CONCLUSION AND SUGGESTIONS

Conclusion-

After analyzing the topic, “Role of Media and Right to Privacy in India- a Legal Perspective”, it is appropriate here to summarize the main points discussed in previous chapters and to offer some suggestions made on the basis of above study.

Privacy is a culturally limited concept. It varies with times, the historical context, the state of culture and the prevailing judicial philosophy. The question, ‘What is privacy’ has therefore, remained a problem for those who have made an attempt to define it and a few scholars have even abandoned their effort to define it. Hence, the concept of privacy does not lead it easy to logically define. The difficulty arises out of the fact that it is not unitary concept but is a multidimensional concept deserves more for enumeration than definition. There is no legal, philosophical consensus on the definition of privacy. For some it is an autonomy, for others a psychological state or condition of being apart from others or seclusion etc.

According to etymological meaning, privacy has been taken from Latin term ‘privatus’ which means ‘separated from the rest’, deprived of something, esp. office, participation in the government’, and from ‘privo’ which means ‘to deprive’, is the ability of an individual or group to seclude themselves or information about themselves and thereby reveal themselves selectively. 'Privacy' is concerned with a man's dignity and

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liberty. It is a fundamental human right guaranteed by international laws. It has been an inalienable and integral part of human life since long. Initially, it had a very narrower scope as such thought to be included only 'right to be let alone'. Later, the increasing maturity levels of the democratic systems, rapid strides in science and technology, made its scope wider. Now the right to privacy covers many aspects such as, freedom of thought, control over one's body, identity, solitude in one's home, control over self-information, freedom from surveillance, protection of one's reputation, and freedom from searches etc. The USA is the motherland of right to privacy. Privacy's origin can be traced back to an article written by Warren and Brandeis published in 'Harvard Law Review' in 1890, in which the concept of Right to Privacy was discussed in detail for the first time. The concept was first proposed in December 1890, in a Harvard Law Review article written by two young lawyers who had roomed together in Cambridge — Samuel Warren and Louis Brandeis. Brandeis would later become one of the legendary justices of the U.S. Supreme Court. Warren's family was prominent in Boston society. They threw lavish parties. Press gossips constantly pestered the family and tried to spy on their parties. Warren and Brandeis published their novel idea in a Harvard Law Review essay. "Instantaneous photographs and newspaper enterprise," they wrote, "have invaded the sacred precincts of private and domestic life."

The popular, pioneer cases on the Right to Privacy i.e., Plessey v. Ferguson-1896\(^4\) and Paolo Pavesich v. New England Mutual Life Insurance Company-1905\(^5\) of the USA, reflect the nascent stage and represent the foundations of right to privacy. While dealing with the subject of privacy William Cohen and John Kaplan explained in this way,

\(^4\) 163 U.S. 537 (1896).
\(^5\) 122 Ga. 190, 50 S.E. 68 (1905).
Once a civilization has made a distinction between the 'outer' and 'inner' man, between the life of the soul and the life of the body, between the spiritual and the material, between the sacred and profane, between the realm of God and the realm of Caesar, between the church and the State, between rights inherent and inalienable and the rights that are in the power of government to give and take away, between public and private, between society and solitude, it becomes impossible to avoid the idea of privacy by whatever name it may be called- the idea of a private space and remain himself\(^6\).

Cohen and Kalpan have almost covered all the dimensions of privacy but the task has not become easy to define privacy in exact terms. There may different types of invasions into privacy- privacy of physical autonomy, psychological being, space freedom, disclosure of embarrassing facts, placing into false light, violation of copyright, illegal search and seizure, theft of identity or name and so on. For these violation the protection is available in different laws- Constitutional Law, Criminal Law, Contract Law, Law of Torts, Customary Law, Information Technology Law, Intellectual Property Law etc.

The privacy can be defined further as 'As autonomy or control over intimacies of personal identity.'\(^7\) It can also be described as 'The Rightful claim of the individual to determine the extent to which he wishes to share of himself with other and his control over the time, place and circumstance to communicate with other. It also means the individual's right to control dissemination of information about himself, it is his own personal possession'. Another author defines privacy as a "Zero relationship between two or more persons in the sense that there is no

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\(^7\) Gaiety.
interaction or communication between them if they so choose." Judge Cooley calls it ‘the right to be let alone’. According to Charles Fried, ‘Privacy is not simply an absence of information about others; rather it is the control we have over information about ourselves... The person who enjoys privacy is able to grant or deny access to others... Privacy, thus, is control over knowledge about oneself.’ Arthur Miller defines privacy as a control over information, Privacy is the individual’s ability to control the circulation of information relating to him- a power that often is essential to maintaining social relationship and personal freedom.

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

The concept is used to describe not only rights purely in the private domain between individuals but also constitutional rights against the state. The former deals with the extent to which a private citizen (which includes the media and the general public) is entitled to personal information about another individual. The latter is about the extent to which government authorities can intrude into the life of the private citizen to keep a watch over his movements through devices such as telephone-tapping or surveillance. This aspect also concerns the extent to which government authorities can exercise control over personal choices: for instance, by determining whether a pregnant woman has the right to

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10 Id Kiran Deshta.
abortion,\textsuperscript{11} or whether an HIV-infected person has the right to marry\textsuperscript{12} or have children.

Hence, whether the term privacy implies positive or negative meaning depends upon the regional and cultural background. Privacy is a dynamic concept which takes its breadth and width from the culture it thrives in. It even starts before birth and may end after death. It is integral part of human dignity and has its basis in the natural rights. It is one of the basic human right.\textsuperscript{13}

The right to privacy has been brought into conspicuous prominence in the legal literature in the view of perpetuating debate amongst the legal thinkers and judges. The right to privacy is not specifically spelled out in our Constitution. The judges have considered the existence of such a right in a number of cases and considered it as implied in the fundamental freedom to life and personal liberty through judicial interpretations. Interpretation, in the words of Gray\textsuperscript{14}, supplements the declaration and fills the vacant spaces by the same process and method that have built up the customary law....The function flourishes and persists by virtue of the human need to which it steadfastly responds.

The importance of media arises from the importance of information, from the need of the human beings to stay informed. In India, the first recorded discussion of dissemination news can be traced back to Kautilya’s \textit{Arthasastra}. In the 16\textsuperscript{th} century, the Christian missionaries brought the printing press to India. By 1780, India had its first newspaper when James Augustus Hicky, an ex-employee of the trading firm East

\textsuperscript{11} \textit{Roe v. Wade}, 410 US 113 (1973)

\textsuperscript{12} \textit{Mr ‘X’ v. Hospital ‘Z’}, (1998) 8 SCC 296.

\textsuperscript{13} Article 12 of Universal Declaration of Human Rights.

India Company in Kolkata, brought out the ‘Bengal Gazette’\(^{15}\). Later on in the far end of the 19\(^{th}\) century and on the advent of the 20\(^{th}\) century, newspapers became proponents of India’s ongoing freedom struggle. From the early newspapers to cable television, news channels media gas assumed an even bigger role. It now acts as a bridge for dissemination of information, news, trends across the world. “In a democratic country like India, right to press is an important right but is not an unlimited privilege for its own sake. It is a limited right to be exercised for public good.”\(^{16}\)

In the modern world, we are undeniable against the media power in the present, which nearly absolutely influence on our life and society. Every day we get the instant information from all over the world through media: newspaper, magazine, television, and Internet. The media already globalize industry, which provided us the interesting and updated news in our society. The information that the media give us is necessary for our daily life and the future life decision. We watch television, read newspaper and magazine for entertainment, knowledge and updated events of running world. We access the Internet with overwhelming information and business issue. Each of generation consumes the product from media in the difference ways. Technology development contributes the media to become the important part of our lives. Everything and every events happen around us are brought to people’s acknowledgement so fast since the technology has stepped into the advance level such as some of equipments like digital camera, live news report via Internet and satellite network. Because of those high advantages of media technology, some questions will follow along; how we can manage or what we should

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\(^{16}\) Introduction to the Two Hundredth Report of Law Commission of India, presented on August 31, 2006.
manage with the media for proper influence on our lives when the world exists in the plentiful Information Age.

How can we forget to given a mention of the Double Murder story\(^\text{17}\) which has seen trial & conviction by media, in an extended, unrestrained & unrelenting form? Coming out of jail where he was held for fifty days on suspicion of murdering his own daughters, dentist Rajesh Talwar was seen and heard pleading to the media to let him spend time with family. In the close of two months, that father was innocent, the media speculated day in and day out about the father’s guilt, about the reputation of the young girl, in the process tarnishing reputational around. The commercialisation of the press & electronic media also calls for intense debate.\(^\text{18}\) In India, the Legislature itself recognized the need of protecting

\(^{17}\) *Arushi Murder case; Nupur Talwar v. CBI & An. AIR 2012 SC 1927.*

\(^{18}\) A group of 40 distinguished legal experts and media representatives convened by the International Commission of Jurists (ICJ), at its Center for the Independence and Lawyers (CIIL), and the Spanish Committee of UNICEF met in Madrid, Spain between 18th-20th of January 1994. The objectives of the meeting were:
1. To examine the relationship between the media and judicial independence as guaranteed by the 1985 UN principles on the independence of Judiciary.
2. To formulate principles addressing the relationship between freedom of expression and judicial independence.

After long debate, the Commission drafted what are recognized as minimum standards of freedom of expression. These Ares-

1. Freedom of expression (as defined in Article 19 of the Covenant), including the freedom of the media-constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial without violating the presumption the presumption of innocence.

2. This principle can only be departed from in the circumstances envisaged in the International Covenant on civil and Political Rights, as interpreted by the *Siracusa Principles*, 1984 on the limitations and derogation provisions in the International Covenant on Civil and Political Rights.
media against the threat of contempt proceeding by incorporating Section 3 in the Contempt of Courts Act, 1971. Even pre-trial publications have granted immunity under Section 3(2) and Explanation. However, parallel investigations have not been favourably viewed by the courts. In *Saibal v. B.K. Sen*¹⁹ the Supreme Court said: "It would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation. This is because; trial by newspapers, when a trial by one of the regular tribunals of the country is going on must be prevented. The basis for this view is that such action on the parts of a newspaper tends to interfere with the course of justice.’ The Fourth Estate can bully their way into anybody’s life and be voyeuristic about it. They can point fingers at anyone and they can cast aspersions on any institution in the name of the fundamental right granted to them. Every Constitutional and statutory right including privacy of individuals have been trampled upon with impunity by this class.²⁰

According to Justice J.S. Verma²¹, “Reporting should be objective-it should be of actual facts, no sensationalism, no opinion mixed with facts- so that you inform people.”

3. The right to comment on administration of justice shall not be subject to any special restrictions.

The Commission emphasized the need of maintaining in balance between independence of Judiciary, freedom of press and respect of the individual particularly, of minors and other persons in need of special protection.

¹⁹ AIR 1961 SC 633


²¹ *I am against any restriction*, Interview with Justice J.S. Verma, former CJI, Frontline, June 1, 2012 at p. 11.
The restrictions imposed on liberty and freedom should not be considered as hurdle in the progress of the individual and the nation if those are imposed to harmonise the social equilibrium. About the freedom of speech to quote the Constitutional assembly Debate\textsuperscript{22}, Good citizenship implies restrictions-

"Satyam Bruyat Priyam Bruyat
Na Bruyat Satyamapriyam."

Meaning thereby, “be truthful and sweet in speech, but do not speak out the unpleasant truth. Anyone has the freedom to state the truth but not the freedom to speak out the unpleasant truth.” This is a restriction and good citizens have to accept this restriction.

At another place he quoted,

"kavikin Arth Akhar Bal Sancha,
Kartal Tal Gatihin Nat Nacha”,

Meaning thereby, dancer dances to the measure of clapping. The poet is bound by the significance of words. A dancer dances according to certain fixed timing and never makes a false movement. His movements are in harmony with the \textit{tal}. When a nation or a community attains freedom, it begins to bear the responsibility on its shoulders. We cannot therefore say that restrictions that have been imposed will retard our progress.

At the outset of the study, in Chapter I, the researcher introduces the subject with meaning and nature of the right to privacy. As the topic of the study is Role of Media and Right to Privacy, the relationship of privacy and media has also been studied. The features of rights are also

\textsuperscript{22} Sh. Algu Rai Shastri, Constitutional assembly Debates, Book no. 2, Vol VII 4\textsuperscript{th} Nov. 1948 - 8 Jan. 1949, Lok Sabha Secretariat.
taken up in this chapter. What are the arguments against the privacy protection has also been discussed in the chapter at length. Side by side, the threats to privacy in the present age of information is also discussed. The rights to privacy has been defined, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attack." In *Olmstead v. United States*[^24], S.C of the US, declared 'man’s house is his castle', the right to privacy has not only been declared as a basic human right but has occupied its space in the Constitutions and Statutes of the nations world while. In India although the right to privacy has not been spelled out in the Constitutions but through Constitutional interpretation and various provisions under different statutes.

In Chapter II of the study, that is Historical Perspective of Media Freedom and Right to privacy in India. The evolution of Media freedom is understood through the development of this concept in the USA, U.K. as well India. "The liberty of the press consists in printing without any previous licence, subject to the consequences of law"[^25]. From the early newspapers to cable television, news channels media has assumed an even bigger role. The importance of media arises from the importance of information, from the need of the human beings to stay informed, but sometimes this desire results into unauthorized breach of individual’s right to reputation and privacy. What is the tension between the media freedom and right to privacy is studied therefore. In order to establish the claim for privacy against media encroachment, it is appropriate to understand the concept of privacy from historical perspective. There is an

elaborate discussion on the evolution of Right to Privacy as natural right and thereafter as a human right. The idea of natural law was proclaimed by John Locke in his essay on “Civil Government” in 1664. The Greeks and Romans too had an idea of the human rights. The first codification of Human rights was by King Alfonse in 1188 A.D. The Magnacarta of 1215 A. D. could be called as the mother of the human rights including the right to privacy. The origin of the modern human rights especially in the times of American Declaration of independence (1776), the Virginia Declaration of Rights (1776) and the American Bill of Rights (1791), the principles of liberty, equality and fraternity at the time of French Revolution. The development and the growth of the right to privacy and role of United States in different phases has also been emphatically described, Further in this Chapter, the Indian origin of right to privacy through the openings of different eras, viz- Hindu, (Ancient and Modern), Islamic, British and Post- Independence, has been described in detail.

In Chapter III, Media Freedom and Right to Privacy in India-Constitutional Protection and Judicial Response, the researcher studies development of right to privacy through the jurisprudential aspect. The interpretation of Right to life and personal Liberty enshrined under Article 21 has expended to cover the Right to Privacy under it. The balance between Freedom of Speech and Expression and Right to Know and The Right to privacy is also the focal point of study. Latest pronouncements of the Honourable Supreme Court has been arranged at suitable places in the Chapter26.

Chapter IV Statutory Protection to Right to Privacy envisages locating and searching the statutory provisions available in India for privacy protection. For violations against privacy, the protection is available under different laws- Constitutional Law, Criminal Law, Contract Law, Law of Torts, Customary Law, Information Technology Law, Intellectual Property Law etc. The researcher also emphasized the need for the comprehensive piece of legislation for privacy guarantee. There is also mention of the Right to Privacy Bill, 2010. It creates a statutory Right to Privacy by means of a broad definition and then creates specific of protections for it. Recognizing the Right to Privacy not to be absolute, the Bill identifies various privacy breaches that are permitted. In the Bill, certain prohibited acts are also identified for which civil remedies as well as criminal sanctions are created. This Bill provides for the Compensation, civil remedy and Criminal remedy. However, it could not have passed until date.

Chapter V Role of Media vis-à-vis Right to Privacy in India, that is the main theme of the theses, incorporates the importance of freedom of press, its origin and development as well as its limitations. This part of the study brings about the Constitutional, Statutory and judicial efforts to establish equilibrium between freedom of speech and expression and right to privacy. Nevertheless, the study of this Chapter suggests for effective tools to put the balance equal.

Chapter VI undertakes to visualize the right to privacy in a global perspective. In this Chapter researcher has discussed the law on privacy of the USA, UK, France and China. The relationship of right to Privacy and Media is also been considered. The purpose to select the USA and UK

is to understand and analyze the common law basis of right to privacy. France has been chosen to represent the continental legal system. The choice of China was made because due to globalization and free economy the traditionally closed countries are coming closer, hence it is interesting to study the system which looks different from us and whether our prejudices are correct or not? Conclusion and Suggestions, puts forth conclusion and suggestions based on analyzed study.

**Suggestions**-

On the basis of study, in the preceding chapters, the following suggestions are being submitted for the future course of action by the researcher-

1. There is an imminent need for a comprehensive privacy legislation, which would ensure the protection of personal and sensitive data of people, as well as protection against the privacy violations by the government and the individuals. There is also the need for an established regulatory body and monitoring body. The law must include the provisions for civil, criminal and compensatory remedies. There exists in India an impending need to frame a model statute, which safeguards the Right to Privacy of an individual, especially given the emergence of customer-service corporate entities, which gather extensive personal information relating to its customers. It is evident that despite the presence of adequate non-mandatory, ethical arguments and precedents established by the Supreme Court of India; in the absence of an explicit privacy statute, the right to privacy remains a *de facto* right, enforced through a circuitous mode of reasoning and derived from an expansive interpretation of either Constitutional law or Tort law.

2. In order to avoid the encroachment on privacy, there is current need to have proper media regulation. However, there are vigorous arguments
against such restriction, but absolute freedom may prove threatening to individual freedom of privacy behind the vague shelter of public interest.

3. Media should be more careful of its conduct while reporting, as to the intrusion of privacy of persons without any justified and weighty reason. The special care is required in cases of sexual offences against a female.

4. Media have earned bad name and Apex court’s ire for media trial at a number of times. To lift the face of media it looks useful that in India also there should be provisions for the complete recording of the cases pending before the courts, like the USA, so that the errors of interpretation during media reporting of the status of sub-judice cases may be minimized.

5. The journalists must have training and awareness for the respect of privacy of the persons. There are always limitations on the right to know, of the public and the media must understand this Lakshman-Rekha.

6. The self-regulation by the media may also be proved very useful, if there in proper internal mechanism. The electronic media be brought under Press Council of India and more teeth should be given to the council. The norms of Journalistic conduct must have sanctioning impact.

7. The infamous nexus of big media houses and famous journalists in events life Radia leaks case evident the need of strong law to tackle such nexus so that the freedom of media may not be looked with suspicion.

8. To prevent breach of privacy there are certain steps, which the journalist can take. The journalist has to verify whether the information is in public domain. If not, then the publication of the private information can be done only after the person regarding whom the information has given his consent for publication of the information. Where the consent is not obtained, then the publication of the private information can only be done in the case where the protection of the public interest outweighs the protection of the right to privacy. There should be provision in law
recognizing the grant of compensation in case of breach of privacy by media.

9. The urgency a statute is augmented by the absence of any existing regulation, which monitors the handling of customer information databases, or safeguards the Right to Privacy of individuals who have disclosed personal information under specific customer contracts viz. contracts of insurance, credit card companies or the like.

10. India is set to emerge as a global hub for the setting up and operation of call centres, which serve clients across the world. Extensive databases have already been collated by such corporate, and the consequences of their unregulated operations could lead to a difficult situation for customers in India who are not protected by any privacy statute, which sufficiently guards their interests.

11. Corporates would need to establish a system whereby all information disclosure systems are duly audited/accounted and monitored, keeping in view the rationale/occasion for every disclosure made. Corporate could include express clauses in their agreements, which include an express authorization from the individual allowing the companies to use/disclose personal information for its own internal purposes or that of its affiliates or group companies.

12. A comprehensive workplace privacy statute is needed to limit computer surveillance, telephone monitoring, searches, physically invasive testing, audio-video surveillance and invasive questionnaires. Electronic monitoring of job performance must be accompanied by a simultaneous signal that such information is taking place.

13. Disclosure of personal information by the government must be prohibited. It must be remedied by injunction and damages.

14. It is indeed a cause of concern that that too many telephone calls are being intercepted by various intelligence and security agencies. Conversations between individuals, who had every reason to believe that what they were saying to each other was private, has been leaked to the
media and have been the source of many a scandal in recent times. No one would argue with the security agencies in case they were to focus their activities on known terrorist or other national security threats. However the tapping of lakhs of phones is a dangerous trend and citizen have every reason to demand a more transparent and less intrusive system so that the legitimate concerns of national security can be addressed, even as individual and corporate privacy is not impinged upon.

15. Females, aged persons and children are more vulnerable to privacy violations. These groups need the special privacy protection, not only in terms of law but also in terms of implementations.

16. The data protection law requires more teeth to tackle the threats to privacy in the present age of sophisticated technology.

17. There is also need for the advanced training of police personnel, especially at the lower lever to handle the cases of privacy violations through use of technology, such as internet, social networking, e-banging, ATM and credit card frauds etc.

18. The UID system should be used for limited purpose for which the personal information is gathered. Any such information when received must be protected by the declaration of purpose for which it is going to be used. Otherwise, there should be injunctions and checks against any such disclosures.

19. Awareness for our own privacy right and sensitivity for other’s such right should be inculcated through proper publicity and awareness by education system and mass media.

20. The law of tort is not very much developed in India due to numerous factors. It is the need of the day civil law is codified and the steps to be taken for strengthening the law of civil wrong, so that wrongs saucy as privacy violation may be addressed in better way.

21. Sharing is life but the desire to connect is basically an urge. Social networking sites have made the people addict to such networking. Although there are suggestions from the different sections of the society
to put a check on the contents of such sites, on the other hand there are arguments that people do not take these comments seriously. However the user should be very careful while using these sites and the private contents should not be disclosed. There is also need of proper monitoring of such sites as to the use of these sites by the children, through the parents, to save them from the potential threats to privacy.

7.3 Concluding Remarks-

Since the onset of liberalization where private players have aggressively entered the market for seeking more viewers and readers, the conceptual understanding of ‘freedom of press’ has also undergone some changes. In an environment of intense competition between media-establishments, reporting often turns to distortion of facts and undue sensationalisation. The pursuit of commercial interests also encourages intrusive newsgathering methods that frequently impede upon the privacy of the people who are the subject of such coverage. In respect of court proceedings, the problem finds it worst manifestation in the coverage of sub judice matters where the reporting can be clearly prejudicial to the interests of the litigating parties. This problem is heightened in instances of high-profile criminal investigations and trials, especially in matters involving celebrities – where media reporting can shape popular sentiments and hence create undue pressure on judges and lawyers. In such a scenario, there is an urgent need for the news media to respect the balance between the ‘freedom of press’ and the ‘right to fair trial’.

In conclusion, the issue that remains to be addressed is not only the shape of the prospective privacy legislation in India, or its details, but the

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need to put in place a privacy law enforcement regime that addresses the emergent privacy issues, in the context of latest technical modes of communication, within a reasonable period. As Ronald Dworkin said in his article "Objectivity and Truth: You’d Better Believe It", “We want to live decent, worthwhile lives, lives we can look back on with pride not shame. We want our communities to be fair and good and our laws to be wise and just. These are enormously difficult goals, in part because the issues at stake are complex and puzzling." Complex as it may be, the concept of privacy protection is an area that needs our lawmakers attention, and rightly so.²⁸