Changing Dimensions of Right to Privacy in India: A Jurisprudential Aspect

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ABSTRACT:

Right to privacy is a right which has now been recognized as a fundamental right under the Indian Constitution by the Indian judiciary in a recent judgment. Right to privacy came to be an important issue after the Aadhaar controversy which dealt with the collection of intimate data of the citizens of India. This right has evolved over judicial history and it was until now that it was ignored. Activities infringing privacy have time and again been justified in the name of law maintenance. Article 21 provides for Right to life and liberty and it is not only the Indian Constitution that recognizes it, and it has also been the view of various jurists from Aristotle to Bentham who have discussed the concept of privacy of Individual in their philosophies.

I. INTRODUCTION

"*Privacy*" is a notoriously difficult concept to define and cannot be understood as a static and one-dimensional concept. It can only be construed as a group of rights.[1] The general idea of "private" can be conceptualized as the practices or acts which we want to protect from public scrutiny.[2] The principle of privacy rights was first referred to as a human right and elaborated in the pioneering article of Warren and Brandies, titled "*The right to privacy*"[3]. Numerous philosophers have indirectly referred to the concept of privacy in their work. A classic example would be Aristotle's identification of two spheres of an individual's life namely the 'polis' or the public sphere, and 'Oikos' or the private sphere.[4] Jeremy Bentham had also recognized the existence of a "private" element in an individual's life[5]. Even Shakespeare had his own notions of "private", which he said was the "undeclared" and included a sense of social secrecy[6].

However, a concern that the opposition to the right to privacy immediately raises, is how we define "privacy" and the scope of application of "right to privacy". A good approach through which privacy can be defined is to strike a balance between the reductionist and the anti-reductionist attempts at defining privacy.[7] The reductionist philosophy would state that the ambit of privacy and its violation should be specified by the legislature.[8] The advantage of this approach would be that it would allow the legislature to operationalize

[1] J. L. MILLS, THE LOST RIGHT 4 (Oxford University Press 2008).
[2] 1 CANNATACI, J.A., THE INDIVIDUAL AND PRIVACY (Routledge 2015).
[3] Samuel D. Warren & Louis D. Brandeis, *The Right To Privacy*, 4 HARV. L. REV. 193, 205 (2001).
[4] ARISTOTLE, B. JOWETT AND H.W.C. DAVIS, ARISTOTLE'S POLITICS (Clarendon Press 1908).
[5] Glenn Negley, *Philosophical Views on the value of Privacy*, 31 LAW & CONTEMP. PROBS. 321-22 (1966).
[6] HUEBERT, RONALD, PRIVACY IN THE AGE OF SHAKESPEARE (University of Toronto Press 2015).
[7] Ujwala Uppaluri & Varsha Shivanagowda, *Preserving Constitutive Values in the Modern Panopticon:*
[8] *The Casefor Legislating toward a Privacy Right in India*, 5 NUJS L. REV. 21 (2012).

privacy and thus include privacy as a fundamental right. However, it would end up limiting the scope of privacy and the extent to which judicial review can improve it.

The Right to Privacy as a fundamental right has been guaranteed after a battle of six decades in the case of Justice K.S. Puttaswamy (Retd) vs Union of India.[9] The evolution of this right can be observed through numerous judgments about how the courts have given different interpretations at different point of times. Subtle differentiation has been provided by dispensing privacy without giving it a status of fundamental right over the years.[10]

Moreover, the right to privacy principally lacks both precise historical antecedents and conceptual limits[14]. To understand the scope and type of rights protected under the right to privacy, it is necessary to identify the nature of this elusive right.

In Chapter II of the paper, the authors attempt a detailed analysis of the Judicial understanding of the right to privacy over the years. Although the Courts have failed to perceive the said right in a harmonious manner, they have increasingly started recognizing it in the context of a maturing Indian society. Finally, in Section III, the authors argue that there exists a right to privacy under the Indian Constitution, by virtue of being an "*integral part*" of the Right to personal liberty u/a 21, and the Parliament should bring in a constitutional amendment to that effect.

In India however, the status is resolved now after the judgment of *K. Puttuswamy v. Union of India*[11] established that the Right to Privacy is a Fundamental right but not an absolute right in its entirety and thus subject to certain exception of reasonable restrictions which have not been defined by the court yet. People support the right to privacy as a fundamental right but the government is not that much in support of the same.

II. CONSTITUTIONAL AND LEGAL STATUS OF RIGHT TO PRIVACY

Position during 1975-2000

In *Gobind v. State of Madhya Pradesh*[12], the Supreme Court held that a "limited" right to privacy was implied within the ambit of Part III of the Constitution, which originates from the Articles 19(a), 19(d) and 21. However, it was noted that the said right is not of an absolute character, and comes with reasonable restrictions arising out of countervailing public interest. In this decision, Justice Mathew taking the US jurisprudence[13] into

[9] WRIT PETITION (CIVIL) NO 494 OF 2012.
[10] V.N. Shukla & M.P. Singh, Constitution of India, 212 (12th ed., 2016).
[11] K. Puttuswamy v. Union of India (2017) 105 SCC 1.
[12] Gobind v. State of Madhya PradeshAIR 1975 SC 1378.
[13] 478 U.S. 186 (1986).

consideration, observed that the right to privacy exists within the penumbral zones of the Fundamental rights explicitly guaranteed under Part III of the Constitution.[14]

The Supreme Court in *Sunil Batra* v. *Delhi Admn*[15] observed that a minimal infringement of a prisoner's privacy is unavoidable as the officers have an obligation to keep a watch and ensure that their other human rights are being duly observed. On the contrary, the Court in *Malak Singh*v. *State of P&H*[16] held that surveillance is a direct encroachment upon an individual's right to privacy.

Moreover, the Supreme Court in *R. Rajagopal* v. *State of Tamil Nadu*[17], again asserted that the right to privacy is an implicit right under Art. 21[18] and has acquired sufficient constitutional status. The Court noted that the said right includes a "right to be let alone" and the right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters"[19] On a similar note, in *State of Maharashtra* v. *Madhukar Narayan Mardikar*, the Supreme Court held that even a "woman of easy virtue" is entitled toher privacy and nobody has the authority to invade her privacy at their sweet will.

The Supreme Court in *People's Union for Civil Liberties* v. *Union of India*[20] held that telephonic conversations are private in nature and thus, telephone-tapping would be unconstitutional unless conducted by a procedure established by law. The Court concluded by saying that "we have, therefore, no hesitation in holding that the right to privacy is a part of the right to 'life and personal liberty' enshrined under article 21 of the Constitution. Once the facts in each case constitute a right to privacy, article 21 is attracted. The said right cannot be curtailed, except according to procedure established by law."[21]

The Supreme Court in *S.P. Gupta v. President of India*,[22] held that a balance needs to be struck between the right to information and right to privacy. The Court reiterated the point that a right to privacy is not absolute and can be infringed to serve a serious public concern. In *Indian Express* v. *Union of India*,[23]it was thus held that - "Public interest in freedom of discussion of which freedom of the press is one aspect stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently, the decisions which may affect themselves."

[14] Gobind v. State of Madhya Pradesh, (1975) 2 SCC 148; Griswold v. Connecticut, 381 U.S. 479. 510; Jane Roe v. Henry Wade, 410 U.S. 113.
[15]State of Maharashtra v. Madhukar Narayan Mardikar(1978) 4 SCC 494.
[16] Malak Singh v. State of P&H, AIR 1991 SC 760.
[17]R. Rajagopal v. State of Tamil NaduAIR 1995 SC 264.
[18] INDIA CONST., Art. 21.
[19] R. Rajagopal v. State of Tamil Nadu, AIR 1995 SC 264.
[20]People's Union for Civil Liberties v. Union of IndiaAIR 1991 SC 207.
[21] Indian Drugs and Pharmaceuticals Ltd v. Workmen, (2007) 1 SCC 408.
[22]S.P. Gupta v. President of IndiaAIR 1997 SC 568.
[23]Indian Express v. Union of IndiaAIR 1982 SC 149.

Right to privacy is not absolute in nature and can be restricted through lawful means for the prevention of crime, disorder, or protection of health or morals or protection of rights of freedom of others. The Supreme Court in *Mr. 'X' v. Hospital 'Z'*,[24] held that moral considerations cannot be kept at bay and public morality can constitute a "compelling State interest" warranting a lawful infringement of the right to privacy.

Evolution from 2000 to today

The Right to Privacy as a fundamental right has been guaranteed after a battle of six decades in the case of Justice K.S. Puttaswamy (Retd) vs Union of India.[25] The evolution of this right can be observed through numerous judgments about how the courts have given different interpretations at different point of times. Subtle differentiation has been provided by dispensing privacy without giving it a status of fundamental right over the years.[26] Initially, it started with the case of M.P Sharma v. Satish Chandra[27] in the year 1954, an eight-judge bench, in which it was held that the drafters of the Constitution did not intend to subject the power of search and seizure to a fundamental right of privacy. Also, the judgment remains silent about the legal point that whether the constitutional right to privacy is protected under any other fundamental right such as the right to life and personal liberty.

The next judgment came in the year 1962 in the case of Kharak Singh v. State of Uttar Pradesh,[28] a six-judge bench, in which it was held that Right to privacy is not a fundamental right but still it dispensed the judgment in the favor of right to privacy by quoting police regulation of night domiciliary visits as the unauthorized intrusion to personal liberty. The narrow view of Article 21 that refused to consider if the procedure established by the law suffered from any deficiencies as ascertained in AK Gopalan's case[29] has been broadened by Maneka Gandhi's case[30] of 1978 which held that the procedure established by law must be just, fair and reasonable.[31] The multidimensional aspect also covers the right to privacy be available to the women of easy virtues as was held in the case of State of Maharashtra v. Madhukar Narain[32] in the year 1991.[33]

The other landmark judgment with regard to privacy rights in India is of R. Rajagopal v. State of Tamil Nadu,[34] 1994, in which SC held that "the right to privacy is implicit in the right to life and liberty guaranteed to the

[24] Mr. 'X' v. Hospital 'Z', AIR (1998) 8 SCC 296.
[25] K.S. Puttaswamy (Retd) vs Union of IndiaWRIT PETITION (CIVIL) NO 494 OF 2012.
[26] V.N. Shukla & M.P. Singh, Constitution of India, 212 (12th ed., 2016).
[27] M.P Sharma v. Satish Chandra1954 AIR 300, 1954 SCR 1077.
[28] 1963 AIR 1295, (1964) 1 SCR 332.
[29] AIR 1950 SC 27: 1950 SCR 88.
[30] (1978) 1 SCC 248: AIR 1978 SC 597,620.
[31] M.P. Jain, Indian Constitutional Law, 166 (7th ed., 2014).
[32] AIR 1991 SC 207: (1991) 1 SCC 57.
[33] Dr. J.N. Pandey, Constitutional Law of India, 259 (52nd ed., 2015).
[34] 1995 AIR 264, 1994 SCC (6) 632.

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, child-bearing and education among other matters". Further the Supreme Court held that right to privacy is not an absolute right and restrictions can be imposed on it for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others in the case of Mr. 'X' v. Hospital 'Z'[35] in the year 1995.

In PUCL v. UOI,[36] popularly known as the 'Phone Tapping Case', it was held that telephone tapping is a serious invasion of an individual's right to privacy. Moreover, in the case of Selvi v. State of Karnataka,[37] it was held that involuntary subjection of a person to tests such as narco-analysis, polygraph examination and the BEAP also violates the right to privacy. It may be a fundamental right under Article 21 of the Constitution but is not an absolute right and it should not be resorted to by the state unless there is a public emergency or interest of public safety requires. The court didn't define the right to privacy and ruled that it depends on facts and circumstances of every case.[38]

Another landmark judgment in this regard is the case of Ram Jethmalani v. Union of India[39] that came in the year 2011, in which it was held that "Right to privacy is an integral part of right to life, a cherished constitutional value and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner." Finally a unanimous judgment was passed by the Supreme Court's nine judge bench in Justice K.S Puttaswamy v. Union of India[40] overruling the eight judges MP Sharma[41] and six judges Kharak Singh's[42] judgment on right to privacy. This resounding victory guarantees right to privacy as a fundamental right under Article 21 of Part III of the Constitution which is subject to reasonable restrictions. This 547 pages long judgment is the outcome of the petition challenging the constitutional validity of the biometrics system in Aadhar.[43] Although, the court remained silent on infringement of privacy rights in Aadhar card that will be decided later by a smaller bench.[44] Number of

[35] (1998) 8 SCC 296.
[36](1997) 1 SCC 301: AIR 1997 SC 568.
[37] (2010) 7 SCC 263,370: AIR 2010 SC 1974.
[38] V.N. Shukla & M.P. Singh, Constitution of India, 212 (12th ed., 2016).
[39] (2011) 8 SCC 1,37.
[40] WRIT PETITION (CIVIL) NO 494 OF 2012.
[41] 1954 AIR 300, 1954 SCR 1077.
[42] 1963 AIR 1295, (1964) 1 SCR 332.
[43] Jyoti Panday, India's Supreme Court Upholds Right to Privacy as a Fundamental Right—and It's About Time, Electronic Frontier Foundation (August 28, 2017), https://www.eff.org/deeplinks/2017/08/indias-supreme-court-upholds-right-privacy-fundamental-right-and-its-about-time. Last visited 14/08/2018 03:10 am.
[44] A Vaidyananthan and Shyalaja Varma, Privacy A Fundamental Right: 10 Points On Huge Supreme Court Verdict, NDTV (August 24, 2017 17:45 IST), https://www.ndtv.com/india-news/right-to-privacy-privacy-is-a-fundamental-right-says-supreme-court-10-developments-1741368. Last visited 13/08/2018 02:10 pm.

petitions[45] have been filed against Aadhar and finally the five-judge bench constituted in the Aadhar case which reserved its judgment. It is challenged on the grounds of violation of right to privacy, unconstitutionality of Aadhar Act, 'Conditional' welfare, Absence of consent and that it is an instrument of mass surveillance.[46]

III. JURISPRUDENTIAL OVERVIEW

Once the evolution of Right to Privacy is dealt with the jurisprudential overview of the Right is essential as to understand how the various scholars over a period of time perceive this right and give their view regarding the same. The submission of the government is that the Court cannot recognize a juristic concept which is so vague and uncertain that it fails to withstand constitutional scrutiny. This makes it necessary to analyse the origins of privacy and to trace its evolution.

The Greek philosopher **Aristotle** spoke of a division between the public sphere of political affairs (which he termed the *polis*) and the personal sphere of human life (termed *Oikos*). This dichotomy may provide early recognition of "a confidential zone on behalf of the citizen"[47]. Aristotle's distinction between the public and private realms can be regarded as providing a basis for restricting governmental authority to activities falling within the public realm. On the other hand, activities in the private realm are more appropriately reserved for "private reflection, familial relations and self-determination"[48].

At a certain level, the evolution of the doctrine of privacy has followed the public–private distinction. **William Blackstone** in his **Commentaries on the Laws of England** (1765) spoke about this distinction while dividing wrongs into private wrongs and public wrongs. Private wrongs are an infringement merely of particular rights concerning individuals and are in the nature of civil injuries.[49] Public wrongs constitute a breach of general and public rights affecting the whole community and according to him, are called crimes and misdemeanors.

John Stuart Mill in his essay, '**On Liberty**' (1859) gave expression to the need to preserve a zone within which the liberty of the citizen would be free from the authority of the state. According to Mill: "The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the

[45] Anoo Bhuyan, Aadhaar Isn't Just About Privacy. There Are 30 Challenges the Govt Is Facing in Supreme Court, The Wire (18/JAN/2018), https://thewire.in/government/aadhaar-privacy-government-supreme-court.

[46] Arpan Chaturvedi, Aadhaar Hearing Concludes In Supreme Court: Here's What Was Argued Over 38 Days, Bloomberg/Quint (10 May 2018, 10:50 PM), https://www.bloombergquint.com/aadhaar/2018/05/10/aadhaar-hearing-concludes-in-supreme-court-heres-what-was-argued-over-38-days#gs.slqgq0s.

[47] Michael C. James, "A Comparative Analysis of the Right to Privacy in the United States, Canada, and Europe", *Connecticut Journal of International Law* (Spring 2014), Vol. 29, Issue 2, at page 261.

[48] Ibid

[49] K.S Puttaswamy v. Union of India WRIT PETITION (CIVIL) NO 494 OF 2012.

individual is sovereign."[50] While speaking of a "struggle between liberty and authority"[51], Mill posited that the tyranny of the majority could be reined by the recognition of civil rights such as theindividual right to privacy, free speech, assembly and expression.

Austin in his **Lectures on Jurisprudence** (1869) spoke of the distinction between the public and the private realms: *jus publicum* and *jus privatum*. The distinction between the public and private realms has its limitations. If the reason for protecting privacy is the dignity of the individual, the rationale for its existence does not cease merely because the individual has to interact with others in the public arena. The extent to which an individual expects privacy in a public street may be different from that which she expects in the sanctity of the home.

James Madison, who was the architect of the American Constitution, contemplated the protection of the faculties of the citizen as an incident of the inalienable property rights of human beings. In his words: "In the former sense, a man's land, or merchandise, or money is called his property. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience which is more sacred than his castle, or to withhold from it that debt of protection, for which the public faith is pledged, by the very nature and original conditions of the social pact."[52]

In an article published on 15 December 1890 in the Harvard Law Review, **Samuel D Warren** and **Louis Brandeis** adverted to the evolution of the law to incorporate within it, the right to life as "a recognition of man's spiritual nature, of his feelings and his intellect"[53]. As legal rights were broadened, the right to life had "come to mean the right to enjoy life – **the right to be let alone**". Recognizing that "only apart of the pain, pleasure and profit of life lay in physical things" and that "thoughts, emotions, and sensations demanded legal recognition", Warren and Brande is revealed with a sense of perspicacity the impact of technology on the right to be letal one: "Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right "to be let alone".[54]

In their seminal article, **Warren and Brandeis** observed that:"The principle which protects personal writings and all other personal productions, not against theft and physical appropriation, but against publication in any form, is in reality not the principle of private property, but that of **an inviolate personality**."[55]Though many

[50] John Stuart Mill, *On Liberty*, Batoche Books (1859), at page 13.
[51] Ibid, Page 6.
[52] James Madison, "Essay on Property", in Gaillard Hunt ed., *The Writings of James Madison* (1906), Vol. 6, at pages 101-103.
[53] Warren and Brandeis, "The Right to Privacy", *Harvard Law Review* (1890), Vol.4, No. 5, at page 193
[54] Ibid, at pages 195-196
[55] Ibid, at page 205

contemporary accounts attribute the modern conception of the 'right to privacy' to the Warren and Brandeis article, historical material indicates that it was **Thomas Cooley** who adopted the phrase "the right to be let alone", in his **Treatise on the Law of Torts**[56]. Discussing personal immunity, Cooley stated:"the right of one's person may be said to be a right of complete immunity; the right to be alone."[57]

Roscoe Pound described the Warren and Brandeis's article as have done "nothing less than adding a chapter to our law"[58]. However, another writer on the subject states that:"This right to privacy was not new. Warren and Brandeis did not even coin the phrase, "right to privacy," nor its common soubriquet, "the right to be let alone".[59]The right to be let alone is a part of the right to enjoy life. The right to enjoy life is, in its turn, a part of the fundamental right to life of the individual. The right to privacy was developed by Warren and Brandeis in the backdrop of the dense urbanization which occurred particularly in the East Coast of the United States. Between 1790 and 1890, the US population had risen from four million to sixty-three million. The population of urban areas had grown over a hundred-fold since the end of the civil war. In 1890, over eight million people had immigrated to the US.

Technological progress and rapid innovations had led to the private realm being placed under stress. Coupled with this was the trend towards 'newspaperization'[60], the increasing presence of the print media in American society. Six months before the publication of the Warren and Brandeis' Article, **E L Godkin**, a newspaperman had published an article on the same subject in Scribner's magazine in July 1890. Godkin, however, suggested no realistic remedy for protecting privacy against intrusion, save and except "by the cudgel or the horsewhip"40. It was Warren and Brandeis who advocated the use of the common law to vindicate the right to privacy.[61]

The idea that individuals can have rights against the State that are prior to rights created by explicit legislation has been developed as part of a liberal theory of law propounded by **Ronald Dworkin**. In his seminal work titled "**Taking Rights Seriously**"[62] Working asserts the existence of a right against the government as essential to protecting the dignity of the individual. Hence it can be said that all the scholar have a very dynamic view and vary from each other regarding the privacy provision of an individual and whether they should be provided to the individuals or not and whether they can enforce that right against the state.

[56] Thomas Cooley, *Treatise on the Law of Torts* (1888), 2nd edition
[57] Ibid, at page 29
[58] Dorothy J Glancy, "The Invention of the Right to Privacy", *Arizona Law Review* (1979) Vol. 21, No.1, at page 1.
[59] Ibid, at pages 2-3.
[60] Ibid 10.
[61] Ibid 12.
[62] Ronald Dworkin, *Taking Rights Seriously*, Duckworth (1977)

IV. THE MULTIDIMENSIONAL ASPECT

The impact of Right to Privacy judgment is multi-dimensional on the lives of 134 crore[63] Indians which could range from sexual orientation to sharing information including Aadhar.

The biometric data that takes fingerprint and iris scan are two of the most personal things to share. The Aadhar has biometric and demographic data of approximately 1.17 billion Indians which could be used for surveillance by the Government. It allows profiling by creating a comprehensive profile of a person's spending habits, their friends and acquaintances, the property they own, and a trove of other information.[64]

As rightly pointed out by Justice D Y Chandrachud that we are in an era of ubiquitous 'dataveillance' where data mining; infringement of informational privacy by information control; Know Your Customer (KYC) which provides intimate information to the organization; National Intelligence Grid (NATGRID) that seeks to integrate over 25 categories of database from agencies and make it available to law enforcement officers are a facet of right to privacy. Google, Facebook, Amazon have much more information of their customers than the government which leads to profiling. Companies track the personal preferences of online shopping and target individuals for the purpose of advertisement. Also, the judgment may force the mobile companies to change the data privacy and protection settings.[65]

Regarding the health records, Supreme Court said that unauthorized parting of individual's medical records will lead to invasion of privacy but it could be legitimately used by the state for the preservation of public health to design appropriate policy.Euthanasia which when read with right to privacy gives the right to terminate life. Justice J Chelameswar wrote, "An individual's right to refuse life, prolonging medical treatment or terminate his life is another freedom which falls within the zone of the right of privacy". Earlier Supreme Court held that the right to life does not include right to die[66] and recommended the Parliament to consider the feasibility[67] of deleting section 309 of IPC[68].

Reproductive rights are penumbral rights which are inherent to the Right to life and personal liberty. KG Balakrishnan wrote, "There is no doubt that a woman's right to make reproductive choices is also a dimension

[63] Dhananjay Mahapatra and Amit Anand Choudhary, Right to Privacy is a fundamental right, it is intrinsic to right to life: Supreme Court, The Times of India (Aug 24, 2017, 23:03 IST), https://timesofindia.indiatimes.com/india/right-to-privacy-is-a-fundamental-right-supreme-court/articleshow/60203394.cms.

[64] A Vaidyananthan and Shyalaja Varma, Privacy A Fundamental Right: 10 Points On Huge Supreme Court Verdict, NDTV (August 24, 2017 17:45 IST), https://www.ndtv.com/india-news/right-to-privacy-privacy-is-a-fundamental-right-says-supreme-court-10-developments-1741368.

[65] Krishn Kaushik & Ravi Tiwari, A to Z of Privacy, The Indian Express (August 28, 2017 10:18:03 pm), http://indianexpress.com/article/explained/fundamental-right-to-privacy-aadhaar-kyc-4816584/.

[66] Gian Kaur vs. State of Punjab, 1996(2) SCC 648.

[67] Suresh Bada Math and Santosh K Chaturvedi, Euthanasia: Right to life vs right to die, 136(6) Indian J Med Res. (2012).

[68] Aruna Ramchandra Shanbaug vs. Union of India & Ors. Writ Petition (Criminal) no. 115 of 2009, Decided on 7 March, 2011.

of "personal liberty" as understood under Article 21…"which also includes right to "abstain from procreating". Family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. The court said that sexual orientation is an essential attribute of right to privacy which affects the previous judgment criminalizing homosexuality.[69]

Since the fundamental rights can be enforced against the state,[70] this right to privacy can be claimed against the state only. The non-state actors are still outside the scope of enforcement of right to privacy against them or at the discretion of the Supreme Court depending upon further adjudication in different cases. All these have to be decided in the light of right to privacy judgment by striking a balance between personal liberty and the legitimate control of the state.[71] Optimistically, the application of right to privacy on subsequent judgments will further strengthen our constitution.

V. CONCLUSION

As we look down upon history of privacy as a right in India we see the changing notions of its jurisprudence by the Apex court of the country. In its initial judgments, the Court didn't consider the Right to privacy a fundamental right. With time the notions of the Hon'ble Supreme Court changed in the cases that came before the court, and recently right to privacy has been held as a fundamental right under Article 21, Part III of the Constitution. The changing notion can be related to the recent technological developments which have led to excessive processing of personal data. The Social Networking sites, the commercial online stores, and many other organizations functioning secretly have gathered a great deal of information about individuals ranging from their date of birth to their credit card details.

Multi-National Corporations have misused the loopholes of law and have obtained the permission to accumulate data of users by putting before them an end user license or agreement which runs into thousands of words neither the layman understands these heavy legal documents nor does he have time to read each and every word of the agreement. The blatant use of the shortcomings of the law has resulted in a revolution which now demands privacy as a right. Privacy involves a number of aspects other than the numerical data which is mined. It comprehends a person's thought which can vary from his sexual orientation to his political beliefs and he prefers to keep them private.

[69] Julie Maccarthy, Indian Supreme Court Declares Privacy A Fundamental Right, National Public Radio, Inc. (US) (August 24, 201711:54 PM ET), https://www.npr.org/sections/thetwo-way/2017/08/24/545963181/indian-supreme-court-declares-privacy-a-fundamental-right.

[70] P.D. Shamdasani v. Central Bank of India AIR 1952 SC 59.

[71] A Vaidyananthan and Shyalaja Varma, Privacy A Fundamental Right: 10 Points On Huge Supreme Court Verdict, NDTV (August 24, 2017 17:45 IST), https://www.ndtv.com/india-news/right-to-privacy-privacy-is-a-fundamental-right-says-supreme-court-10-developments-1741368.

The state may claim that keeping a record of individual's activities is a must for the safety and security of the nation. But there is no definition, no guideline or a command which defines the limit of the state in exercising its duty to protect the nation's interest. But the situation is not the same in every part of the world and the comprehensive OECD guidelines give a clear picture of the limits that need to impose on processing personal data. This power can be summed up under three categories: - transparency, legitimate purpose, and proportionality. Implications of privacy are fundamental to the existence of varied interests among individuals and thus this right needs to be respected as well as protected.