

**THE IMPACT OF TECHNOLOGY ON CRIMINAL  
INVESTIGATION AND PRIVACY RIGHTS IN INDIA**

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

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## **CERTIFICATE**

This is to certify that the, “THE IMPACT OF TECHNOLOGY ON CRIMINAL INVESTIGATION AND PRIVACY RIGHTS IN INDIA” is the work done by **Deep Raj** 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.

I wish her success in life.

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## **ACKNOWLEDGEMENT**

Acknowledging the wide panorama of people who helped and motivated me to complete this project, I am grateful in presenting to you the rare shades of marketing and technology by documenting the project **“THE IMPACT OF TECHNOLOGY ON CRIMINAL INVESTIGATION AND PRIVACY RIGHTS IN INDIA”**

I am grateful to my guide, **Dr. Sudhir Kumar** whose overall guidance and helped me with full devotion and always supported me earnestly whenever it was needed.

My friends have been biggest support for me at every juncture of life. They manifested their great interest in my mini project work also and always tried to make things easy for me.

A word of gratitude goes to my family members whose love; affection and understanding have enabled me to complete this endeavor with ease.

At the end, I thank to Almighty for giving me courage and strength to conduct this project report.

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## **LIST OF ABBREVIATIONS**

- AIR** - All India Reports  
**CBI**- Central Bureau of Investigation  
**CEDAW** -The Committee on the Convention on the Elimination of Discrimination against Women  
**CENVAT**- Centralized Value Added Tax  
**CID**- Criminal Investigation Department  
**CJI**- Chief Justice of India  
**CPC**- Fundamental Procedure Code  
**Cr PC**- Criminal Procedure Code  
**CrLJ**- Criminal Law Journal  
**ICA** - International Centre for Arbitration  
**IHL** -International Humanitarian Law (I).  
**LL.M.** - Master of Laws  
**NALSA** - National Legal Services Authority  
**NCPCR** - The National Commission for the Protection of the privileges of the kid (  
**NCRB** - National Crime Records Bureau's ,  
**NHRC** - National Human Rights Commission  
**POWs** - Prisoners of war  
**SCC** - Supreme Court Cases  
**SEHAT**- Social Education & Health Advocacy Training  
**UK** - United Kingdom  
**UN** -United Nations  
**UNCITRAL** - The United Nation Commission on International Trade Laws Versus  
**UNODC** - United Nations Office on Drugs and Crime  
**US** -United States (of America)  
**v.** Versus  
**WLR** - Weekly Law Reports

## LIST OF CASES

*Olmstead v. United States (1928) 277 U.S.438*

*Gobind v. State of Madhya Pradesh 1975 AIR 180*

*R.M. Malkani v. State of Maharashtra 1973 AIR 157*

*Union for Civil Liberties v. Union of India W.P. (CIVIL) NO 196 OF 2001*

*Harvinder Kaur v. Harmander Singh AIR 1984 DELHI 66*

*Maneka Gandhi v. Union of India AIR 1978 SC 597*

*Naz Foundation v. Union of India 160 DEHLI LAW TIMES 277*

*A.K. Gopalan v. State of Madras 1950 AIR 27,1950 S.C.R. 88*

*Govind v. State of Madhya Pradesh, Mathew, J. 1975 AIR 1295*

*M. P. Sharma along with others vs Satish Chandra, AIR 1954 S.C. 300*

*Kharak Singh v. The State of U. P. & Others on 1963AIR 1295, 1964 SCR 1*

*People'S Union of Civil Liberties. v. Union of India (UOI) as well as Anr. on 1997 1 SCC 301*

*Mr. 'X' v. Hospital 'Z' on 21 September, 1998 (8) SCC 296*

*Justice K.S.Puttaswamy(Retd) v. Union Of India along with Ors. 10 SCC 1*

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**CHAPTER 1**  
**INTRODUCTION**

## **CHAPTER 1**

### **INTRODUCTION**

Today, technology has affected our global surroundings in a few ways. Technology is evolving at a rapid speed and the resourcefulness of criminals along with it. To fight back against crime in a digital world, law enforcement must adopt new tools and equipment that keep pace with technological advancements. The use of cutting-edge tracking systems, software and other technologies has made a significant difference in the criminal justice industry, helping to catch criminals, enhance public safety and ultimately save lives. Learn more about how technology is currently being used in criminal investigations. Technology has created a more advanced society and economy. We use technology in every aspect of life today. New innovations and technology help create a safer atmosphere and reduces the rate of crime. Technology is the usage and knowledge of techniques or is systems of these things. Usage of technology in the criminal justice system is not new but more apparent today. Technology in criminal justice will continue to challenge us to think about how we turn information into knowledge. Due to new technology, criminal investigations are able to maintain and improve their processes. Forensic science, *DNA*, other and future technology has all had a tremendous impact on criminal investigation and its process.

Privacy is a challenging area to express in words or phrases. It is widely acknowledged that privacy is a necessary component of life; one cannot exist without privacy or personal space. As a result, privacy is a highly prized and appreciated component of one's identity. For all humans, the desire for privacy is a fundamental tendency. Individual boundaries with near-perfect isolation are, in fact, a fundamental desire of an individual. A man's natural need for privacy is to define personal boundaries and restrict others' access to that space.

The concept of 'privacy' has a long history in both history and religion. The need of privacy is recognized in several religious Scriptures, manuscripts, and ancient writings. The concept of privacy, which began in animal society, was embraced by "primitive human society", in which the first indications of it be located and found. As per to many anthropological studies, concepts of privacy differ among primitive tribes. In ancient India, the concept of privacy was incorporated into the word 'Avarana', the

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concept of meditation in the Vedas and Upanishads, and the concept of 'Dharma'. The history of privacy in India can be divided into her two eras, the Hindu era and the Islamic era, both of which had numerous privacy laws and regulations. Privacy has never been an alien concept in India. Rather, it is rooted in the country's rich cultural history. Although the concept of privacy dates back to biblical times and is mentioned in the Quran and the words of the Prophet Muhammad, Jewish law traditionally recognizes the concept of "freedom from surveillance." Studies of animal behavior and social organization suggest that the human need for privacy may have evolved from animal origins, and that humans and animals share many basic strategies for requesting privacy in their neighbors.<sup>1</sup> It suggests that It may take thousands of years to go from the garden of the Bible to the desert of law, but it is essential for strong relationships between people, whether between husband and wife, sons and fathers, partners and friends. The language of every society includes the concept of privacy.

The term "privacy" has evolved into a concept that is widely and commonly used. In its broadest definition, privacy refers to the non-disclosure of information, one's sexuality, trade secrets, and observations of others. It is a concept related to isolation, secrecy and independence. Thus, privacy rights may include not only public disclosure of personal information, but also interference with an individual's secluded, solitary, or private affairs.<sup>2</sup>

The right to privacy is a fundamental human right recognized by the United Nations Declaration of Human Rights, the International Covenant on Civil and Political Rights, and numerous other international and regional conventions around the world today. Human dignity and other important values such as freedom of association and expression are based on privacy. It has evolved into one of the most pressing human rights challenges today.

Technology's growth has increased its use while also posing new problems not only to our legal system but to the entire legal world. This is now true in relation to Information Communication Technology (ICT) and associated breakthroughs by all accounts. Today, information technology has a huge impact on storing data on every potential topic that is vital to humanity, and it has completely changed the

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<sup>1</sup> "Alan F. Westin, *Privacy and Freedom*, 8 (1970)".

<sup>2</sup> "Raymond Wacks, *Personal Information Privacy and the Law*, 20-21 (1994)".

correspondence framework structure.<sup>3</sup>

“Privacy is a challenging idea in today’s technology-driven environment. Technology has become a two-edged sword: on the one side, it enables a person to protect his private, while on the other hand, it assists in blowing the privacy cover that one may have”.<sup>4</sup>

Information Technology-related problems in India are no longer a delusion; rather, they highlight the impending impact of ICT as the new frontiers of advancements in crimes, including the global perspective through the global wave system and other current and enhanced ways for innovation.

In this age of technological advancement, the most well-known and intimate right of any individual, known as the “Right to Privacy,” is underneath threat.

### **1.1. Statement of the problem**

Human rights are a growing concept that is developing on a regular schedule. As a result, the notion of the Right to Privacy is growing rapidly on a near daily basis. Although there are ancient examples of the right to privacy, there have been few advancements in the field to yet. As a consequence, the study’s significance rests in identifying the need for comprehensive laws to protect the Right to Privacy on a global and national level.

Invasion of privacy rights in modern democracies is now a serious problem. Advances in communication technology have made the right to privacy nearly impossible to achieve and pose serious risks to it. Another key issue with confidentiality is the lack of legal and organizational norms that provide privacy, confidentiality, and due process to subjects of computerized information. All levels of government, industry, and the military build databases without really understanding or considering the potential impact on individual rights. This problem is the same all over the world.

The current situation not only requires a comprehensive review of existing laws protecting privacy rights in various legal systems, but also prevents the passage of new

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<sup>3</sup> S.K. Verma and Raman Mittal, “Legal Dimensions of Cyberspace,”. New Delhi: The Indian LawInstitute, 2004, p.214.

<sup>4</sup> Vakul Sharma, Information Technology-Law and Practice, 2004, p.172.

laws covering all aspects of privacy rights.

Under today's social conditions, when basic human rights such as family, marriage, education, information, reputation and personal freedom need to be protected urgently, the right to privacy is violated. Certain cases of invasion of privacy are unjust and unreasonable. Phone tapping, email scanning, narcotics analysis, polygraph testing, brain mapping, sting operations, biometric-enabled national ID cards, the role of the media in violations of the right to privacy in the private lives of public figures and the right of public privacy to ignore terror Doctrine law is just one example. All of these rights are part of the basic human rights of the individual and therefore any violation of the right to privacy is a violation of the fundamental rights of the individual. Parliamentarians in many countries have not fully addressed the topic or field of study of privacy current law

Terms protecting the right to privacy are insufficient to protect this right. As the protection of the right to privacy is a transnational and global issue, this study examines the evolution of privacy law at the international and national levels and the role of the judiciary in ensuring the protection of privacy law.

## **1.2. Aims and objectives of the research**

1. To assess the current state of information technology and to highlight developments and changes in existing cyber legislation and enforcement methods.
2. To investigate the systematic evolution of privacy in historical context and its development, as well as the impact of information technology on the right to privacy.
3. Researching and analyzing the current and existing legal system in order to secure and protect the right to privacy.
4. To draw attention to the grave issues that the legal profession is facing as a result of information technology.
5. To create a new type of machinery for regulating and controlling information technology, such as establishing a “Cyber Regulatory System in India” and broadening the current scope of information technology-related laws.

6. To investigate the Indian legal system's legal provisions in order to identify and emphasize the status of the right and the scope of the protection inherent in those laws.

## **1.2. Hypotheses**

2. Whether advancements in data technology have a significant impact on the 'Right to Privacy,' and whether the degree of impact is endless as science and information technology evolve.
3. Whether information and communication technology (ICT) is a hot topic right now, not just in India but also in the rest of the world.
4. Whether new challenges developing in the examination of cases involving information technology have a quick look over violations of information privacy, and whether a legal framework should be built at the needed pace and adequate enactment should be made for data privacy regulation and management.
5. Whether, in order to meet the challenges posed by the development of information and communication technology, legal mechanisms at both the international and national levels must be evolved and developed in order to protect both individual and national interests, as there is a serious issue of jurisdiction.
6. Whether it necessary to preserve the right to privacy against the potential threat of interception posed by modern technological innovations?

## **1.3. Review of literature**

The literature on the subject reveals that a number of different books, articles, journals, research, acts, statutes, and other studies are being undertaken on preserving individual privacy in the technological era, cyber-crime, and its impact on Society.

Privacy cannot exist without protection, according to **Hyman Gross's** book "Privacy its Legal Protection," published in 1976. Physical intrusion of private items cannot be secure in private areas, and all controls for their transmission or exposure are ineffective. There are two interests in society: one is to protect privacy, and the other is to ensure that people live decently. For society to function properly, there must be a balance between these two interests.

**S. K. Sharma's** book "Privacy Law: A Comparative Study," published by Atlantic Publishers and Distributors in New Delhi in 1994 and available at the Indian Law Institute Library in New Delhi, is a comparative review of privacy laws around the world. The Freedom of Information Act of the United States, the Younger Committee Report of the United Kingdom, and the constitutional status of privacy in the United States, the United Kingdom, India, and other nations have all been critically reviewed and underlined in this work.

**Dr. J. N. Pandey's** "Constitutional Law of India," 40th Edition, Central Law Agency Publications, 2003, is a book that covers all contemporary constitutional advancements and judicial activism in India. It gives a succinct but clear explanation of the Indian Constitution's essential features. At appropriate locations, there are also key authoritative Supreme Court pronouncements. It is an excellent resource for all legal practitioners.

**Alan F. Westin's** "Privacy and Freedom", Atheneum Publications, New York, 1970, is a book about the operations of privacy and surveillance in society, new tools for violating privacy, and the American societies strive for controls to achieve the right to privacy, which is available at the Indian Law Institute Library in New Delhi. In actuality, it is a book that depicts the state of the right to privacy in 1970 and the policy decisions that were made. It aids our understanding of the present privacy law's historical context.

**S.K. Sharma** attempted to explain privacy in a national and international context in his book "Privacy law: A comparative analysis," published by Atlantic Publishers in 1994. Personal data privacy in the online setting was defined by Nandan Kamath in his book "A Guide to Cyber Laws" (2008). Privacy, according to D.D. Basu in his book "Law of the Press" (2002), is a recent development in the field of law, and the stream of its development is continually flowing. It's impossible to establish a comprehensive legal description of what privacy entails. It has been loosely defined as a person's right to be 'let alone,' or his right of repose in his private life and home. In his book "Information technology legislation, law relating to cyber and e-commerce" (2000), R.K Suri, Parag Diwan, and Shammi Kapoor established the standard definition of privacy as "the right to be left alone in terms of isolation from the scrutiny of others."

**Michael Arnheim's** book "The Handbook of Human Rights Law: An Accessible Approach

to the Issues and Principles”, published by Kogan Page Ltd. in London and Sterling, USA, in 2004, deals with the confluence of law and human resources in the context of UK and European legislation. Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, and Article 10 of the Human Rights Act, 1998, are both discussed in depth in this work. Both of these articles are on the law in the United Kingdom concerning the right to privacy. This book provides an in-depth look at several high-profile English cases involving the right to privacy, as well as the position and approach of the Human Rights Court in Strasbourg, UK, in terms of privacy rights.

**V. N. Shukla's** Constitution of India, edited by M. P. Singh: Edition:13th Edition,2017 Eastern Book Co.1990.The current edition comprise a detailed analysis of the latest Constitutional Amendments as well as landmark Supreme Courts decisions such as Supreme Court Advocates along with discuss cases pertaining to right to privacy in our country. The book helped me to study along with discuss the developing challenges of right to privacy.

**M P Jain** Indian Constitutional Law Lexis Nexis; Eighth edition (4 February 2018) M P Jain Indian Constitutional Law is an authoritative, evergreen classic on Indian constitutional law. The Right to Privacy is explain comprehensive way in this book which have different edition whose present edition is eighth edition, is a thematic arrangement of the multifaceted as well as multi-dimensional theme of Constitutional law in a logical, inclusive as well as organized manner. The different chapters contains in-depth insights that benefit all level of people belonging to students, legal academics, policy makers, advocates/lawyers, judges, research scholars, as well as interested citizens. These people look in favor of the latest progress in Indian constitutional jurisprudence. The concept present in different part of book helped me to learn as well as discuss the mounting challenges of right to privacy.

**Gaurav Goyal's** in his study in favor of The Right to Privacy in India: Concept as well as Evolution in his first edition published by Partridge India (January 11, 2016). These two legal scholars of India examine privacy in India, as well as how it is different from privacy in the Western region, along with why it needs to be confined in today's world in this carefully researched book. Gaurav Goyal as well as Ravinder Kumar debate that privacy laws in India are poor because politicians have drastically failed to pass laws to protect it wholly. Even in the West, it's not every time clear what's confined in term of privacy along with what is not. The concept present in different part of book helped me to learn as well as discuss the



mounting challenges of right to privacy as a fundamental right in India along with explanation how it is diverse from the right to privacy which is practices in other countries.

**Abhivardhan's** Privacy, The Deceptive, The Intrinsic: A question of uncertainty along with concern solved (First Edition Book 1) The book discuss the theory of privacy devised by the writer, with its consistency in the realm of estimative realism. Some mention is of the a variety of historical as well as sociological aspects of Privacy in the light of India along with its Constitution. The writer persuasively endorses the objective applicability along with realism to the idea of what Privacy can be. The concept present in different part of book helped me to learn as well as talk about the mounting challenges of right to privacy as judicial approach towards right to privacy as well as what are sensible restrictions on the fundamental right to privacy. This fundamental right to privacy has been recognized by the Court.

**Rakesh Chandra's** write in his book name Right to Privacy in India amid Reference to Information Technology Era first edition YS Books International (2017) The concept present in different part of book helped me to learn along with converse the mounting challenges of right to privacy to understand the latest era of technology along with the growing privacy issues faced by individuals as well as how difficult it can be to secure or rather insure one's right to privacy as guaranteed by the constitution of India as a fundamental right. The author this book name Right to Privacy in India also discusses to what extent the government bodies can have access along with store in favor of further use of the private data of a company or an individual.

**Jyoti Panday** in her research have done research in name 'India's Supreme Court Upholds Right to Privacy as a Fundamental Right—and It's About Time' discuss a variety of aspects of privacy. she researches on aspects of privacy what is the mindset of the bench of the SC. as well as SC whilst deciding the judgment on whether right to privacy of citizen of India a fundamental right of citizen is or not. The judgment's endorsement of the right to privacy as a fundamental right in India marks a watershed moment in the constitutional history of India.<sup>5</sup>

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<sup>5</sup> <https://www.eff.org/deeplinks/2017/08/indias-supreme-court-upholds-right-privacy-fundamental-right-and-its-about-time>

#### **1.4. Methodology of the study**

The suggested research project is both theological and scientific. It is based on a comparative and basic analysis of constitutional and legal components in global legal frameworks, especially as they relate to information technology, in the “United States of America, the United Kingdom, the European Union (EU)”, as well as the Indian legal system.

For the current study, the researcher chose India because it is not based on actual experience. The study's theoretical aspects have been analyzed through a range of sources, including Constituent Assembly Debates, Law Committee Reports, Recommendations from the “Second Press Commission, the Nordic Conference of Jurists on the Right to Privacy in 1967, and the Youth Committee Report in 1972”. In several libraries this study is being undertaken. It involves examining a number of books on this subject. The researcher must be able to study books, articles, newspapers, commissions, and panel reports as well as legal precedents. Inquiry and study of case law, organizing, investigating, and systematizing legal suggestions, and investigation of legal reasoning, as well as lawful thinking or judicious derivation, were used to accomplish this research.

Quick references to US and UK law are also provided when dealing with specific areas of privacy. The contributions of Western celebrities are recognized as the basis of the debate on the intellectual bases of privacy. On the other hand, Eastern notions of privacy can be found in many places. Review the constitutional status of this right using customary law and legal provisions. In addition, this research includes a critical review of previously identified case law. As primary sources, not only Acts of Parliament and Court Statements are used, but also secondary documents such as constitutions, books, articles, judicial observations and encyclopedias. Resources used by the Corpus Secundum Juris, dictionaries, and newspapers. In addition, in order to simplify and standardize the citation system, we have adopted the citation system commonly used in legal reports in various countries.

## **1.5. Scope and limitations**

Beginning with reading, accounting, newspapers and most recently the Internet, the concept of privacy has changed as technology has advanced. The Internet and ubiquitous data collection and storage have changed the way people think about privacy in the modern world. Current privacy concerns center on how third parties manage the data they collect: is it secure and who can access it and when?

The right to privacy is recognized as a fundamental need in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the UN Migrant Workers Convention<sup>6</sup>, the UN Convention on the Protection of Children<sup>7</sup>, and many other regional and international treaties. Privacy is explicitly mentioned as a right in most international human rights instruments, treaties and human rights courts.

The United Nations Special Rapporteur on the right to privacy highlighted the right to privacy in his first report of 8 March 2016. Her research is based on two principles. Privacy protection must work across borders. Remedies for invasion of privacy must also be available across borders. The Special Rapporteur has also drawn up a 10-point action plan to support the implementation of the principles.

The right to privacy underpins other rights and freedoms such as freedom of expression, association and religion. Privacy has become an important issue in the technological age, as personal data is routinely captured and sold in the new economy. Researchers and analysts are currently working on addressing privacy concerns and ensuring the security of the data obtained.

The study's importance is vital in order to build and establish appropriate directional, controlled, and systematic procedures to defend the most prized human right to privacy in a well-accepted and complete manner.

The impact of big data collection, storage, and usage on human rights in Indian contexts must thus be investigated. This article investigates the issue of privacy in today's big data era, as well as the potential use of Big Data against citizens via ICT and social media platforms. This research also examines the importance of data security and identifies

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<sup>6</sup> See A/RES/45/158 25 February 1991, Article 14.

<sup>7</sup> See UNGA Doc A/RES/44/25 (12 December 1989) with Annex, Article 16.

technologies that put people's data on the Internet in jeopardy. Finally, this essay will provide ways for people of India to secure their personal information on the internet.

The need for this study stems from the basic to contradict issue of the "right to privacy" with today's growth of modern science and innovation. This study may meet a need and make major contributions to the development of a technology-based legal framework to assist modern socialised societies in meeting legal advancements from a global perspective. Individual privacy and data protection concerns, such as information security, necessitate urgent research in this crucial topic.

The vehicle of data information technology must be governed and constrained by incorporating current legal components into the current arrangement of global communication networks, such as the Internet and overall communication technology systems.

India currently lacks a comprehensive data protection law. The "Government passed the Information Technology Act in May 2000, a series of regulations intended to provide a comprehensive regulatory framework for internet commerce". The Information Technology Act, which is the only establishment swapping with the subject, is quite limited in scope. The Information Technology Act is the only provision dealing with the subject and is rather limited in scope. As a result, there is a significant gap between individual privacy expectations and current legislative safeguards in India.

The Indian legal structure lags far behind in terms of controlling the growing threat of data-based liability. To regulate the framework with a productive and sustainable lawful legal system, a reasonable and functional instrument is required.



# **CHAPTER -2**

## CHAPTER 2

# ORIGIN AND DEVELOPMENT OF RIGHT TO PRIVACY

Privacy, in a literal sense, is the state of not being observed by others or being hindered by other public means, or away from the public eye. This is the state that I have to face in the universe. Refers to normal life. Exist without outside intervention. Privacy is the inalienable right of every individual to privacy, the right to protect their data and their personal information, and the right to vote to the extent that information may be transferred to third parties. or used by third parties. They need privacy, a fundamental right designed to benefit Indian citizens, both of which were spelled out in a lengthy disclosure published in 2013. In the words of former NSA employee Edward Snowden, the right to privacy has been deemed essential and has become the subject of international debate. "Government agencies, such as the NSA, the CIA, RAW along with GCHQ", are engaged in massive global supervision, which in the first turn, violates the principles of the Right to Privacy which is a fundamental right. Some debate over around the ultra-include such issues, as the question of the be capable of if privacy coexist with the intelligence services along with their ability to access along with analyze information in relation to the life of man; that the loss of the right to a private life along with there is no means in favor of strengthening the protection of suspects of terrorist threats; along with if these threats of terrorism are a good excuse along with justification in favor of surveillance of the population. He is part of the different legal traditions of the restrictions on the Government along with private activities, which pose a threat to the integrity of the private life of individuals. More than 150 national constitutions mention the Right to Privacy which is a fundamental right.

According to the Legal Dictionary of the Blacks, the Right to Privacy which is a fundamental right is " the right to be alone ", human right to protection against unreasonable interference. " Recently, a decision the judge **D.Y. Chandrachud** canceled principles, recognized in the Habeas Corpus casein the case of Justice K.S. Puttaswamy and ors. v. Union of India<sup>8</sup>,

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<sup>8</sup> Writ petition(civil)no.494 of 2012

which has evolved as a historical judgment in the history of India with respect to the status of The Right to Privacy. The Indian Constitution comprise Right to Privacy under Article 21<sup>9</sup>, which is a condition of the right to life along with personal freedom. Insisting on the concept of " private life " is a dynamic concept in constant evolution, which have got to be explained. The scope of Article#21 is multidimensional in agreement during the Indian Constitution. In historical fact K. With. Puttaswami v. Union India in 2017-year **K.S. Puttaswamy v. Union of India** in 2017, so with the purpose of the earlier it is not considered a basic right according to the Indian Constitution. Topics not less, our Indian judicial system is now recognized this in a basic right, which is inborn in Article#21.

Many of the major players in the private sector as well be capable of pose a threat to The Right to Privacy, in particular such technology companies, like Apple's, Amazon's, Facebook, the Google along with Yahoo, which collect along with use the personal data of its users. such concerns have increased in the result of the impact, in particular the scandal with these Facebook-Cambridge Analytica, which was focused on psychographic corporation Cambridge Analytica, which uses the personal data Facebook in favor of the impact on large groups of publics. As the concept of privacy applies to natural rights theory, it often responds to new information with communication technologies. In the United States, an article in the Harvard Law Review of December 15, 1890, written by attorney Samuel D. Warren and future United States Supreme Court Justice Louis Brandeis, has the following rights: There is " The Fundamental Right to Privacy" is often cited as the first explicit statement of the American right to privacy. Warren and Brandeis write that privacy is "the right to remain calm," and it also focuses on the protection of the individual. This particular approach is a nod to the In response to recent developments in photography and sensationalist journalism techniques, also known as "yellow journalism".

**Jud Cooley** explained the law of privacy, along with said, with the intention of privacy - it is right to solitude. **Edward Shills** has as well explained, with the intention of Privacy - is " zero relationship among two or else more public in with the intention of sense, with the purpose of among them there is no interaction or else communication, if they are of want." Relations among public or else groups otherwise among groups as well as public are neutral. Privacy is a value, condition otherwise cultural condition that is intended in favor of a

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<sup>9</sup> "No person shall be deprived of his life or personal liberty except according to a procedure established by law."

personage in the collective realization of himself, varies from one society to another. In this way, the right to respect in favor of private life, how as well as the right to solitude, is considered to be a manifestation of " inviolate personality ", the center of freedom along with liberty, from which public should be free from any intrusion. The Right to Privacy which is a fundamental right justified the need to be alone.

The right to privacy is a legal element of national constitutions are frequently associated in the midst of information technology. In my particular opinion widely cited case *Olmstead v. United States* (1928)<sup>10</sup>, Brandeis drew attention to thoughts, which he developed in his article#1890 the year " The Right to Privacy which is a fundamental right." In this dissent, he insisted on the fact, with the aim of the question of Privacy more relevant in favor of constitutional rights, along with even said, with the intention of " the government has been defined as a potential violator of privacy." He wrote: "The discovery along in the midst of invention have allowed the government a much more effective means, than to stretch the grid, get into the court information in relation to that, with the intention of whispers in the closet." At the time, phones were often community assets, sharing lines and switching operators connecting to them. By Katz's time in 1967, the telephone had become a personal device, not intended to share lines between households, and switches were electromechanical. In the 1970 's years, new computer along with recording technology have caused all the great concern of in relation to privacy, so as to led to the principles of fair information practices.

Privacy is our right. that's right. In other words, it should include the realm around us: our bodies, possessions, families, minds, ideas, everything that can be a part of us. Our emotions, our secrets are all in our personality. This right gives Indian citizens the possibility to make choices within their control. That is, projects in this field can take advantage of other parts and degrees, and function in this way in using those parts. choose, reveal.

**Alan Westin Father of Modern Data Privacy Law** explained in his book "privacy and freedom" that the new technology changed the balance among Privacy along in the midst of disclosure of information, as well as in the midst of the intention of the right to privacy possibly will limit the state control over the protection of the democratic process. Westin defines privacy as a " requirement of certain persons, groups otherwise institutions alone to

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<sup>10</sup> 277 U.S 438



determine, when, how as well as in which extent information in relation to them is disclosed to third parties." Westin describes four states of intimacy: loneliness, intimacy, anonymity, restraint. These states need to balance participation and standards. Each person is constantly engaged in a process of individual adaptation in which the desire for privacy in the desire to reveal oneself is balanced with the desire for communication in relation to oneself. take. Be considerate of others and create an environment that conforms to social norms. the society in which he lives. - Ellen Westin, "Privacy and Liberty," 1968

In a system dominated by liberal democracies, privacy creates a separate space in political life, further allowing some to self-govern as individuals and providing democratic freedoms of association and speech. In the intent of the web, computer-based data poses a threat to privacy, David Flaherty explained. He developed "data protection" as a privacy feature, including "the collection, use and distribution of personal information". This concept is the basis of fair information practices used by governments around the world. Flaherty proposed privacy as a concept of information management. "People want peace on their left, some control over the way they use information." Mark Rothenberg calls modern privacy a fundamental right of fair information practice, related to the use and collection of personal information. Rights and obligations. Lautenberg emphasized that the intention to transfer rights is the responsibility of the subject data, and that data collectors have the intention to be responsible for information asymmetries in data transfers and data practices.

**Richard Posner as well as Lawrence Lessig Professor at Yale University** explained that emphasizes the economic aspects of personal information management. Posner supports the hiding of information that reduces market efficiency and criticizes privacy. For Posner, employment is selling oneself in the labor market, which, in his view, is like selling a product. Any unreported "defect" in the "Product" is a fraud. For Lessig, online privacy breaches can be regulated by norms and laws. Lessig have explained that, in the midst of the intention of " privacy was stronger, if one have public viewed the law as the right to property " as well as with the intention of " public should have the opportunity to control the information in relation to them." Economic approaches to privacy make it difficult to maintain a shared understanding of privacy.

There has been a lot of attempts to rethink the private life in a basic right of man, so with the purpose of its social value becomes a significant component of the governance of democratic societies. Amitai Etzioni explained an approach community to private life. This requires a

common moral culture to establish public order. Etzioni have explained that, with the intention of " privacy only one good among numerous others, " as well as with the intention of technological effects depend on the responsibility along with supervision of the community. He have explained that, with the purpose of the laws of Privacy only reinforce state control.

**Priscilla Regan Assistant Professor of Public Affairs in his book “legislating privacy”** explained that the personage concept of Privacy suffered a setback as a philosophical along with political ally. He stands in favor of the social value of private life in three dimensions: the general presentation, social values along with collective components. These ideas shared to private life will permit freedom of conscience along with the diversity in thinking. The public values will ensure more democratic participation, in that including the freedom of expression of opinion along with association, as well as limits in government authorities. The collective elements principally describe privacy as a collective benefit, then, with the intention of are not capable of be divided. The purpose Regan is in fact, to strengthen the requirements of Privacy when developing policy: “If we accept the collective otherwise social value of private life, as well as common along with public value of private life, among those, who advocates in favor of the protection of Privacy, will be more solid foundation, on which the to ask in favor of his protection.”

**Leslie Regan Shade Assistant Professor in Department of communication** says that with the intention of the right of a person to privacy is absolutely necessary in favor of a meaningful democratic participation along with so as to it guarantees human dignity along with independence. Privacy depends for the mainly part way of standards that, as the will to spread information, along with from that, is whether it is suitable otherwise no. Violations of personal life depend on the upper situation. The Right to Privacy which is a fundamental right has a precedent in the Organization of the United Nations ' Declaration of Human Rights. Shade have explained that, with the purpose of privacy should be approached in the midst of socially oriented point of view, along with not the market.

On 24th August 2017 the year Board of nine judges of the highest judicial court of India(the S.C.)of India in the head with the **Chief Justice JS Khehar**, with the intention of The Right to Privacy is a fundamental right for the citizens of India in agreement in the midst of the

Indian Constitution ( the main way in accordance in the midst of Article 21<sup>11</sup> as well as further on the rights of part III). No legislation, adopted by means of the Government, not possibly will excessively disturb him. In particular, the Court took the test in three parts, necessary for the achievement of Article#21 - the right to legality- order - word on where the existing law; the need in favor of a point of view of the legitimate purpose of the state as well as proportionality, which provides a rational connection among the object of the invasion along with means, adopted to achieve this goal. This explanation is important to prevent future erosion of the law by the whims and fancies of then-current governments. On September 6, 2018, the Supreme Court paved the way for the decriminalization of homosexuality in India, legalizing same-sex sexual relations between two adults, most of them under private guardianship.

The new policy was to exchange data on WhatsApp among Facebook, but then Facebook bought Whatsapp in 2014, raising the issue of violating people's privacy rights and facing it in the Supreme Court. It's done. Courts of India (Supreme Court). India's Supreme Court (SC) must decide whether the right to privacy applies to private individuals.

In many cases, especially for the public, generally viewed by the media, the right to privacy is violated when it comes to information about a person's life, namely a statement made in a report. be confirmed. Otherwise, even the smallest behavior will be reported. On the other hand, the assertions of the press are based on the fact that all citizens have the right to know private information about persons holding public office for this purpose. This difference is rooted in numerous legal traditions as part of freedom of expression.

Any periodical of the facts, which possibly will be considered as confidential by means of law, have explained that in relation to the news, in relation to these particular facts along with of the protection, which are the facts. If it has a significant for the media, essential in favor of the public, is to force the freedom of the press, these facts are protected. On the other hand, with the purpose of would not been done, to be true, if this fact is not considered to be not worthy of attention, it is not protected. examples, such as the sexual orientation, HIV - status along with financial position, to show, that they possibly will cause public damage to the published figure. The problem comes from the definition of news. Multiple

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<sup>11</sup> *"No person shall be deprived of his life or personal liberty except according to a procedure established by law."*

cases such as **Strutner v. Dispatch Printing Co.**<sup>12</sup>, to show, so as to the publication of personal address as well as full name of the person questioned by means of the police face is real as well as " element of legitimate public interest." The last part will be considered, if it would be capable of be regarded as the in the form of doxing. In connection with the fact, with the intention of the court confirmed the right of the newspaper to publish, modify it in the future will be much more difficult.

Governmental organizations, such as the NSA, the CIA as well as GCHQ, among other things, as a rule, carried out mass surveillance of the whole world. Programs, such as the PRISM, MYSTIC as well as other operations, carried out by means of the states - members of NATO, permit NATO to collect a large number of metadata, even the actual recording of telephone calls from different countries along with the history of " the Internet ". The presence of such programs is justified by means of these factors from the point of view of the alleged benefits of protection along with law enforcement authorities, but it is as well contrary to the Right to Privacy which is a fundamental right, enshrined in a variety of treaties, constitutions along with the Universal Declaration of the rights of man. In this way, the argument in relation to the sanctity of private life met a broad counterintelligence operation for the sake of political benefits as well as has become a controversial issue, in view of the fact that it undermines the conscious need for the countries in that, to spy in favor of the broad population to maintain its structures of power. In 1999 year at the event, dedicated to the launch of the technology the Jini, Scott McNealy, president along with chief executive director of Sun Microsystems, have explained that, with the purpose of the question of Privacy was " a red herring ", along with then have explained that: " In any case, have one no competitors, pp. Go on."

After the scandal Snowden, the government have explained that, that there is a terrorist threat all still there, that outweighed the so -called right to a private life. The Right to Privacy, which is a fundamental right belongs to the concept, according to which personal information the person is confined from public control. American judge Louis Brandeis called it " the right to be left in peace." Although this right is not specified in the Constitution of the United States, some amendments provide some protection.

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<sup>12</sup> 442 N.E.2d 129 (Ohio Ct. App. 1982)

The Right to Privacy, which is a fundamental right, should in general be weighed against the overriding interests of the state, in fact including improving quality of life, promoting social security along with improvement in quality of life. Examples of this are the laws of the belts of security along with requirements for motorcycle helmets. along with though numerous Americans are well aware, with the purpose of the government collects personally identifiable information, the majority say, with the intention of state supervision is acceptable.

There are a lot of lawsuits about privacy, but there isn't a single one that isn't about something like seeing privacy as a fundamental right. A historical case, **K.S. Puttaswami v. Union of India 2017**, demonstrates a fundamental right to privacy. The right to privacy is a fundamental right that is enshrined in various treaties not only at the national level but also at the international level. As the right of privacy is a dynamic concept, it is contained in different statutory provisions covering different aspects.

The fundamental idea of the preface to this principle was in the protection of personal works along in the midst of private works, along with its scope of coverage extends not only to the theft along with illegal use, but along with on the publication in any form. In this way, from the - in favor of the constant changes in technology along with development, which threatened a person in the audience, numerous outstanding lawyers have made a variety of proposals, along with as well offered to add the feature of " the right to solitude " in the Law on Privacy.

Basic rights - is the basic rights, which are inherited from each person, along with these rights have got to be granted to every citizen of the country, together in the midst of appropriate means of legal protection. Certain confidential along with hidden parts of public cannot be declared public domain. After the death of a recent case in the 2017 year the Right to Privacy which is a fundamental right in all the world was gaining strength along with was recognized in a basic Right to Privacy which is a fundamental right. a variety of countries gave a convincing acknowledgment of the Right to Privacy which is a fundamental right, such as the United States, Great Britain, India along with a variety of international organizations, such as the **UDHR, ICCP** along with the ECHR, as provided the actual recognition.

## **Evolution of the “right to privacy”**

The concept of privacy dates back to ancient Hindu texts. List some material recorded from the public, including hitopash, prayers, and home floors. While the concept is not entirely foreign to Indian culture, some legal scholars, such as Seetar Asrani-Dhan, have misgivings about the concept given India's right to privacy. Intent further explains the following: Upendra Baxi, but Upendra Baxi is clearly alert, kind, sympathetic, human, otherwise soft, with a purpose of constant curiosity. good. Even closeness was associated with "positive morality" in ancient times. So, notwithstanding this aspect, the right to privacy was not clear in the old Indian documents.

Likewise, the question of the right to private life was brought up in the debates of the Constitutional Convention when the Constitutional Amendment was first proposed. BR Ambedkar only gives Karimuddin snobbish support and privacy which cannot be included in Indian constitution. What happened in the 1960s as the issue of land was in time recognized as one of the fundamental rights recognized in the Indian Constitution alongside ordinary rights? In 1954, eight justices in the Capitol ruled that the right to privacy was not considered one of the fundamental rights. **M.P. Sharma v. Satish Chandra**<sup>13</sup> dismissed the existence of a right to privacy on the basis of the right of "Dharma" groups to seize and search documents, so that an appeal could be made directly to the framers of the Indian Constitution. It is not mentioned.

## **Strip Searching Under trial Prisoner Violates Fundamental Right To**

### **Privacy: Mumbai Court**

#### **CBI V/s AKS**

Strip searching under trial prisoners is a violation of fundamental right to Privacy, a court in Mumbai has observed.<sup>14</sup> Special Judge BD Shelke under the Maharashtra Control of Organized Crimes Act directed Mumbai Central Prison authorities to use scanners and electronic gadgets to conduct personal searches

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<sup>13</sup> AIR 1954 SC 300

<sup>14</sup> 2022live law

instead. “Certainly, taking search by making the UTP nude is violation of his fundamental right of privacy, it is also humiliating. Not instead. “Certainly, taking search by making the UTP nude is violation of his fundamental right of privacy, it is also humiliating. Not only this but using unparliamentarily language or filthy language against accused also humiliating to the UTP”, the court said. The court was dealing with a complaint filed by AKS (name redacted), an accused in the 1993 Mumbai blasts case seeking directions against jail authorities for conducting personal search using Scanners.. if scanner /electronic gadgets are not available and personal search of UTP is required to be conducted physically, not to misbehave with UTP, not to humiliate UTP, not to make nude to the UTP, not to use filthy language or unparliamentarily language against the UTPs...”, the court added. Advocate Farhana Shah submitted that when AKS is taken back to jail after appearing before the court, the search guard at the entrance gate strip him nude before other prisoners and staff members while carrying out body check-up. When he opposed it, the guard misbehaved, humiliated, and threatened him, she submitted. The Superintendent of Mumbai Central Prison denied the allegations and contended that a false application is filed with an intention to pressurize jail authorities. The court noted that other under trial prisoners have also made such complaints against the searching guard. Therefore, the court directed the guard to carry out personal searches with electronic without causing any humiliation to the applicant. In February, the same court had issued warning to the search guard and superintendent of the jail after Danish Ali, an accused turned prosecution witness in another case, made similar allegations. Director General of Police to take steps to remove online images and details of a woman who is a The Kerala High Court recently directed the Director General of Police to take steps to remove online images and details of a woman who is a victim of offences under the Immoral Traffic (Prevention) Act, 1956. The Petitioner had approached the

High Court removal of online content having her name and images circulating on social media, which had resulted in humiliation and cyber attacks on her. Thrillophilia Taking note of the submission of the Petitioner that circulation of such content on social media is violating her right to privacy, a single bench of Justice K Babu observed that: "Privacy is the ultimate expression of the sanctity of the individual. There cannot be dignity to an individual without privacy. It is a constitutional value founded on fundamental rights. Privacy with its attended values assures dignity to the individual. Dignity is the core which unites fundamental rights. Privacy is the THE constitutional core of human dignity." The Petitioner who is a certified Ayurvedic Therapist, Beautician and Massage & Spa Therapist, is a victim of a crime registered at Thodupuzha Police Station under the Immoral Traffic (Prevention) Act, 1956. She submitted that she being deprived of her right to perform her profe due to the incident. "Though the petitioner is arraigned as a victim in the above case, her name, images and details were uploaded and published in the online media links and YouTube channels, that when the humiliation and cyber-attacks became unbearable for the petitioner, she had submitted detailed complaints before the respondents 3 and 5 showing her grievances and requesting to take immediate steps for the removal of her images and details from the online media links and YouTube channels." her plea states.

### **XXX V/s State of Kerala**

The Court took note of the submission of the Petitioner that even though complaints were preferred by her to the State Police Chief for removal of her images, name, videos and defamatory articles about her online, no steps have been taken so far.<sup>15</sup> The Court accordingly directed Director General of Police & State Police Chief to remove the online media links pertaining to the

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<sup>15</sup> 2023 live law 284



Petitioner. Advocates P T Sheepish, Tom Thomas, Sandra Tom, A Abdul Raman, Heath H & Aparna V Devassia appeared for the Petitioner. Case Title: XXX. V State of Kerala Citation: 2023 Live Law (Ker) 288 Kerala High Court Raps Media; Says Litigant's Dignity & Privar Can't Be Harmed; Calls For 'Responsible Journalistic Conduct' In Court Coverage The Court lamented unjustified media comments based on oral remarks made by judges during adjudication While allowing Priya Varghese's appeal, the Kr High Court made some critical observations ag the media coverage of the case. Priya Varghese is the wife of K.K. Ragesh, private secretary to Chief Minister Pinarayi Vijay an. Taking note of the media attention received by the case, a division bench of Justice A K Jaya sankaran Nambiar and Justice Mohammed Nias C P reminded the press to respect the right to privacy of the litigant and to follow responsible journalistic conduct. The Court stated that the an individual's Right to Privacy is not only against the State but also against private parties such as the media. "On account of its nature as a right that is personal to an individual, we are of the view that the newly recognized fundamental right to privacy, which takes within its fold the right to protection of one's reputation as well, would merit classification as a fundamental right that protects an individual, not only against arbitrary State action, but also against the actions of other private citizens, such as the press or media. We trust, therefore, that the media will take note of these observations and adopt a code of responsible journalistic<sup>16</sup> conduct that will inform news reporting in the days to come." the Court stated.

### **Priya Varghese V/s Dr. Joseph**

The Division Bench heavily criticised the media for the distraction caused and warned the press to not obstruct the course of justice: ".frighteningly frequent are those occasions when the impugned decision in academic matters attracts

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<sup>16</sup> 2023 live law 288

media attention for some reason or the other, and the court has then to deal with the added distraction brought about through incessant newspaper channel discussions and Overwhelming social media posts. It is for this reason that courts have time and again exhorted the print and electronic media to exercise restraint by deferring discussions on matters pending before the court so that the rule of law can be better served by avoiding an obstruction of the course of justice. While noting that the media must exercise caution while reporting Court proceedings as not everything said by a judge during a hearing reflects the judge's views on the case, the Court said: "On its part, the media cannot be unmindful of the harm that is caused to a litigant's dignity and reputation through unjustified comments and remarks, often based on the oral remarks made by a judge during the adjudication proceedings, notwithstanding that the litigant ultimately succeeds in those proceedings. They must note that no less a constitutional functionary than the Chief Justice of India, had recently observed that not everything that is said by a judge during the course of interaction with counsel in court can be taken as revealing the judge's views on the merits of the cause that is being adjudicated." In November 2022, a Single Bench of Justice Devan Ramachandran had held that Priya Varghese did not possess the requisite teaching experience, to be appointed as Associate Professor at the Department functionary than the Chief Justice of India, had recently observed that not everything that is said by a judge during the course of interaction with counsel in court can be taken as revealing the judge's views on the merits of the cause that is being adjudicated." In November 2022, a Single Bench of Justice Du.a Ramachandran had held that Priya Varghese did not possess the requisite teaching experience, to be appointed as Associate Professor at the Department of Malayalam at Kannur University and directed the competent authority of the University to reconsider her credentials and decide whether she should continue on the Rank List. The division bench set aside the order of the single bench and

held that the time taken for acquiring a Ph.D. degree period spent by a faculty member under the Faculty Development Programme could not be excluded while considering the period of teaching experience.

F. Request. There, the privacy debate surfaced, which was again dismissed by a six-judge panel of the Supreme Court of India (SC) in **Kharak Singh v Uttar Pradesh state**<sup>17</sup> a decade later, in 1962. only. India's Supreme Court (SC) enacted it with the intent that it was not a fundamental privacy right, but has since changed its position, saying that allowing nighttime access is a violation of "personal liberty". expressed the dissent of Justice Subba Rao, in which he explained that the intent of privacy is still an important part of individual liberty, but did not include that position. Fundamental rights enshrined in the Indian Constitution.

Then, in 1975, India's Supreme Court explained that a three-judge panel faced the same issue of fact in **Govind v. Madhya Pradesh**<sup>18</sup>. In the middle of Article 21. You have basic privacy rights. At this point, Govind was defeated, but privacy was achieved for the first time, and the Indian constitution barely recognizes consensual individual liberties.

Back then, privacy was our fundamental right. His presence faced no serious challenge before any of the nine justices in K.S. case. In 2017 the Puttaswamy-India coalition overturned the decision of MPs Sharma and Karak Singh. Following a recent decision in 2017, it turns out that the right to privacy is a fundamental right that has not lost its place in the golden trinity of Article 14 (Right to Equality). Article 19 (right to liberty) and article 21 (right to life to the enjoyment of personal liberty).

Listening to a telephone conversation and explaining how the right to privacy hinges on many technological developments, the In **R.M. Malkani v. State of Maharashtra**<sup>19</sup>, Court said the court's intent was not to allow assurances made to protect the public to be jeopardized and to allow police to take unlawful or improper steps. Phone hacking is considered a violation of privacy and freedom of expression and the Government of India has taken a libertarian and defamatory stance against government officials who destabilize Article 21 and Article 19(1)(a). It is not considered possible to impose restrictions on the publication of unsolicited material. constitution.

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<sup>17</sup> 1963 AIR 1295,1964 SCR (1) 332

<sup>18</sup> 1975 AIR 1378, 1975 SCR (3)

<sup>19</sup> 1973 AIR 157,1973 SCR(2) 417

As per the observation made by **Justice Kuldip Singh** in the case of **People's Union for Civil Liberties v. Union of India**<sup>20</sup> that it is right on the conduct of telephone negotiations in private life in his home otherwise office without interference, of course, it possibly will be claimed as The Right to Privacy. In this case, the highest judicial court of India (the highest judicial court of India (the S.C.) ruled, that telephone conversations are private in nature along with that, therefore, listening to telephone conversations is a violation of personal life.

Another feature of the fundamental right to privacy today includes the prioritization of gender issues, which prevents not only privacy distortions but also privacy violations. It also means the right to full expression. Likewise, no one, not even those who behave casually, has a basic right to privacy or the right to interfere in their private lives. Everyone has the fundamental right to be treated with dignity.

But in the case of **Harvinder Kaur v. Harmander Singh**<sup>21</sup>, the Delhi HC has counted, that even if the sex with could be like one of the attributes mainly significant to at the very notion of marriage, but not is not all its contents. Sexual intercourse is only one of the elements that make up a marriage.

Sector Health is one of the significant issue s concerns in private life along with moreover is a significant feature of the right to privacy. Information in relation to the state of health not only comprise in itself the information in relation to the general health along with / otherwise disability, but it moreover contains information in relation to medical services, that person possibly will receive. It is the human tendency to think, that the information in relation to the state of health is very sensitive along with should be confined from numerous publics. The right to life is so important, with the intention of replaces the Right to Privacy which is a fundamental right. Doc torus under oath otherwise under medical ethics, to keep secret the personal information of their patients, how such disclosure possibly will cause harm otherwise to Dana gerah life of others. The parts to be M. "X" with. Hospital "Z has been found, that the relationship among the physician - patient, but in the main commercial, professional of confidence, along with therefore doctors have a moral along with ethical to preserve Privacy. Public disclosure of the actual facts in such a situation possibly will lead to sparing the right of the person, which is necessary to keep one, along with the right of another to be informed.

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<sup>20</sup> WRIT PETITION(CIVIL)NO.196 OF 2001

<sup>21</sup> AIR1984 DELHI 66

The first case, alarmed basis right to private life in India was the case *Kharak Singh*, where a bench of seven top court judges was to check on the constitutionality of some of the police regulations, which are authorized by means of the police, to make a home visit along with / otherwise observation of a criminal records along with the constitutionality of this provision was confronted in the case described above, this was in fact a violation of the Constitution of India under the term “ chelas of orthogonal freedom ” in agreement with as under the term ‘personal liberty ‘under Article#21<sup>22</sup>. . The Court then held, that any law, which is intrusive to personal liberty of a citizen have got to be to be constitutional, it found the triple test of the highest judicial court of India (the highest judicial court of India (the S.C.)in the case of *Maneka Gandhi v. Union of India*<sup>23</sup>. This requires a triple test of any law, if the interference with the concept of human freedom in agreement in the midst of article. 21, to meet certain standards: he has got to appoint a procedure; The procedure have got to withstand the test of one otherwise a few basic rights, enshrined in Article#19, which be capable of be used in a particular situation. He as well has to be suitable for testing with reference to Article#14. It was found, with the intention of the contested provision is not passed this test. Storage of financial documents in the house of a citizen otherwise in the bank is not there has been a great value.

One other aspect, relating to private life, which is, finally, an integrated space in agreement in the midst of Article#21 of the Indian Constitution was read in the case of **Naz Foundation v. Union of India**<sup>24</sup>, in which Delhi HC ‘struck down’ Section 377 of the Indian Penal Code, 1860 the year, with those to decriminalize class of voluntary sexual intercourse of adults, along with the invasion of the state only in that case, if the state was able to establish an insurmountable interest, was one of the critical arguments, confined Section 21 of the Indian Constitution In a recent case of **Navtej Singh Johar v. Union of India**<sup>25</sup>, The apex Court held that **Section 377**<sup>26</sup> of Indian Penal Code, 1860 the year, in that measure, in which it is used in relation to sexual behavior among adults in private order along with is constitutional.

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<sup>22</sup> “No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

<sup>23</sup> 1978 AIR 597

<sup>24</sup> 160 DELHI LAW TIMES 277

<sup>25</sup> WRIT PETITION (CRL)NO.76 OF 2016

<sup>26</sup> Unnatural offences. —Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

India has implemented a wide range of data exchange along with system monitoring shortly after the terrorist attacks 2008 the year in Mumbai in order to enhance public safety for the fight with crime along with terrorism. In order to centralize the interception of all messages, data along with ensure access to law enforcement agencies. Central surveillance system created. After the introduction in such a system, it is then connected to everything on the system of interception of telephone calls (Nairu), which will then monitor voice calls, SMS along with MMS, fax messages online ground, the CDMA network, v d 3G. Other projects along with schemes include in themselves legal system of interception along with monitoring (LIM), NATGRID along with project CCTNS along with numerous others.

Recognition of The Right to Privacy in relation to Article#21 in a basic right possibly will be enough, to encroach on any - any field of activity. What with the development of technology along with a variety of social networks, the introduction of such a right has become extremely difficult? Very level, in which the question of Privacy among the public completely done subjectively, along with it differs from one person to another. Section **Section 43**<sup>27</sup> of The Information Technology Act, 2000 moreover comprise in itself The Right to Privacy, with the intention of makes unauthorized access to the computer resource crimes. Article#19 (1) ( a ) of the Indian Constitution contains in itself the right to the media, which frequently be capable of be contrary to the right to private life. Then there is the issue in the conflict among the right of a person to private life along with the right of another person to the press? He responds to this question, introducing the concept of " public interest " along with " public morality " along with other provisions, referred to in Article#19(2) of the Indian Constitution. The publication of personal information, the person without his consent is justified, if these forms of information state the Records including records of court sessions more. in a variety of sheniyah, The Right to Privacy possibly will enter into conflict with the police investigation. a variety of tests, such as the Narco- analysis, test on a detector of lies otherwise tests on the detector of lies along with tests of mapping the brain, make unwarranted interference in the right of a person to privacy.

The final report on the Act, known as the Personal Data Protection bill 2018, was published by the Commission in July 2018. The Act provides for the establishment of a data protection

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<sup>27</sup> [Penalty and compensation] for damage to computer, computer system, etc. -If any person without permission of the owner or any other person who is incharge of a computer, computer system or computer network

authority to manage data protection measures. This may involve processing data. It was formed to recognize the need for consensual protection of personal data within the fundamental right to privacy. From a personal information privacy perspective, the creation of a collective culture of free support and unbiased digital stewardship needs to be advocated to drive innovation. Moreover, the purpose of drafting such legislation is actually to protect the autonomy of individuals in relation to their relationship with personal data. In addition, with regard to the use of personal data, it is necessary to clearly establish the relationship between the public and the legal entities that process personal data, and to establish some standards in favor of personal data. The cross-border transfer of personal data also prevents harmful fraudulent processing and authorized responsible parties for the processing of personal data.

The right to private life is a specific condition in the right to life along with freedom of the personage in agreement in the midst of Article#21 of Indian Constitution. it is not is the absolute, it possibly will be under the condition of compliance of reasonable restrictions in connection with the prevention of crime, violations of public order along with the protection of other, but it possibly will be, is a contract, but moreover arises from the relationship of concrete, which be capable of be commercial, matrimonial, otherwise even political, along with moreover in the case of conflict among these two derivatives of rights prevails then, that promotes public morals along with public interests. Studying the previous solutions apex court in throughout his major years, one be capable of watch in favor of those, as the court considered the basic rights in a watertight compartment in the case of **A.K. Gopalan v. State of Madras**<sup>28</sup>, the mitigation of this strict position could be felt in the case of **Maneka Gandhi v. Union of India**, the right to life is not simply an adjective for animal survival, but a guarantee of a meaningful and fulfilling life.

Considering himself a part of society, we, as a rule, frequently do view, that we are public, first, along with in this world, each of us, that every need in us with the private space.

Because every day-to-day activity is getting ahead, it is right becoming extremely important. When all of our lives, exposed to the effects of means of mass information all the way through the websites of social networks otherwise cameras spy, protection should be

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<sup>28</sup> 1950 AIR 27, 1950 SCR 88

provided to all without discrimination, along with it has to act in the way, with the intention of no one does not think in relation to the infringement of the right to privacy of the individual. Protection have got to be confined in all this aspect, but with the condition observance of reasonable restrictions, in agreement in the midst of the provisions of the of in the Indian Constitution along with other relevant laws, operating in the time. it should be soles, that privacy have got to be in the mind, along with in a limited range of, along with it does not explain, in the rest of the world.

In all, that humanity is when - otherwise to commit, always have a positive along with negative side. Technology invaded on all parts of our life, if we want otherwise do not have, we be capable of T be sure, is whether this is something, which we did on the example, is heard ny third party along with the desire otherwise no. The old adage Hindi, with the intention of even the walls with ears had not been so true. The premise of today's world be capable of be the following: that would be one otherwise do, the world will know, prior to than one it will know, ask in relation to this at a certain Tiger Woods.

In previous cases in the Indian law only confined from physical dangers, such as the violation of borders, whose right to the property has arisen to protect their homes along with household animals. It was considered right to life. Gradually, at least the general right in constant evolution designed, to fit all the mainly different problems, public were, with that face, it was recognized, that in addition to physical security, security of spirituality, as well as his feelings, required intelligence. the right to life, already in the present time is distributed in the range of its scope along with comprise in itself the right to be left in peace along with the right to freedom, which guarantees the implementation of the long civil privileges; as well as the term " property " has become to include in itself all forms of possession - intangible, as well as material. Strategy, adopted by means of the Apex Court, to broaden the scope of art. 21 along with involve certain rights, concluded in the interpretation of Article#21, as well as international charters of the rights of man.

Courts have assumed Privacy Article 21 by agreeing on an interpretation between Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil Rights. In 1966, both of these international instruments included the right to privacy, but the right to privacy has not been translated into a fundamental right in the Indian constitution. The scope of this right was first explored in the Karak Singh case as to the validity of certain norms allowing surveillance of suspects. Few Solutions Subba RAO J.



Attracted by Light. In its 1975 decision, the Supreme Court reconsidered the right to privacy in the context of section 19(1)(d). In a detailed decision, Judge Jivan Reddy considered the intent of the privacy rights implied by section 21 and said that this rightly should be left in peace. Article 19(1)(d) and Article 21 guarantee surveillance in cases where surveillance is established, if the surveillance is intrusive and seriously violates the privacy of citizens. Freedom of movement may be violated. Based on the information provided by the medical history, surveillance should be aimed at crime prevention. In the context of anti-terrorism laws, the right to privacy is the subject of public safety, and the concealment of information with the attitude of criminal detention is considered unlikely to be legally revoked. Privacy Reasons. The right to privacy as to the meaning of Article 21 is debated in various contexts.

### **International Concepts of Privacy**

In Article#12 of the Universal Declaration of the rights of man (1948) Have explained that, with the intention of " No one does not have to be subjected to arbitrary interference in his personal life, family, home otherwise correspondeThe Court has recognizednce, otherwise interference in his honor along with reputation. Everyone has the right to defend the law against such interference or else attacks. "

In Article#17 of the International Covenant on Civil along with Political Rights (side which is India ) provides, with the intention of " one does not have to be subjected to arbitrary or else unlawful interference in his personal life, family, home along with correspondence, as well as unlawful attacks on his honor along with reputation." "

In Article#8 of the European Convention on the Rights of the man have explained that, with the intention of " every person has the right to respect in favor of his private along with family life, his home along with his correspondence; not should be no interference with the part of public authorities, in favor of the exception of those, which conform to the law along with are necessary in a democratic society in the interests of national security, public safety otherwise the economic well-being of the country in favor of the protection of health or else morals or else for the protection of the rights along with freedoms of other public. "

As already discussed, Article#21 of the Indian Constitution have explained that, with the intention of " Nobody not be capable of be deprived of his life otherwise personal liberty, except how to order, recognized by means of the law." The right to life, enshrined in

Article#21 has been interpreted by means of the liberal, so how in the average to something greater, than simple survival along with the very existence of the O g of the existence of animals. In this way, it covers all aspects of life, which makes the life of a man more meaningful, fulfilling along with dignified life, along with the right to private life is one of them. **In fact Govind v. State of Madhya Pradesh, Mathew, J.** accepted the right to privacy as a manifestation of art. 19 ( a ), (d) along with 21, but The Right to Privacy is not is an absolute right. " If we assume, with the intention of the basic rights, explicitly guaranteed by means of the citizen, have a criminal band, along with the intention of the right to privacy itself by means of itself is a fundamental right, the basic right should be limited on the basis of compelling public interest." Observation for a visit to the home is not always should represent an unwarranted intrusion into the private life of a man of - of character along with background person, who is under the supervision of, along with moreover the objects along with constraints, in which conducted observation. The right to privacy comes to " the public, along with not places."

In **Smt. Maneka Gandhi v. Union of India & Anr.,(1978)** in this case SC 7 Judge Bench stated, with the intention of " personal freedom " in section 21 covers a lot of rights, along with some have basic membership rights along with enjoy the extra protection. 19. A triple test for any law that infringes on personal liberty: (1) he has got to establish a procedure; (2) procedure should withstand the test of one or else a few basic rights, provided u / a 19, which possibly will be applicable in a given situation, along with (3) it has got to withstand the test of Article#14. The law along with procedure, allowing intervention in the freedom of personal affairs along with the right to on privacy moreover have got to be fair along with equitable, along with not arbitrary, fanciful or else oppressive.

In fact, **Naz Foundation Case (2009) Delhi HC** took the historic decision of homosexuality by means of mutual consent. In this case, section 377 of the IPC along with sections 14, 19 along with 21 were considered. The right to privacy necessarily has got to protect " private space, in which public be capable of become along with remain a ". It is explained that public need a place of refuge, where they be capable of be free from public control - where public be capable of lose a mask, a time to refrain from projecting the image of the world. " They want to be accepted as an own in favor of themselves, the image, which be capable of reflect the values of their peers, but not the reality of nature.

At the present time is set, with the intention of the right to life along with freedom in agreement in the midst of Article#21 comprise the right to privacy. The right to privacy - it's " right to be left in peace." A citizen has the right to protect his personal life, the life of his family, marriage, childbearing, motherhood, childbearing along with education. Anyone, who publishes it - on the above issues, in addition to how to consent of the person, will be held responsible in favor of the damage. On the other hand, the position should be different, if a person voluntarily enters into contradiction otherwise voluntarily invites or else causes conflict.

Intervention in private life be capable of be - (1) The legislative provisions (2) Administrative / Executive Order (3) The court ruling. Legislative invasion should be checked with the point of view of intelligence, guaranteed by means of the Constitution, along with this purpose the Court possibly will proceed to the proportionality of the invasion of relation to the pursued objectives. (2) As regards administrative otherwise enforcement measures, they have got to be reasonable in the light of the facts along with circumstances of the case. (3) In relation to orders from the Court should be sufficient reason to believe, that the search is justified, along with should consider the extent of the search or else confiscation, necessary in favor of the protection of " the special interests of the state." Besides that, both mentioned above, in general, the right was recognized as a rare exception to conduct searches without a warrant to arrest, but they have got to be conscientious, to preserve evidence otherwise prevent the sudden anger person or else goods.

### **The Privacy Bill, 2011**

The bill have explained that, with the intention of " everyone has The Right to Privacy - the Privacy of communications, made by means of him or else them - including personal correspondence, telephone conversations, telegraph messages, postal mail, e- mail along with other means of communication; the Privacy of his personal or else family life.", The protection of their honor along with glory, protection from searches, detentions otherwise the impact of legal relationships stuck among along with among personage persons; Privacy of supervision Privacy of its banking along with financial transactions, medical along with legal information along with the protection of personal data. "

The bill guard against theft of identity of the citizen, in fact including theft of identity of the criminal (giving yourself for another person under arrest for the offense), theft of financial

information ( if one use someone else's identity to obtain credit, goods along with services ) along with so on. D. The bill prohibits the interception of communications except how in certain cases, with the permission of the Secretary. It requires the destruction of intercept material in over two months after the end of the interception.

The bill provides for the establishment of the Central Committee in favor of consideration intercept messages in favor of evaluation along with consideration made orders, along with it is authorized to establish, with the intention of such interception violates Section 5 of the Law of the Indian Telegraph along with the intention of these captured documents have got to be immediately destroyed. It uses as prohibition supervision or else following the face or else CCTV or else other electronic circuits or else by means of any other method, for excluding a case specific to the said procedure. According to this bill, no one person, having office in India along with having the data, using the equipment, located in India, does not needs to collect, use or else disclose the information, relating to any - any person, who - either without the consent of that person.

The bill provides in favor of the establishment of a body on the protection of data in India, the purpose of which is to monitor the development in data processing along with computer technologies; to study in the law along with in the future to assess its impact s on this PROTECTI, along with to provide its recommendations along with to receive comments from the representatives of the public on any issue, which, as a rule, effect on the protection of data. The Authority possibly will as well investigate the safety data Breach of orders along with issue to protect any of the interests of security of all affected persons in the personal data, which have or else probably, have been compromised by means of such a breach.

Draft law is a violation of all the provisions, relating to the interception, punishable by means of the term of deprivation of liberty in the period, which possibly will be extended in favor of up to five years otherwise a fine, which possibly will be up to Rs. 1 lakh otherwise with both for each of these intercepts. In a similar way, the disclosure of this information is a crime, punishable by means of deprivation of liberty in the period up to three years along with a fine in the amount of up to Rs. 50,000 otherwise both. Besides that, it provides, that any, who will receive a file of information in relation to a person from the state official or else agency under false pretext, to be subjected to a fine in the amount of up to Rs. 5 varnishes.

The right to privacy, with one hand, along with the power of the state to search for along with seize on the other were the subject of a variety of court decisions not only in India, but along with in other countries. SC referred to the American law in agreement in the midst of the Fourth Amendment to the US Constitution. The Court moreover referred to the Universal Declaration of the rights of man, the European Convention on the Rights of the person, other treaties along with constitutional provisions along with held, that the state does not possibly will have the right to uncontrolled search along with seizure. especially LY, he stressed, with the intention of all these public documents is always possible to check, but it's not been to not so open collector under question was modified section 73 of the Law of Stamp Indians in 1899 year to send to the production of documents, which, carried out with in the banks. These notes are in copies of these private documents. The Right to Privacy is in the protection of documents, stored in the banks. If there is reasonable grounds to believe, that these documents possibly will lead to the disclosure of fraud, these documents do not be capable of be checked. The court overturned Article#73, providing a collector with uncontrolled authority to permit "any person " to take notes or else extracts from these documents. Even the rules, adopted in agreement in the midst of the law, do not provide sufficient guiding principles or else guarantees that, as the exercise of these powers. Apex court is referred to the American court on this issue. He chose to follow the opinion of the minority in the case of Miller along with believed, with the intention of the decision of the majority was wrong. He as well referred to a variety of articles along with comments, in which said, with the intention of the decision of the majority was wrong, the Court held, with the intention of the documents otherwise their copies, delivered in the bank, will remain confidential. That fact, that they are transferred to the bank voluntarily, does not mean, with the intention of the cease to be personal documents, like stated above.

The Wire, that with on stitutes a serious attack on the right of a person to private life. Is it allowed in India? If yes, then in what limits along with under what safeguards. To the above questions, the SC in the Public's Union for Civil Liberties against the Indian Union was fully considered. In this case, it was initiated court proceedings to the public interest in a sign of protest against cases of listening to telephone conversations politicians from the part of the CBI. The court ruled, with the intention of " the telephone conversation is an significant feature of the personal life of man." The right to conduct a telephone conversation in private life at home or else in the office without the intervention of man, of course, be capable of be claimed as a " Right to Privacy." Therefore, listening to telephone conversations - is a

serious intrusion into private life. This means, with the intention of the listening of telephone conversations would violate section 21, if only it is not permitted in agreement in the midst of the procedure, recognized by means of law. The procedure should be “fair, fair along with reasonable.”

In Section 5 of the Indian Telegraph Act, the court agreed to intercept other messages and telephone conversations to protect the public interest and provided that the state's discretion was regulated. Acknowledging the blanket guidance is an arbitrary and unlawful exercise of government power. Section 5, paragraph 2, of the Act allows the interception of communications on the basis of agreement within the scope of the law. "Emergency" or "other public safety" is a mandatory application of Article 5, paragraph 2 of the law "Not only is there no emergency or for public safety" is a condition that we are not entitled to exercise the powers conferred by the law. The court further stated that a public emergency is one that arises out of a state of emergency or that affects the general public and supports immediate action. "Public safety" means a situation that poses danger or serious danger to the general public. Of course, in the absence of either of these two conditions, courts have ruled that central or national governments or authorized agents are unlikely, even if satisfied, to resort to wiretapping. I am explaining. If not, then it is necessary only in the sovereign interest of the real country. Among other orders, even if the central government is satisfied, such government may refrain from doing so if it is necessary or expedient to do so in the interests of national security or friendly relations with foreigners and national sovereignty. Actions are also required. No interception or wiretapping of messages shall be permitted except in urgent cases where the interest of public safety requires public order or the prevention of incitement to crime. or the availability of public safety benefits.

The Court has recognized the following procedural guarantees in favor of the implementation of the power in agreement in the midst of section 5 (2) of the Indian Telegraph Act, ruling on listening to telephone conversations possibly will be issued only to the Minister of Internal Affairs of the government of the central or else regional authority's control. In urgent cases, the authority possibly will be transferred to an official person of the Ministry of Internal Affairs of the central government along with the governments of states, whose rank is not lower, than in the second secretary. A copy of the order has got to be sent to the Audit Commission in within one week from the date of acceptance of the order. If it is not to be renewed, a warrant ceases to act all the way through two months from the date of

issue. Organ, receiving orders, possibly will be considered to this period, if he considers it necessary to maintain the procedure in agreement amid subsection 5 (2) Act. Authority, taking orders, should keep records of intercepted communications, to that extent, to which the material should be disclosed, the number of publics, their personality, which material is disclosed. Use of intercepted material should be limited to a minimum, necessary according to Article#5 (2) Act. Committee in favor of consideration should be in for two months to find out, there is whether the appropriate order in agreement in the midst of subsection 5 (2) of the Law, or else was there he. If after investigation the Audit Commission comes to the conclusion, that took place the violation of the provisions of part 2 of Article#5 of the Law, to cancel the order. He is capable of moreover direct the destruction of copies of intercepted material. If after investigation the Audit Commission concludes, that the violation of the relevant provisions of the law not been, she captures the appropriate conclusions. The Court noted, with the intention of with the development of high-tech communication technology right on the conduct of telephone negotiations in private life at home or else in the office without interference becomes all the more vulnerable to abuse. In this context, the decision of the Court, which sets out detailed guidelines in favor of the exercise of powers under the relevant law, is timely along with has historical significance.

Protection from Article#21 is available to convicts. The convicted person is not, solely in virtue of their respective convictions, deprived of all their basic rights, which would be in the opposite case conducted. After the condemnation of the prisoner, he possibly will be deprived of basic freedoms, such as the right to freely move on the whole territory of India. But the convicted person has the right to priceless right, guaranteed by means of Article#21, along with he possibly will be deprived of his life along with personal freedom only in the order, recognized by means of the law. The question of the right to be left in advance in advance has been raised in the case of P. Rajagopal against the State of Tennessee, moreover, known as the Auto Shankar. The prisoner wrote his autobiography in prison with a description of the prevailing there conditions along with communication stuck among prisoners along with several employees of IAS along with IPS. He gave an autobiography of his wife, so that she could publish it in a certain magazine. Topics not less than, the publication has been limited in a variety of areas, along with there was a question of fact, is whether someone - the right to solitude and, in particular, in prison.

In **R. Rajagopal vs. State of T.N.**<sup>29</sup>, (1994) Right to Privacy is meant in Article#21. " This is the right to be alone." A citizen has the right to protect their personal life, in fact including his family, marriage, childbirth, motherhood, motherhood along with education. In this case, the right of a prisoner to privacy is recognized.

In India, the Constitution directly does not recognize The Right to Privacy. But after consideration of the case " Kharak Singh v. State UP" the highest judicial court of India (the S.C.) first recognized the Right to Privacy, which is enshrined in the Constitution of India of Indian Article#21. The Court agreed that the right to privacy is an integral part of the right to private life. life, but without clear laws, it always remains in the gray zone. The opinion was based on the conclusion, with the intention of the violation of basic rights should be both direct, as along with tangible, that freedom, guaranteed to 19/1 (a) - the right to freedom of speech along with expression of opinion not been despoiled in the result of monitoring, carried out on the motion of the suspect.

In the case of P. Rajagopal against the State of Tennessee, the highest judicial court of India (the S.C.) ruled, with the intention of the right to privacy is a " right to leave even less." Nobody is not capable of publish it - either in respect of the above issues, without their consent, whether it is true or else no, whether the additional otherwise critical if it is to make, it would violate the right of interested parties to privacy, along with will be held responsible in case of damage.

In Mr. X in. The Hospital Z was established, with the intention of in the event of a conflict among two fundamental rights, both in this case, along with it is the right of the applicant to privacy as a part of the right to life along with the right of others to lead a healthy life, which is their fundamental right to 21, the law, which will promote public morality or else public interests, will be used in alone all the way through legal procedures, In view of the fact that moral considerations do not possibly will be reduced to no, along with that the judge did not expect to sit as a dumb clay structures, both in the city of, known as the hall of the court, but should be sensitive, " in that sense, that they should firmly keep your fingers on the pulse of the accepted morality of the day."

Ex-Prime - **Minister Manmohan Singh**, expressing concern on the occasion of the unfortunate use of the law of RTI, explained, that knowledgeable citizens, of course, should

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<sup>29</sup> 1995 AIR 265, 1994 SCC (6) 632



be limited, if it violates the private life of a person. According to his words, " it is necessary to maintain a fair balance struck among the right to information along with The Right to Privacy, which derives from the basic right to life along with freedom. The right of citizens to information, of course, should be limited, if the disclosure of information violates someone - otherwise Privacy. But where to draw the line is a difficult question. "

Recently, in one of the mainly controversial cases, **Ratan Tata** appealed to the highest judicial court of India(the S.C.)with a complaint in relation to the publication of the interception of his conversation with Neera Radia who is engaged in corporate communications in favor of the group. Tata claims, that, in view of the fact that both phones Radia tapped by means of public authorities, in particular, in favor of investigation of possible crimes, conversations, recorded on film, should be used exclusively for this purpose. Ratan Tata has filed a petition in the highest judicial court of India (the S.C.) with a request to protect his right to privacy. But In view of the fact that the laws on freedom of information relating to the first turn, the disclosure of information, exceptions strictly interpreted, along with was told, with the intention of the right of the public to information should be predominant force, if the disclosure does not disclose details. The intimate nature is very personal. On Radia cassettes public numbers have already been published, but not Tata's personal life. These conversations will be available to all citizens in agreement in the midst of the law of RTI, as the only objection, which possibly will be put forward, will be based on the 8 (j) of the law of RTI, which reads as follows: information, relating to the personal information, the disclosure of which is not due. to any public activity, representing interest. As it is moreover said, " or else that be capable of cause unwarranted intrusion into the personal life of a person, if only the public authority is not to be satisfied, if only the person, responsible in favor of information, are not convinced in the fact, that a broad public interest justifies the disclosure of such information."

In this case, a preliminary issue, which is to be set, is in fact, will be whether the conversations Tata disclosed all the way through the ITR or else her conversations are covered under section 8 (j) the release of personal information. It is as well interesting to note, in the very structure of this release. Using the word " or else " the law supposes, with the intention of unwarranted intrusion into the private life of a person be capable of lead to the release, even if the information relates to a public activity otherwise interest. But extra

caution speaks in relation to the fact, with the intention of a broad public interest possibly will justify the disclosure of even a purely private information.

Using the word " or else " the law supposes, with the intention of unwarranted intrusion into the private life of a person be capable of lead to the release, even if the information relates to a public activity or else interest. But extra caution speaks in relation to the fact, with the intention of a broad public interest possibly will justify the disclosure of even a purely private information. In addition to that, then, that is " personal " information, not been defined in the legislation. On the other hand, according to e Xpert's legal opinion, the highest judicial court of India (the S.C.)of India has the right to permit the details of the conversation stuck among Ratan Tata along with Neera Radia to be disclosed.

The right to privacy, once recognized in a basic right, is quite a wide range, to infringe literally on all spheres of activity. Granting these rights has become very difficult with the advent along with development of technology along with virtual social networks. But the flip side is the fact, with the intention of the right to private life of a person has a tendency to include the right to disclose personal information. The degree, to which should be the domain of Privacy of each person, is subjective along with be capable of vary from person to person. acknowledgment in the right to private life moreover be capable of be observed in the Article#43 of the law on information technology, which makes unauthorized access to the computer resource of responsibility.

Today every man is the press, taking in a view on the emergence of the blog points m sites of social networks. In some cases, The Right to Privacy possibly will come in conflict with the law on lobbying. The right to use pressure is right, resulting, in particular, of Article#19 (1) ( a ). The right of a person to self-expression is frequently contrary to the right of another person to privacy. Question in fact, where there is a conflict, which should prevail over the other, is well explained by means of the introduction of the concepts of " public interest " along with " public morality.” The publication of personal information, the person without his consent or else approval is justified, if this information is part of the public records, including court files. Each case is different, along with every right is special.

Any right, which was received from a section 19, possibly will moreover be obtained from the Article#21 m, with a broad interpretation of " personal freedom.” Although the Court generally uses the criterion of " public interest " or else " public morality " in the event of a

conflict stuck among the two derivatives of rights, possible along with other interpretation. The right -soo, resulting from Article#21 longer, than the right, derived from Article#19, as the state adoption law in violation of this right be capable of be saved with the view of reasonable restrictions 19 (2) (5). The situation changed in the era, preceding mannequins, when Article#21 not been a source of material rights.

The right to privacy possibly will conflict with the police investigation in several ways. Narco - analysis, test on a polygraph along with test mapping of the brain in applied, almost certainly invade unjustified in favor of the right to private life of a person. the highest judicial court of India (the S.C.) has recognized the right of the personage to privacy, declaring these tests inhumane along with unconstitutional. The Supreme Court in Directorate of Revenue along with Anr v. Mohammed Nisar Holia<sup>30</sup> referred to the decision of the highest judicial court of India(the S.C.)of the United States, in which contained the " thermal imaging ", a complex technology to improve sensitivity, which when stored outside the home person be capable of identify, contain whether the prisoner narcotic substance in the room, like this, like say, be an invasion into privacy life. The Court is not approved unjustified violation of the rights of a person to privacy along with decided, with the intention of any powers not need to be endowed with unimpeded authority to violate the right of a person to privacy. The Court tried, canceling a guilty verdict in favor of failure to comply with obligations in respect of the legal search along with seizure. Although the legal authority to search along with confiscate both those not possibly will violate the right to privacy, but in this case is the lower, it be capable of make a judgment - is to make sure, that this right does not exist. not unnecessarily disturbed.

**Judge Louis Brandeis** in his famous decision explained, that the right to privacy is " the mainly valuable right of civilized public." With regard to complaints to the means of mass information, Lord Hoffmann observed, that there is no logical reason to assert, with the intention of the public should have less protection from the person, than he, from the state for the publication of personal data, for which there is no reason to.

All the judges of the highest judicial court of India(the S.C.)of the United States is constantly talking in relation to the right to privacy like an feature of commitment to happiness. The desire in favor of happiness, requires a certain freedom, with the intention of government

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<sup>30</sup> APPEAL (CRL)311 OF 2002

guarantees in favor of us, so that we be capable of act in such a way, that we consider it appropriate, if it does not violate the rights of other persons. Freedom is not a limited otherwise measurable right. This be capable of be seen by means of the entire legal spectrum.

If we look at previous decisions of the highest judicial court of India(the S.C.)in its formative years, we will see an opportunity in favor of the court to consider fundamental rights as waterproof compartments. This is mainly noticeably in the case A. To. Gopalan v. Madras, along with the mitigation of this strict position could be felt in the decision of Manek Gandhi v. Union of India. The right to life was considered not as the embodiment of a simple animal existence, but as a guarantee of a full along with meaningful life.

## **Conclusion**

Privacy is an ever- evolving concept. The term privacy refers to privacy a person otherwise group, to isolate themselves, or else information in relation to yourself, along with so express yourself selectively. The sphere of private life along with the right to privacy of these years expanded: from the independence along with autonomy of the household to the right to the protection of communication along with correspondence, along with then to virtual reality - the platforms of social networks. Being a part of this society is frequently superior to the fact, that we are in the first-place public. Each person needs their private space in favor of any activity, confirming, that it is legitimate. The State must, therefore, ensure with the intention of every person is entitled to SU only enjoy these private moments with those, whom they want without prying eyes the rest of the world. Clinton Rossiter said, that " privacy - it is a special type of independence, which be capable of be understood as an attempt to ensure the autonomy, in favor of at least, in some of the personal along with spiritual problems. This autonomy - the mainly peculiar thing, which be capable of enjoy public. He is truly a free man there. it is not a right against the state, but against the world. A person does not want to share his thoughts with the world along with this right will help protect his interests. "

The world, in which we live today, this right becomes all the more significant with the passage of time. In view of the fact that all our life is closely connected with the means of mass information, whether it is all the way through the sites of social networks or else spy camera, we all need protection, so that we be capable of function well, how we want, along

with not to think in relation to others first, then we it will do., At the end of all, we are obliged to explain only us, but not the whole world.

The right to privacy is confined in the Universal Declaration of the rights of man, along with in favor of the past few years, it has received extensive development along with recognition, its scale has been steadily increasing, along with its need in favor of openly declares. State of India has seen the development of the right to privacy in a variety of cases, and, though he tried to qualify this right in agreement in the midst of Article#21, it is necessary to recognize this right as a personage right, fully evolving dynamics of society along with the world in general.

# **CHAPTER -3**

## **CHAPTER- 3**

# **RIGHT TO PRIVACY: INDIA'S NATIONAL LEGAL FRAMEWORK**

When 26 January 1950 the year was adopted by means of the Indian Constitution, in it is not mentioned on the Right to Privacy. It was whether it is simply the observation or else was a deliberate reason? Official transcripts of the meetings of the Constituent Assembly does not contain anything, except in favor of a passing reference to the right to the secrecy of correspondence, both discussed in Chapter 2. A speech by Mr RK Sidhwa contains the following comment:

" I would like to moreover say, that the Committee proposed to guarantee the secrecy of correspondence along with that no should be no interception of correspondence, telegrams along with telephones, but the main committee deleted it. Therefore, fair to say, with the intention of the Committee on the basic rights not considered this question. It appears, with the intention of the developers of our Constitution of India considered the question of the inclusion in the Constitution of India the right to privacy, but in favor of some - that reason, agencies, dealing with transcription, is not found in full, decided to completely it exclude the final project. According to at least, it has proved, with the intention of the fact, with the intention of in the Indian Constitution does not mention privacy, it was not an accident, but the result of a conscious choice of the drafters.

The right to privacy was repeatedly taken up, its roots go in ancient India in Hitopadesha, where they say, with the intention of some issues, such as the family, gender along with religion, do not need to be transmitted publicly. in modern times, this was mentioned by means of some public, but especially in favor of the first time in the modern era, Kazi Saed Karimuddin throughout the constitutional debate of the Constituent Assembly.

Returning to the concept of private life along with its development in India, the draft law on in the Indian Constitution from 1895 explained, with the intention of " every citizen has in his home inviolable asylum, " which is the mainly fundamental along with more an basic fraction of the freedom to a private living like we know along with see it is today. The

leaders of the struggle in favor of freedom felt the need to make this right available to their citizens as a fundamental right. This was the beginning of the acknowledgment of the personage citizens along with the need to recognize the individuality of Saudi Arabia along with to provide space, which concerns only them along with the intention of it will act as a safe haven, effectively preventing any unruly along with unfair actions along with acting as a safe space in favor of the specified person.

In a similar way, the bill Commonwealth India 1925 the year declared, with the intention of " every person has the fundamental right to personal freedom along with security of their homes along with their property." The emphasis on the right to freedom of property served as the basis in favor of the need for the right to life along with The Right to Privacy, as in the era, preceding independence, not been a lot of autonomy in relation to the place of residence or else property, the colonial government generally acted arbitrarily, how along with how he it wanted, which caused a massive outrage, we be capable of observe here the development of the concept of personage rights along with the use of the term fundamental right, to emphasize the extreme need for this right.

For this was followed by means of the report of the **Nehru** (Swaraj ) 1928 the year, in which said, with the intention of " Nobody not be capable of be deprived of his liberty, along with his house otherwise property not be Driving, stolen or else confiscated, in favor of the exception of cases, stipulated by means of the law ". In his report, Nehru emphasized the importance of freedom along with autonomy in matters of property along with residence along with insisted on the need to grant this right to everyone.

The materials of the Constituent Assembly were several mentions of The Right to Privacy in a variety of capacities, for example, in a note to the. T. Shah of F. P. (December 1946 g .), He explained, that " every citizen of India has along with the mainly guaranteed security in his personal documents, property, home otherwise property from unreasonable search or else confiscation ." The Shah supported the previous claims for such a right.

In K M Munshi's explained, that " every citizen ... has the right to the inviolability of his home "

“Every citizen ... has the right to privacy of his correspondence”

" Every person has the right to be confined from interference in their family relationships "



This restored the beliefs of previous leaders. In **Harnam Singh's** explained that "Every dwelling shall be inviolable"

In his note on the FR (March 1947). Dr Babasaheb Ambedkar explained, with the intention of " the right of public to safety in relation to their identity, their homes, their documents along with their consequences from unreasonable searches along with seizures are not should be violated, along with no reason not to be issued, but in favor of a probable reason, with the support of the oath of approval along with description, in particular, the search site along with public or else things confiscated. " He firmly re-established the need to reaffirm the importance of the right to freedom itself along with to the property, along with that this right be capable of be realized, only if it is defined along with directed in the order, recognized by means of the law.

**Karimuddin** recommended the amendment, which he made, along with which reads as follows: " The fact, with the intention of in Article#14, the following text will be added to an item: He argued, with the intention of the public should have the freedom of their freedom. Karimuddin said, with the intention of the public should have the right to exercise autonomy in their business, have the right to enjoy their property without a break along with have a right against arbitrary arrest along with search. " He emphasized his notice of amendment, citing the American, Irish along with German constitutions. B. P. Ambedkar moreover said: " This is a very significant amendment. one will be pleased to know, with the intention of this Article#finds its place, so with the intention of Article#4 of the American Constitution along with the Constitution of Ireland contains paragraphs (2) along with (5), which are similar to, along with in the Constitution of Germany of Article#114 along with 115 are located on one line ... The book, etc. - Dr. Ambedkar - Minorities along with the state - on page 11, paragraph 10 a similar agreement was reached. Therefore, this amendment, the accuracy of which is not be capable of be challenged. What is the situation in India today? In India almost in all provinces have law Gunda along with social section. The law of laws, which do not provide in favor of an appeal otherwise representation along with not permit the interested parties to defend themselves. Arrests are carried out without warrants along with searches without justification. We are guided by means of unlawful laws, along with we are not able to address with a complaint of - for the illegal arrests along with searches. "

Next **Karimuddin explained:** " In the 1947 year along with in early 1948 the year we have

seen, with the intention of hundreds of thousands of publics were arrested, along with the house ransacked simply on suspicion. As a result, the moral spirit of the members of the community of the Muslim minority was shocked, along with them treated like with criminals in the country. I will give the house a very significant example. Every time, when we went to the airport in Delhi, our products searched without reason, without reason along with without warning. Now I will give another example. When was the police action in Hyderabad, all Muslims, worthy of this name, he was arrested without any - any reason in the neighboring provinces. If one has these Muslims were really traitors, they should pursue, punish along with hang up. But public, who do not have any relationship to Hyderabad, was arrested under the pretext, with the intention of they put only under custody in the police. What Well, if they have taken only under arrest, why their wives along with children, were present on the street, do not fall under this protection? "

**Karimuddin** found, with the intention of there is no need to search along with arrest without reason right on the arbitrary arrests along with the right to autonomy of the living, In view of the fact that with the intention of he said in relation to his submission to the Constituent Assembly : " Therefore, I would argue, with the intention of if this fundamental right, to which I ask In view of the fact that this amendment guaranteed, there will be no end to these arrests without a warrant along with to these searches without justification. I proposed this amendment in the sincere hope, that it will be adopted. "

**Karimuddin not** able to apply along with accept his amendment, In view of the fact that it does not be capable of get enough support from the party members, along with BR Ambedkar only partially upheld his claims, saying, that " I think, that it is useful to position along with be capable of find its place in our Constitution. There nothing new in this no, in view of the fact that with the intention of all proposed their Article#contained in the Criminal - Procedure Code, so that we be capable of in some sense to say, that it has the land law. it is quite possible, that the legislative bodies of the so significant to the point of view of freedom of the person that is very desirable make the position inaccessible to the legislator, along with so I'm ready to accept it amendment. " On the other hand, it is not been accepted in full The project, approved by means of the Subcommittee on basic rights (March 1947)., explained, that:

“The right to inviolability of the home is for all public”

“The right to privacy of correspondence - in favor of all citizens”

Following behind this project was presented to the final accountability - Committee on the Rights of the person ( in April 1947 the year ), in which stated, that " the right of public to be secure in their faces, houses, papers, along with the consequences of unjustified, unreasonable searches along with seizures are not have got to be broken, along with the order is not to be issued, but on probable cause, supported by means of oath confirming along with describing, in particular, the place, which will be produced by means of the search, as well as persons or else things, withdrawn. " “The right of every citizen to the secret of his correspondence”

### **PRIVACY UNDER INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1987**

Under the Indecent Representation of Women (Prohibition) Act (1987) if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing “indecent representation of women”; they are liable for a minimum sentence of 2 years. Further section 7 (Offences by Companies) holds companies where there has been “indecent representation of women” (such as the display of pornography) on the premises guilty of offenses under this act, with a minimum sentence of 2 years.

### **PRIVACY UNDER INTELLECTUAL PROPERTY RIGHTS**

India has one of the most modern copyright protection laws in the world. A major development in the area of copyright was the amendment to the Indian Copyright Act, 1957 in 1999, to make it fully compatible with the provisions of WTO’s Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement. The Copyright (Amendment) Act, 1999, came into force on January 15, 2000. The other important development during 1999 was the issuance of the International Copyright Order, 1999, which extended the provisions of the Copyright Act to nationals of all World Trade Organization (WTO) member countries. Under the Indian law, computer programs have copyright protection but no patent protection. A software program is an algorithm and patent law does not protect algorithms per se. As per the provisions of the Indian Copyright Act, 1957, any person who knowingly makes use of an illegal copy of a computer program is punishable. According to Section 63B, copyright infringement attracts a minimum imprisonment of 7 days. The Act further provides for fines, which are not to be less than Rs. 50,000, but may go up to Rs. 200,000 and a jail term up to 3 years, or both [(1994) 6 SCC 632].

India has not provided statutory protection under its intellectual property right regime to trade secrets, or valuable business information, which provide an additional benefit or competitive advantage over competitors. Since globally the right in trade secret remains so long the owner prevents its disclosure, thus, if properly protected, trade secrets may last forever. The Supreme Court [P.U.C.L. v U.O.I. (2003)(3) SCALE 263] specified the grounds on which the government can withhold information relating to various matters, including trade secrets. The Supreme Court observed that “every right – legal or moral – carries with it a corresponding objection. It is subject to several exemptions/ exceptions indicated in broad terms. Generally, the exemptions/ exceptions under those laws entitle the Government to withhold information, including information, which, if disclosed, would violate the privacy of the individual.

Please answer the following Self Assessment Question.

### **POSITION UNDER EASEMENTS ACT, 1882**

Indian Easements Act, 1882 accords statutory recognition to customary right of privacy. Section 18 of the Act provides that an easement may be acquired in virtue of local customs, which are called customary easement. Illustration (b) to the above section more or less settles the contents of the customary right of privacy. It lays down:

By the custom of a certain town no owner or occupier of a house can open a new window therein so as to substantially to invade his neighbour’s privacy. A builds a house in the town near B’s house. A thereupon acquires an easement that B shall not open new window in his house so as to command a view of the portions of A’s house which are ordinarily excluded from observation, and B acquires a like easement with respect of A’s house.

In 1888, the case of Gokal Prasad v Radho [ILR 10 All (1888) 358] came before a Division Bench of Allahabad High Court for decision. The plaintiff alleged that the defendant had wrongfully built a new house in such a way that certain eaves of that new house projected over the plaintiff’s land and that a verandah and certain doors of the house interfered with the privacy of those portions of the plaintiff’s house and premises which were occupied and used by the females of the plaintiff’s family. Accordingly he claimed to have the eaves, in question, and the verandah removed and the doors, complained of, be closed. The female members of the plaintiff’s family were paradanashin women. The lower court decreed the plaintiff’s claim with costs. On appeal, the District Judge that an appeal was made and this is how the case came before the High Court, the Division Bench of the High Court formulated the following questions.

Does the privacy in fact and substantially exist and has it been and is it in fact enjoyed? If it were

found that no privacy substantially exists or is enjoyed, there would be no further question in an ordinary case to decide if, on the other hand, it were found that privacy did substantially exist and enjoyed, the next question would be: was that privacy substantially or materially interfered with by acts of the defendant done without the consent or acquiescence of the person seeking relief against those acts.

Chief Justice Edge, who delivered the judgment, arrived at the conclusion after examining various authorities that a right of privacy exists and has existed in these provinces by usage or custom and that substantial interference with such a right of privacy, where it exists, if the interference be without the consent of the owner of the dominant tenement, afford such a good cause of action. In his concurring judgment Justice Mahmood pointed out that under conditions of life such as they are in these provinces, the custom that invasion of privacy is actionable is far from being an unreasonable custom, and the custom itself is so well recognised that Mr. Motilal Nehru, for the respondent, in course of his argument stated that it was wholly unnecessary to remand the case for ascertaining the custom. Thus, the appeal was decreed and the lower court decree was restored.

The Gokal Prasad case is an important decision in several ways. In the first place, the extensive examination of the cases undertaken by the court illustrates the existence of the customary right to privacy prior to the present decision.

### **POSITION UNDER INDIAN CONSTITUTION**

On a closer scrutiny of the judicial interventions in the area of privacy rights, one can discern that privacy rights have their genesis in the law of torts and the constitutional law. In common law, a private action for damages for unlawful intrusion of privacy is maintainable. Under the constitutional law, the right to privacy is implied in the fundamental right to life and liberty. The Indian courts have seized the opportunities whenever they came and tried successfully to bring the privacy right within the purview of fundamental rights. Even though right to privacy is not enumerated as a fundamental right in our Constitution it has been inferred from Article 21. This section traces down the evolution and development of right to privacy as emanating from the 'right to life' enumerated under Article 21 of the Constitution of India read with other fundamental right falling under Part III of Indian Constitution, highlighting development in law in the post constitutional period in India.

#### ***Supreme Court on Right to Privacy – 1954 to 2005***

The right to privacy against unreasonable search and seizure has been recognised under the fourth

amendment to the US Constitution. As early as 1954, privacy rights came under the scrutiny of the Supreme Court of India in the case of *M.P Sharma v. Satish Chandra* [AIR 1954 SC 300 (Para 18 p. 306)] where the process of search and seizure was challenged in the light of fourth amendment to the American Constitution. A bench of eight judges in Para 18 that: “A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction. Nor is it legitimate to assume that the constitutional protection under article 20(3) would be defeated by the statutory provisions for searches. It is to be remembered that searches of the kind we are concerned with are under the authority of a Magistrate (excepting in the limited class of cases falling under section 165 of the Criminal Procedure Code). Therefore, issue of a search warrant is normally the judicial function of the Magistrate. When such judicial function is interposed between the individual and the officer’s authority for search, no circumvention thereby of the fundamental right is to be assumed.”

However, a good half a century later, Supreme Court in the case of *District Registrar and Collector vs. Canara Bank* [(2005) 1 SSC 496] held that the right to privacy of the person includes right to freedom from unreasonable, search and seizure. It further said that the, State cannot have unrestricted access to inspect and seize or make roving inquiries into all bank records relating to person, without any reliable information before it prior to such inspection. Documents or copies of documents of the customer which are in bank must continue to remain confidential vis-à-vis the person, even if they are no longer at the customer’s house and have been voluntarily sent to a bank. Search, taking of notes or extracts or seizure of the said documents would amount to breach of confidentiality and be violative of the privacy rights of the customers of the bank, unless there is some probable or reasonable cause or basis. Hence disclosure of the private documents of the customers or copies thereof by a bank would therefore be violative of the privacy rights of its customers.

***Right to Privacy Emanating from ‘Right to Life’ –Article 21 – Indian Constitution***

It is evident from various pronouncements of the Supreme Court that right to privacy, though not a fundamental right has gained constitutional recognition in Indian courts. The writ courts have

carved out a constitutional right to privacy reading it as a part of 'right to life' under Article 21 of the Constitution of India, which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law". It can be reasonably inferred that there do exist legal spaces within the Constitution of India that can be utilized for honouring and upholding the right to privacy. The judicial interventions by the Supreme Court of India reaffirms this position through innovative and creative interpretation of 'Right to Life' under Article 21 as including 'Right to Privacy'.

### ***Right to Privacy versus Freedom of Press***

It is only in *R. Rajagopal alias Gopal v. State of Tamil Nadu* [(1994) 1 SCC 632], where a question concerning the freedom of press vis-à-vis the right to privacy of the citizens of their country was raised, that the Supreme Court unequivocally stated that the right to privacy is implicit in Art. 21. The dispute in this case was over the publication of the alleged autobiography/life story of Auto Shankar, who was charged and tried for as many as six murders. It was claimed that the autobiography set out the close nexus between Auto Shankar and several IAS and IPS and other officers some of whom were indeed his partners in several crimes. One of the three questions that arose on the pleadings is 'whether a citizen of this country can prevent another person from writing his life story or biography?'

Whether the freedom of expression guaranteed by Art. 19 entitles the Press to publish such unauthorized account of a citizen's life and activities and if so, to what extent and in what circumstances? What are the remedies open to a citizen of this country in a case of infringement of his right to privacy and further in case such writing amounts to defamation?" Supreme Court after considering a number of Indian, American and English cases came to a conclusion that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a right 'to be let alone'. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish anything concerning the above matters without his consent—whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. The position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy".

***Surveillance versus Right to Privacy***

The earliest cases decided by the Supreme Court of India where the foundations for the right were laid, concerned the intrusion into the home by the police under State regulations, by way of 'domiciliary visits'. Such visits could be conducted any time, night or day, to keep a tag on persons for finding out suspicious criminal activity, if any, on their part. The validity of these regulations were challenged in the Court.

One of the first cases where 'right to privacy' came under scrutiny of Supreme Court was the case of *Kharak Singh v. state of U.P.* [AIR 1963 SC 1295 (Para 20 p. 1303)] relating to police surveillance, Supreme Court considered the constitutionality of Police regulation that permitted the police to keep a close watch on would be criminals. *Kharak Singh* was a case where the petitioner was put under surveillance as defined in Regulation 236 of the UP Police regulations. It involved secret picketing of the house, domiciliary visits at night, periodical enquiries by police officers into repute, habits, association, income or occupations, reporting by police constables on the movements of the person etc. The regulation was challenged as violative of the fundamental rights guaranteed to the petitioner.

In the given case the majority observed "The right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movements of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III." However Subha Rao, J., in his minority judgment dissenting with the majority held that the fundamental right to privacy is part of the right to liberty in Art. 21, part of the right to freedom of speech and expression in Art. 19(1)(a), and also of the right to movement in Art. 19(1)(d), held that the Regulations permitting surveillance violated the fundamental right of privacy AIR 1963 SC 1295 (Para 31 p 1305).

The matter again came up for consideration of the Supreme Court in *Govind v. State of*

*M.P.* [(1975) 2 SCC 148 (Para 23-24 p. 156)] which again was a case of surveillance, this time under MP Police Regulations. The Court had to consider the Constitutional validity of Regulations 855 and 856 of MP Police Regulations, which provided for surveillance. Justice Mathew observed that "privacy primarily concerns the individuals. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values". Justice Mathew opined that the law of privacy



can not be cast in stone as “in the application of the Constitution our contemplation cannot only be of what has been but what may be. Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet”. Thus one can ascribe that surveillance, by and large, has been held to be intrusive and an encroachment upon the right to privacy by the Supreme Court of India [Malak Singh v State of Punjab (1981) 1 SCC 420, Sunil Batra v. Delhi Admn (1978) 4 SCC 494].

### ***Right to Privacy against Wire-trapping***

In People’s Union for Civil Liberties v. UOI [(1997) 1 SCC 301 (Para 18 p. 311)]. The Supreme Court held that tapping into telephonic conversations was unconstitutional unless it has been brought about by a procedure established by law. The issue before the Supreme Court was the citizen’s right to protect their privacy from being abused by the authorities. Taking cue from the earlier decisions, in this public interest litigation, the Supreme Court reiterated its earlier stand that right to privacy is a part of the right to ‘life and personal liberty’ enshrined under Art. 21 of the Constitution and the said right cannot be curtailed, except according to procedure established by law [(1997) 1 SCC 301. (para 18 p. 311)]. The Court further held that the right to privacy by itself has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether the right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as ‘right to privacy’. Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man’s life. It is considered so important that most people carry mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man’s life. Right to privacy would certainly include telephone conversation in the privacy of one’s home or office. Telephone tapping would, thus, be in violation of Article 21 of the Constitution of India unless it is permitted under the procedure established by the law. The Court also highlighted the necessity to lay down procedural safeguards for the exercise of power under section 5(2) of Telegraph Act which permits interception of telephone messages, so that the right to privacy of a person is protected.

### ***Privacy Right – Reasonable Restrictions***

The Supreme Court has categorically stated that the rights to privacy like any of the fundamental

rights, is also subject to reasonable restrictions. Thus in *Govind's case* [(1975) 2 SCC 148 (Para 23-24 p. 156)] the Supreme Court stated that there 'can be no doubt that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does not find that a claimed right is entitled to protection as fundamental privacy right, a law infringing it must satisfy the compelling state interest test.

From the above observations of the Supreme Court the following principles emerge:

Right to privacy is a fundamental right, implicit in Article 21;

It is not an absolute right, but subject to reasonable restrictions like any other fundamental rights; and

Right to privacy can be exercised subject to other rights and values and compelling State and public interest.

## **Conclusion**

Discussion on Constitutive meeting effectively discussed the need for freedom itself along with the freedom to enjoy the autonomy of a, property along with place of residence, but a right to privacy in general otherwise in the particular manner not mentioned in precise terms. Discussion varied along with reflect the need in favor of in an hour, but, for unfortunately, not been able to get enough support from the part of the meeting. Society has changed the game right now, along with this causes damage to society in general, not recognizing the need in favor of the Right to Privacy which is a fundamental right intended in favor of Indian citizens along with it is constantly growing scale.

Constitutional officers face highlighted other rights along with subjected to criticism of the recommendation committee in relation to the different rights of different articles. Protecting the right to privacy, which recognizes privacy, it began much afterward in those cases, which were followed in recent years along with led to the development of the law. to privacy, how we it know, along with understand the scope of Privacy.

# **CHAPTER -4**

## CHAPTER 4

# ROLE OF JUDICIARY - ENHANCING RIGHT TO PRIVACY

### **Law Commission**

Law Commission of India is a decision-making body recognized under means of an order of the Indian Government. Its major purpose is to work in favor of legal reforms. Law Reform has been an ongoing procedure particularly throughout the last 300 years or else more in Indian history. In the ancient period, when religious along with customary law occupied the field, the reform process had been ad hoc along with not institutionalized all the way through duly constituted law reform agencies.

The Constitution under Article#51A(h) as well as (j) casts a duty on every citizen of India, to develop the scientific temper, humanism in addition to the spirit of inquiry furthermore reform as well as, to strive towards excellence in all spheres of personage along with collective activity. Parliament is competent to undertake legislations which encourage a variety of technological in addition to scientific methods to detect crimes, speed up investigation as well as determine standards in institutions in favor of higher education along with development in technical institutions (Entry 65 & 66 of the Union List). The other relevant provisions of the Constitution are, (i) Article#20(3) which guarantees a right against the self-incrimination; furthermore (ii) Article#21 which guarantees protection of life along with liberty of every person.

### **CASE**

The highest judicial court of India(the S.C.)in Bhabani Prasad Jena v. Convenor Secretary, Orissa State Commission in favor of women, whilst pressing upon the significance of DNA testing in the process of administration of justice held: when there is apparent conflict among the Right to Privacy which is a fundamental right intended in favor of Indian citizens of a person not to submit himself forcibly to medical examination as well as duty of the court to reach the truth, the court ought to exercise its discretion only after balancing the interests of the parties furthermore on due consideration whether in favor of a just decision in the matter, DNA test is eminently needed.

In R Rajagopal v. State of Tamil Nadu<sup>34</sup>, the highest judicial court of India (the S.C.) held:

The Right to Privacy which is a fundamental right intended in favor of Indian citizens is implicit in the right to life as well as liberty guaranteed to the citizens of this country by means of Article#21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family marriage, procreation, motherhood, child-bearing in addition to education among other matters.

It is our view with the intention of that the interest of a free as well as fair digital economy will best be served by means of a framework where a model contract in favour of such transfers is formulated by means of the DPA. Entities transferring data would be mandated to incorporate such model clauses in the relevant contracts.<sup>31</sup> The model contract will contain the key obligations on transferee entities as per the Indian law. These include security, purpose limitation, storage limitation furthermore a responsibility to fulfil rights of individuals. Further, the transferor entity who is bound by means of the Indian law will undertake to bear liability in favour of any breach by means of the transferee in relation to the aforementioned obligations. A self-certification by means of such entity with the intention of that the contract is in line with the model contract, along with the intention of that it undertakes to bear liability as mentioned above, will be recorded. These records will be subject to compulsory audit as well as periodic reporting to the DPA. A similar set of binding corporate rules which possibly will be termed as intra-group schemes can be adopted by means of group companies in favor of inter se transfer of data within the group.

Such entity-led transfers should be the primary method in favor of ensuring equivalent protection for Indian personal data abroad. On the other hand, despite the practical difficulties of entering into adequacy assessments, the role of the sovereign in green-lighting certain countries in favor of permissibility of transfer cannot be entirely discounted. This is because, if the very rationale of this law is to protect data of Indians, such rationale will be defeated if data can be transferred abroad without the possibility of any regulatory preconditions being set. The option ought to be given to the Indian Government, in consultation with the DPA to enter such determinations of countries where personal data can be transferred freely. by means of continuing this option, the law provides a lever in favour

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<sup>31</sup>For group companies, inter se transfers should be permitted based on a standard template with the intention of that will be preapproved by means of the DPA. There will be no need for regular reporting to the DPA every time a contract is entered into or a transfer is made

of adequacy assessments, contingent on capacity developing over time, reducing transaction costs in favour of entities. On the other hand, the law is not contingent on a positive adequacy determination in favour of transfer thereby leaving entities the autonomy to transfer data on the basis of standard contracts. In our view, this is a harmonious balance.

In addition, we possibly will mention with the intention of that transfers of personal data on the basis of consent have to be permitted. Despite the difficulties this might raise in terms of enforcement, provision in favour of such transfer possibly will be necessary to respect the autonomy of the data principal. For the purposes of sensitive personal data, the consent would have to be explicit. There would on the other hand be another exemption to the operation of the regime in favor of the transfer of personal data outside India. There possibly will be a set of hitherto unknown situations where data with the intention of that is processed ought to necessarily be transferred abroad without restriction. This possibly will be in favor of practical reasons, e.g. emergencies or strategic ones, otherwise the need to bolster bilateral trade. In view of the fact that this is best assessed by means of the executive, the Central Government should have the power to determine such instances on a case by means of case basis furthermore exempt it from any restrictions (described below) which possibly will applies.

Regardless of the duplicate effect of the data protection regime on other legislative texts, some other legislative texts should be amended simultaneously with the data protection regime. Three of these texts have been identified in favor of diverse reasons. The Aadhaar. Act you need to make substantial amendments, to enhance the protection of privacy, and also to provide autonomy The-Unique-Identification Authority-Of India (UIDAI). In view of the fact that working conditions in the Committee was formed in the course of the lively public debate about Aadhaar, but also about its impact on the protection of data, the Committee has shown to negligence, if would not tackle this issue. In - the second, in the Law on RTI provided the standard of protection of private life, providing for exemption from the requirements of transparency according to Article 8 (1) (j). It is often used for rejection of requests ITR in the past and requires harmonization with the system of protection of the data, offered by us. In - Third, the law on the protection of data replaces Article 43A of the law on IT in addition to the rules of the SPD, adopted in accordance with this provision. Consequently, this status ought to be reversed with minor modifications, resulting from it. In view of the fact that the first two of these amendments require clarification, they are

discussed in detail below.

### **Amendments to Aadhaar Act**

A significant portion of the public attention to the issues of protection of data was focused on Aadhaar so as the opportunity with the intention to create a memory-resident database data will be contrary to the regime of protection of data, which is working well. The validity of the arguments, relating to its constitutional aspects, widely discussed in the supreme judicial court of India (Supreme Court) in Puttaswamy.<sup>32</sup> In view of the fact that the decision is expected, any comments on the merits is not done, in the opposite case, the shortcomings of these arguments are also balanced.

Topics not less, significant to clarify, that the mode of protection data, proposed by the Committee, will require from the government a thorough study of the different aspects, related to the current functioning of The-Unique-Identification Authority-Of India (UIDAI). At the present time in the law Aadhaar anything not said about the powers of the body the power of India (UIDAI) for a one-time identification to take enforcement action against stray companies in the ecosystem of Aadhaar. It comprise in itself the company, who wrongly insist on the non- Aadhaar (issued by The-Unique-Identification Authority-Of India (UIDAI)), those, who used numbers Aadhaar (issued by The-Unique-Identification Authority-Of India (UIDAI) ) in in favor of illegal purposes, as well as those, who flees from Aadhaar ( issued Unified Identification System Of India (UIDAI)), all of which have seen several cases in the recent past. Each of these elements can affect the confidentiality of information and requires urgent repair.

In addition to that, the recent announcement of the authorized body of the The-Unique-Identification Authority-Of India (UIDAI), relating to the virtual identifier, creates an alias to use authentication, permit Aadhaar. to know the number of objects, requesting authentication, in addition to checking out the line. The possibility of checking identity with using QR- codes without conducting centralized registration has significant potential to provide both limit the collection, so and minimizing data. Topics not less, in the present day there is no legal support for such ads, and it is not clear, how they should be effectively

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<sup>32</sup>Justice K.S. Puttaswamy (Retd.) v. Union of India, W.P. (Civil) No. 494/2012 Etc.

implemented.

Therefore, necessary amendments to the law Aadhaar in favor of strengthening the protection of private life in favor of the residents, but also to rethink the powers The-Unique-Identification Authority-Of India (UIDAI) in the role of the regulatory body, which can ensure the protection of consumers and coercive measures against violations and appeal to the relevant judicial authority. Note to the intent, that this committee does not bear the responsibility of any of the intention to propose to change the large-scale Aadhaar act - even. Recommended changes are limited to those changes, which are justified by the need to harmonize the law Aadhaar with the proposed confined data.

As a result, two main series of amendments to Aadhaar law are needed:

In - the first, necessary changes, aimed at strengthening the rights of a person to the inviolability of private life. The mainly significant obligation for all keepers of data is limiting the collection, i.e., collection of personal data should be limited to data, necessary for processing. Therefore, in this qualifier we were proposed changes, requesting objects of two types for the regulation of access to personal data on the basis of need - those, who can request to use authentication, further those, who limit checking identity of people in the autonomous mode.

With regard to the subjects, who possibly will seek to use authentication, in principle, the same thing should be limited by all actors, who perform public service, in addition to the requirement amenable to verification of identification in favor of the objectives of this public service. This principle is used, if any entity can require authentication in two situations: in - first, if it is stipulated by law, adopted by parliament. Parliament, as the highest legislative body in the country, has the sovereign authority to request from the party's authentication, when he deems it necessary. If an organization requests authentication in accordance with parliamentary mandate, it ought to be respected. It is expected, that the Parliament judicious when determining the order, any organization require such authentication. In - Second, the state body, performing a public function with intent to obtain this approval by the Authority for the unique identification of India (UIDAI), also can request authentication. When providing this resolution authority " Indian unique identification » (UIDAI) should take into account the standards of security, used now, and the measures, taken by them for the integration of the protection of privacy in favor of the owners of rooms Aadhaar.



In addition to that, the Office for identification of India (UIDAI) can classify these objects - the applicants with the intention of those, who have the right to ask for authentication, from those, which possibly will have direct access to a number Aadhaar, i.e ., for example, to simplified authentication. like those, who can get access only to the virtual identifier, alias numbers Aadhaar Virtual identifier - this time a random 16- digit number, which can be generated with the help of holder number Aadhaar in favor of certain types of authentications. He does not disclose the person's Aadhaar number. This distinction is significant to ensure that, so that, with a view to this, only the subjects, which required number Aadhaar himself in favor of its functioning, collected number Aadhaar with other objects collected only the virtual identifier. Here is how to limit the collection can be supported in the framework of Aadhaar.

For organizations, which do not perform public functions, identification of individuals all else possibly will be required. At the present time, numerous of these organizations are asking, of course the same, about the amount Aadhaar. This is a serious problem in relation to confidentiality. For all these organizations for confirmation of identity possibly will be used only autonomous inspection rooms Aadhaar ( issued by The-Unique-Identification Authority-Of India (UIDAI)) with the consent of the owner of the number Aadhaar ' person., This mechanism is provided to, for the purpose of this confidential information, concerning such persons, both their number Aadhaar, that it is not to be disclosed by the requesting organizations for daily activities, but also for the transaction.

During the whole of this system, to ensure, that the intention to protect the confidentiality goes hand on hand with significant benefits for personage persons, all requesting entities authorized to provide, so that it had a place in the event of failure of authentication events for conscientious reasons., Invalidity or technical failure, other means of identification (e.g., a standalone mode, check or other manner) should be available. This has been made mandatory for all requesting organizations. Besides that, it was confirmed the intention, to this basic biometric information to anyone not passed, because in their favor is needed the highest level of protection.

In - the second, necessary changes, to ensure the autonomy of the Indian authority for the

unique identification (UIDAI). With over 121 crores of Aadhaar numbers (issued by The- One- Identification -Authority Of India (UIDAI)), the Indian government also has state governments that make Aadhaar authentication. mandatory for a number of benefits, subsidies in the form of as well as services, in addition to several private transactions, using the Aadhaar in as a method of identification, the need in an hour is the regulatory framework in favor of activities. Aadhaar. It requires two conceptual changes in that, as the law at the present time considering the Uniform Identification Authority of India (UIDAI) - in the - first, the Uniform Identification Authority of India (UIDAI) has to be autonomous in their decision. - development, operating independently from the agencies - members of the government and externally, with the aim of using. Aadhaar; in - Secondly, the Office of unique identification of India (UIDAI) shall have the authority, the same authority of the traditional regulator in relation to measures of coercion.

After reviewing the credentials, the functions of existing regulatory bodies, such as TRAI, SEBI, CCI, etc., are then performed., And also the shortcomings in the existing structure for ... Aadhaar, the Committee considers the opinion with the intention, that the Authority in India (UIDAI) - A unique identification should be vested with functions to ensure effective implementation, better compliance, protection of consumers in addition to the prevention and elimination damage to private life. Consequently, the Authority shall be endowed with powers to impose civil penalties on various subjects ( including the requesting entities, registrars and the Agency for authentication ) with a view to ensure, that they are wrong, if you do not comply. In cases, associated with the recognized law violations or non-compliance with or violation of the actual life of a private person, as inevitable, the Office for identification of India (UIDAI) will bear the responsibility for the provision of instruction, but also for the fact, that the longer refuse from order to announce in addition to private entrepreneurs, as well as other officials, performing functions in accordance with the Aadhaar Act.

It works in tandem with the provisions of the draft law on the protection of data, which will permit all affected parties to address in Department of protection of data in case of violation of the Principles of protection of data in relation to any object in Aadhaar., Ecosystem, in fact including a unique identification -Autorité of India (UIDAI), when data guardian. In general, it will provide, with the aim of affected citizens, adequate means of legal

protection against all subjects, who manipulate their data Aadhaar, as well as wandering objects in the ecosystem Aadhaar, subject to strict coercive measures.

Finally, to strengthen the financial autonomy of the Authority for the unique identification of India (UIDAI) in a governing body of the sum, received from fines, levied by the Authority in accordance with the law, they will be deposited into a separate fund. It is significant for the addition, to the Office of unique identification of India (UIDAI) has played the role of a responsible regulator in addition to the trusted entity.

The proposed changes will have significant significance for the solution of significant problems of privacy with the intention, expressed in relation to the structure of Aadhaar. They also ensure, to the Office of unique identification of India (UIDAI) was more autonomous in operation, and also had the necessary tools of regulation for the owners of rooms Prote la vie et de Aadhaar. Finally, in the role of a trusted entity data in the proposed structure of the protection of data, The-Unique-Identification Authority- Of India (UIDAI), from the point of view of the law on the protection of data, it will be treated as an any other organization, dealing with personal data of personage persons. will also be subject to the severity and sanctions of the law. Therefore, it is important, that these changes were made in conjunction with the new legislation on the protection of data.

To make the above changes, you need to make some changes / additions. The Government possibly will consider any changes, which it deems appropriate, and to take appropriate legislative measures for their implementation.

## **Conclusion**

DNA profiling in addition to its use involves various legal as well as ethical issues. There is concern in the public mind about its misuse, which, if it is not protected, can lead to the disclosure of personage information.

After examining the statutory regulators and deficiencies in the existing system, the Committee for Aadhaar believes that UIDAI should be endowed with the functions of ensuring effective enforcement, better compliance, protecting consumers, and preventing, as well as preventing, compensation for privacy violations. In cases of violation of the law or non-compliance with requirements, or with an actual other unavoidable violation of

confidentiality, the Indian Unique Identification Authority (UIDAI) will be instructed to issue instructions and also to cancel the refusal orders, in addition, private contractors and other organizations performing functions as part of Aadhaar.

# **CHAPTER -5**

## CHAPTER 5

### INFORMATION TECHNOLOGY AND THE PRIVACY

#### RISK: CHALLENGES AND REMEDIAL

#### PERSPECTIVES

The Supreme Court is highest in the hierarchy of courts in India along with has a wide variety of powers vested with it along with due to its power it has to deal with a number of cases every year which creates a lot of burden on the courts already pending cases. Right to Privacy as mentioned under part 3 of the Indian constitution has a wide history of debate in a number of cases along with with changing time as well as with changing hon'ble highest judicial court of India (the S.C.) judges the decisions along with the mindset also kept on changing.

There are a series of judgments starting from kartar singh vs state of up till puttuswami also known as the adhar case. in favor of better understanding along with for better knowledge of hw Right to Privacy developed in our country let us study it using a timeline as well as starting from 1950 till 2018

1964	KHARAK SINGH VS STATE OF UP & OTHERS (1963 AIR SC 1295)	<b>SURVEILLANCE INTRUDES INTO PRIVACY:</b> This case is among the mainly cited cases in India when it comes to privacy. Here, a majority of a six-judge bench held with the intention of that unlawful intrusion into the home violates personal liberty.
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**THE IMPACT OF TECHNOLOGY ON CRIMINAL INVESTIGATION AND PRIVACY RIGHTS IN INDIA**

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1997	PUCL VS UNION OF INDIA (AIR 1997 SC 568)	TELEPHONE TAPPING INVADES PRIVACY: A division bench held with the intention of that a telephone conversation is an exercise in freedom of expression, along with with the intention of that telephone tapping is an invasion of privacy.
1998	MR X VS HOSPITAL Z (1998 (8) SCC 296)	PRIVACY ISN'T ABSOLUTE: The case concerned revealing the HIV status of a patient by means of a doctor. A division bench held the Right to Privacy which is a fundamental right intended in favor of Indian citizens isn t absolute. A doctor possibly will disclose a patient s HIV status to the partner
2008	HINSA VIRODHAK SANGH VS MIRZAPUR MOTI KURESH JAMAT (AIR 2008 SC 1892)	CHOICE OF FOOD PERSONAL: A division bench upheld the closure of slaughterhouses in Ahmedabad throughout the Jain Paryushan festival. It also observed with the intention of that what one eats is part of one s Right to Privacy which is a fundamental right intended in favor of Indian citizens
2009	JAMIRUDDIN AHMED VS STATE OF WEST BENGAL(CRIMINAL APPEAL NO. 1535 OF 2008)	RAID WITHOUT REASON NOT OKAY: A division bench ruled with the intention of that search/seizure without recording valid reasons violates the Right to Privacy which is a fundamental right intended in favor of Indian citizens

**THE IMPACT OF TECHNOLOGY ON CRIMINAL INVESTIGATION AND PRIVACY RIGHTS IN INDIA**

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2011	RAM JETHMALANI & OTHERS VS UNION OF INDIA (2011) 8 SCC 1	CAN'T REVEAL BANK DETAILS WITHOUT VALID GROUNDS: Popularly known as the "Black Money Case", here the highest judicial court of India(the S.C.)held with the intention of that revealing an personage s bank account details without establishing grounds to accuse them of wrongdoing violates their Right to Privacy which is a fundamental right intended in favor of Indian citizens
2012	SUPREME COURT TAKES SUO MOTU NOTICE OF THE RAMLILA MAIDAN INCIDENT	RIGHT TO SLEEP IS PART OF RIGHT TO PRIVACY: The highest judicial court of India(the S.C.)took suo motu cognizance of the crackdown on sleeping anticorruption protesters camping at Ramlila Maidan led by means of Baba Ramdev. Identifying Right to Sleep as an feature of the Right to Dignity along with Privacy, the court refused to permit "illegitimate intrusion into a person s privacy as Right to Privacy which is a fundamental right intended in favor of Indian citizens is implicit in the right to life as well as liberty"



The cases discussed above are some of the land mark judgements given by means of the Hon'ble highest judicial court of India(the S.C.)of India but the table is not exhaustive along with there are a variety of other cases as well which requires a brief discussion.

The **M. P. Sharma vs Satish Chandra case** was associated to the raid as well as seizure of credentials of a Dalmia group company- Messrs. Dalmia Jain Airways Ltd. The investigation indicated with the intention of that the company was indulged in misconduct along with it misappropriated the funds conceal from the shareholders the real state of affairs by means of submitting false documents along with balance-sheets.

The Government had ordered an investigation into the affairs of the company along with on November 19, 1953, a First Information Report (FIR) was registered. On the basis of FIR, District Magistrate, Delhi was inquire in favor of warrants for the investigate of credentials. The DM had ordered an examination of the offenses as well as issued warrants for instantaneous searches at as numerous as 34 places.

The distressed parties confront the investigate in their petition along with alleged with the intention of that their private credentials were taken away along with it dishonored their fundamental rights under a variety of articles. The petitioners also sought to quash the searches as being absolutely illegal as well as ask in favor of the return of the documents seized.

A bench of then Chief Justice Mehar Chand Mahajan as well as Justices B Jagannadhadas along with six others in its judgement emanated on March 15, 1954, held that, "A power of search as well as seizure is in any system of jurisprudence'an overriding power of the State for the protection of social security along with the intention of that power is necessarily regulated by means of law. When the Constitution makers have thought fit not to subject such regulation to Constitutional boundaries by means of acknowledgment of a (1) 201 U.S. 43; 50 Law. Edn. 652. the fundamental right to privacy, analogous to the American Fourth Amendment, we contain no justification to import it, into a totally different fundamental right. by means of some process of strained construction."

***Kharak Singh vs The State Of U. P. & Others on 18 December, 1962***

In this case, Kharak Singh was arrested in a case of dacoity in 1941, but there was no considerable proof brought into being against him as well as he was unconfined. But Uttar Pradesh Police had unwrapped a "history-sheet" in regard to him under Chapter XX of the Uttar Pradesh Police Regulations.

In his petition, Kharak Singh confronted the constitutional validity of Chapter XX along with alleged with the intention of that the UP police despoiled his fundamental rights under Articles 19(1)(d) — right to freedom of movement — as well as 21 — protection of life along with personal liberty.

In its judgement emanated on December 18, 1962, a bench of six judges consisting of the then Chief Justice Bhuvaneshwar P Sinha as well as Justices Syed Jaffer Imam, K Subbarao, N Rajagopala Ayyangar, J C Shah as well as J R Mudholkar had struck down the Clause (b) — domiciliary visits at night of Chapter XX of the Uttar Pradesh Police Regulations but upheld the rest 5 Clauses.

The bench pronounced the judgement against Kharak Singh as well as held with the intention of that “the right of privacy is not a guaranteed right under our Constitution, along with consequently the effort to ascertain the movements of a personage is simply a manner in which privacy is invaded as well as is not an infringement of a fundamental right guaranteed in Part III (fundamental rights)”.

***People'S Union Of Civil Liberties ... vs Union Of India (Uoi) as well as Anr. on 18 December, 1996***

In 1990, Chandra Shekhar suspected with the intention of that the Government was illegally tapping telephones of 27 politicians, including his own

Subsequently, a CBI examination exposed extensive wiretapping commenced by means of the Government. The issue reached the highest judicial court of India (the S.C.) all the way through a public interest petition filed by means of the People's Union for Civil Liberties.

The impugned legislation in the PUCL Case was section 5(2) of the Indian Telegraph Act,

1885, which permits interception on the occurrence of a public emergency, otherwise in the interest of public safety.

The Supreme Court, while refusing the squabble with the intention of that the said provision is ultra-vires the Indian Constitution, held with the intention of that the two statutory pre-conditions, namely, the occurrence of any ‘public emergency’ otherwise in the ‘interest of public safety’, have to be satisfied.

In view of the fact that the terms hadn’t been defined under the IT Act, the highest judicial court of India(the S.C.)interpreted them to mean “the prevalence of a sudden condition otherwise state of affairs affecting the people at large calling in favor of immediate action”, as well as “the state otherwise condition of freedom from danger otherwise risk in favor of the people at large”, respectively.

Insofar as wiretaps along with their contravention of constitutional rights were apprehended, the highest judicial court of India(the S.C.)laid down the following touchstones:

The Right to Privacy “is a part of the right to ‘life’ along with ‘personal liberty’ enshrined under Article#21 of the Constitution”.

The right to hold a telephone discussion in the privacy of one’s home otherwise office without interference can certainly be claimed as “right to privacy” In view of the fact that telephonic conversations are often of an intimate along with confidential nature.

Any right enshrined under Article#21 cannot be curtailed except according to the procedure recognized by means of law, which has to be just, fair along with reasonable the highest judicial court of India(the S.C.)went on to issue guidelines to curb administrative overreach.

Following the judgment, the guidelines were codified in Rule 419(A) of the Indian Telegraph Rules, 1951 in 2007.

As per Rule 419(A), a track for interception under Section 5(2) possibly will be subjected only by means of the Union Home Secretary at the Centre, otherwise the State Home Secretary otherwise in unavoidable circumstances, by means of another authorized officer.

Given the legal framework recognized by means of the PUCL Case as well as succeeding to

the codification of the guidelines, one possibly will think with the intention of that the issue of illegal wiretapping was appreciably curbed if not altogether dealt with.

A man was invented to marry his fiancée but it was called off because he was detected as an AIDS patient or we can say an HIV positive along with his doctor reveal this fact to his fiancée. The man challenge with the intention of that the respondent hospital as well as doctor had breached their responsibility underneath medical ethics by means of unveiling the fact of being positive for HIV.

The case is a signpost judgment with the intention of that discusses two issues in detail –

Whether the doctors can whittle out an exception as well as unveil their patient's confidential fact in certain situations.

Whether the wife of an AIDS patient have the right to discern about his/her positive status of this viral diseases.

Right to privacy means 'right to be let alone'. The Right to Privacy is an comprehensive right of right to life along with personal liberty under Article#21 of the constitution understand writing along with the Directive Principles of State Policy.

The mainly significant difference among The Right to Privacy along with the right to confidentiality is with the intention of that the concluding is available only against a person to whom you have unveiled such fact as well as is more of a duty whereas The Right to Privacy is a right in rem.

The court critical out with the intention of that The Right to Privacy possibly will even arise from commercial relationships like doctor-patient. This relationship will be harmed if the doctor expose such fact with the intention of that affects the patient's 'right to be left alone'. Therefore, it can be accomplished with the intention of that both the rights- Right to Privacy along with Right to Confidentiality are not absolute.

#### ANALYSIS OF THE JUDGEMENT

The judgment in my outlook is a sound judgment in view to the exposé of the fact with the intention of that the appellant suffered from deadly viral disease AIDS because public interest acts as an override to the duty of confidentiality imposed on doctors, particularly at

what time there is an instantaneous upcoming health danger to others.

**RAM JETHMALANI & ORS V UNION OF INDIA & ORS.**

The petition came to the Court on the basis of news flooded in newspapers along with tabloid about the inaction of the Government to bring back the tainted money deposited in the foreign Banks as well as Tax Havens. From the petitioner's side, it was requested to constitute Special Investigation Team (SIT) headed by means of one otherwise two judges of highest judicial court of India (the S.C.) to look into the matter which was opposed by means of the Government of India.

In the matter of assertion of the Union of India with the intention of that the unveiling the name of the account holder would violate the right to privacy, Court accepted the assertion. Court, recognizing with the intention of that The Right to Privacy is a significant part of the Article#21 can only be taken out by means of law. Because being the account holder of the said bank is not an illegal act, the apprehension individuals have their right intact along with can't be violated. Court further held with the intention of that it wouldn't make any exemption in this regard as the bits possibly will be read to generate further exception in future which is not good in favor of democracy.

“Right to privacy is an integral part of right to life, a cherished constitutional value along with it is significant with the intention of that human beings be allowed domains of freedom with the intention of that are free of public scrutiny unless they act in an unlawful manner.”

***Justice K.S. Puttaswamy (Retd) ... vs Union Of India along with Ors. on 24 August, 2017***

A nine-judge bench of the highest judicial court of India (the S.C.) of India held unanimously with the intention of that The Right to Privacy was a constitutionally confined right in India, as well as being incidental to other freedoms guaranteed by means of the Indian Constitution. The case, brought by means of retired High Court Judge Puttaswamy, confronted the Government's proposed scheme in favor of a uniform biometrics-based identity card which would be mandatory in favor of access to government services as well as benefits. The Government have an argument with the intention of that the Constitution did not grant

specific protection in favor of the right to privacy. The Court reasoned with the intention of that privacy is an incident of fundamental freedom otherwise liberty guaranteed under Article#21 which provides that: “No person shall be deprived of his life otherwise personal liberty except according to procedure recognized by means of law”. This is a landmark case which is likely to lead to constitutional challenges to a wide range of Indian legislation, for example legislation criminalising same-sex relationships as well as bans on beef along with alcohol consumption in numerous Indian States. Observers also expect the Indian Government to establish a data protection regime to protect the privacy of the individual. Further, the case is likely to be of wider significance as privacy campaigners use it to pursue the constitutional debate over privacy in other countries.

### Facts

The case was brought by means of 91-year old retired High Court Judge Puttaswamy next to the Union of India (the Government of India) prior to a nine-judge bench of the highest judicial court of India(the S.C.)which had been set up on reference from the Constitution Bench to determine whether The Right to Privacy was guaranteed as an independent fundamental right following conflicting decisions from other highest judicial court of India(the S.C.)benches.

The latest case had worried a challenge to the government’s Aadhaar scheme (a form of uniform biometrics-based identity card) which the government projected building obligatory in favor of access to government services along with benefits. The challenge was made prior to a three-judge bench of the highest judicial court of India(the S.C.)on the basis with the intention of that the scheme despoiled the right to privacy. On the other hand, the Attorney General have an argument on behalf of the Union of India with the intention of that the Indian Constitution does not grant specific protection in favor of the right to privacy. He based this on observations made in the case of M.P. Sharma v. Satish Chandra (an eight-judge bench) as well as Kharak Singh v. Uttar Pradesh (a five-judge bench). On the other hand, a succeeding eleven-judge bench found with the intention of that fundamental rights were not to be construed as distinct, unrelated rights, thereby continuation the nonconforming view in Kharak Singh. This also produced the basis of afterward decisions by means of lesser benches of the highest judicial court of India(the S.C.)which specifically recognized the right to privacy.

It was in this perspective with the intention of that a Constitution Bench was set up along with concluded with the intention of that there was a need in favor of a nine-judge bench to determine whether there was a fundamental Right to Privacy within the Constitution.

The Petitioner have an argument ahead of the nine-judge bench with the intention of that this right was an independent right, certain by means of the right to life with self-respect under Article#21 of the Constitution. The Respondent submitted with the intention of that the Constitution only recognized personal liberties which possibly will incorporate The Right to Privacy to a limited extent. The Court considered detailed arguments on the nature of fundamental rights, constitutional interpretation along with the theoretical as well as philosophical bases in favor of The Right to Privacy as well as the nature of this right.

What led to the highest judicial court of India(the S.C.)Proceedings?

Petitions in the Supreme Court:

With the increasing ‘compulsion’ around the practice of Aadhaar for a variety of activities, the debate around privacy escalated in the recent past. Even previous to the Aadhaar Act [i] was passed in march 2016, there were several petitions[ii] in the highest judicial court of India(the S.C.)challenging it. After the passing of the Act along with its associated rules (passed in Sept 2016), fresh petitions[iii] were filed.

### **The Government’s Stance:**

While arguing on behalf of the government, the Attorney General, Mukul Rohtagi, presented with the intention of that in view of prior judgements[iv] of the Supreme Court, the legal position regarding the existence of the fundamental Right to Privacy is doubtful. This was in August 2015.

### **What the highest judicial court of India(the S.C.)did:**

A 3-Judge bench of the Supreme court, at with the intention of that time, approved an order with the intention of that a special bench of ‘appropriate strength’ be constituted by means of the Chief Justice of India to scrutinize the earlier judgements along with to decide once as well as for all on this matter.

Consequently, a 5-Judge bench[v] was set up on 18th July 2017. This bench decided the very

same day with the intention of that a 9-Judge bench needs to be constituted to determine whether The Right to Privacy is a fundamental right under the Indian Constitution. Rest of the issues associated with the Aadhaar scheme would be decided by means of the lesser 5-Judge bench at a afterward stage.

The very next day, on 19th July 2017, a 9-Judge Constitutional Bench<sup>[vi]</sup> began hearing petitioners arguments to determine whether Right to Privacy which is a fundamental right under the Indian Constitution.

### **Why a 9-Judge bench?**

In view of the fact that the case involves an interpretation of the Indian Constitution, i.e. whether the Right to Privacy is a fundamental right otherwise not, the bench had to consist of at least 5 Judges<sup>[vii]</sup>. The Supreme Court, in practice, holds the decision of a larger bench to have an overriding effect on the decision of a lesser bench. In view of the fact that the earlier two judgements in existence on The Right to Privacy were decided by means of a 6-Judge bench [Kharak Singh v. State of Uttar Pradesh (1964) SCR (1) 332] along with an 8-Judge bench [M P Sharma & Others vs Satish Chandra, District Magistrate, Delhi & Others], a constitutional bench of 9-Judges was required to be recognized to make this decision an authority on the existence of The Right to Privacy under the constitution.

Why is a 9-Judge bench of such critical importance in the history of independent India?

Most matters prior to the Hon'ble highest judicial court of India(the S.C.)are heard by means of a division bench consisting of 2-3 Judges. For example, the critical Ayodhya Judgement was delivered by means of a 3-Judge bench. Setting up of a 9- Judge constitutional bench is, therefore, a very rare occurrence.

### **By the Advocates for the Petitioners:**

#### **a) Gopal Subramaniam**

Privacy is embedded in all aspects of life as well as liberty

Life along with liberty are not conferred by means of the Constitution; they are pre-existing natural rights as well as Constitution simply recognises them. Dignity, Liberty along with consequentially privacy are not accompanying rights but is the essence of right to life. It is



the heart along with soul of the Constitution.

Can liberty be exercised without privacy? No. Privacy is not a sub-set of liberty. It is THE LIBERTY.

Preamble of Constitution uses two expressions – liberty along with dignity. Liberty is analogous to American jurisprudence while Dignity is analogous to continental jurisprudence. Privacy is embedded in both liberty as well as dignity.

Constitution places citizens as paramount with the State being the product of the Constitution.

**b) Soli Sorabjee**

That Right to Privacy is not mentioned anywhere in Constitution does not mean with the intention of that it does not exist. It can be deduced from other fundamental rights.

Freedom of press is not expressly provided in the Constitution. But it is deduced from Article#19(1)(a).

Argument with the intention of that it does not exist is fallacious especially after the judgments in RC Cooper and other cases.

**c) Shyam Divan**

In view of the fact that 1975, Right to Privacy has been affirmed by means of this Court. It is now an opportunity to consolidate the same along with not regress.

Argument with the intention of that my body belongs to the State is symbolic of totalitarian regime.

Kharak Singh has been expressly overruled by means of Maneka Gandhi.

If there is no Right to Privacy, a large number of Fundamental Rights possibly will be denuded.

**d) Arvind Datar**

In both MP Sharma and Kharak Singh, the issue of whether privacy is envisaged in Part III

otherwise not was not in question. The rationale in favor of decision in both MP Sharma as well as Kharak Singh is not whether Right to Privacy is a Fundamental Right or not.

They (Central government) are taking one line from MP Sharma along with one line from Kharak Singh as well as arguing with the intention of that there is no Right to Privacy along with the intention of that is the law of the land.

In 2017, in favor of a democratic country like India to say with the intention of that fundamental rights include a plethora of rights but not Right to Privacy which is a fundamental right intended for Indian citizens would be paradoxical.

We cannot say with the intention of that we have Right to Life as well as Personal liberty but with the intention of that right does not include Right to Privacy.

The parameters on which Right to Privacy should be tested will depend on the law under challenge. Today, it is definitely a part of Articles 14, 19 along with 21. Tomorrow it could be a facet of more Part III rights.

#### **By the Government's Advocates (Advocates for the government)**

a) Kapil Sibal

Technology allows State to be all pervasive as well as invasive. It has the capacity to empower along with dis-empower. Today, there is no need to enter someone's house to know what is going on inside the house. It can be ascertained sitting miles away.

MP Sharma and Kharak Singh cannot be used to determine contours of privacy today due to big changes in technology along with circumstances.

In this era of technology, Right to Privacy cannot be absolute. The Court has to strike a balance as well as there should be a method to protect communication among State along with individuals along with non-state parties along with individuals.

Privacy relates to one's physical being, thoughts as well as inter-personal relationships.

When state accesses data, it should be sanctioned by means of law along with it should be in

favor of a legitimate aim.

**There has to be a data protection law in this country.**

Privacy also has another dimension – privacy of data of the state. So if a non-state actor accesses such data, he should be prosecuted.

**b) KK Venugopal**

There is no fundamental Right to Privacy. Even assuming privacy can be raised to the status of liberty, it is multi-faceted along with every facet will not be eligible to claim the status of fundamental right.

India had declined to introduce privacy as fundamental right as is evident from the Constituent Assembly[x] But now Your Lordships are being asked to hold privacy as fundamental right, which should be rejected.

**Each feature of privacy should be examined individually.**

If there is an overwhelming State interest involved, then as far as factual privacy is concerned, there will be a blanket right on the State to collect data.

The fact with the intention of that Aadhaar Act recognises privacy is a acknowledgment with the intention of that there is no fundamental right to privacy. with the intention of that is why a law has been enacted. Right to Privacy was consciously considered as well as jettisoned [by Constituent Assembly]. Hence, it should not be read back.

**c) Aryaman Sundaram**

The basic question is whether privacy is a fundamental right. This will necessarily mean we will have to read in all aspects of privacy. Hence, submission by means of the petitioner with the intention of that certain facets of privacy is fundamental right while others possibly will not be, would mean with the intention of that the genus of privacy cannot be conferred the status of fundamental right.

Before we confer something status as fundamental right, we need to know what exactly the right is. Privacy is just a concept.

Concept of privacy is all encompassing. To have it as a fundamental right would amount to injecting an expression with ambiguity along with vagueness into the Constitution, something which was expressly rejected by means of Constituent Assembly.

Expressions like freedom of speech, movement etc are concepts which have an exactitude. On the other hand, privacy is a word without exactitude. It is an incomplete expression.

Kharak Singh has been correctly decided along with wrongly interpreted. Govind v. State of Madhya Pradesh did not lay down Right to Privacy which is a fundamental right intended in favor of Indian citizens as a fundamental right.

Purpose of Article#21 is protection of body; Protection of mind is found in Freedom of Conscience (Article#25).

**d) Additional Solicitor General Tushar Mehta**

Privacy is subjective along with vague as well as hence, cannot be a Fundamental Right.

It is too late in the day to say privacy is not a right at all. It is of course valuable but it's not a Fundamental Right.

There are statutory protections of privacy. It has always been confined even prior to Constitution. There is no need to elevate it.

In view of the fact that privacy is subjective along with possibly will differ from context to context, legislature is better positioned to protect it than giving it a Constitutional protection

**e) Rakesh Dwivedi**

Whether otherwise not privacy can be asserted needs to be based on the injury with the intention of that a specific fact disclosure will cause. It is not enough in favor of someone to claim their privacy is violated. They need to show the nature of injury with the intention of that possibly will ensue due to with the intention of that violation.

Liberty along with dignity in preamble are narrow domains. Dignity has got nothing to do with privacy but only with fraternity. Economic as well as social justice precedes liberty

under preamble. Even poor people's life along with liberty are important.

Privacy is a fading concept. There can be no claim of privacy as to basic identity fact. Even highest judicial court of India(the S.C.)Rules seek a lot of personal fact along with identity fact including Aadhaar when PILs are filed.

We ought to make use of technology to the maximum.

#### **f) Gopal Sankaranarayanan**

Some rights are in favor of persons as well as some in favor of citizens. Indeed, all rights need to be read together but there are also grounds in favor of separation because Article#19 is in favor of citizens only along with not in favor of all persons.

Consequences of elevating all aspects of privacy as Fundamental Rights will be problematic. mainly of the aspects of privacy are already confined under Article#21

If privacy is Fundamental Right, it cannot be waived along with it will have a lot of implications including under Contract law. Maybe it is possible, with the intention of that derivative rights of Privacy can be waived.

The people offended by means of Aadhaar are those who don't need the services. If the State ends up balancing such interests, it will lead to majoritarian rule, which is not what the Constitution is about. UDHR has relevance in favor of Part IV along with not Part III.

#### **g) Argya Sengupta**

The nature of the Right to Privacy which is a fundamental right intended in favor of Indian citizens with the intention of that exists is different depending upon the zone in which the act takes place. You have no right not to be spied on in public. Court should not read in a general fundamental Right to Privacy which is a fundamental right intended in favor of Indian citizens in the Constitution.

In the US, neither abortion nor same sex rights are adjudicated on the ground of privacy. All decisions in the US rely on liberty rather than privacy.

Right to be let alone is part of liberty. Privacy is only a formal construct. The core idea is with the intention of that of liberty. There is no right to take drugs in your own house. If

privacy is a right to be left alone, then there is a correlative duty upon others to stay off. There ought to be a case to case development “so-called privacy interests.” Context is everything as well as therefore there can be no general test. No new doctrine is required because existing liberty jurisprudence is enough. Court should not get into the horizontal data protection as it is a complex problem.

Key conclusions from the **Judgment on Justice K.S. Puttaswamy (Retd)** along with *Another vs Union of India as well as Others* (Writ Petition Civil No. 494 of 2012):

1. Life along with personal liberty are inalienable rights. These are rights which are indivisible from a distinguished human existence. The dignity of the individual, equality among human beings along with the quest in favor of liberty are the foundational column of the Indian Constitution;

2. Judicial acknowledgment of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the Court embarking on a constitutional purpose of with the intention of that nature which is entrusted to Parliament;

3. Privacy comprise at its central part the safeguarding of personal intimacies, the sanctity of family life, marriage, procreation, the home as well as sexual orientation. Privacy also provide a right to be left alone.

4. Personal choices governing a way of life are intrinsic to privacy.

5. ...privacy is not lost otherwise give up simply because the personage is in a public place. Privacy attaches to the person in view of the fact that it is an essential facet of the dignity of the human being;

6. Technological modify has given rise to apprehension which were not in attendance seven decades ago along with the rapid growth of technology perhaps will render obsolescent numerous notions of the present. Consequently the elucidation of the Constitution ought to be resilient 9 along with flexible to permit future generations to become accustomed its pleased bearing in mind its basic otherwise essential features;

7. Like other rights which form part of the fundamental freedoms confined by means of Part III, including the right to life as well as personal liberty under Article#21, privacy is not an

absolute right. A law which infringe upon privacy will have to endure the touchstone of permissible restrictions on fundamental rights.

8. Privacy has both positive along with negative content. The negative substance restrains the state from committing an intrusion upon the life as well as personal liberty of a citizen. Its positive substance imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.

9. The right of privacy is a fundamental right. It is a right which guards the inner sphere of the personage from interference from both State, along with non-State actors along with allows the individuals to make autonomous life choices.

10. The privacy of the home ought to protect the family, marriage, procreation as well as sexual orientation which are all significant feature of dignity.

11. ...in a India which prides itself on its diversity, privacy is one of the mainly significant rights to be confined both against State along with non-State actors along with be recognized as a fundamental right.

12. ...right of privacy cannot be denied, even if there is a miniscule fraction of the population which is affected. The majoritarian concept does not apply to Constitutional rights...

13. Let the right of privacy, an inborn right, be unambiguously a fundamental right entrenched in part-III of the Indian Constitution, but subject to the restrictions 10 specified, applicable to with the intention of that part. This is the call of today.

The old order changeth yielding place to new. Final order of the highest judicial court of India(the S.C.)The judgment on behalf of the Hon'ble Chief Justice Shri Justice Jagdish Singh Khehar, Shri Justice R K Agrawal, Shri Justice S Abdul Nazeer as well as Dr Justice D Y Chandrachud was delivered by means of Dr Justice D Y Chandrachud. Other judges delivered separate judgments. The reference is disposed of in the following terms:

(i) The decision in M P Sharma which holds with the intention of that The Right to Privacy is not confined by means of the Constitution stands over-ruled;

(ii) The decision in Kharak Singh to the extent with the intention of that it holds with the intention of that The Right to Privacy is not confined by means of the Constitution stands

over-ruled;

(iii) The Right to Privacy is confined as an intrinsic part of the right to life along with personal liberty under Article#21 along with as a part of the freedoms guaranteed by means of Part III of the Constitution.

(iv) Decisions succeeding to Kharak Singh which have enunciated the position in

(iii) above lay down the correct position in law.<sup>13</sup> Implications of the Judgement The historic fallout of the nine-judge Bench judgment, declaring privacy as intrinsic to life as well as liberty along with an inborn right confined by means of Part III of the Constitution, is with the intention of that an ordinary man can now directly approach the highest judicial court of India(the S.C.)as well as the High Courts in favor of violation of his fundamental right under the Constitution.

By making privacy an intrinsic part of life along with liberty under Article#21, it is not just a citizen, but anyone, whether an Indian national otherwise not, can move the constitutional courts of the land under Articles 32 as well as 226, respectively, to get justice. by means of declaring with the intention of that privacy is inborn to each along with every fundamental freedom in Part III of the Constitution, the highest judicial court of India(the S.C.)has made privacy an essential ingredient of other significant fundamental freedoms, including right to equality, free speech along with expression, religion as well as a myriad other significant fundamental rights essential in favor of a dignified existence subject to reasonable restrictions of public health, morality along with order.



# **CHAPTER -6**

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### **CONCLUSION AND SUGGESTIONS**

In the present era, we cannot imagine a day without the appropriate technology. It is a dire requirement even in the criminal investigation by the police that new technologies be incorporated. Many technologies are already in use but constant up-gradation is required. Technology has been a boon but there have been instances where gross misuse of these technologies has been carried out. For the prevention of such instances, it is imperative to formulate legislation. Technologies are costly and therefore, we should focus on research and development in our own country. In this research, The impact of technology on Criminal Investigation and Privacy rights in India as per Indian constitution along with the different aspects of constitution of other country of world have been discussed. This study also gives details about the approaches towards right to privacy. Discussion on Constitutive meeting effectively discussed the need for freedom itself along with the freedom to enjoy the autonomy of a, property along with place of residence, but a right to privacy in general otherwise in the particular manner not mentioned in precise terms. Discussion varied along with reflect the need in favor of in an hour, but, for unfortunately, not been able to get enough support from the part of the meeting. Society has changed the game right now, along with this causes damage to society in general, not recognizing the need in favor of the Right to Privacy which is a fundamental right intended in favor of Indian citizens along with it is constantly growing scale .

Constitutional officers face highlighted other rights along with subjected to criticism of the recommendation committee in relation to the different rights of different articles. Protecting the right to privacy, which recognizes privacy, it began much afterward in those cases, which were followed in recent years along with led to the development of the law. to privacy, how we it know, along with understand the scope of Privacy.

DNA profiling in addition to its use involves various legal as well as ethical issues. There is concern in the public mind about its misuse, which, if it is not protected, can lead to the disclosure of personage fact.

After examining the statutory regulators and deficiencies in the existing system, the Committee for Aadhaar believes that UIDAI should be endowed with the functions of ensuring effective enforcement, better compliance, protecting consumers, and preventing, as well as preventing, compensation for privacy violations. In cases of violation of the law otherwise non-compliance with requirements, otherwise with an actual other unavoidable violation of confidentiality, the Indian Unique Identification Authority (UIDAI) will be instructed to issue instructions and also to cancel the refusal orders, in addition, private contractors and other organizations performing functions as part of Aadhaar.

Modern times the technological advancement poses a serious threat to our privacy. In this era of technological advancement, it is very difficult to identify the infringement of the right for taking legal action. The Supreme Court had recognized 190 the “right to privacy as a fundamental right protected under article 21 of the constitution” yet the realization of this remains a distant dream for us. The reason is that the actual content of the right has not been elaborated upon. This needs to be rectified so that it can become a justiciable right. There is an urgent need to take some solid legislative measures before we lose control of it. The content, limits, and extents of this right are still not clear. As we know, Privacy is not expressly provided under our Constitution. It is implicitly mentioned under Art. 21. “There is an inherent conflict between the Right to Privacy & Data Protection. Data protection may include financial details, information relating to health, business proposals, intellectual property and sensitive data”. In India, a major provision for protection of data and Privacy are provided under IT (amendment) Act, 2008. But, these provisions are not provided in an exhaustive manner. “Our IT act is not sufficient for protection of data. Hence a separate legislation in this regard is required”. For the protection of data and Privacy, at least five bills were tabled in parliament over the years. But no specific law is in place. So, despite several bills, Parliament has not yet enacted any specific law which defines Privacy & ensures a protection of data of Individual in India. An individual can be easily harmed with a computerized data & it can be transferred to third Party. We are not taking it seriously, If our data is publically available than it can be misused. If we fail to secure our Data & Privacy we are at risk of ID theft, phishing scam, voting manipulation can be done by using our data or other risks. We can take example of Cambridge Analytica in America, which used Facebook likes to spread propaganda for political parties. The situation can be worst in a country like India. Our government is storing data related to cast, religion, bank, education etc. all of this

can be used for voting manipulation. The “Ministry of Electronics and Information technology” drafted “the Data protection Bill 2019” and introduced it in Parliament. This bill has potential to alter the India's privacy framework. This bill heavily favor’s the State. It allows the government to set up Data Protection Authority and enables the government to demand Non personal data. Government also has a power to exempt any of its agencies from the legislation. This bill heavily favored the government, when 191 it comes to access to data and processing of it. Accessing of personal data for certain purposes. It also allows for the processing of personal data for any service or the benefit of the State. It does not apply proponent of privacy to sensitive or critical data.

It also allows for the processing of personal data for any service or the benefit of the State. It does not apply proponent of privacy to sensitive or critical data. Chapter 14 allows state after consultation with DPA, to demand non personal information from data fiduciaries to enable better targeting of services. If it not defined in a well form, it can be misused. Here, government is consulting with DPA, and DPA members are appointed by government.

Positives:

This will ensure the dignity of the personage as mentioned in our Preamble. It will impose restrictions on the government when it tries encroach our privacy. It will also give impetus to the Right to personal liberty, under Article#21 of the Constitution.

Negatives:

It can hinder the implementation as well as performance of welfare schemes -like Aadhar along with Direct Benefits Transfer-which requires personal data of citizens. These schemes are well intended as well as helps in identification of marginalised sections along with effective implementation by preventing leakages. Right to Privacy will also restrict police along with intelligence agencies to collect private fact about accused, dead persons etc. as mentioned in DNA Profiling bill.

## **Suggestions**

Considering that the international community regards the right to privacy as well as data protection as a basic human right, India possibly will be under a moral as well as legal obligation to enact privacy along with data protection regulations. There are two modes in which regulations can be adopted:

a) Self-regulation as well as Government regulation. Self-regulation- India could consider promoting an initiative among Indian industries, especially those interested in the growth of e-commerce. Self-regulation by the industry offers the advantage of a flexible policy made by those who know the trade practices along with are motivated by the desire of customers. Self-regulation is also cost efficient to the government, as enforcement mechanisms need not be established. On the other hand, a large as well as heterogeneous group of agents possibly will make self-regulation difficult. On the other hand, there is also the risk that self-regulatory solution would be to set the lowest standard.

b) Government Regulation- Alternatively, the Indian government could adopt specific legislation to address privacy along with data protection issue. Even countries like the US that have primarily taken a self-regulatory approach to protecting privacy on the Internet, are slowly moving towards Government regulation to bring about uniformity as well as effective application of privacy standards.

1. All the State Governments have equipped themselves with different technologies for being ahead of other States. However, there should be a central mechanism that can integrate all the systems. This will help the police to understand the criminal history of a person not only in that particular State but in any State of the country. Western countries have already integrated the systems. They have integrated the criminal and non-criminal matters.
2. There should be the use of big data to store the information of the criminals and gangs. This information can be used to identify the criminals with the help of their criminal history, fingerprints, iris scan, etc.
3. Crime analytics is a part where the police department has been lacking. There have to be charts, bar graphs, and numbers to understand which part of the

country needs which kind of police protection. The distribution of crimes and potential criminals can be identified through such analytics.

4. An officer should be appointed who would monitor the technological aspects, their working, training, and efficient implementation.
5. A system of feedback from the police officers who use these technologies should be formulated so that development can be carried out in these existing machinery.
6. The Criminal Tracking Network and National Intelligence Grid should be fast-tracked for the modernization of the police department.
7. The legal framework governing privacy in India needs to be improved so as to address contemporary challenges. Basic regulatory approach needs to be improved.
8. In India the right to Privacy is a fundamental right. But it is very difficult to exercise this right without the support of statutory right in this regard. The right must be defined properly in order to be an enforceable right. It is also very difficult to identify the cases of breach of privacy without legislative support. This is the reason why we need to enact a statutory right in this regard. “We should clearly define that where the right to privacy is available and where it is not available. It is necessary to define Privacy as a sense of personal liberty felt by an individual without the constraints felt by him as radiated by people around him”.
9. “On the discloser of data of an individual to the people around is the primary reason of the constraints to be felt by the individual. The concept of privacy must include a right of individual to control how much of information about himself can be shared. After the inclusion of it in the definition of privacy data disclosure becomes a means of eroding privacy and therefore becomes a part of privacy protection mechanism”. The data should be classified in to three categories namely “Essential Data, Sensitive Data and Personal Data”. “Essential data” include those data which is available to the society as a right to know. On “Sensitive data” the individual must have a right to keep it secret. “Personal data” must include the data relating to basic dignity of an individual.
10. There is an urgent need to legislate an overarching Privacy Act. The government should constitute a committee of the expert to probe into the cases of privacy breaches and must enact legislation exclusively dealing with such problems accordingly. Our government should hold public consultation on how we can enhance data protection and privacy measures. “The proposed Privacy Act will be used to harmonize, but not homogenize”. The Act should consists following features in order to become a good privacy legislation
  - ❖ Providing an enforceable Right to Privacy for the Citizen;

- ❖ Providing a Grievance redresser mechanism;
  - ❖ Defining a deterrence structure in case of noncompliance;
  - ❖ Must include an effective monitoring mechanism;
  - ❖ Provisions for the responsibilities on the data processor;
  - ❖ Provisions to Minimize the overlapping with other legislations
11. “The proposed Privacy Act must articulate the constitutional basis of privacy” as a fundamental right deriving from Article 21 of the Constitution. It would have been more effective if the "Right to Privacy" could have been derived and extended from the Constitution and the Privacy Bill focused only to set up an infrastructure to implement the constitutional guaranteed right and provide such clarifications as are necessary for the implementation.
12. The Government should desist any temptation to compete with the U.S. or any other government to increase surveillance and interception of our citizens. Undoubtedly, national security, lawful interception and monitoring are critical to our national objectives, but this is the time to remain balanced and lead an inter-governmental dialogue on how to improve privacy and overall internet governance. Government should have the permission to tap phones or raid houses up to certain limit for instance in case of suspected terrorist. This thing is called as legitimate State purpose. If the government invades privacy then it should have a legitimate state purpose and that legitimate state purpose should be in proportional to the extent of privacy been getting invaded. So if 193 there's a small crime then it is irrelevant to tap the phone of people. So, the proportional representation should be there.
13. It is unclear as to how data traffic, especially those which flow on the networks of ISPs is monitored, since there is no clear process laid down for such interpretation, except the Government's right to intercept under the ISP license. So, a clear process for monitoring of the data traffic should be formulated as early as possible.
14. Data Protection law must move ahead with the technology. There should be exceptions in it but they should be clearly defined and limited. It should not happen that the law gets pressurized under the exceptions. “Any limitation on the right to privacy should be in accordance with the laws in force and should extend only to that aspect which is necessary in a democratic state”. 8. Encryption protects the “security of Internet users from invasions of privacy”, “theft of data”, & “other attacks”. “Therefore, instead of relying on a company to

secure communication, the surest way to achieve end-to-end encryption is for the sender to encrypt the message before it leaves her computer". In this way, only the cipher text will be visible if the data is intercepted.

15. International protections & harmonization to protect the open internet must be incorporated. It means if there's any good law. It should be adapted and get inspired to implement them here. For instance, in the Europe GDPR when you open any Website then the Website will have to ask you whether they can track you or not? You can either accept or decline. India adopted it with a step ahead. We will also tell clearly that what will be actually tracked and whether we want to accept that or decline it.
16. The government should set the clear guidelines for authorities on collection, uses, monitoring and storage of information. Currently, in India in case of surveillance carried out by the government, does not have sufficient privacy safeguards. The present framework is geared towards national security and fails to protect privacy adequately. 194 There is a lack of sufficient institutional or legislative oversight. This thesis proposed that there is a requirement for a separate chapter consist provision relating to surveillance.
17. A new strong and independent body should be made named privacy Commission. This commission will look after the privacy related matter and will see how well is this law being implemented. It will have investigative powers & will also see that a law is not getting outdated and getting changed with time. Commission should have its authority on the government.
18. There is a need to spread awareness among end users and simplify the languages as much as possible used in policies, user's agreement, and other terms and conditions. The agreements of user should be simple and specific. The user must be primarily informed about the purpose behind the collection and uses of data. So, in simple words, we can say informed consent is necessary before usage and storage of data. The user must have a permission to reach websites or resource even after he declined to share his data.

### **Protect the data itself, not just the perimeter**

Concentrating on securing the walls around your data seems to be the focus in many organizations, with almost 90% of security budgets spent on firewall technology. However, there are hundreds of potential ways to circumvent a firewall; including through customers, suppliers, and employees. All of these people have the ability to bypass exterior cyber-security and misuse sensitive data. For this reason, you need to ensure that your security efforts are focused on the data itself, not just the perimeter.



## **Pay attention to insider threats**

It's easy to visualize threats originating from outside your organization, as these are often represented in news and television as the biggest and most costly ones. However, the reality is that it's your insiders that can potentially hurt you the most. Due to their nature, insider attacks can be difficult to detect and prevent. It can be as simple as an employee clicking on an email attachment they believe to have come from a trusted source and releasing a ransomware worm. These kinds of threats are the most prevalent across the world and the most costly.

## **Encrypt all devices**

In today's world, more and more people are choosing to work on mobile or personal devices. How can you ensure that these devices are trustworthy? Make sure that all data is stored in an encrypted format and remains encrypted during migrations.

## **Testing your security**

If you think installing an antivirus on every computer or device will protect your company from attacks, think again. As recent data breaches have shown, hiring a professional organization to conduct a security audit will always reveal weaknesses you weren't expecting. I encourage you to take a walk around your office and look at your employees' desks. I guarantee, if you look hard enough, you'll spot a password written down on a sticky note.

## **Delete redundant data**

Many organizations deal with sensitive information as an essential part of their business; especially companies in healthcare, finance, the public sector and education. Ensuring information disposal mechanisms are in place helps prevent stale data from being forgotten about and stolen at a later date. Having a system for shredding, erasing or otherwise modifying redundant data to be indecipherable will go a long way to ensuring your employees don't stash it away.

## **Spending more money and time on Cyber-security**

Many CIO's have admitted that spending more money and more time on data security is a must, as the lack of it continues to be the number one risk to your IT infrastructure. Many big companies with sensitive business data to protect are appointing chief security officers, often to board-level positions, with an acknowledgment that cybersecurity has to be an integral part of all business processes.

## **Establish strong passwords**

Many organizations are still employing relaxed password policies, leading to simple, generic, and easy-to-hack passwords for critical accounts, which have access to the sensitive and valuable data. Implementing strong passwords is the first step you can take to strengthen your security in this area. Use reasonably complex passwords and change them at least every 90 days. Never use passwords like "12345" or "Admin1". Don't ever write down your passwords and leave them on your workstation for other people to find.

## **Update your programs regularly**

Make sure your computer is properly patched and updated. This is often the best way to ensure its adequately protected. Your security applications are only as good as their most recent update. Since hackers and ransomware strains are constantly adapting to exploit weaknesses in earlier software versions, it is advisable to update these applications regularly.

## **Back up your data regularly**

This should already be a crucial part of your IT security strategy. With secure backups in place, you can survive everything from accidental file deletion to a complete ransomware lockdown. As a security best practice, backup data should be stored in a secure, remote location away from your primary place of business.

# **BIBLIOGRAPHY**

## **BIBLIOGRAPHY**

### **BOOKS**

- Sharma SK, “Privcay Law-A Comparative Study”, Atlantic Publishers & Distributors, New Delhi, 1994
- Chandra Rakesh, “ Right to Privacy in India with reference to Information TechnologyEra”, Ys Books International, New Delhi, 2017
- Matthan Rahul, “ Privacy 3.O- Unlocking Our Data-Driven Future”, Harper CollinsPublishers, Noida, 2018
- Kumar D & Goyal G, “The Right to Privacy in India: Concept and Evolution”, Partridge:A Penguin Random House Company, 2016
- Deshta Kiran, “Right to Privacy under Indian Law”, Deep &Deep Publications, Delhi,2011
- Mishra G., “Right to Privacy, Preeti Publications (Delhi) April (1994)
- Wacks, Raymond; ‘Privacy’- A Very Short Introduction, Oxford University Press, NewYork, 2010
- Warren, D. Samuel and Brandeis, D. Louis, The Right to Privacy, Quid Pro Law Books,Louisiana, New Orleans, 2010
- Choubey,R.K. : An Introduction to Cyber Crime and Cyber Law, 2007
- Duggal, Pawan; Cyber Law; Universal Law Publishing Co. New Delhi, 2014
- Ratan Lai & Dheeraj Lai : The Indian Penal Code,28Edn., Wadhwa, Nagpur,2002.
- Shukla, V N, Constitution of India, Edn. 13<sup>th</sup>, Eastern Book Company, Lucknow (2017)
- Basu, Durga Das; Commentary on the Constitution of India, Vol. 5, Lexis Nexis, Gurgaon, Haryana, 2015
- Kailash Rai “Constitutional Law of India”, Central Law Publications, (2001)
- Prof. M.P. Jain, “Constitutional Law of India”, Wadhwa and Company Nagpur, (2007)
- Pandey, J.N., Constitutional Law of India, Central Law Agency (Allahabad) 43rd Edition(2006)

### **Articles and Journals**

- <https://www.eff.org/deeplinks/2017/08/indias-supreme-court-upholds-right-privacy-fundamental-right-and-its-about-time>
- Prof Elizabeth B. Ludwin King (A Conflict of Interests: Privacy, Truth along with Compulsory DNA Testing )2011
- For group companies, inter se transfers should be permitted based on a standard template with the intention of that will be preapproved by means of the DPA. There will be no need for regular reporting to the DPA every time a contract is entered into or a transfer is made
- Justice K.S. Puttaswamy (Retd.) v. Union of India, W.P. (Civil) No. 494/2012 Etc.
- Abhishek M. Singhvi; “State Accountability for Torture and Custodial Crimes”, ed by K.P. Saxena ,”Human Rights and the Constitution Vision and the Reality”
- Dr. Justice A. R. Lakshmanan; “Reforms in the Judiciary- An Overview”, Madras Law Journal, 2009.
- Jagannath, Mohanty, “Bases and Sources of Human Rights”, Human Rights Education (2000).
- Jain, N.K., “Custodial Crimes - An Affront To Human Dignity”, Human Rights Year Book, Universal Law Publishing Co. Pvt. Ltd., Delhi (2000).
- Justice P.N. *Bhagwati*, “Human Rights in Criminal Justice System”, I.B.R. 1985.
- Katju, Markandey, J, “Torture as a Challenge to Civil Society and the Administration of Justice”, (2000) 2 S.C.C.

***Websites:***

- [www.jud.ct.gov](http://www.jud.ct.gov)
- [www.trust.org](http://www.trust.org)
- [www.pib.nic.in](http://www.pib.nic.in)
- [www.newindianexpress.com](http://www.newindianexpress.com)
- [www.thehindu.com](http://www.thehindu.com)
- [www.apgovernmentorders.com](http://www.apgovernmentorders.com)
- [www.arunachalpradesh.gov.in](http://www.arunachalpradesh.gov.in)
- [www.bslsa.bih.nic.in](http://www.bslsa.bih.nic.in)
- [www.cglsa.gov.in](http://www.cglsa.gov.in)
- [www.mplaw.nic.in](http://www.mplaw.nic.in)
- [www.manipur.gov.in](http://www.manipur.gov.in)