine within the chain stored identifying information, and agreed to disclose that information, This technique is facilitated via way of encryption,⁵⁰ When one considers the reality that an e-mail may be routed via twenties nameless intermediaries— throughout the assist of pc automation—, and that many remailers exist within foreign countries, some distance past the jurisdictional attain of U,S, courts, and regulation enforcement agencies, it turns into clear that one may have almost absolute anonyms of communications,

Public key encryption additionally permits for the possibilities of nameless charge structures tons like cash, Today, whilst one purchases ice cream on the nearby mall with cash, there is no report identifying the individual's purchase, However, if the equal purchase is made via credit card, debit card, or check, transactional records linking the individual to the acquisition can be recorded, A privacy-promoting charge generation could permit steady electronic charge via our on-line world, while disclosing no greater non-public information than cash,¹⁶¹ This is made possible by the cryptographic technique of blind digital signatures.¹⁶² we will have what David Chaum calls clearly unforgettable, and untraceable electronic coins,

¹⁶¹ A, Michael Froomkin, *supra* note 38, pp, 453-71,

¹⁶² A digital signature involves just the reverse of the public key cryptography process discussed above, Recall that a message encrypted by one half of the public/private key pair can be decrypted only by the other half, To scramble messages, one would encrypt a message with the recipient's public key, so that only the recipient's private key would be able to decode the message, One creates a digital signature by encrypting a message with one's own private key, which no one else should have, If the message decodes with that person's public key, which has been released to the world, then one can be confident that the message within fact came from that specific person, Indeed, a digital signature is far harder to forge than a handwritten signature,

With digital signatures, the financial institution may be certain that a customer who withdraws electronic coins's who she claims to be, When the financial institution sends the coins to the customer, the financial institution signs it with its personal signature, When the coins's transferred to the service provider, the service provider can verify the financial institution's signature to make certain that the coins will be honoured, This scheme protects privacy due to the fact the service provider want now no longer, and will now no longer research the identities of the customer, The service provider's handiest worried with getting paid; so long as the coins bears the financial institution's enforceable signature, then the service provider's interests are secure, See commonly David Chaum, *Achieving Electronic Privacy*, SCI, AM,, Aug,1992, at 95,

2, Limitation:~

There's a vein of thinking approximately our on-line world that discounts policy, and regulation making as quaint however moot, made irrelevant via way of means of technology, especially robust cryptography, But this techno-anarchist view's pollyanish, First, the continuing legalities of those technologies's uncertain within the United States, For example, the executive branch, and certain participants of Congress⁵³ have vigorously endorsed various styles of key escrow systems, Under those systems, a private secret is now no longer stored via way of means of the individual on my own; a further copy's stored via way of means of either a central authority enterprise or a private zone third party, within addition, the export of robust encryption remains substantially regulated,

Second, even if the technologies are permitted, they're limited, Consider the limits of using encryption to maintain confidentiality, While encryption might also additionally assure the confidentiality of communicative statistics during electronic transmission, it frequently does nothing to save you the collection of transactional statistics, For example, with e-mails, even though an information collector won't be capable of examine the contents of an encrypted e-mail message, it can be capable of examine the entire statistics incident to its delivery among sender, and receiver, Moreover, as soon as the communication's received, the recipient have to decrypt the message within order to manner the communication, After the communication has been transformed into "plaintext," encryption's position within ensuring privacy involves an end,^{ss} Similarly, consider the limitations of nameless charge schemes, Although anonymities may be

preserved within a buy of information or informational product, e.g., software, via way of means of combining an nameless communication, and nameless charge system, the equal can't be said of purchases of physical objects, which require delivery to a few physical address,, and from that physical address, one has an access point to potential wealth of additional statistics,

Third, relying upon technologies on my own might also additionally have damaging distributional consequences, which favour the pc savvy, and well-educated, Although those technologies aren't difficult to use, they're hardly ever effortless, Only the ones sophisticated sufficient to take benefit of public key encryption, and anonymities filters might also additionally do so, with the relaxation of the population left defenceless because of ignorance,

Fourth, investing within privacy equipment can be a waste of sources, Cyberspace, and its associated technologies make possible extra privacy-invasive statistics acquisition; in addition they make possible extra privacy-protecting shields, Ina laissez-faire regime with a "survival of the cryptographically fittest "mind-set on privacy, what we might also additionally quickly have's an fingers race among those technologies,fifty six A significant expenditure of sources via way of means of people who could take private information, and via way of means of people who could shield it might also additionally, within the end, end result within a final degree of privacy no different from the extent that existed earlier than such expenditures, Surgical country intervention might also additionally permit us to avoid such waste,¹⁶³

5,2,2 Cryptography

Cryptography's an important detail of any approach to deal with statistics transmission securities requirements, It's the practical artwork of converting messages or statistics into a different form, such that no-you may study them without having get entry to to the 'key, The message can be transformed using a 'code' (in which case every man or woman or institution of characters's substituted with the aid of using an alternative one), or a 'cypher' or 'cipher' (in which case the message as a whole's transformed, instead of individual characters),

Cryptology's the science underlying cryptography, Cryptanalysis's the science

¹⁶³ Richard S, Murphy, Properties Rights within Personal Information:~ An Economic Defense of Privacy, 84 GEO, L,J, 2397, (1996),

of 'breaking' or 'cracking' encryption schemes, i.e, discovering the decryption key, A 'sturdy encryption scheme' is one which can not be cracked within a sufficiently quick time that the securities of the message's threatened, even using the maximum effective computer systems available for the task,¹⁶⁴

With a 'susceptible encryption scheme', on the alternative hand, there is a significant risk that the important thing may be discovered through an organisation which has get right of entry to to sufficient computing energy, Discussions within this location commonly relate to the computing energy owned through the U,S, National Securities Agency (NSA),

There are numerous elements of a scheme that determine its strength, One of particular importance's the important thing-period had to make it highly unlikely that a cracking strive will be successful,

Cryptography comprises distinct classes:~ symmetric, and asymmetric,

1, Symmetric Cryptography

Symmetric cryptography involves a single, mystery key, which each the message-sender, and the message-recipient ought to have, It's utilized by the sender to encrypt the message,, and through the recipient to decrypt it,

The NSA said lately that a 40-bit period became proper to them (i.e, they could crack it sufficiently quickly), Increasing processor speeds, combined with loosely-coupled multi-processor configurations, are bringing the abilities to crack such brief keys within attain of tons much less well-funded organisations, To be 'strong', the important thing-period consequently wishes to be at the least fifty six bits,, and it became argued through an professional institution within 1996 that ninety bits's a greater appropriate period,

Symmetric cryptography provides a method of satisfying the requirement of message transmission security, due to the fact the content material can't be study without the name of the game key, There's a risk exposure, however, due to the fact neither parties may be positive that the alternative parties has now no longer uncovered the name of the game key to a third parties (whether or not accidentally or intentionally),

Symmetric cryptography also can be used to cope with the integrity, and authentication requirements, The sender creates a precis of the message, or 'message authentication code' (MAC), encrypts it with the name of the game key,, and sends that with the

¹⁶⁴ Roger Clarke, "Data Transmission Securities (or 'Cryptography within Plain Text')," 1996, Privacy Law & policy reporter 3, 2 (may 1996), pp,24-27,

message, The recipient then re-creates the MAC, decrypts the MAC that became despatched,, and compares the 2, If they may be identical, then the message that became received ought to were identical with that which became despatched,

The technique does now no longer effectively cope with the non-repudiation requirement, however, due to the fact each parties have the identical mystery key,, and subsequently every's uncovered to fraudulent falsification of a message through the alternative,

A main difficulties with symmetric schemes's that the name of the game key must be possessed through each parties,, and subsequently must be transmitted from whomever creates it to the alternative party, But if the secret is compromised, all the information transmission securities measures are undermined, The steps taken to provide a steady mechanism for creating, and passing on the name of the game key are known as 'key management',

2, Asymmetric ('Public Key') Cryptography

Whereas symmetric cryptography has existed, at the least within primitive forms, for 2,000 years, asymmetric processes have been simplest invented within the mid-1970s, Asymmetric cryptography involves associated keys, known as a 'key-pairt, one in all which simplest the proprietor knows (the 'private key'), and the alternative which all of us can understand (the 'public key'),

The benefits of asymmetric cryptography are that:~

- a. simplest one parties wishes to understand the private key; and
- b. expertise of the public key through a third parties does now no longer compromise the securities of information transmissions,

To crack a trifling 40- or fifty six-bit asymmetric key might be trivially simple, due to the fact there are a ways fewer units of keys (or, expressed greater technically, the 'key-space"s relatively 'sparse'), It's presently conventional to treat a 1024-bit asymmetric key- period as being important to provide security,

3, Applied Public Key Cryptography

Public key cryptography may be applied as a method of addressing every of the requirements for information transmission securities identified within the previous section,

a. Public Key Cryptography, and Message Transmission Security

The sender encrypts the message, now no longer with their very own key, however using the intended recipient's public key, The receiver decrypts using their private key,

This's a greater steady technique than symmetric cryptography, due to the fact the decryption key want by no means be within the possession of all of us apart from the proprietor, It's tons slower, however,, and subsequently symmetric cryptography's greater typically used for protecting the contents of the message from prying 'eyes',

b. Public Key Cryptography, and Integrity, Authentication, and Non-Repudiation The technique may be used to cope with all the integrity, authentication, and non

This technique may be taken a step further, to cope with the integrities requirement as well, The additional segment's now no longer pre-agreed, Instead, a 'message digest"'s created, through processing the real message using a special, pre-agreed algorithm (in a similar manner to the MAC'ing manner used within symmetric cryptography), The sender encrypts this message digest with his private key, to supply what is referred to as a 'digital signature' (due to the fact it plays tons the identical function as a written signature, even though it's tons tougher to forge),

The recipient re-creates the message digest from the message that they receive, makes use of the sender's public key to decrypt the digital signature that they received appended to the message itself,, and compares the 2 results, If they may be identical, then:~

- a. the contents of the message received ought to be similar to that which became despatched (satisfying the integrities requirement);
- b. the message can simplest were despatched through the purported sender (satisfying the authentication requirement); and
- c. the sender can't credibly deny that they despatched it (satisfying the non-repudiation requirement),

Rest confident that maximum human beings do now no longer hold close the ones ideas the first time that they study them,

The 2d description's of the manner wherein all message transmission securities risks may be addressed via the application of public key cryptography,¹⁶⁵

4, Contemporary Message Transmission Security

In the overdue 1990s, the conventional method to protecting the securities of messages during transmission applies a hybrid of symmetric, and asymmetric cryptography, Message content material security's achieved using a mystery key, with key control accomplished using an asymmetric key-pair, Integrity, authentication, and non

¹⁶⁵ Roger Clarke, *supra* note 55,

5, The Establishment of the Framework

Each of the participants has to create a key-pair, keep the private key within a steady manner,, and make the public key available to organisations that are seeking it,

SET envisages a hierarchy of certification authorities (CAs), independent from different CA hierarchies, These are:~62

- a. a 'root CA' (God) that certifies charge-processing organisations like Visa, MasterCard, and AmEx;
- b. a CA run with the aid of using or for every charge-processing organisation, which certifies its member-institutions / banks / card-issuers; and
- c. a CA run with the aid of using every card-issuer that certifies its cardholders,

A cardholder will (quite probable unconsciously) acquire a certificate from the CA of their card-issuer, a duplicate of which they are able to provide each time they make a purchase, Each card-issuer will acquire a certificate from the CA of every charge-processing organisation that they use, Each charge-processing organisation will acquire a certificate from the basis CA,

5, The Conduct of a Payment Transaction

To impact a transaction, a card-holder invokes software program on their workstation that initiates the following sequence:~

- a. the card-holder states that he wishes to make a charge;
- b. the service provider responds;
- c. the card-holder provides details of the quantity to be paid, collectively with a duplicate of their certificate;
- d. the service provider sends to the charge-processing organisation (via the charge gateway or acquirer) a request for authorisation;
- e. authorisation's treated with the aid of using existing procedures using existing networks;
- f. the service provider receives authorisation;
- g. the service provider sends a seize request (to genuinely commit the transaction);
- h. the service provider receives confirmation that the transaction has been accepted;
- i. the service provider sends the card-holder confirmation that the charge has been accepted,

Since it changed into introduced with a good deal fanfare within 1996, development within implementing SET has been slow, This's due to the fact the scheme's complex,, and relies upon on many participants conforming to the specification,

A particular concern's that the scheme contains nothing that manages participants' private keys, It seems that those will want to be saved on participants' workstations, and servers, or on additional peripherals installed on workstations, and servers to deal with a steady token (probable a chip-card),

7, Infrastructure for Digital Signatures

Two conditions want to be satisfied, within order that public-key digital signatures can satisfy message transmission securities desires:~

a. robust securities measures protecting every individual's private key; and

b. Public Key Infrastructure (PKI),

(a) Securities Measures for the Private Key

For a digital signature to be of high qualities (i.e, now no longer readily problem to spoofing, and repudiation), it desires to be generated using a 'private key' which's held beneathneath highly steady conditions with the aid of using the individual concerned, A private secret's long, It's impractical for a private key to be memorised within the manner that passwords, and PINs are intended to be memorised, An appropriate device to guide steady garage of a private secret's a chip,, and the maximum practical carrier for this sort of chip at present's a smart-card,¹⁶⁶

Access to the private key saved on a chip wishes to be included within a few manner, such that simplest the proprietor can use it, One method's to shield it with a PIN or password; however this provides simplest a slight stage of security,

An emergent method's for the cardboard itself to refuse get entry to to the private key, besides whilst the cardboard measures a few factor of the holder's physical person,, and's satisfied that it corresponds sufficiently closely (using 'fuzzy matching') to the degree pre-saved within the cardboard, Examples of such 'biometrics' include the styles shaped through rods, and cones at the retina,, and the geometry of the thumb,

A significant difficulties that must be addressed, however,'s that, due to the fact a business entities can't itself act, it's depending on the actions of 1 or extra people acting on its behalf, within addition to the securities measures wanted within recognize of someone's very own digital signature, in addition measures are wanted, within order to lessen the likelihood of blunders or fraud through one or extra persons, involving misapplication of the business entity's private key,

(b) (National) Public Key Infrastructure ((N)PKI)

¹⁶⁶ Roger Clarke, *supra* note 59,

During the mid-to-overdue 1990s, the emergent PM has been the problem of feverish efforts within the United States, with initiatives within the technical, organisational, and criminal arenas, within Australia, efforts through a Standards Australia Committee (PKAF 1996), and ultimately through a committee convened through the Commonwealth Minister for Communications, and the Arts (NPKI 1998) have resulted within measures being proposed to make sure that an appropriate public key infrastructure's positioned into place, The rely has additionally been addressed from the perspective of the interests of Commonwealth Government agencies, At least one organisation's geared up to provide public certification authorities (CA) services, as quickly as that infrastructure's within place (Australia Post, with its Key Post service), The paintings of developing technical requirements for the Australian PKAF's being undertaken through the Standards Australia IT/12/4/1 Committee,

Further issues are that the regulation as it currently stands might not recognise digital signatures as being the equivalent of (or higher than) a written signature, A United Nations Model Law on Electronic Commerce (UNCITRAL 1996) recommends an method for addressing such problems, within March 1998, an Electronic Commerce Expert Group working within conjunction with the Commonwealth Attorney-General's Department, produced a record which endorsed modifications to the regulation to make sure that digital signatures are regular within regulation as evidence that someone originated a message (ECEG 1998),¹⁶⁷

Another hassle that can undermine the intended PKI's a loss of clarities approximately the liabilities of CAs, or a diploma of risk publicity that makes the business of being a CA too unattractive, Various proposals were made as to a way to make certain that the business of a CA's tenable, including the American Bar Association (ABA 1995), and the United Nations (UNCITRAL 1998) at Articles 11, and 12, Laws defining the quantity of liabilities were exceeded within a few jurisdictions, e.g, the State of Utah as lengthy in the past as 1995,

8, Additional Issues within Public Key Cryptography

Public key cryptography's relatively new, technically complex,, and raises many public policy issues,

a, The Generation of Pairs of Private, and Public Keys

¹⁶⁷ Roger Clarke, *supra* note 59,

Because of the character of the mathematics underlying asymmetric cryptography, the pairs of keys are created as a part of the identical process, Three main choices exist as to who plays key-generation:~

1. The key-proprietor:~ within this case, the private key in no way travels outside the proprietor's premises (or higher still outside the owners' stable computer, or chip-card); however the proprietor should have the technical competence to carry out the function,, and all parties should have grounds to be confident approximately the qualities of the key-generation process (e,g, thru audit, and certification of software program applications or of hardware, together with clever cards);

2. A service organisation of the proprietor's choice:~ within this case, the private key has to tour from the service organisation to the proprietor,, and the proprietor has to consider the service organisation either now no longer to preserve a duplicate, or to preserve a duplicate concern to an appropriately high set of securities requirements, Once again the qualities should be assured (e,g, thru audit, and certification of service organisations); or

3. A specific authorities business enterprise or agencies:~ within this case, the private key has to tour;, and consider has to exist;, and the location of all private keys's recognized to,, and beneathneath the manage of, the State, Some shape of assurance's wanted that the State,, and agencies of the State, will now no longer abuse the consider,

This choice of who generates key-pairs's one of the issues on the coronary heart of the cryptography debates of the previous few years,

9, Secure Deposit of Private Keys

If someone or organisation loses their private keys, they're not able to:~

- a. encrypt messages with their private key; and
- b. study messages despatched to them encrypted with their very own public key,

In order to cope with this risk, it's strongly advisable that each private key be located into deposit within a few location break free that individual's regular workstation, Because of the risks involved if the private key involves be recognized

through a few different individual, the deposit desires to be concern to an appropriately high set of securities requirements,

10, Escrow of Private Keys

'Escrow's an association wherein something's located on deposit with a relied on party, however can be accessed through third parties beneathneath certain conditions, It changed into originally used for title deeds for actual property,, and's used for source-code for software program applications,

Escrow also can be used for private keys, within which case it's mentioned as 'private key escrow', which's usually shortened to 'key escrow',

There are some of conditions beneathneath which individuals or organisations can also additionally have a legitimate interest within gaining get admission to to the private keys of different parties, These include:~

a. in which an organisation seeks get admission to to the private key utilized by an officer, worker or agent, especially in which the individual not fulfils that function on behalf of the organisation;

b. in which an executor acts on behalf of the property of a deceased individual;

c. in which a regulation enforcement business enterprise seeks get admission to to a private key within order to materially assist within the investigation of a serious crime; and

d. in which a national securities business enterprise seeks get admission to to a private key within order to materially assist within the protection of national security,

If, however, security's to be sustained (and, indeed, if privacy's to be protected), any get admission to to escrowed keys could want to be concern to very cautious designed, and implemented controls, e.g, a prior requirement of felony authorities (together with a seek warrant), granted through a senior member of the judiciary,

If key escrow's implemented, it might be:~

a. voluntary,

b. voluntary for individuals however obligatory for corporations;

c. obligatory for all users; or

d. obligatory for dealings with authorities,

And the function might be finished through:~

a. a service organisation of the key-proprietor's choice;

b. a service organisation which should be licensed,, and which, as a condition of the licence, has to satisfy certain conditions; or

c. a specified authorities business enterprise or agencies,

These choices,, and indeed the very question as to whether or not private key escrow ought to be implemented, lie on the coronary heart of the cryptography debates of the previous few years (Clarke 1996), It's important that the distinction be appreciated among stable deposit (for the benefit of the key-proprietor) be distinguished from escrow (for the benefit of a third party), This has emerge as harassed during the public debates,"

11, Access to,, and Certification of, Public Keys

Asymmetric schemes rely upon the public keys of people, and organisations being publicly available, The maximum practicable techniques of achieving this are:~

a. senders can include their public keys within every message; or

b. public keys can be saved within one or extra principal directories, enabling every parties to an change to appearance up the public key of the opposite party,

Either of those approaches's concern to 'spoofing', i.e, an imposter can ship a message which includes a public key, or shop a public key within a directory,, and thereby idiot the opposite parties into thinking the message got here from a particular individual or organisation,

To cope with this risk, the standards were created of:~

a. a relied on 'public key certification authority' (CA), using:~

b. a 'public key infrastructure' (PKI); within:~

c. a 'public key authentication framework' (PKAF),

If a parties to a message-change wishes to acquire the public key of the opposite party, or to test that the public key they have already got for the opposite

party's valid, and up

12, Multi-Function Certification Authorities

The preceding paragraphs have endeavoured to offer the entire set of standards within a logical series of development, Unfortunately, the separation of ideas, and functions has been considerably muddied within practice,

In particular, a number of the proposals for public-key certification / authentication frameworks, and certification authorities, including the Australian Standards file MP75 (PKAF 1996), envisage the authorities performing multiple functions, including:~

- a. the generation of pairs of private, and public keys;
- b. escrow of private keys;
- c. garage of public keys; and
- d. authentication, and certification of public keys,

Whether an organisation that plays the third, and fourth functions ought to additionally carry out the first and/or 2d functions's principal to the modern arguments among crypto-anarchists, and crypto-authoritarians,

13, Digital Signatures, and Privacy

A PKI should have potentially grave impact on privacy, depending on how it's implemented, Greenleaf, and Clarkeidentify, and examine the following impacts of digital signature generation on privacy:~

a, Privacy Implications of Private Keys

1. key-pair generation
2. private key garage, and backup
3. private key escrow
4. private key get admission to
5. private key revocation

b, Privacy Implications of Public Keys

1. certification identification requirements
2. registers of public keys, or certificates, or both
3. Certificate Revocation Lists (CRLs)

c, Consequential Privacy Implications

1. expectations of identification
2. chip-garage as a method of carriage of the private key
3. principal garage of biometrics

A position declaration on PKI at Clarke⁷¹:~

a. nominates the characteristics of a PKI that could satisfy privacy desires in addition to authentication requirements;

b. criticises conventional, hierarchical PKI as failing to fulfill the desires of electronic commerce, and electronic services delivery;

c. expects adaptation of existing requirements to fulfill the want to be slow; and

d, Considers 'net of consider' PM to be extra likely to satisfy the want,

A similarly issue's that a few authorities agencies, and a few corporations are running a 'technological imperative' time table within an attempt to transform nameless transactions into identified transactions, The privacy interest runs emphatically counter to tries to transform nameless into identified transactions,

The cluster of tensions that has arisen among individuals who believe within the want for robust manage of societies through nation-states, and people who cost individual freedoms a lot extra highly has reached serious proportions,, and will get a lot worse, Cryptography within general,, and the strategies followed within relation to public key infrastructure within particular, are on the centre of those debates,

CHAPTER-6
CONCLUSION, and SUGGESTIONS

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Conclusion

U,S, Supreme Court Justice Louis d, Brandeis wrot a landmark Harvard Law Review article titled 'The Right to experience the life- the right to be allow alone, Meaning thereby No one will be subjected to arbitrary inference with his privacy, family, domestic or correspondence or to assault upon his honour, and reputation, The instance of privacy's something which had to be explained within order to apprehend how it advanced within India, and its relevance within Indian society, Hindu religion expressly recognizes the privacy of the Individual, Indian constitution beneathneath the Art, 14 expressly provide that everybody has the right to the protection of the regulation against such interference or assault, Privacy's the basic requirement of the individual for the highest improvement of his personalities it includes social privacy, informational privacy family privacy,

After going via all of the regulation associated with right to privacy a national, and international stage we will say within cutting-edge societies, the dynamics among privacy, and securities are certainly complete, Previously we handiest noticed to balanced relationship within that security, and privacy are collectively exclusive, So governments referred to as for reduced privacy to decorate national security,, and privacy proponents have been almost pressured to invite that criminalities be permitted within order to improve the purpose of liberty, The world's for extra sophisticated now, as we've got discovered a good deal from history, Increasingly with the rise of securities breaches, and identify found, and with abuses within securities investigations private securities may also certainly be enabled via privacy, within whilst the private information of a communities or a nation's positioned at risk via over-centralization, and made accessible wrongly to others, we may also perceive privacy as a essential of securities whilst we consider all of the those dynamics whilst assessing a brand new era or a brand new policy are we able to certainly appreciate the risk, and demanding situations we're approximately to face, Capacities building on privacy's consequently essential in order that key stake holders are equipped to apprehend the character of the problems, the challenge, the opportunities, and the risks, I think there ought to be one new universal international framework for privacy protection with the overall participation of civil societies this is primarily based totally on the guideline of thumb

of regulation, recognize _or essential human right, and assist for democratic institutions,

Indian constitution does now no longer cowl right to privacy as one of the essential rights, The post- independence period within India witnessed the emergence of many constitutional rights including the to easy environment, right to education , right to shelter, right to fitness etc, The right to privacy's one in all such right which has been accorded constitutional recognition within this period, But now there is want to recognize with the aid of using inserting the right to privacy as a separate essential right like right to education as inserted beneathneath Art21 Ain the constitution of India, On the opposite hand , right to privacy now no longer expressly implicit within statutes however beneathneath the Indian Penal Code or The Evidence Act, Information Technology Act,2000and a few different statutes implicitly have a few provisions regarding right to privacy are provided ,different names have been given to it different times ,like, privileged communications , withholding of documents, domestic affairs, matrimonial rights, etc,

The right to informational privacy's unsettled, The nations within the arena want a comprehensive federal policy guaranteeing individuals the right to govern the collection, and distribution of their private information, Legislation which incorporates the basic tenets of fair information practices's a vital aspect of this policy, These tenets give individuals the right to limit records collection, records transfers,, and secondary makes use of of the records; the right to get entry to one's private records, and to make corrections; the right to have one's private records maintained securely;, and the right to be informed of records collection, and transfer, The legislation could consequently vicinity restrictions at the collection, and use of private records with the aid of using the customers of private information, Personal information customers could be required to explicitly inform individuals whilst private information's being collected, and the way this information might be used, Legislation could require that private information customers give individuals an opportunities to save you in addition dissemination of their private information, Accordingly, there could be appropriate restrictions at the online publication, and collection of private information,

Further, a comprehensive policy could provide an enforcement mechanism which could establish sanctions against violators, and provide redress for aggrieved individuals,

Most effective could be legislation providing a private right of action for aggrieved individuals alongside with the administrative enforcement powers of a central authority regulatory authority,

Finally, even though this sort of comprehensive privacy policy's essential to assure the individual's right to govern the collection, and distribution of private information, the individual ought to exercise this control, Online customers will still want to take responsibilities their electronic communications, They will want to be cautious approximately the content material of those communications,, and use appropriate securities measures, including encryption, to protect their security, Individuals will additionally want to decide how a good deal private information to show whilst registering at Internet sites, and participating within commercial transactions, By anticipating the dangers of online use, and utilizing the felony protections previously outlined, individuals will be capable of take complete benefit of the various educational, social,, and commercial opportunities available now,, and within the future, at some point of cyberspace,

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