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Evolution of Right to Privacy in the Constitution of India

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ABSTRACT

On August 24, 2017, a committee of nine judges from the Supreme Court of India regarded the right to privacy as a fundamental right to constitutional status. There is no denying that privacy issues have been discussed and spoken in India for quite some time. With this in mind, this article attempts to examine the various discussions, evaluations, and discussions about privacy rights that have taken place in India for a long time and have contributed to the development of India's right to privacy.

The purpose of this paper is to present a true advance in the right to privacy in India to understand the importance of this idea in the existence of humans and society as a whole. First, the meaning of "privacy" is considered, followed by the development of the right to privacy and its various aspects in India. Then for the modern times, we would focus on the British period's Right to Privacy and the various contentions and considerations that occurred in the Constituent Assembly post-independence to make it a piece of the Constitution of India.

Finally, this article addresses each of the privacy issues raised by the Supreme Court and recognizes what these proceedings meant in establishing the constitutional status of privacy rights in India.

Keywords: *Right, Privacy, Evolution, evaluations, Discussions, Historical, Fundamental, Supreme Court, Constitution.*

I. INTRODUCTION

The idea to protect the privacy basically articulates not to intrude in an individual's personal life via any means or through any person and therefore, not compromising their personal space. The dynamic expansion of the society has led every person to be more civilized and have individualistic approach towards changing the idea of We as a society to I as a single Individual. Thereby, paving a requisite expansion for the law dealing with privacy to be apprehended anywhere on the earth.

A common myth is that privacy directly is linked to people who have done something against

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the law, but the concept of privacy has nothing to do with concealment of facts or wrongdoings, but instead it is an inherent right which is guaranteed to everyone. Humans are limited to sharing information and are sensitive to their profiles thus, in modern times, it is not only the personal belongings/property that needs protection but also the security of the person to be left alone and undisturbed. Privacy is always viewed as an intrinsic unit under the umbrella term of human rights. It can be understood that every individual has the right to be left alone and no other individual should meddle in his/her personal affairs.

In the ancient Vedic culture of our Indian literature, disturbing a meditating sage was considered to be a sin emphasizing the importance of private space without any interference. The idea of privacy was also very relevant in the ancient Hindu culture and various texts. The pragmatic touch of the Hitopades stimulated the idea that the matters relating to worship, sex and family matters should have its sanctity of privacy and not be disclosed to everyone.³ There were many dissenting and assenting judgements in the courts like that of Kharak Singh⁴ and M.P Sharma⁵ regarding the interpretation of privacy but the landmark turnover was in the In the case of KS Puttaswamy and other Union with India.⁶

A committee of nine judges of the Supreme Court of India unanimously ruled that the right to privacy is a constitutionally protected right in India and is incidental to other freedoms guaranteed by the Constitution of India.⁷

This paper shows the evolution of privacy rights in India. To understand the importance of this concept in the existence of human beings and society as a whole. The meaning of the word privacy explains the following by the development of privacy rights in India. Finally, this article addresses each of the privacy issues raised by the Supreme Court and recognizes what these proceedings meant in establishing the constitutional status of privacy rights in India.

II. PRIVACY CONCEPT- MEANING AND ITS DEFINITION

The word privacy has been originated from a Latin term “Privatus” which translates as “separated from the rest” and the original word itself is borrowed from another terminology privo which translates as “to deprive”. According to Merriam Webster dictionary, the

³ *Legal Analysis of Right to Privacy In India*, Legal Service India, available at <https://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html>, (last Visited May 03, 2022).

⁴ Kharak Singh vs The State Of U. P. & Others, 1964 SCR. 332 (India).

⁵ MP Sharma v Satish Chandra, 1954 SCR. 1077 (India).

⁶ Justice Puttaswamy Vs. Union of India, 2017,10 SCC 1 (India).

⁷ Justice Puttaswamy Vs. Union of India, 2017,10 SCC 1 (India).

definition of Privacy is the situation or condition of being separated from the society and the state of being observed⁸.

There has not been exact definition of the word privacy, and it varies in many ways, from a cultural approach to a national approach. According to the Black Law Dictionary Definition, it is defined as the right to be left alone. The dynamic concept of privacy also aims to draw a line between government agencies and the way they manage and collect information about individuals that affect their personal aspects.

As the expansion of the human population has diverted towards modern urbanization, the technological needs and equipments has also expanded its arena. Technological advancement is a boon but its implications does have various complications added in the personal aspects of a private individual. Example, computer has been a greatest invention of all time, making the work burden more simplistic with just a single click. Everywhere around the shops, malls etc has started operating on computers thus, keeping all the databases of the customers and information resulting Unprecedented large-scale data spread.

Gerety⁸ has given a very appropriate definition of privacy. He states that “privacy is an autonomy or control over the intimacies of personal identity”.⁹ He has brought to light the autonomous aspect of privacy. He has recognized three of the important legal aspects of privacy i.e. autonomy, intimacy and identity.¹⁰

Bostwicks¹¹ definition of privacy has led to triple classification of privacy which is privacy of intimacy, leisure and sanctuary.

The security of the privacy cannot be practiced by any individual when the matter is in the question of internal securities or in spheres of public space, such claims can be negated. Example, A talking to B in his residence and is intruded by C, it would reflect as intrusion of Privacy. But if a person participating in public space has created chaos for the general public through any means and has been intruded by any officials, in such situations it would not result as an infringement of rights.

Privacy has many aspects and can be defined as a voluntary action that a person takes to withdraw himself/herself from the society for a temporary period of time through various means of psychological needs. It can put as the freedom of not disclosing personal information

⁸ Gerety, Redefining Privacy, Harvard Law School. Harvard Civil Rights Civil Liberties Law Review Volume 12 Issue 2, Pg. 233-296.

⁹ Ibid

¹⁰ Ibid

¹¹ Bostwick, A taxonomy of privacy, 64 Cal.L.Rev.1447 (1976).

which can bring harm to their reputation, freedom to express their views and also to have personal space regarding intimacy, marriages etc. The nature of the right and its privileges to privacy is never absolute and provided that Article 19 (2) relating to the Constitution of India sets out the principles and appropriate restrictions necessary for the implementation of basic rights, as guaranteed in Part III under the context of the Indian Constitution.

III. DIMENSION OF PRIVACY

Privacy to communicate - Communication is a basic trait of humans. Every human has the right to communicate with anyone of their personal choice regarding any information or topic without any fear of being monitored or being watched. The advancement of technological field such as tapping the phone calls is also an intrusion to privacy.

Protection of data – There should be no interference by any organization or person to access the private data of a person and it can be understood as one of the basic facets of privacy.

Privacy and its types-

- It would include the right of a patient to not disclose information about his disease or problem as to protect himself from series of reactions.
- To protect a person from disclosing the candidate he has voted for and should not be forced against his will to do so.
- It is the right of every individual to abstain or to hide any info on the internet and they have the control over to do so.
- Every organization be that of government or private must follow strict securities to uphold their rights, trades or secrets.

Privacy in relation to Sexual Identities –

Naz Foundation v. Union of India. The Delhi High Court "read" Article 377 of the Indian Criminal Code of 1860 and denounced the class of sexual relations between adults who agreed. In this case, one of the important arguments accepted by the court is that the state can interfere with the right to privacy of citizens' sexual relations only if the state can have a keen interest in such interference. The state was unable to show a keen interest in interfering with the sexual relations of its citizens, so the rules were downgraded to make all agreed sexual relations non-criminal.¹²

¹²*Evolution of Right to privacy as Fundamental right*, Legal Service India, <http://www.legalservicesindia.com/article/2445/Evolution-of-Right-to-privacy-as-Fundamental-right.html>, (last Visited May 03, 2022).

The list of the dimensions of privacy is never ending. In the advent of the technological expansion everything can be accessed, traced and likewise, be misused. Privacy has multi layered aspects and no one should be made objectionable in the lights of privacy.

IV. IMPORTANCE OF RIGHT TO PRIVACY

A common myth is that privacy directly is linked to people who have done something against the law, but the concept of privacy has nothing to do with concealment of facts or wrongdoings, but instead it is an inherent right which is guaranteed to everyone. Humans are limited to sharing information and are sensitive to their profiles thus, in modern times, it is not only the personal belongings/property that needs protection but also the security of the person to be left alone and undisturbed. Therefore, right to privacy is really important.

India being a democratic country, liberty is one of the essentials of democracy provided to all the individuals of a nation. Autonomy is complimentary to democracy where no other state shall intrude in the private matters of the other state. Likewise, in democracy everyone has the liberty to practice and communicate information of their own choice differentiating it from a totalitarian state.

No one can force and extract information about anyone except for the manner established under the law. The doctors, psychiatrist holds the position of oath that they should not pass around the information about their patients or else it would lead to loss of trust and would infringe their privacy. Lawyers holds the same duty towards their client. Circulation of economic information too of sensitive nature may lead to theft, fraud hampering the concept of privacy.

The classifications would be:

- **Political-** In democracy, every adult with a voting card has the privilege of exercising voting rights and promoting political practices of his choice. No one should be forced against their will, but have the right to freedom.
- **Economic-**For the enhancement of the economy, there should be freedom not to disclose economic secrets.
- **Sociological-**No one should be told about the choices to be followed and associated with which groups. Free environment to behave in a certain way without the need of being intruded is a must.
- **Psychological-** The need for private space and right to be left alone.

V. EVOLUTION

This section of evolution will take a grasp around the committees and cases which has shaped the way for the development of right to Privacy.

(A) Pre Constitutional Development

Constitution of India Bill, 1985

As quoted by Bal Gangadhar Tilak, "Swaraj my birthright" influenced the drafters of the 1895 Constitution of India. The state authorities in the absence of privacy hampered the liberty of the people and therefore, the bill introduced the need for such right.

In the English law it is commonly said that "for every man his home is his castle" which to further interpret would translate as no one should be stripped off of his right to have a personal life especially by the state except by the law. A house and the ease of its comfort in one's personal space serves as an asylum to peaceful mind as well which should not be intruded unless required by the law.

(B) Commonwealth Bill, 1925

*"Every person shall have the Fundamental right to liberty of person and security of his dwelling and property."*¹³

While the bill introduced a new dimension in which privacy is not limited to homes, combines the term privacy need with the freedom and security of people and their property. The bill was drafted under the chair of Sir Tej Bahadur Sapru and, and other people who co-sponsored the bill were Mahatma Gandhi, Bipan Chandra Pal, and Mrs. Sarojini Naidu.

(C) The Nehru (Swaraj) Report, 1928

The idea of Swaraj aimed at creating India with a self-contained government system. The Indian National Congress, led by Motilal Nehru, has established a committee that focuses on the role of the state in relation to personal privacy in relation to freedom and property. The committee was made up of various members, with great names like Netaji Subhas Chandra Bose, who was a member of the committee.

It was that one has the right to individual liberty and must not be deprived of those rights under any circumstances except as provided by the law that designates them. The notion propagated also restricted intervention in individual's property in ways that were considered

¹³ *Indian Constitution was written up, enforced without explicit recognition of individual's privacy as fundamental right*, Counterview.org, available at <https://counterview.org/2015/08/07/indian-constitution-was-written-up-enforced-without-explicit-recognition-of-individuals-privacy-as-fundamental-right/>, (last Visited May 03, 2022).

illegal. The nation had to understand the legitimate nation before it could interfere with the case.

(D) Constituent Assembly (CA) debates

To discuss the length and the limitations on privacy, Advisory committee was set up by the constituent assembly which was headed by Sardar Vallabhbhai Patel to discuss majorly on issues relating to the minorities and also on the subject of fundamental rights. Another sub category was formed to deal on fundamental rights and Acharya J B Kripalani was appointed as the chairperson. K.T Shah said there must be certain sense of security by the state against the unlawful manners of encroaching the house, property of the individuals and also failing to state the reasonability of such actions results as intrusion of liberty.

There were three privileges demanded by K M Munshi in 1947 where he said that every citizens should have the inviolable privilege of home, a right to keep the communications private and no state or any person should interfere in the relations of family and their functioning. Inspired by the constitution of Czech, Mr Harnam Singh on march 1947 that privacy right must not just revolve around people but should extend its concerns on properties too.

In March 1947, Dr. B R Ambedkar added more details on privacy, he stated - "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched and the persons or things to be seized."¹⁴

Also drawn a sense of reasonable measure that was required to be followed by the state in lieu to being reasonable and lawful. In the same year the sub-committee headed by Acharya J B Kripalani as its chairperson through rigorous debates presented a draft of ideas which dealt with inviolable privilege of home and communications.

In the following month of march, the final draft on Privacy to be presented and added as fundamental rights were actually an amalgamation of ideas given by K T Shah, Munshi and Dr Ambedkar which read as: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath of affirmation, and particularly describing the place to be searched and the persons or things to be seized. The

¹⁴ Ibid

right of every citizen to the secrecy of his correspondence."¹⁵

There were dissenting views on the drafted proposition prepared by the subcommittee in the month of April on fundamental rights which seek to recognize privacy as a fundamental right. The concerns revolved around that if privacy becomes part of fundamental rights, then it would bring many implications and some of which would also include the right not to intrude personal property, resulting in creating a way for criminals to reside safe which otherwise, undoubtedly be easily caught in their homes.

Benegal Narasingh Rau the advisor of the Constituent assembly, Times Sardar K M Panikkar, Alladi Krishnaswamy Ayyar (eminent members of the Constituent Assembly) were the ones who opposed the idea to recognize privacy as a fundamental right. If privacy is implicitly recognized as a right, it would simply obstruct the working of the law affiliated agencies.

The idea proposed by the advisory committee on privacy was called off but, the other rights mentioned regarding the life and liberty of people were added and highlighted in the part III(three) of the basic rights envisaged in Article 19 and 21 of the of the Indian Constitution. The Constitution in India was thereby, formed in the year 1950 and had no express mention about the rights regarding privacy.

From the above noted points, one can say that although privacy was not considered to be an element of constitution in reference to our basic rights in India when it was framed in the year 1950. One can also not forget the expressly projected desire by the members of the assembly and makers who really wanted to transform privacy as a fundamental right until, some other eminent members of the assembly had total different opinion about it.

(D) Post Constitutional Development

In India, the scope of right to privacy is based on the broader interpretation of the provisions of Part III of the Constitution of India, Articles 19 and 21. From the cases mentioned above, it is known that the right to privacy has failed. As a category right provided for basic rights. However, over time, the legal understanding of privacy has been endorsed in the eyes of the judiciary for its application and interpretation.

Here, in the development of private life after the enactment of the Constitution, important examples are given and judicial decisions are made to better understand the concept of the right to private life.

For rights to be recognized, it is not a requisite for it to be expressly mentioned in the

¹⁵ Ibid

constitution, but a look into interpretation to read between the lines does also generate various interpretations in the words of the statutes and to derive the intentions of the legislature behind such rational formation of laws.

As already discussed, The Constitution of India was thereby, formed in the year 1950 and had no express mention about the rights regarding privacy.

Kharak Singh vs The State of Uttar Pradesh¹⁶: This case was relating to surveillance by the state towards the accused breaching the idea of personal space. The learned judge in this case held that if the nature of surveillance is extreme in nature then, such intrusions violates the rights provided in art 19(1) and 20 of the Indian constitution. The court however gave a statement that when the constitution was framed, the makers did not include the provision of privacy in the constitution and therefore, no assumption on privacy to be a part of right shall be held.

In the cases of Kharak Singh and M.P Sharma the notion on the application on privacy before the Supreme Court was denied. However, the following smaller bench Judgement complimented the right.

Govind v. State of Madhya Pradesh¹⁷: Justice Matthew learned in this case found that the right to privacy is related to Articles 19 (1) (a), 19 (1) (d) and 21 of the Constitution. But he also said that for justice, and in accordance with the law, if a government agency violates that right, it should be given the right to do so, within reasonable limits.

Maneka Gandhi v. Union of India¹⁸: The court in this case declared that the word that is associated with the constitution's article 21 defining the word "liberty" has in depth meaning and on its way to being interpreted may associate and recognize various other rights to be held under the frames of the rights which are fundamental in nature. Also provided the linked with article 19 and created a test called triple test to analyse and know if any infringement of liberty occurred.

P.U.C.L. v. Union of India¹⁹- This case dealt with phone tapping. Here, it was held that privacy is core related to right to life and it is an outcome of it which is to be given to individuals.

Honourable Judge Mr. P N Bhagwati has also interpreted that the fundamental right of

¹⁶ Kharak Singh vs The State of Uttar Pradesh. & others, 1964 SCR 332 (India).

¹⁷ Govind v. State of Madhya Pradesh, 1975 SCR 946 (India).

¹⁸ Maneka Gandhi v. Union of India, 1978 SCR 621 (India).

¹⁹ P.U.C.L. v. Union of India, (1997) 1 SCC 30 (India).

right to life has a various scope of interpretations in its ambit. The right to life also translates that every person should live their life with dignity, also have an access to basic necessities such as food, shelter and cloth etc. If such requirements are not fulfilled that it will result in the violation of right to life. However, if such infringement are lawful in nature and just fair then, it would not amount to such infringement.

Mr X vs Hospital Z²⁰– Here, this case it was decided that if one right of privacy collides with right to life then, it will be the right to life which is to be taken as a priority. If a doctor discloses facts in a doctor-patient relationship to save the lives of others, it is not considered a violation.

Directorate of Revenue vs Mohd Nisar Holla²¹: Here, the court found that a person could be deprived of his right to life and freedom only by following the procedures stipulated by law. Until then, everyone has the right to live alone, free and undisturbed. Legislative Procedures- In layman's terminology is a law officially enacted by the legislature to be valid and obeyed, subject to confirmation of the correct procedure. This doctrine has the power to deprive human life and individual freedom according to the procedures stipulated by law. In short, this means that legitimate legislation is valid, even if it violates the principles of justice and equality.²²

K.S. Puttaswamy (Retd.) and Ors. Vs. Union of India (UOI) and Ors²³-This is a groundbreaking case. Here, in this 2017 proceeding, the Supreme Court of India declared the right to privacy a fundamental right.

A committee of nine judges of the Supreme Court of India unanimously agrees that the right to privacy is a constitutionally protected right of India and is incidental to other freedoms guaranteed by the Constitution of India. The proceeding, filed by retired High Court Judge Puttaswamy, challenged a system of government proposals for a unified biometric-based identity card that is essential for access to government services and interests. The government argued that the Constitution did not provide any specific protection for the right to privacy. The court argued that privacy is a case of fundamental freedom or freedom guaranteed by Article 21 that governs it. “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

²⁰ Mr X vs Hospital Z, (1998) 8 SCC 296 (India).

²¹ Directorate of Revenue vs Mohd Nisar Holla, (2008) 2 SCC 370 (India).

²² Maneka Gandhi v. Union of India, 1978 SCR 621 (India).

²³ Justice Puttaswamy Vs. Union of India, 2017, 10 SCC 1 (India).

VI. DIMENSIONS OF PRIVACY

In India there is no single applicability of privacy but rather, it is very wide in its scope and accordingly can be interpreted and used in various cases and situations as follows:

(A) Surveillance

In **Kharak Singh case** - The oldest case in privacy where the police were given unrestricted rights to keep an eye on the accused at any point of time. Here, the contentions were that the officials visited the accused at an odd night hour, knocking at the door and also asking the accused to be present in different stations without any major disclosure of information.

Regulation 236 gave an unreasonable right to the officials to visit the accused at an odd hour, i.e. in the middle of the night intruding not only space but also causing physical disturbance. The nature of the case that the judges in the case concluded that when the drafter of the Constitution did not explicitly enshrine the right to privacy. Therefore, it is unreasonable to assume that this law will apply.

Despite opposition to the majority, Judge Subharao said privacy was an element of Article 21 of the Indian Constitution. The concept of personal freedom can only be achieved if personal privacy remains unimpeded.

(B) Intimate Details

Privacy has its own limitations and one cannot withdraw to disclose information when filing for certain applications or insurances. However, the nature of the information can also be classified. When applying for government jobs, one has to share the necessary details in order to be applicable to sit in the examination but, that does not give the person of authority holding the information to share it to the world. The other layers of details can be personal and no one should be forced against their will to reveal such details which can cause agony or bring harm to their reputation.

VII. RIGHT TO SPEECH

R. Rajagopal v Tamil Nadu In this particular case, the murderer wanted his biography to appear in the Tamil News Magazine. It reveals details of police officers and other officials involved in the crime series.

The Supreme Court of India at that time directly established the relationship between Article 21 of the Constitution and the right to privacy. The court ruled that it respects privacy, but has its limitations. Posting texts about others without the permission or consent of others will infringe on your privacy. If it is a published publication of a public record, it should be kept

as an exception to the exercise of right to privacy.

VIII. THE 'RIGHT TO PRIVACY' OF HIV ('+'VE) PATIENTS

Mr X vs Hospital case²⁴ – Here in the facts of this case was that the petitioner being aggrieved by the disclosure of his information by the doctor to the fiancé cause implications between them and lead to the failure of the marriage that was soon to be held. The petitioner was tested HIV positive and when the doctor without the consent of the patient disclosed the fact, the patient filed a case for Infringement of privacy.

Here, this case it was decided that if one right of privacy collides with right to life then, it will be the right to life which is to be taken as a priority. If a doctor discloses facts in a doctor- patient relationship to save the lives of others, it is not considered a violation.

The judges observed-

*"If that person is suffering from any communicable venereal disease or is impotent so that marriage would be a complete failure or that his wife would seek divorce from him on that ground, that person is bounded to act therein according to the law, and it is to be added as a legal responsibility, to tell the woman with whom the marriage is proposed that he was not physically unwell and that he was suffering from a disease which was supposed to be corresponded to the girl."*²⁵

This is a case where the exception of not providing a private information by the doctor to save right to life of another was laid down. Right to life to be of greater importance when collided with right to privacy. Otherwise, in general privacy to be maintained and the medical records to be in the category of privacy which without prior consent cannot be disclosed.

IX. PRIVACY IN THE CONTEXT OF SEXUAL IDENTITIES

Navtej Singh Johar v Union of India: In this case, the agreed intimacy between two agreed adults of the same sex was not considered an unnatural crime within the meaning of Section 377 of the IPC. The petitioner in this case challenged the constitutional validity of Section 377 of the IPC under various provisions of the Constitution of India, which governs rights such as equality and life.

In the year 2018, five Supreme Court judges of India on 6 September held the status of section 377 of IPC to be unconstitutional. It gave justice to the people of other orientation a recognition under the law.

Homosexuality is not a disease and one should refrain from using it in derogatory way.

²⁴ Supra Note 18

²⁵ Ibid

Lesbian, Gay, Transgender, Queer though different orientations but are also human and therefore, need to be protected the same way as other members of a society or a country.

X. INTERNATIONAL CONCEPTS

Article 12 of the Universal Declaration of Human Rights (1948) states so. “No one shall be subject to any arbitrary interference with his home, privacy or correspondence nor to attack upon his honour and reputation. Everyone has the right to privacy of the law against such interference or attacks.”²⁶

All the other individual has the security to enjoy the privilege of privacy in matters relating to family, home etc without being disturbed . If anyone interferes with the privacy of another without the validation of the law, has the right to be protected and file a case for such interventions.

International Covenant on Civil and Political Rights (Article 17 of International Covenant on Civil and Political Rights) states “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation”²⁷

European Convention on Human Rights states (Article 8) “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national privacy, public safety or the economic well-being of the country, for the privacy of health or morals or for the privacy of the rights and freedoms of others.”²⁸

In given above definitions makes it visible that every person has the element to enjoy the privilege of privacy in matters relating to family, home etc without being disturbed . If anyone interferes into the privacy of another without the validation of the law, has the right to be protected and file a case for such interventions against the person who has breach the right to privacy.

In the case of exception, if an official is authorize by the law for carrying such operations to

²⁶ *Universal Declaration of Human Rights*, United Nations, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights> , (last Visited May 03, 2022).

²⁷ *International Covenant on Civil and Political Rights*, United Nations, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> , (last Visited May 03, 2022).

²⁸ *Article 8 ECHR – Right to private life, family life, correspondence and home*, Hembach Legal, available at <https://human-rights-law.eu/echr/article-8-echr-right-to-private-life-family-life-correspondence-and-home/> , (last Visited May 03, 2022).

meet the greater end of Justice then, in such cases an individual cannot demand that the infringement of privacy has occurred.

(A) USA

Until the 20th century, there was no recognition for the privileges such as privacy. The privacy resonated with the commons in the year 1890, when two scholars in Harvard published an article, "The Right To Privacy". This article led to an evolution for the recognition of this right, as before that, there were no concepts or ideas existing in the look out of scholars or in view of the basic law in references to the privileges of the word "Privacy" and its importance in terms of the society.

At the core of the law comes from the right to privacy and is broadly defined as the "right to be left alone". Usually excluded are personal issues or activities that may be of public interest, such as celebrities or attendees of newsworthy events. Infringement of the right to privacy may be the basis for a claim for damages against the infringing individual or organization. These include a fourth amendment to protect against unjustified search or seizure, a first amendment to freedom of association, and a due process 14th amendment. These are recognized by the Supreme Court as protecting the general right of privacy in family and marriage. Motherhood, reproduction and parenting.

To live a dignified life, we need to ensure privacy, and we need to give all humans such rights.

(B) US CONSUMER PRIVACY BILL OF RIGHTS²⁹

The US Consumer Privacy Rights Privilege states that customers have the following privileges:

- Personal control on what individual information organizations gather and how they utilize it (Assent, Notice/Choice).³⁰
- Transparency on privacy policies and procedure adopted (Transparency/Openness).³¹
- The organizations will gather, utilize, and reveal individual information only for that purpose and in that context for which the individuals have informed

²⁹Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy, Journal of Privacy and Confidentiality, available at <https://journalprivacyconfidentiality.org/index.php/jpc/article/view/623/606>, (last Visited May 03, 2022).

³⁰ Ibid

³¹ Ibid

information(Use Limitation).³²

- The Information must be handled in secured manner (Privacy).³³
- Access and Accuracy: The Subject must have unrestricted access to the Data provided and must also have the authority to amend it in case of any wrong information provided. (Access and Correction).³⁴
- The information which is relevant to the purpose must only be collected. No irrelevant information must be collected.(Collection Limitation)³⁵
- Accountability: The information collected must be in accordance with Consumer Privacy Bill of Rights and the officers collecting Data must be made accountable.(Accountability).³⁶

The United States of America's constitution, its 5th amendment and the 14th amendment has widened the scope of the term "liberty" by expressing it as the epitome and the base of every rights that an individual should possessed as a human.³⁷ To live a dignified life, we need to ensure privacy, and we need to give all humans such rights.

XI. STATUS OF PRIVACY RIGHT

The Personal Data Protection Bill, 2018

In 2018 July, a final draft and reports by committees was presented for protecting the Individual's data in ambit of the right relating privacy which is known as the bill of Personal Data Protection. It proposed for data protection authority to eye on the process of the data collection ; (I) to protect individual's interest, (ii) to stop the use of the personal data and information and (iii) To comply with the bill. ³⁸

Introduced to Lok Sabha on December 11, 2019 by Ravi Shankar Prasad, Minister of Electronics and Information Technology. The purpose of this bill is to establish a data protection authority that supports the protection of personal data and information of individuals and manages processes such as data transfer from one country to another while

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Ibid

³⁶ Ibid

³⁷ *Legal Analysis of Right To Privacy In India*, Legal Service India, available at <https://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html> , (last Visited May 03, 2022).

³⁸ Amar Patnaik, Why India's Proposed Data Protection Authority Needs Constitutional Entrenchment, *The Wire* (April .24, 2022, 4.40 Pm) <https://thewire.in/tech/india-data-protection-authority-needs-constitutional-entrenchment#:~:text=Why%20India%E2%80%99s%20Proposed,and%20political%20interference>

respecting the interests of the bill³⁹.

An idea to create a digital economy with right amount of fairness laying due respect for the protection of individual's privacy with no further hindrances in lieu of their privacy and liberty.⁴⁰To also reduce the government's intrusion in the personal affairs of the individuals or neitizens of the nation.

The need for such a bill is to protect the autonomy of the individual, thereby creating a sense of relationship between the individual and the organization that collects and processes the data. The purpose was to provide legal remedies for illegal access and make such institutions accountable.⁴¹

The bill also contains provisions of “right to be forgotten”

"Right to be forgotten" is a fairly new concept in India, where one might try to remove or remove an online post containing an embarrassing image, video, or news article that mentions them⁴² Section 43 of the Information Technology Act 2000 also includes the right to privacy. This makes unauthorized access to computer resources a crime⁴³.

K.S Puttaswamy (Retd.) and Anr. Vs Union of India

In the landmark case of Puttaswamy v. Union of India, the Supreme Court declared that the right to privacy is a fundamental right and protected as part of Article 21 of the Constitution of India. ⁴⁴.

This petition was presented and filled by Justice K.S Puttuswamy before the apex court ,i.e., supreme court, held that privileges of privacy is an vital element of article 14, 19 and 21 of the Constitution as guaranteed under part III of the Indian Constitution. Here, judgement passed by the nine judge bench declared security of privacy as a part of basic rights which gave a whole new recognition to the concept of long debated right to privacy.⁴⁵

The court only struck down those provisions of Aadhar Act which were unconstitutional in nature. The first few cases that dealt with the privacy were that of Kharak Singh case ⁴⁶and

³⁹ Ibid

⁴⁰ *The Universal Declaration of Human Rights*, 1948, Legal Service India,“ available at: <http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html> ,(last Visited May 03, 2022).

⁴¹ Ibid

⁴² *Data protection Bill has provisions for ‘right to be forgotten’*, Centre tells HC ,The Hindu, December 21, 2021 at <https://www.thehindu.com/news/cities/Delhi/data-protection-bill-has-provisions-for-right-to-be-forgotten-centre-> .

⁴³ *The Information Technology Act, 2000, No 43, Acts of Parliament, 2000(India)*.

⁴⁴ Justice Puttaswamy Vs. Union of India, 2017,10 SCC 1 (India).

⁴⁵ Ibid

⁴⁶ Supra Note 6

M.P Sharma ⁴⁷ where the judges decided by the courts that the privilege of privacy is not inclusive of basic rights because when our makers frame the Indian constitution, there were no expressive thoughts on right of privacy and therefore, an assumption was not to be into consideration. But this case of Justice K.S Puttaswamy (Retd.) overruled the various decision of the previous landmark judgement and added a new recognition upon the right to Privacy. The right conferred by this landmark judgement upon right to privacy was to be protected under the article 21 of the constitution of India⁴⁸, i.e., right to life and personal liberty.⁴⁹

Increasing active role of the judiciary in interpreting the clauses and articles of the laws is never based in the restrict manner, rather they keep an approach of open interpretation of the laws and to read between the lines in order to maintain a balance between the ever growing needs dynamic concept of expanding modern needs in relation to people as well the society.

Although the status of right to privacy has never been expressed as a right in the context of previous judgments, the Puttaswamy case recognizes the right to privacy as a fundamental right and is protected as an integral part of Article 21. It brought about a breakthrough change in the Indian Constitution. This case filed with the Supreme Court of India, states that the right to privacy is an integral part of Articles 14, 19, and 21 of the Constitution, as guaranteed by Part III of the Constitution.

XII. SUGGESTIONS

After thorough in- depth research on privacy, here are few suggestions to be laid down:

- There is a need for the term right to privacy to be defined accurately in its true sense. As already discussed in the research that there is no precise definition for the term 'Right to Privacy' which makes its hard for its interpretation and also leads to ambiguity. Therefore, a precise definition is a requisite to apprehend the meaning of the term privacy in its truest sense.
- In order to set a pace with the definitions of the term Right to privacy, there is much needed space for right distinctions to be made clear as for its pragmatic approach. There are various dimensions to be dealt under the right of privacy as its dynamic extension is expanding. The world of contemporary era has transformed to be more sophisticated and thereby, the practicality of the right has to be understood first and applied according while dealing with its various dimensional situations.

⁴⁷ Supra Note 8

⁴⁸ Ibid

⁴⁹ INDIAN COST. Art. 21.

- Most people are not aware of their rights due to various reasons and situations and fails to exercise given privileges. This words on security of privacy is comparatively new intrinsic basic right guaranteed to every people and so, Initiatives are must for people to comprehend and acknowledge of what elements constitutes their right to privacy and how to go about it in the time of lawful requirements.
- The privileges of privacy has been defined as one of the basic rights and infringement of such rights will have a major impactful repercussions upon the person doing so. To not shelter such infringement, one must be cautious of their actions and such consciousness can only be achieved when the guidelines to such violations and remedies are laid down concrete .
- To balance conflicting interests, need to perform appropriate proportional tests. In short, such a test will determine the balance between the purpose of justice and the public interest at the same time.
- Act on the protection of personal data to protect personal data and protect it from unauthorized and unauthorized access is still pending for specific reasons. India is a populous country and such legislation needs to be concrete and strict in order to protect and store all levels.
- The Government of India may consider the need to revise the rules of the Press Council of India on journalism ethics to avoid conflicts between press freedom and privileges of privacy.⁵⁰
- In a recent case of K.S. Puttaswamy, the Supreme Court of India has determined that the right to privacy is a fundamental right and an integral part of Article 21 of the Constitution of India, which enshrines the right to life and personal freedom. To make the right to privacy easier to read, the government must insert a new clause in (b) into Article 21 to include the right to privacy.
- There are no specific enactments for privacy and the interest is only served through various different statutory provisions. Therefore, there is much need for a separate legislation for multi faceted privacy to lay down the principles , objectives , and also to elaborate upon violations of such rights, what would be its consequences and possible feasible remedies.
- The sustainability of the right to privacy would depend on the legislations and the degree of penal provisions must also be included to punish various variations and

⁵⁰ *Freedom of the press in India*, Wikipedia, available at https://en.wikipedia.org/wiki/Freedom_of_the_press_in_India . (last Visited May 03, 2022).

infringement of the right to privacy. Various sanctions should also be introduced along with the incorporated provisions to deal with situations that has failed to implement the above mention provisions of the privacy. Any person who access information about others from any government affiliated people or officials must be imposed with penalty.

- There is a misconception among the people that the right to privacy can be practiced everywhere. It is not true. Privacy definitions changes with personal and then in view of public domain. Awareness to be created to educate people on such topic and not to interchange the rights of personal liberty to that of public domain.
- The role of media is very crucial in the modern world. They bring everything to the attention of the common public via news or various platforms. But sometimes the ethics of media are not really followed and leads to various violations of victims or the accused. Therefore, a need limitation on such media is necessary for the interest of everyone and that, for the protection of privacy.

XIII. CONCLUSION

Privacy is fundamental and basic right and it is an element of article 21 of the Indian Constitution. Puttaswamy case brought about a landmark turnover by recognizing right to privacy as a fundamental right and to be protected as an intrinsic part of the article 21 of the constitution of India.

The term right to privacy is not absolute in nature, certain restrictions may apply upon reasonability for maintaining the concern of larger public interest or to balance the greater concept of justice in the lawful manner. There is a major difference between private and public interpretation of privacy and one cannot expect the same amount of privacy in the public space as they do in the personal space. When there is collision between two concepts of rights, the onewill prevail over the other is one that promotes the morality interest of the public. Privileges of privacy cannot be practised when it is question of internal securities or in spheres of public space, such claims can be negated.

In Maneka Gandhi case , the interpretation of life was translated as a life with dignity and notlike mere animal existence. Right to life paves a way for everyone to be guaranteed certainaspect of rights that are needed by every individual to live a meaningful life.

The idea to protect the privacy basically articulates not to intrude in an individual's personal life via any means or through any person and therefore, not compromising their personal space. The dynamic expansion of the society has lead the people to be more civilized and

have individualistic approach, changing the idea of “WE” as a society to “ME” as a single entitled Individual. In the social structure of the society , the need of the people has transformed to be much that of individual approach. The recognition of privacy as a right has given everyone the liberty to enjoy personal space without any intrusion. The liberty to share their thoughts and emotions with friends and family of their choice and not the world.

Privacy has many aspects and can be defined as a volutuntary action that a person takes to withdraw himself/herself from the society for a temporary period of time through various means of psychological needs. It can put as the freedom of not disclosing personal information which can bring harm to their reputation, freedom to express their views and also to have personal space regarding intimacy, marriages etc. Privacy as a right is never absolute in nature and provided that article 19(2) of the Indian constitution lays down the principles of reasonable restriction over the practicality of the basic rights as guaranteed under part III of the Constitution.

India being a democratic country, liberty is one of the essentials of democracy provided to all the individuals of a nation. Autonomy is complimentary to democracy where no other state shall intrude in the private matters of the other state. Likewise , in democracy everyone has the liberty to practice and communicate information of their own choice differentiating it from a totalitarian state.

No one can force and extract information about anyone except for the manner established under the law. The active role of the judiciary in interpreting the clauses and articles of the laws is never based in the restrict manner, rather they keep an approach of open interpretation of the laws and to read between the lines in order to create balance between the ever growing wishlist of the dynamic concept of ever expanding modern needs in relation to people as well the society.

As the expansion of the human population has diverted towards modern urbanization, the technological needs and equipments has also expanded its arena. Technological advancement is boon but its implications does have various complications added in the personal aspects of a private individuals. Phone tapping , card swipes technology has made it easy for the people to have an access on the information of others and that is why privacy plays an important role in today’s age. Privacy is not a requirement but a right.
