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LEGAL INTROSPECTION TOWARDS THE DEVELOPMENT OF RIGHT TO PRIVACY AS FUNDAMENTAL RIGHT IN INDIA

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Abstract

Privacy of the individual is an essential aspect of dignity. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. The journey of right to privacy has been significant in India, from being completely ignored during the drafting of the Indian constitution till recognising it as one of the essential component of right to life of an individual. This development can be measured in the case by case development of 'right to privacy' by the Indian judiciary. Further at times, the law making bodies along with the judiciary has taken cognizance of the reflections of contemporary social and technological changes on the individual's right to privacy. This paper will focus on the evolution of the concept of Privacy and its inclusion under the Constitution of India under Part III as a fundamental right. The paper will also discuss the understanding and application of right to privacy with reference to the technological developments and social media in India.

Keywords: Privacy, judiciary, fundamental rights, technology, personal liberty

Abstrak

Privasi individu merupakan aspek penting dari martabat manusia. Kemampuan individu untuk melindungi zona privasi memungkinkan realisasi nilai penuh dari kehidupan dan kebebasan seseorang. Kebebasan (liberty) memiliki arti yang lebih luas di mana privasi adalah bagian hal tersebut. Tetapi tidak semua kebebasan dapat dilaksanakan dalam privasikonteks. Namun yang lain dapat dipenuhi hanya dalam ruang pribadi. Privasi memungkinkan individu untuk mempertahankan otonomi tubuh dan pikiran. Otonomi individu adalah kemampuan untuk membuat keputusan tentang hal-hal vital yang menjadi perhatian kehidupan. Perjalanan hak atas privasi sangat penting di India, mulai dari masa di mana hak tersebut diabaikan sepenuhnya selama penyusunan konstitusi India hingga India mengakui privasi sebagai salah satu komponen penting hak untuk hidup individu. Perkembangan ini dapat diukur dalam kasus per kasus pengembangan 'hak atas privasi' oleh peradilan India. Lebih jauh lagi, badan pembuat undang-undang bersama dengan peradilan telah menyadari refleksi dari perubahan sosial dan teknologi kontemporer pada hak individu atas privasi. Makalah ini akan fokus pada evolusi konsep Privasi dan penyertaannya di bawah Konstitusi India di bawah Bagian III sebagai hak fundamental. Makalah juga akan membahas pemahaman dan penerapan hak atas privasi dengan mengacu pada perkembangan teknologi dan media sosial di India.

Kata kunci: privasi, peradilan, hak-hak dasar, teknologi, kebebasan individu

I. INTRODUCTION

Privacy is a concomitant of the right of individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. The human element in life is impossible to conceive without the existence of natural rights. Natural rights are not bestowed by the State. They inhere in human beings because they are human. They exist equally in the individual irrespective of class or strata, gender or orientation.

Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. Privacy of the individual is an essential aspect of dignity. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. This paper will focus on the evolution of the concept of Privacy and its inclusion under the Constitution of India under Part III as a fundamental right. Further, the paper will discuss the development in the understanding and application of right to privacy with reference to the technological developments in India.

II. MEANING OF PRIVACY

The term privacy originates from the word "*Privatus*" which means "separated from the rest of the world". The term privacy is exceptionally complex and difficult to conceptualized. Privacy, being a subjective term has been taken in different ways in different situations. Jude Cooley¹elucidated the law of privacy and stated that, "privacy is synonymous to the right to be let alone". Tom Gaiety expressed that²"right to privacy is bound to include body's inviolability and integrity and intimacy of personal identity including marital privacy". Edward Shils³viewed privacy as "zero relationship between two or more persons in the sense that there is no interaction or communication between them, if they so choose". Warren and Brandeis⁴have very eloquently explained that "once a civilization has made distinction between the 'outer' and 'inner' man, between the life of the soul and the life the body...the idea of a private sphere is in which man may become and remain himself". Privacy is a neutral relationship between persons or groups or between groups and person. Privacy is a value, a cultural state or condition directed towards individual on collective self-realization varying from society to society.

Privacy is a prerequisite for the enlargement and salvation of personhood. Jeffrey Reiman defined privacy as, "a recognition of one's ownership of his or her physical and mental reality and a moral right to his or her self-determination".⁵Privacy is the

¹ Thomas M Cooley, *A Treatise on the Law of Torts* 29, 2nd ed. (Chicago: Callaghan and Company, 1888).

² Tom Gaiety, "Right to Privacy," *Harvard Civil Rights Civil Liberties Law Review*, n.d., 233.

³ Edward Shils, "Privacy: Its Constitution and Vicissitudes," *Law and Contemporary Problems* Vol.31 (1966): 281-304, <https://scholarship.law.duke.edu/lcp/vol31/iss2/4>.

⁴ Samuel Warren & Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review* Vol.4 (1890): 193.

⁵ Jeffery L. Johnson, "A Theory of the Nature and Value of Privacy," *Public Affairs Quarterly* No.3 (1992):

inner sanctum of a person or reservation of private space which is inviolable, but still somewhere it is conditioned by his/her relationship with the rest of the society. As these relationships always carry with them questions to autonomy and free choice of an individual. Further, the pressure of the State and non-state entities design aspects of social existence which force an individual to surrender his choices.⁶

The four contours of privacy are solitude, intimacy, anonymity, and reserve⁷ which reflects the scope of the term 'privacy'. According to Westin, "Solitude is a physical separation from others. Intimacy is a close, relaxed, and frank relationship between two or more individuals that results from the seclusion of a pair or small group of individuals. Anonymity is the desire of individuals for times of public privacy. Lastly, reserve is the creation of a psychological barrier against unwanted intrusion; this creation of a psychological barrier requires others to respect an individual's need or desire to restrict communication of information concerning himself or herself". These characteristics of privacy are fundamental for an individual's life and therefore, it has become inalienable.

As Salmond has defined right as, "an interest and protected by a rule of right. It is any interest, respect for which is a duty, and this disregard of which is a wrong".⁸ Considering the meaning of right expressed by Salmond, right to privacy is every individual's interest and therefore it not only needs to be recognised but also needs to be protected from state's interference as well as from third parties. The right to privacy has three contents. They are:

- 1) The first content of privacy is related to physical or spatial privacy (space-in particular). For eg--the preservation of constitutional liberty is aptly applicable in such forms of privacy.
- 2) The second content views privacy as principally concerned with choice, an individual's ability to make certain significant decisions without interference. For example- use of technology for availing freedom of speech and expression in effective manner.
- 3) The third content of privacy deals with protection, preservation and the flow of personal information.

From the above contents of privacy, it can be said that right to privacy does protects the individual's privacy right against both the state as well as non-state actors. Privacy gives an individual a choice about what he wishes to do, how he wishes it to do as well as what he wishes not to do at all. Thus, privacy does provide horizontal as well as vertical protection to an individual, wherein horizontal against non-state actors and vertical against the state.

271-88, <https://www.jstor.org/stable/40435812>.

⁶ "Right to Privacy: It's Sanctity in India," Legal Service India, accessed August 3, 2019, <https://ctconline.org/wp-content/uploads/pdf/2019/seminar-presentation/essay/R-11.pdf>.

⁷ Leon A. Pastalan, "Privacy as a Behavioural Concept," *Social Science* Vol.45 (2) (1970): 92-98, <https://www.jstor.org/stable/41963409>.

⁸ Bhupendra R Patel, "Jurisprudence and Philosophy as Foundations of Law" (Maharaja Sayajirao University of Baroda, 2001).

III. PRIVACY AND INDIVIDUALISM

Steven Lukes, in his article on “The Meanings of “Individualism”” explains that the concept of Privacy is evolved and developed through the perception of “Individualism”.⁹ Individualism is a moral stance, political philosophy, ideology or social outlook that stresses “the moral worth of the individual”. The theory of individualism reflects that an individual is an independent entity because the creator has granted life to him/ her and thereby an individual can avail all the freedom including privacy.

Privacy postulates the reservation of a private space for the individual, describe as the right to be let alone. The concept is found on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifests in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of body and the sanctity of the mind can exist on the foundation that each individual possess an inalienable ability and the right to preserve a private space in which the human personality can develop. Hence privacy is the postulate of human dignity itself.

Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone, an individual is not judged by others. Privacy enables each individual to take crucial decisions which find expression in the human personality. It enables each individual to take crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to her life. Privacy attaches to the person and to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in pattern woven out of a thread of diversity into the fabric of culture.

Privacy represents the core of human personalities and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and in turn are shaped by their social environment. The individual is not hermit. The lives of individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of the society. Equally, the life of the individual is being consistently shaped by cultural and social values imbibed from living in the community. The state of flux which represents a constant evolution of individual personhood in the relationship with the rest of the society provides the rationale for reserving to the individual a zone of repose. The lives which individual lead as a member of society engender a reasonable expectation of privacy ensures that while on the one hand, the individual has a protected zone of

⁹ Steven Lukes, “The Meanings of Individualism,” *Journal of the History of Ideas* Vol.32 (1) (1971): 45-66, <http://www.jstor.org/stable/2708324>.

privacy, yet on the other, the exercise of individual choices is subject to the rights of others to lead orderly lives.

IV. INTERNATIONAL DEVELOPMENT OF CONCEPT OF PRIVACY

Privacy is an inherent right in every human. even into six right intrinsic rights have to be recognised by the law of the land for due enforcement. in about 1948 article 12 of the Universal Declaration of Human Rights (UDHR)¹⁰ are as defined the right to privacy as under:

“No-one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. everyone has the right to the protection of the law or against such interference or attacks.”

The UDHR was there after made part of the International Bill of Human Rights and it is now enforceable in signatory countries. The IBHR also comprises *inter alia* the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the international Covenant on Civil and Political Rights (ICCPR). The later defines and protects privacy at Article 17:

“No one shall be subjected to arbitrary or unlawful interference with his privacy family home and correspondence not to unlawful attacks on his honour and reputation”.

Article 8 of the European convention of Human Rights set out that -

“Everyone has the right to respect for his private and family life, his home and his correspondence”.

The European convention further set out the limited expectation to strict enforcement and protection of privacy in the interest of national security, public safety, for the economic well-being of the country, for the protection of health or morals or for the protection of rights and freedoms of others.

A. Development of Right to Privacy in USA

As with the Indian constitution the American constitution also does not specifically set out or protect privacy. The first, forth and fourteenth amendments of bill of rights have however been interpreted by the US Supreme Court to include right to privacy including from unwarranted search or seizure and due process right for protecting right to privacy of person within family, marriage, motherhood, procreation etc.

In 1928, the minority view of Justice brandies in *Olmstead v. United States*¹¹ upheld the right to privacy in every individual and coined the Classic and Crisp definition of privacy as the “right to be let alone”. In this case of wiretapping or electronic surveillance, since the same was without actual physical invasion, the majority view was that there was no reasonable expectation of privacy Justice Brandies however

¹⁰ “The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations”.

¹¹ *Olmstead v. United States*, 277 U.S. 438 (1928)

recorded that the purpose of privacy was to secure conditions favourable to the pursuit of happiness while recognising the significance of man's spiritual nature of his feelings and intellect. The rights to protect Americans in their beliefs, their thoughts, their emotions and their sensations.

The above minority opinion became law several decades later, when in 1965 the US Supreme Court upheld the right to privacy in *Griswold v. Connecticut*¹² by holding the right to marital privacy. A Connecticut law prohibiting use of contraceptives in any form was contested as violative of the 14th amendment i.e.

“no state shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States nor shall any state deprive any person of life liberty or property without due process of law nor deny any person the equal protection of law”.

In *Katz v. United States*¹³, Charles katz use the public pay phone booth to transmit illegal gambling wagers from LA to Miami and Boston. FBI recorded his conversations using an electronic eavesdropping device attached to the outside of the phone booth and Katz was convicted based on these recordings. The US Supreme Court upheld his challenge on the ground of violation of his fourth amendment rights as Katz would have had reasonable expectation of privacy. This case made wiretapping by State and Federal authorities subject to fourth amendment's warrant requirements.

Right to privacy has thereafter been expanded for the *Roe v Wade*¹⁴ when a pregnant single women brought a class action challenging the constitutionality of the Texas criminal abortion laws which permitted abortions only upon medical advice for the purpose of saving the Mother's life. Recently the California Court of Appeal held that intersection of emails at workplace was not in violation of an employee's right to privacy as they would have no reasonable expectation of privacy.

B. Evolution of Privacy Doctrine in India

In Indian context, classical Hindu Law governed Indian societies before European colonization brought the word 'privacy' to our legal system. It was distinct from colonial and post-independence Hindu Law which recognizes and enforces expectations of privacy in different contexts. Ancient law recognized the sanctity of the home and family, the autonomy of the community, and prescribed penalties for those who breached these norms. So, does Islamic law: all schools of Islamic Jurisprudence-‘fiqh’ – recognize privacy as an enforceable right.¹⁵

The province of privacy of an individual came to be determined by criminal law during the British era. Criminal enactments particularly the Criminal Procedural Code 1890 afforded protections to the person, property and dwelling house and made it punishable to impute unchastity to a female. The law of torts provided an additional dimension of protection of individual interests in reputation as also the person and property with an admonition that the least touching of another in anger was assault actionable in damages. The right to reputation was exercised through the laws of libel

¹² *Griswold v. Connecticut*, 381 U.S. 479 (1965)

¹³ *Katz v. United States*, 389 U.S. 347 (1967)

¹⁴ *Roe v. Wade*, 410 U.S. 113 (1973)

¹⁵ Bhairav Acharya, “Privacy Law in India: A Muddled Field – I,” accessed March 3, 2016, http://www.theboot.org/story_popup/privacy-law-in-india-a-muddled-field-i-8772.

and slander.¹⁶

Before India's Independence, the Swaraj Bill of India, 1895¹⁷ spoke about freedom of speech, right to privacy and equality, right of franchise and punishment for specific offence only.¹⁸ However while making the draft of Indian Constitution in 1948, the makers preferred the American pattern of incorporating the Bill of Rights in the Constitution and including a number of human rights and civil liberties in part III of the Constitution dealing with fundamental rights. In the period before the coming of the present Constitution, no rights were accorded to citizens. The legal concept of citizenship and enforceable rights in India came into being with the Constitution of 1950. While drafting the Constitution, amendments were moved to insert safeguards against search and seizure¹⁹ within the fundamental rights chapter; Dr. B.R. Ambedkar pointed out that these safeguards were already provided by the Code of Criminal Procedure but he agreed that adding them to the Constitution. Therefore, the right to privacy is not a new concept on Indian soil, but certainly its recognition and implementation has changed over the period of time.

IV. INDIAN CONSTITUTIONAL ASSEMBLY DEBATE OVER RIGHT TO PRIVACY

Before the accepting the Constitution of India, it was thoroughly debate by all the assembly members for 166 days over the period of 2 years in the Indian parliament which is precisely known as the "Constitution Assembly Debate"²⁰. During the debates, Mr. B.N. Rau (Adviser to the Constituent Assembly) and Alladi Krishnaswamy Ayyar, a Constituent Assembly member, both disagreed with the idea of including right to privacy within the scope of fundamental rights. BN Rau was of the view that right to privacy may interfere with the investigative powers of the police authorities and thereby affect the investigation process. Whereas Ayyar believed that granting the right to privacy and secrecy in correspondence would be disastrous as it would adversely affect civil litigation where documents form an essential part of the evidence.²¹ In the plenary sessions of the Constituent Assembly, one can find two separate attempts to introduce right to privacy provisions in the fundamental rights chapter.²²

On 30th April 1947, Somnath Lahiri suggested to make the right to privacy of correspondence a fundamental right. However, his proposal did not receive any traction. A year later Kazi Syed Karimuddin moved to include the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures in Article 20 (Draft Article 14) of the Constitution. Both these attempts

¹⁶ Rishika Taneja & Sidhant Kumar, *Privacy Law* (Lucknow: Eastern Book Company, 2014).

¹⁷ "The Constitution of India Bill 1895, also referred to as Swaraj Bill, was written during the emergence of Indian nationalism and increasingly vocal demands by Indians for self-government - albeit within the British Empire. The author of the document remains a mystery; Annie Besant seems to suggest that the document was influenced was Bal Gangadhar Tilak - who was the force behind calls for "Swaraj".

¹⁸ Granville Austin, *The Indian Constitution-Cornerstone of a Nation* (Oxford: Clarendon Press, 1966).

¹⁹ Code of Criminal Procedure, 91-100 (1973)

²⁰ "The Constituent Assembly sat for the first time on 9th December 1946. Over the next 2 years and 11 months, the Assembly sat for a total of 166 days to frame the Indian Constitution. The final session of the Constituent Assembly took place on 24th January 1950".

²¹ R. Krutika, "Constitution of India Accessed," Constitution of India, 2020, [https://www.constitutionofindia.net/blogs/the_right_to_privacy_in_indian_constitutional_history#:~:text=BN Rau \(Adviser to the,powers of the police authorities.](https://www.constitutionofindia.net/blogs/the_right_to_privacy_in_indian_constitutional_history#:~:text=BN Rau (Adviser to the,powers of the police authorities.)

²² Krutika, "Constitution of India Accessed."

were unsuccessful in making right to privacy as a part of fundamental right in the Constitution.

Though the Constituent Assembly was not a seminar on the right to privacy and its amplitude but it thus indicate that the proposed inclusion (which was eventually dropped) was in two specific areas, namely, searches and seizures.²³ On one hand, a close scrutiny of the Debates reveals that the Assembly only considered whether there should be an express provision guaranteeing the right to privacy in limited context of “searches” and “secrecy” of correspondence, whereas on the other larger dimensions of the right to privacy were not fully examined during the debates. The question whether the expression “liberty” under Article 21 takes within its sweep the various aspects of the right to privacy was not debated.

From this, it cannot be concluded that the Constituent Assembly had expressly resolved to reject the notice of the right to privacy as an integral element of the liberty and freedoms guaranteed by the fundamental rights. Since the assembly rejected the insertion of right to privacy and therefore no separate provision is made in the constitution about the same under the Part III of the Constitution.

A. Journey of Right to Privacy as “Fundamental Right”: An Overview

Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected, is understood. Privacy is the constitutional Core of human dignity. Privacy has both a normative and descriptive function. At normative level privacy sub-serves those eternal values upon which the guarantees of life liberty and freedom are founded. Normative privacy nurtures to protect one’s own and others’ privacy. For example, privacy right of women and privacy right of LGBT or simply the right to be left alone is a normative privacy. At a descriptive level privacy postulates a bundle of entitlements and interest which lie at the foundation of ordered Liberty. In this type of privacy, the state make sure to provide a rule, law or enactment which exclusively deals with the right to privacy aspect of an individual.

Privacy lies across the spectrum of protected freedoms. The right to privacy in India has derived itself from essentially two sources: the common law of torts and the Constitutional law.²⁴ In common law, a private action for damages for unlawful invasion of privacy is maintainable. The printer and publisher of a journal, magazine or book are liable in damages if they publish any matter concerning the private life of the individual without such person’s consent. It is interesting to note here that the right to privacy is based on two exclusions firstly, that the right to privacy exhaust to continue once the publication is a matter of public record and, secondly, when any public servant makes the publication while discharging his official duties. This can only be challenged if it is found that the officer act was based on false action, malicious or is in reckless disregard for truth.²⁵

Privacy was not specifically enumerated in any of the fundamental rights under

²³ B. Shiva Rao, *The Framing of India’s Constitution* (New Delhi: Universal Law Publishing House, 1967).

²⁴ K.S. Puttaswamy, *Right to Privacy* (Lucknow: Eastern Book Company, 2017).

²⁵ Papiya Golder, “Right to Information v. Right to Privacy: A Judicial Approach,” *International Journal of Law Management & Humanities* Vol.4, no. 2 (2021): 1598-1605, <https://doi.org/http://doi.one/10.1732/IJLMH.26333>.

part 3 of the constitution. It has been incorporated under the aegis of Article 21²⁶ by virtue of various pronouncements of law by the Supreme Court. Therefore, in public law, privacy is a fundamental right. Its breach is to be remedied by the constitutional courts under their writ jurisdiction.²⁷ Privacy has been a cherished value in human rights law across jurisdictions and therefore, it is immaterial to consider whether it is for the citizens or non-citizens. Hence, in India the judiciary, through various judgement and judicial explanations induced the right to privacy to the Citizens and non-citizens through Article 21 of the Constitution of India.²⁸ In the following paragraphs the judgement wise analysis of right of privacy will be made which helps in understanding the development of this right in India. Some of the landmark cases are given below:

B. Recognition of Right to Privacy

Privacy as a right for the first time came under the judicial lens in *M.P. Sharma v Satish Chandra*²⁹. The petitioner had challenged the vires of the power of the state accorded by the Criminal Procedure Code for the issuance of search warrants. The Court in this case held that “the provision declaring that the state has an overriding power in law for affecting search and seizure is for the purpose of security”. Further the Eight-Judge Bench of Supreme Court presided by the Chief Justice Mehr Chand Mahajan held, “When the Constitution makers have thought fit not to subject such regulation to constitutional limitation 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 constitution.” In this emerging discussion on privacy, a very conservative interpretation for right to privacy is given by the judiciary as they were of the opinion that since the framers of the constitution did not add it, the judiciary should not pressure the constitution to include privacy as a right.

Later, in *Kharak Singh v. State of U.P.*³⁰ the apex Court through a six-Judge Bench of the Supreme Court discussed the question “whether surveillance under Chapter XX of the Uttar Pradesh Police Regulations 236(b) which allowed surveillance domiciliary visits at night was held to contravene Article 21?”. The court was of the opinion that,

“the personal liberty of an individual significant as it is written in the preamble to the Constitution that it is designed to assure the dignity of the individual and therefore it cherishes human values as the means of ensuring his full development and evolution. We are referring, to these objectives of the framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as “personal liberty” having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any pre-conceived notion or doctrinaire constitutional theories.”

The Court in furtherance of devising greater meaning to concept of “personal

²⁶ “Article 21- Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law”

²⁷ Kumar, *Privacy Law*.

²⁸ Kumar.

²⁹ *M.P. Sharma v Satish Chandra*, SCR 1077 (1954)

³⁰ *Kharak Singh v. State of U.P.*, SC 1295 (1963)

liberty” quoted with approval from Frankfurter J. as he observed in *Wolf v. Colorado*³¹, “The security of one’s privacy against arbitrary intrusion by the police is basic to a free society”.

It is therefore implicit in ‘the concept of ordered liberty’ and as such enforceable against the states through the *Due Process Clause*. The knock at the door, whether by day or by night as a prelude to a search without authority of law but solely on the authority of the police, according to Murphy, J. considered as an invasion which is against “the very essence of a scheme of ordered liberty”. From this judgement, it can be said that the court started opening the doors for identifying the requirement to protect privacy but this identification is limited only for the police action which are not covered under the due process established by law. Further, it can also be argued here that protection of privacy will come later but before protection recognition of privacy is important. Though the court did not throw light on the recognition of privacy in this case, but certainly it does provided insight on its protection.

Another interesting case is *Gobind Vs. State of Madhya Pradesh*³² wherein the supreme court undertook a more comprehensive analysis of the right to privacy. The court was considering the constitutionality of Regulation 855 and 856 of the Madhya Pradesh Police Regulation³³ which provided for surveillance undertaken by various means specified therein including surveillance of habitual offenders through domiciliary visits and picketing. In the instant case, the Supreme Court upheld the validity of the regulations since it met the test of “procedure established by law” laid down in Article 21³⁴. The Court also accepted a limited right to privacy rooted in Articles 19(1) (a)³⁵, (d)³⁶ and 21. The right, however, was not considered absolute in the Court’s view. It was opined by the Court that restrictions may be legitimately placed on the right in public interest in terms of Article 19(5)³⁷. Matthew J, envisaged the evolution of the privacy right in a case by case development. The Court was in favour of deciding such claims on the basis of the factual circumstances of each case. The Court held as such:

“The right to privacy in any event will necessarily have to go through a process of case by case development. Therefore, even as assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one

³¹ *Wolf v. Colorado*, 93 L. Ed 1782: 338 US 25 (1949)

³² *Gobind v. State of Madhya Pradesh*, 2SCC 148 (1975).

³³ “Madhya Pradesh Police Regulations, Regn.855, Regn.856— Provisions regarding domiciliary visits and subjecting persons to surveillance - Provisions have statutory force. The Police Regulations were framed by the Government of Madhya Pradesh under Section 46 (2) (c) of the Police Act. The Government is empowered to make rules consistent with the Act. One of the objects of the Act is to prevent commission of offences. The provision in regulation 856 for domiciliary visits and other actions by the police is intended to prevent the commission of offences. The object of domiciliary visits is to see that the person subjected to surveillance is in his home and has not gone out of it for commission of any offence. Therefore Regulations 855 and 856 have the force of law”.

³⁴ No person shall be deprived of his life or personal liberty except according to procedure established by law.

³⁵ “The article 19(1) (a) of the Constitution of India states that, “all citizens shall have the right to freedom of speech and expression”

³⁶ “Article 19(1)(d) Right to move freely in territory of India”.

³⁷ “Nothing in sub clauses (d) and (e) of Article 19 shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe”

can characterize as a fundamental right, we do not think that the right is absolute."

It must be subject to restriction on the basis of compelling public interest. But the law infringing it must satisfy the compelling *State Interest Test*. The decision in the *Gobind Case* therefore, recognizes that there may be certain restrictions that may be placed on the right to privacy in the larger societal or public interest. Further, the Supreme Court accepts³⁸ that such restriction ought to be based on the compelling *State Interest Test*. In this case Matthew J. has accepted the recognition of right to privacy in some parts along with the restrictions imposed by article 19. Here, it needs to be noted that ascertaining restrictions on some rights is indirectly acceptance of that right. We cannot put restriction on some right without recognizing that right. Therefore, in *Gobind's case*, the court accepted some parts of right to privacy and recognised it as a component of article 19 (1) and article 21, though it was subject to the restrictions imposed by the state based upon the state interest and state actions which are established by law. Further, the scope of right to privacy can be interpreted and vary from case to case basis as there are no specific standards of privacy.

In *R.M. Malkani v. State of Maharashtra*³⁹, the Supreme Court observed that, "the court will not tolerate safeguards for the protection of the citizen to be imperilled by permitting the police to proceed by unlawful or irregular methods". Hence, the court expresses its firm opinion that at no point of time an individual's right to privacy should be compromised by any authority except the due procedure established by law.

The claim for privacy right helps in determining an individual, groups or organisations to what extent and in what manner the information about them will be communicated to others. It is immaterial on which medium it is stored, preserved or accumulated. Basically, privacy rights provide a sense of security to an individual that state cannot force them to reveal any information which is collected out of the purview of constitutional validity. In *Ram Jethmalani and Ors. vs. Union of India (UOI) and Ors.*⁴⁰ the supreme court 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. State cannot compel citizens to reveal, or itself reveal any of their details to the public at large, either to receive benefits from the State or to facilitate investigations, and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility"*⁴¹.

Therefore, if an individual does not wish to disclose/reveal or submit his information then the state cannot force him to disclose unless there are valid grounds established by the state for such disclosures. Forceful disclosure of information would certainly violate the right to privacy of an individual. In this case, the court has described the scope of right to privacy wherein even the state cannot compel a person to give up his/her privacy unless it is required by law.

Understanding the Nature of Right to Privacy

There is always a tussle between the right to privacy and freedom of speech and

³⁸ Kumar, *Privacy Law*.

³⁹ *R.M. Malkani v. State of Maharashtra*, SC 157 (1973)

⁴⁰ *Ram Jethmalani and Ors. v. Union of India (UOI) and Ors*, 1SCC 711 (2011)

⁴¹ *Ram Jethmalani and Ors. v. Union of India (UOI) and Ors*, 1SCC 711 (2011)

expression given under article 19 (1) (a) of the Indian Constitution. On one hand, the citizen has the right to express its opinions, dissents, views, experiences etc about anyone else but on the other absolute care is required to be taken while availing article 19 (1) (a) so that one person's right to expression does not involve speech or expressions about others which eventually may affect the right to privacy of that other person. In *R. Rajagopal v. State of Tamil Nadu*⁴² the Court proposed certain canons upon which the definition of privacy may be based, thereby seeking to balance the right of privacy against the considerations of freedom of expression. These canons are:

"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." It is the fundamental right of every citizen to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing 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/she does so, h/she would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy"

This is the most definitive expression of the right to privacy as a fundamental right protected by Article 21. Further, the law contained in this particular canon clearly accepts a claim for damages for the breach of the right to privacy. In other words, a civil claim may be pursued to remedy for the violation of privacy. Therefore, the decision in the Auto Shankar Case establishes remedies for the breach of privacy in public law and private law.⁴³ An interesting development about the nature of right to privacy can be seen in this, as here the evaluation of right to privacy as a part of article 21 of one citizen is done against another fundamental right given under article 19 (1) (a) freedom of speech and expression of another citizen. Here, the court analysed the privatisation of right to privacy when there is a conflict between the fundamental rights of two citizens.

V. DEVELOPMENT OF THE SCOPE OF RIGHT TO PRIVACY

The right to privacy is protected against an individual also. Knight Bruce in *Prince Albert v. Strange*⁴⁴ upheld that, "a third party intrusion into one's privacy results in grave violation of right to privacy and hence implies need of legal protection to right to privacy.⁴⁵ When a citizens' fundamental right to privacy is breached by fellow citizens it is destructive of social order". Hence, the right to privacy is protected not only against the state but also against third parties including individuals.

In *Bodhisattwa Gautam v Subhra Chakraborty*, it is held that, "fundamental rights protect individuals from any arbitrary actions taken by both, the state as well as any individual"⁴⁶. The privacy right demands that the state must restrict itself from intervening into the matters of an individual, at the same time also restrict other

⁴² *R. Rajagopal v. State of Tamil Nadu*, SC 264 (1995)

⁴³ Kumar, *Privacy Law*.

⁴⁴ *Prince Albert v. Strange*, 64 ER 293 (1849)

⁴⁵ Aishwarya C.R., "Privacy In Cyber Space- Concerns And Challenges," *Bharati Law Review* 166 (2016): 175.

⁴⁶ *Bodhisattwa Gautam v Subhra Chakraborty*, 1 SCC 490 (1996)

individual from doing so. In such interference, the state can take necessary action against that individual who is affecting the privacy right of the other. Also, here the scope of right to privacy has been expanded as the case base evaluation will be done when there is conflict between right to privacy of one citizen versus the right to privacy of another. Thus, not only the protection is demanded between two fundamental rights but protection is also required when conflict between one fundamental right i.e. right to privacy as a part of article 21 of one citizen with another.

A. Technology and Right to Privacy

Technology has always intervened with the Right to privacy. Communication between two individuals via telephone, mobile and other communication software and devices have created a debatable issues related to Right to privacy relating of a person's correspondence. There have been cases of intercepting mails and telephonic communication of political opponents as well as of job seekers. Section 26(1) the Indian Telegraph Act, 1885⁴⁷ empower the central and state governments to intercept telegraphic and postal communications on the occurrence of public emergency in the interest of public safety.⁴⁸ Telephone tapping is an invasion of right to privacy and freedom of speech and expression and also government cannot impose prior restraint on publication of defamatory materials against its officials and if it does so, it would be violative of articles 21 and 19(1)(a)⁴⁹ of the Constitution". In *People's Union for Civil Liberties v. Union of India*⁵⁰ Kuldeep Singh J held that, "right to hold a telephonic conversation in the privacy of one's home or office without interference can certainly be claimed as right to privacy". In this case Supreme Court laid down certain procedural guidelines to conduct legal interceptions, and also provided for a high level review committee to investigate the relevance of such interceptions.⁵¹ In the year 2008 such caution has been thrown to winds in recent directives from government bodies as is evident from phone tapping incidents that have come to light.

In *State of Maharashtra v. Bharat Shanti Lai Shah*⁵², the Supreme Court held that, "interception of conversation though constitutes an invasion of an individual's right to privacy it can be curtailed in accordance with procedure validly established by law". The parameters for procedural validity describes that it must be fair, just and reasonable and not arbitrary, fanciful or oppressive. An authority cannot be given an untrammelled power to infringe the right to privacy of any person⁵³. In *Neera Radia* tape case⁵⁴ to use phone tapping as a method of investigation in a tax case seems to be an act of absurd overreaction. For so many journalists, politicians and industrialists to have their phone tapped without a rigorous process of oversight represents a gross violation of basic democratic principles. Therefore, the supreme court of India is of

⁴⁷ "Section 26 (1) of Indian Telegraph Act - Telegraph officer or other official making away with or altering, or unlawfully intercepting or disclosing, messages, or divulging purport of signals shall be punished with imprisonment for a term which may extend to three years or with fine, or with both".

⁴⁸ Shiv Shankar Singh, "Privacy And Data Protection In India: A Critical Assessment," *Journal of the Indian Law Institute* Vol.53 (4) (2011): 663-677, <http://www.jstor.org/stable/45148583>.

⁴⁹ Refer Article 19 of the Indian Constitution.

⁵⁰ *People's Union for Civil Liberties v. Union of India*, AIR SC 568 (1997)

⁵¹ Singh, "Privacy And Data Protection In India: A Critical Assessment."

⁵² *State of Maharashtra v. Bharat Shanti Lai Shah*, 8 SCC 13 (2008)

⁵³ *Directorate of Revenue v. Mohd. Nisar Holia*, (Cri) 415 1 SCC (2008)

⁵⁴ "Radia Tapes: Scribe, Media House Settle Defamation Case," *The Times of India*, January 2, 2019, timesofindia.indiatimes.com/articleshow/67353546.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst.

the firm opinion that tapping of conversation between two people via telephone is the violation of right to privacy of both the individual.

Another important growing technology is Artificial Intelligence (AI). The Report of the United Nations High Commissioner for Human Rights, 2021 mentions that, “the operation of AI systems can facilitate and deepen privacy intrusions and other interference with rights in a variety of ways”. Also in the *Derechos Digitales and Privacy International* report it is reported that, “AI tools are widely used to seek insights into patterns of human behaviour. With access to the right data sets, it is possible to draw conclusions about how many people in a particular neighbourhood are likely to attend a certain place of worship, what television shows they may prefer and even roughly what time they tend to wake up and go to sleep. AI tools can make far-reaching inferences about individuals, including about their mental and physical condition, and can enable the identification of groups, such as people with particular political or personal leanings. Many inferences and predictions deeply affect the enjoyment of the right to privacy, including people’s autonomy and their right to establish details of their identity. They also raise many questions concerning other rights, such as the rights to freedom of thought and of opinion, the right to freedom of expression, and the right to a fair trial and related rights”⁵⁵ The intensity of AI’s interference with right to privacy is high but the Indian courts and law is yet to identify it. Though, courts and law making bodies have already started analysing technological impact on privacy but exclusive reference of protection of right to privacy from AI is yet to get sighted.

B. Contemporary trends in Right to privacy: Informational Privacy

It is un-debatable truth that technology has been a vital tool for the social transformation of human beings. It has affected each and every facet of an individual’s life including his/her right to privacy as well. Every individual on one hand put efforts for keeping his or her personal life/affairs to himself, but on the other in this digital world through variety of platforms he/she himself/herself provides easy access to the netizens on his information. Today, by providing his personal information through technology an individual can escalate his productivity, employment opportunities, livelihood, recognition and social growth. Now the concept of “informational self-determination” has been developed wherein an individual’s autonomy in the information society can be acknowledged as a measure/method for his development.

In *Puttaswamy v Union of India*⁵⁶, Justice Nariman was of the view that “we can ground physical privacy in Article 19 (1) (d) and (e) read with article 21; privacy of choice in articles 19 (1) (a) to (c), 20 (3)⁵⁷, 21, and 25⁵⁸ and ground personal informational privacy under article 21”⁵⁹. Further he continued that, “the core value of the nation being democratic, for example would be hollow unless persons in a democracy are able to develop fully in order to make informed choices for themselves

⁵⁵ “The Right to Privacy in the Digital Age- Report of the United Nations High Commissioner for Human Rights,” United Nations General Assembly, 2018, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/239/58/PDF/G1823958.pdf?OpenElement>.

⁵⁶ *Puttaswamy v Union of India*, 10 SCC 1 (2017)

⁵⁷ “Clause (3) of Article 20 declares that no person accused of an offence shall be compelled to be a witness against himself”.

⁵⁸ “Article 25 guarantees the freedom of conscience, the freedom to profess, practice and propagate religion to all citizens.”

⁵⁹ *Infra* 1

which affect their daily lives and their choice of they are governed”⁶⁰ The judiciary wants to make it clear that not only the state must provide absolute freedom to its citizen about the medium on which he/she wants to share the information but also every individual’s right to make choices must include allowing him to use any medium to express his views including print medium, digital platforms, social media etc. This means, the state is bound to take precautions, protections and preventions in legal form through which the choice of using technology as a means of expression is not getting affected. Therefore, the Information Technology Act, 2005 is an example of one such effort put forth by the State to protect an individual’s right to choice of expression.

A choice of an individual is a material of his privacy and the state except in exceptional situations (as discussed earlier) cannot have a hold on individuals’ choices. The information or database created or generated by executing these freedoms assigned to an individual can become his/her property unless provided by law. Justice Chandrachud in *Puttaswamy’s case* was of the view that, “We are in an information age. With the growth and development of technology, more information is now easily available. The information explosion has manifold advantages but also some disadvantages. The access to information, which an individual may not want to give, needs the protection of privacy”⁶¹

Refereeing to the Puttaswamy’s judgment, the Supreme Court in *Indian Hotel and Restaurant Association (AHAR) and Ors. v The State of Maharashtra and Ors.*⁶², held that, “the data stored in CCTV footage is the personal information of the person”. The court is of the view that, “complete surveillance of activities through CCTV cameras inside the premises of dance bars is excessive and disproportionate. The monitoring, recording, storage and retention of dance performances of the girls causes unwarranted invasion of privacy and would even subject women bar dancers to threat and blackmail”. The CCTV footage can disclose the identity of the girl and thereby violates her right to privacy. The analysis of this judgement shows that in the conflict between the right to privacy of the women bar dancers and safety/security of the dance bar, the court gave priority to the right to privacy of the women bar dancer’s right to privacy versus the right to livelihood of the bar owner.

The above case can be precedential, but it has its limitation as the CCTV Surveillance is done by a private person. The point which can be discussed here is that what will happen if the surveillance is done by State? As now in India the Government through its police departments are providing CCTV camera and other surveillance devices at all the public and common places which monitors, records and store people’s information, then whether this surveillance affects the right to privacy of the people. Is it justified that for getting protection and safety within the state, citizens need to surrender privacy to the state? It will be interesting to see the development of right to privacy with regard to CCTV surveillance in future cases.

Facebook in 2017 admitted that, “the data of 87 million users, including 5 lakh Indian users, was shared with Cambridge Analytica through a third-party application that extracted personal data of Facebook users who had downloaded the application as well as their friends, is demonstrative that users did not have effective control

⁶⁰ Puttaswamy, *Right to Privacy*.

⁶¹ Per D.Y. Chandrachud J. at Para 457, *Puttaswamy v. UOI* (2017) 10 SCC 1

⁶² *Indian Hotel and Restaurant Association (AHAR) and Ors. v The State of Maharashtra and Ors*, 1 SCC 45 (2019).

over data”⁶³ According to [statista.com](https://www.statista.com) there are 326.1 million social media users in India, out of which 260 Million are Facebook users till April 2019. The [statista.com](https://www.statista.com) has predicted that India will have 448 million social media user by 2023⁶⁴. From these 326.1 million media users’ humongous data in the form of photo, status update, Twitter post and blog entry by and about them will be posted, shared, re-shared and eventually will be stored forever online. Unfortunately, an individual who is posting and sharing his data, does not have any control over his personal information once it is posted in the social media platform. Recently in 2021, the Ministry of Electronics & Information Technology, GOI issued the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 wherein the Significant Social Media Intermediaries like Facebook, WhatsApp can now block the information posted by an individual upon a court or government order. The SSMI are subject to ‘duties of care’ and ‘notice and take down’ obligations to remove illegal content.

Technology has the competence to generate extremely big data sets in the form of digital footprints, traceability and data trails which can be analysed computationally to reveal patterns, trends, and associations, especially relating to human behaviour and interactions across globe. According to the report of the committee on a Free and Fair Digital Economy Protecting Privacy, Empowering Indians, “Data gathering practices are usually opaque, mired in complex privacy forms that are unintelligible, thus leading to practices that users have little control over. Inadequate information on data flows causing tangible harms are unfortunate reality now”.⁶⁵ The Internet has brought new concerns about privacy in an age where computers can permanently store records of everything. In India under the Aadhaar Card Act, through UIDAI the Government is authorized to collect, use, transfer, store and processing of both biometric as well as demographic data of the citizens, wherein the citizens absolutely don’t have any control of this data. Though the action of state to gather data through UIDAI is justified as a state action towards “welfare of the citizen” but the parallel set of questions about the how to protect informational privacy, in what circumstances the right to erase, right to be forgotten will be considered, what is the state’s obligation and liability towards the protection of data collected through UIDAI remained unanswered.

Further it is noteworthy to mention here the role of Significant Social Media Intermediaries (SSMI) and its impact on privacy. As per IT Rules 2021, the SSMI is required to enable the identity of first originator⁶⁶ of the message. This is known as traceability. However, these Rules also do not specify any timeline in terms of how far back in time the messaging service will be required to check for determining the first originator⁶⁷. This will lead to data retention which is primarily against the principle of data minimisation⁶⁸. A matter related to traceability and privacy protection is

⁶³ “Government of India, Report: Committee on A Free and Fair Digital Economy Protecting Privacy, Empowering Indians” (New Delhi, 2017).

⁶⁴ www.statista.com. Accessed June 06, 2019.

⁶⁵ “Government of India, Report: Committee on A Free and Fair Digital Economy Protecting Privacy, Empowering Indians.”

⁶⁶ “...a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary”

⁶⁷ https://prsindia.org/billtrack/the-information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021#_edn26

⁶⁸ “Data minimisation means limiting data collection to what is necessary to fulfil a specific purpose of data processing, and has been recognised as an important principle for the protection of personal privacy.”

pending with the supreme court in *Facebook Inc vs Antony Clement Rubin*⁶⁹. It will be interesting to follow this case as it may open a Pandora's box for other issues related privacy and technological interface in India.

Another ambit of right to privacy and technological interface was recently discussed in *ABC vs. Union of India & Ors*⁷⁰. The Bombay high court had made a maiden attempt in identifying the "right to be forgotten" as a significant part of right to privacy and recognised right to be forgotten as part of Article 21 of the Constitution. In the present case, the petitioner mentioned that the litigation of 2013 resulted in his acquittal and the resultant order was uploaded to the court's website along with his personal details. The petitioner requested the court to remove/mask his name and personal details from this order as it is affecting his right to privacy. Also, the matter is completely sorted out now and both the parties have moved on from it. In this case the court directed the registrar of high court to remove the name and personal details in the earlier order and judgment of 2013. Though the high court has set the limitation to this judgment by specifically mentioning that the above order is applicable only for this case depending upon the circumstances of this case but certainly the court did not deny the urge for inclusion of right to be forgotten as a part of right to privacy of an individual.

C. Not absolute right – Limitations of Right to Privacy in India

However, the right to privacy is not an absolute right. This right is subject to reasonable regulations made by the State to protect legitimate State interests or public interest. However, when it comes to restrictions on this right, the drill of various articles to which the right relates must be scrupulously followed. For example, if the restraint on privacy is over fundamental personal choices that an individual is to make, State action can be restrained under Article 21 along with Article 14 if it is arbitrary and unreasonable; and under Article 21 read with Article 19(1)(a)⁷¹ only if it relates to the subjects mentioned in Article 19(2)⁷² and the tests laid down by the Supreme Court for such legislation or subordinate legislation to pass muster under the said article. Each of the tests evolved by the Supreme Court, qua legislation or executive action, under Article 21 read with Article 14; or Article 21 read with Article 19(1)(a) in the aforesaid examples must be met in order that State.

VI. CONCLUSION

The journey of right to privacy as a fundamental right is exciting in India. From begin absolutely unconsidered and ignored right to privacy before the independence period till recently considering the different facets and elements of right of right to privacy as a part and parcel of fundamental right is an interesting development. Since the inception of our constitution, the members from legislative and judiciary

⁶⁹ *Facebook Inc vs Antony Clement Rubin*, Diary No 32478, (2019)

⁷⁰ *ABC vs. Union of India & Ors*, Writ Petition No. 3499 (2021).

⁷¹ "Article 19(1) in The Constitution Of India 1949 - (1) All citizens shall have the right (a) to freedom of speech and expression".

⁷² "Article 19(2) in The Constitution Of India 1949 - (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence".

through series of enactments and judgements has shown a comprehensive and wide range approach in recognising, protecting, regulating and conserving the right to privacy as a part and parcel of fundamental right in the democratic state. In tune with the constitution of India, the concept of privacy has evolved and developed both horizontally as well as vertically. Horizontally (within individual) it has included sexual autonomy as part of privacy, whereas vertically (state and individual) it imposes an obligation on state to protect and conserve right to privacy of every citizen. On the basis of above discussion, it is clear that right to Privacy is an integral part of Right to Life and Personal Liberty and other freedoms guaranteed in Article 19 and 21 of the Constitution. Privacy rights is well accommodative of the technological developments and the medium whether online, print or media does not matter for its inception and protection. The recently development about the rules and regulation of SSMI is a progressive step towards protection of right to privacy in the digital age, whereas these rules are at the preliminary stage and its actual impact is yet to be seen. Right to privacy of the citizen must prevail at every point of time.

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