CHAPTER- 1

INTRODUCTION

1.1 Introductory-

“The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, the man, under the reeding influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprises and invention have, through invasion upon his privacy, subjected him to mental pain and distress, for greater than could be inflicted by mere bodily injury,”¹ The famous words of Warren and Brandeis, clearly specify the threat to privacy protection in present age, need for its protection and difficulty in actually protecting it. Today we are living in the age of information, and in some cases, it may take sacrifice of individual’s expectation of his personal privacy. Privacy which is the part of every aspect of life, be it privacy of home, food, sexual relation, psychological need of privacy or religious privacy. Not only human beings but the animals also need privacy. The Homo sapiens have strong justifications for privacy security, in home, office and even to some extent at public place.

The pronouncement of right to privacy through the Declaration of Human Rights is worth mention here-

“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."\(^2\)

The recognition to Right to privacy under Universal Declaration of Human Rights sets forth the basic human requirement regarding the privacy about the development of one's personality & for preservation of one's self respect. There are certain arenas of person's life which he wish no to be interfered by anyone.

Lord Denning has forcefully argued for the recognition of a right to privacy thus:\(^3\)

"English law should recognize a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require .It should also recognize a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."

In present age the recent development of science & technology and accessibility to information has created, challenges to this right to privacy & it has become difficult to maintain the dignity of individual.

The law ensures the protection of personal & property rights of the individuals through the assistance of the state. A number of rights are protected specifically while others are supposed to be protected by the implication of law. The struggle for implementation of law is as old as

human civilization itself. Before initiating the inquiry into the nature and origin rights it will not be out of place to quote the famous text by Ronald Dworkin,

“The language of rights now dominates political debate in the United States. Does the Government respect the moral and political rights of its citizens? Or does the Government’s foreign policy, or its race policy, fly in the face of these rights? Do the minorities who rights have been violated have the right to violate the law in return? Or does the silent majority itself have rights, including the right that those who break the law be punished? It is not surprising that these questions are now prominent. The concept of rights, and particularly the concept of right against the Government, has its most natural use when a political society is divided, and appeals to co-operation or a common goal are pointless”.

So now, the public is expecting and asserting the rights against government.

1.2 The Rights of Citizens-

Now the issue is not, whether citizens have some moral rights against their government. It seems accepted on all sides that they do. Conventional lawyers and politicians take it as a point of pride that our legal system recognizes, for example, individual rights of free speech, equality and due process. They base their claim that our law deserves respect, at least in part, on that fact; for they would not claim that totalitarian system deserve the same loyalty. Some philosophers, of course, reject the idea that citizens have rights apart from what the law happens to give them. Bentham thought that the idea of moral rights was ‘non-sense on stilts’. But that view has never been of our orthodox

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4 Dworkin considered rights in context of America.

political theory, and politicians of both parties appeal to the rights of the people to justify a great part of what they want to do.\textsuperscript{6}

It is much in dispute, of course, what particular rights citizens have. Does the acknowledged right to free speech, for example, include the right to participate in nuisance demonstrations? In practice the government will have the last word on what an individual’s rights are, because it police will do what its officials and courts say. But they does not mean that the Government’s view is necessarily the correct view; anyone who things it does must believe that men and women have only such moral right as Government chooses to grant, which means that they have no moral rights at all\textsuperscript{7}.

\textbf{1.3 Meaning of Rights-}

To take the Right to privacy & Role of media as a subject matter of research it is necessary to discuss the meaning of Right first.

To say that a man has a right to something is roughly to say that it is right for him to obtain it. It may entail that others ought to provide him with it, or that they ought not to prevent him getting it, or that they ought not to prevent him getting it, or merely that it would not be wrong for him to get it.\textsuperscript{8}

Rights are concerned with interests, & indeed have been defined as interests protected rules of right, that is by moral or legal rules. Yet rights & interests are not identical. Interests are things which are to a man are advantage: he has an interest in his freedom or his reputation. His rights to these, if he has such rights, protect the interests, which accordingly form the subject of his rights but are different from them. To say he has

\textsuperscript{6}Ibid.

\textsuperscript{7}Ibid p. 184-185.

\textsuperscript{8}Fitzgerald P J, \textit{Salmond on Jurisprudence}, (Sweet & Maxwell ltd., London, 2008, 12\textsuperscript{th} ed)
an interest in his reputation that it is to his advantage to enjoy a good name; to say he has a right to this is to imply that others ought not to take this from him.\textsuperscript{9}

Now since law & morals are primarily concerned with human interests, every wrong involves some interest attacked by it, & every duty involves some interest to which human interests, every wrong involves some interest attacked by it, & every duty involves some interest to which it relates, & for those protections it exists. The converse, however, is not true. Every attack upon an interest is not a wrong, either in fact or in law, nor in respect of every interest a duty, either legal or natural. Many interests exist de facto & not also de jure; they receive no recognition or protection from any rule of right. The violation of them is no wrong, & respect for them is no duty. For the interests of man conflict with each other, it is impossible for all to receive rightful recognition. The rule of justice selects some for protections, & the others are rejected. Whether his interest amounts to a right depends on whether there exists with respect to a duty imposed upon any other person. Rights like wrong and duties are either moral or legal. A moral or natural right is an interest recognized and protected by a rule of morality - an interest the violation of which would be a moral wrong, and respect for which is a moral duty. A legal right, on the other hand, is an interest recognized and protected by a rule of law – an interest the violation of which would be a legal wrong done to him whose interest it is, and respect for which is a legal duty.\textsuperscript{10}

Bentham set the fashion still followed by many of denying that there are any such things as natural rights at all. All rights are legal rights and the creation of the law. “Natural law, natural rights”, he says (d), “are two kinds of fictions or metaphors, which play so great a part in books of legislation, that they deserve to be examined by themselves. . . Rights


\textsuperscript{10} Salmond on Jurisprudence, \textit{Ibid}. 
properly so called are the creatures of law properly so called; real laws give rise to real rights. Natural rights are the creatures of natural law; they are a metaphor which derives its origin from another metaphor.” Yet the claim that men have natural rights need not involve us in a theory of natural law. In so far as we accept rules and principles of morality prescribing how men ought to behave, we may speak of there being moral or natural duties; and in so far as these rules lay down that men have certain rights, we may speak of moral or natural rights. The fact that such natural or moral rights and duties are not prescribed in black and white like their legal counterparts points to a distinction between law and morals; it does not entail the complete non-existence of moral rights and duties.\textsuperscript{11}

It is to be noticed that in order that an interest should become the subject of a legal right, it must obtain not merely legal protection, but also legal recognition. The interests of beasts are to some extent protected by the law, inasmuch as cruelty to animals is a criminal offence. But beasts are not for this reason possessed of legal rights. The duty of humanity so enforced is not conceived by the law as a duty towards beasts, but merely as a duty in respect of them. He who ill-treats a child violates a duty which he owes to the child, and a right which is vested in him. But he who ill-treats a dog breaks no vinculum juris between him and it, for there is no bond of legal obligation between them. Similarly a man’s interests may obtain legal protection as against himself, as when drunkenness or suicide is made a crime. But he has not for this reason a legal right against himself. The duty to refrain from drunkenness is not conceived by the law as a duty owing by a man to himself, but as one owing by him to the community.

It should also be noticed that the foregoing statement of the connection between rights and human interests is merely a generalization

\textsuperscript{11} Ibid, p 218-219.
based upon Western legal system, and may be found contradicted in some parts of the world. There is nothing in the nature of thing to prevent a legal system from regarding right as inhering in animals or idols, and in fact some Eastern systems do regard rights as inhering in idols (e). Rights may also be bestowed by law on artificial persons such as corporations. Yet in both cases the ultimate effect concerns the interests of human beings.\textsuperscript{12}

Although a legal right is commonly accompanied by the power of instituting legal proceedings for the enforcement of it, this is not invariably the case. As we shall see, there are classes of legal rights which are not enforceable by any legal process; for example, debts barred by prescription or the lapse of time. Just as there are imperfect and unenforceable legal duties, so there are imperfect and unenforceable legal rights.\textsuperscript{13}

The question has been debated whether rights and duties are necessarily correlative. According to one view, these can be no right without a corresponding duty, or duty without a corresponding right, any more than there can be a husband without a wife, or a father without a child. For, on this view, every duty must be a duty towards some person or persons, in whom therefore, a correlative right is vested.\textsuperscript{14}

\textbf{1.4 Characteristics of Rights-}

Subject- Subject means the person in whom the rights have been vested; He is the seeker of the rights.

\textsuperscript{12} Ibid, p 219.
\textsuperscript{13} Ibid, p 219-220.
\textsuperscript{14} Ibid, p 220.
1. The Act of Forbearance- The right obliges a person to do a particular thing or forbear in favour of a particular person. It is the content of the right.

2. Object- it is the thing in respect of which the right exists. It includes property, life, religion, thought expression & privacy.

3. The person of incidence- it means the person upon whom falls the correlative duty.

4. Title- This fifth element to the right has been added by Salmond.

   Every right, therefore, involves a threefold relation in which the owner of it stands –

1. It is a right against some person or persons.

2. It is a right to some act or omission of such person or persons.

3. It is a right over or to something to which that act or omission relates.

   An ownerless right does not appear to be recognized by English law. This is not because an ownerless right is impossibility, for there would be nothing to prevent such a concept being used in legal reasoning if lawyers chose to employ it. However, the fact is that they do not appear to do so. Yet although ownerless rights are not recognized, the ownership of a right may be merely contingent or uncertain. The owner of it may be person indeterminate. He may even be a person who is not yet born, and may therefore never come into existence. Although every right has an owner, it not has a vested and certain owner. Thus the fee is simple of land may be left by will to a person unborn at the death of the testator. To whom does it belong in the meantime? We cannot say that it belongs to no one for the reasons already indicated. We must say that it is presently owned by the unborn person, but that his ownership is contingent on his birth.
1.5 The Basis of Rights- Different theories-

1.5.1 Will is the basis of rights-

According to this approach the purpose of law is to grant the individual the means of self expression or self assertion. Therefore, right emerges from the human will. The definition of right given by Professor Austin and Professor Holland lay down that the will is the main element of right. Pollack and Vinogradoff also defines rights in terms of will. Locke believed in ‘inalienable’ rights. He declared that in certain spheres of individual life the state could not interfere. According to him, the basis of the right was the will of the individual. Holmes defines legal right as nothing ‘but a permission to exercise certain natural power and upon certain condition to obtain protection, restitution, or compensation by the aid of Public Force’. According to Hegel, Kant, Hume and others by right we mean the power of self-expression or ‘will’. Puchta is also supporter of this theory. He defined legal right of a ‘Power over an object which by means of this right be subjected to will of the person enjoying the right’.

According to Duguit, the basis of law is the objective fact of ‘Social Solidarity’ and not the subjective will. The law is to protect only those acts or things which further ‘Social Solidarity’. The idea of will is anti-social. However, Paton says that ‘will is an essential element, in the general conception of legal right, but it is not the only element’.

1.5.2 Interest is the basis of rights-

Inhering, a great German Jurist propounded the theory which is known as the Interest Theory. He defines legal right as a legally protected interest. According to him, the basis of right is interest and not will. He says, law always has a purpose. In case of rights the purpose of law is to protect certain interests and not the will or the assertions of individuals. These interests are not created by the state, but they exist in the life of
the community itself. The state only chooses out of them such interests as it will protect. Salmond also supports Inering’s view but he adds enforceability to it as a necessary element of right. There are cases where a person may have rights without having any ‘will’. For example, infants, lunatics and corporations have legal rights but they do not have wills. In such cases, in the name of rights these interests are protected.

According to Prof. Allen, “the essence of right seems to me to be legally guaranteed power by itself, but the legally guaranteed power to realize an interest”.

Recognition and protection by the State are also the essential elements of legal right, without recognition by the state a right cannot be legal right. The protection of the right by the state means that if the right is challenged by anybody the state will enforce it. In case of breach of a moral right the law gives no remedy. Therefore, it is said that enforceability by the legal process is the sine qua non of a legal right. Undoubtedly, it is this element that distinguishes as a legal right from a moral right, but this proposition is not absolute and is subject to the following exceptions.

1.5.3 Imperfect Rights-

It is that right which though recognized by the state is not enforceable i.e. a statute. For example, in case of a statute barred debt, it is not the right that is barred, but it is the remedy or enforceability that is barred. If the debtor pays such debt, he cannot sue to recover it on the ground that it was proved without consideration.

(1) In many cases the law does not enforce the right itself but provides remedy in the form of damages awardable to the aggrieved and the injured party. In such cases the damages are considered to be an adequate remedy.
(2) In some cases the courts cannot enforce their decisions for the want of adequate machinery needed for such enforcement. In international law there is no adequate machinery to enforce the decisions of the international body.

1.6 The Relationship of Right & Duty-

Rights & duties are correlated to each other in such a way that one cannot be conceived without the other, the rights and duties go side by side or together. In other words the existence of one depends upon the existence of other as there can be child without a father & no father without a child. The right is always against someone, upon whom the correlative duty is imposed.

Rights & duties are correlated to each other in such a way that one cannot be conceived of without the other. The rights & duties go side by side or together in other words the existence of one depends on the existence of the other as there can be no child without a father & no father without a child. A right is always against someone, upon whom the correlative duty is imposed. In the same way a duty is always towards someone, in whom the correlative right vests.\(^\text{15}\) When the law recognizes an act as a duty it commonly enforces the performance of it, or punishes the disregard of it. But this sanction of legal force is in exceptional cases absent because it is legally enforced or sanctioned. There are legal duties of imperfect obligation, as they are called\(^\text{16}\).

The purpose here to discuss the right and duties and their relationship is to underline the concept of privacy as a right with a corresponding duty. This aspect would be discussed in detail in coming chapter.

\(^{15}\) B.N. Mani Tripathi, Jurisprudence: Legal Theory,(Allahabad Law Agency, 18\textsuperscript{th} ed., 2008)

\(^{16}\) Salmond on Jurisprudence, Ibid.
1.7 Meaning and Definition of Privacy

Privacy is a culturally limited concept. It varies with times, the historical context, the state of culture and the prevailing judicial philosophy.\textsuperscript{17} 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.\textsuperscript{18} 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 ‘\textit{privatus}’ which means ‘separated from the rest’, deprived of something, esp. office, participation in the government’, and from ‘\textit{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.\textsuperscript{19} ‘Privacy’ is concerned with a man's dignity and 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

\textsuperscript{18}Kiran Deshta, Right to Privacy under Indian Law (Deep & Deep, New Delhi, 2011) p. 18.
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 and seizures etc. The USA is the motherland of right to privacy. Privacy's origin can be traced back to an article written by Warren and Brandy 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 Bradeis 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. Fergusson-1896\(^\text{20}\) and Paolo Pavesich v. New England Mutual Life Insurance Company-1905\(^\text{21}\) 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,

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

\(^{20}\) 163 U.S. 537 (1896).

\(^{21}\) 122 Ga. 190, 50 S.E. 68 (1905).
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\textsuperscript{22}.

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.'\textsuperscript{23} 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 interaction or communication between them if they so choose."\textsuperscript{24} Judge Cooley calls it 'the right to be let alone'. According to Charles Fried,\textsuperscript{25} 'Privacy is not simply an absence of information about others; rather it is the control we have over information about ourselves...The person who


\textsuperscript{23} Gaiety.

\textsuperscript{24} Adam Carlyle Breckenridge: The Right to Privacy,1971.

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 abortion, or whether an HIV-infected person has the right to marry 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

26 *Id* Kiran Deshta.

27 *Roe v. Wade*, 410 US 113 (1973)

thrive in. It even starts before birth and may end after death. It is an integral part of human dignity and has its basis in the natural rights. It is one of the basic human rights.\textsuperscript{29}

1.8 Basis of Privacy-

The roots of right to privacy may be traced back from the natural rights, which are basic, inherent and inalienable rights.\textsuperscript{30} There are also strong legal bases for the right to privacy in International Law. Article 12 of the Universal Declaration of Human Rights, 1948, Article 14 of the International Covenant on Civil and Political Rights, 1966, Article 16 of Convention on Rights of the Child of the United Nations, 1989, Article 14 of the United Nation's Convention on Migrant Workers, 1990 speak about the Right to Privacy. In addition to this, a number of regional legal instruments also recognized the Right to Privacy. They are, Article 8 of the European Convention, Articles 11 and 14 of the American convention on Human Rights, 1978, Articles V, IX and X of the American Declaration on Rights and Duties of Mankind, 1948. The Organisation for Economic Co-operation and Development (OECD) framed certain guidelines pertaining to privacy protection and transnational transmission of personal information. The European Union Council too made some minor efforts through its data protection directives to establish data protection regulations. In India, though this right is not explicitly mentioned in the constitution, it is interpreted by the Supreme Court to be implied in the Article 21 (right to life) of the Indian Constitution. This has been repeatedly reiterated in a number of cases such as \textit{Kharak Singh v. State of Uttar Pradesh} (1963)\textsuperscript{31}, \textit{Gobind v. State of Madhya Pradesh} (1975)\textsuperscript{32}, R.

\textsuperscript{29} Article 12 of Universal Declaration of Human Rights.

\textsuperscript{30} For detailed discussion see Chapter 2.

\textsuperscript{31} (1975) 2 SCC 148.

\textsuperscript{32} (1975) 2 SCC 148.
Rajgopal v. State of Tamilnadu (1994)\textsuperscript{33} and Peoples Union of Civil Liberties vs. the Union of India (1997)\textsuperscript{34} (telephone tapping case). The Apex court acknowledged the privacy infringements in these cases.

The right to privacy is not spelled out by Indian Constitution and not even by the U.S. Constitution, but what it means has been debated for more than one hundred years. As a young Boston lawyer in 1890, U. S. Supreme Court Justice Louis d. Brandeis co wrote a landmark Harvard Law Review article titled ‘The Right to Privacy,’’ advocating that "the right to life has come to mean the right to enjoy the life- the right to be let alone."\textsuperscript{35}

"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."\textsuperscript{36} The recognition to Right to privacy under Universal Declaration of Human Rights sets forth the basic human requirement regarding the privacy about the development of one's personality & for preservation of one's self respect. There are certain arenas of person's life which he wish no to be interfered by anyone. Lord Denning has forcefully argued for the recognition of a right to privacy thus:\textsuperscript{37}

"English law should recognize a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognize a right of confidence for all

\textsuperscript{33} (1994) 6 SCC 632.

\textsuperscript{34} (1997) 1 SCC 301.

\textsuperscript{35} Charles P. Cozic, \textit{et.al.} (eds.),\textit{Civil Liberties, Opposing Viewpoints}, (Greenhaven Press U.S.A.1994)

\textsuperscript{36} Article 12 of Universal Declaration of Human Rights.

correspondence and communications, which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance, it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."

1.9 The Justification of the Right to Privacy-

As earlier discussed, there should be recognition of a claim as a right and there should be a corresponding duty to observe. In the words of Dean and Justice Irene Cortes,

"The stand for privacy, however, need not be taken as hostility against other individuals, against government, or against society. It is but an assertion by the individual of his inviolate personality."\(^\text{38}\)

The justification of the right to privacy depends on a peculiar relationship of the four concepts of privacy, individual autonomy, democratic government, and other fundamental ends. The feature that distinguishes democratic government from other forms of government is that individual autonomy is one of its fundamental ends. Therefore, under democratic government, the protection of certain acts is justified in order to foster individual autonomy.\(^\text{39}\)

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1.10 Individual Autonomy and Privacy-

Perhaps it will be objected that although autonomy might be a hope for result from democracy, since democracy may be justified in many other ways (as productive of happiness or peace or as an application of sovereignty), it is by no means necessary that autonomy be produced. Consequently, it may very well be that democracy does not produce autonomy.\textsuperscript{40}

There are two sides of autonomy in Democratic Governments. The objection assumes, however the autonomy (like privacy) is necessary a form of negative freedom or freedom from certain kinds of interferences. However, this is not true. Autonomy in the context of western democratic institutions has elements of both positive and negative freedom. The positive side of autonomy is related to the very quality western democracy is supposed to promote, namely, self-rule by making the conditions for it possible. The difference between the two is that while the positive freedom is logically connected to self-rule, the negative freedom operates by a casual connection. Hence it cannot be said on either score democracy does not produce autonomy.

Still, the protection afforded autonomy is not absolute, because democratic government is a species of government in general which means that it has to fulfill all other fundamental ends of government, such as providing an economic system for the exchange of goods and services. Consequently, permissible extent to which protection will be afforded autonomous act is the maximum consistent with the promotion of other fundamental ends of government, such as providing an economic system for the exchange of goods. Privacy is the criterion to determine which autonomous acts government can or cannot proscribe. In this sense, privacy is not the same as autonomy because there are many acts which

\textsuperscript{40} ibid
that people can perform autonomously that are not private and that government will protect are privacy acts with respect to the citizens at large.\textsuperscript{41}

Related to private acts is the idea of a private state of affairs. The connection to autonomy, which again is casual, is made by providing a place or situation where private acts can occur. For instance, the privacy of one’s home is protected because the home is recognized as a place where private act should be able to occur.\textsuperscript{42}

\textbf{1.10.1 Democracies Value Privacy-}

From the above discussion, it follows that privacy is valued by democratic institution for two reasons. First, it is a sort of boundary marker setting out the area wherein an individual’s action are thought (at least in the first instance) to affect only that individual. Second, it is a means for making possibly private actions. In these ways, privacy allows for possibility of autonomy by delimiting those human actions, information, and state of affairs that prima facie should not be interfered with. In this sense, then, privacy is connected to democratic institutions, namely, in making the object for which the institution are valued (autonomy of the individual) possible, thus the importance of privacy as a value is tied to the importance of autonomy as a fundamental end of democratic legal institution.\textsuperscript{43}

Here it might be questioned whether one needs to protect private information or private states of affair at all. It might be argued that autonomy can be protected merely by prohibiting interferences (that is physical attacks or invasions or obstructions) of one’s actions. It also, and one is tempted to say most characteristically limits observation of one’s

\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid.
\textsuperscript{43} Ibid.
self or one’s action. While it is clear how interference limits privacy, it is not so clear how observation or the possession of personal information does.44

1.10.2 The Relation of Value of Privacy and Autonomy-

Now after establishing the connection between the value of privacy and autonomy, the question arises what is the degree of protection of the privacy norm. Here it is important to recall that privacy is valued because autonomy is valued, and privacy is conceived either as part of autonomy or (at least in this world) as a necessary precondition for autonomy. Furthermore, given that democratic institution are established to affect certain ends, to the extent that autonomy is valued as an end of such institutions, privacy must be similarly valued.

Indeed, this is the key to answer the question, namely, that there are only two circumstances in which privacy must be satisfied in a democracy. The first occurs when a competing right is in conflict with the right to privacy and the circumstances are such that autonomy is better served by protecting competing right. The second occurs when the government seeks to protect an interest that is more compelling than privacy to the preservation of autonomy in general. Still privacy regulates the degree of the state’s intrusion to the minimum necessary to satisfy the state’s compelling interest... privacy should be part of any democratic society that had autonomy as one of its fundamental principles.45

44 Ibid.
45 Ibid.
1.11 Personal Privacy-

Your personal information is more than your name, address and Social Security number. It includes your shopping habits, driving record, medical diagnoses, work history, credit score and much more.

The right to privacy refers to having control over this personal information. It is the ability to limit who has this information, how this information is kept and what can be done with it. Unfortunately, personal privacy is lost, unknowingly forfeited, purchased or stolen every day. Often, we do not value privacy until it’s gone. But for anyone who has been the victim of identity theft, this lost privacy can mean months or years dealing with harassing debt collectors, police, credit bureaus and government agencies. For victims of stalking and harassment, lost privacy can mean that no place is safe - because our 'electronic footprint' makes it very difficult to live and work without creating a record that can be traced by a web-savvy stalker.

Lost privacy can also mean your personal information is collected, analyzed and shared by marketers, employers, insurance companies and the government without your knowledge or consent. You may learn your privacy has been compromised only after you've been added to the phone lists of charities, refused a job based on your Face book profile or denied the ability to return a purchase because of previous returns to that store.⁴⁶ More than ever, workers’ productivity is monitored electronically with computers and telephone system. It is argued that electronic monitoring unfairly violets workers’ right to privacy because it is used to spy on the employees. It is also contended that the unethical employer can use monitoring systems to listen to workers’ private conversation. Workers,

consumers and citizens all suffer from the increasing encroachment of electronic surveillance in the modern workplace. 

1.12 Different Facets of Right to Privacy-

"Privacy is the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others." Privacy Right has different facets-

- **Privacy of the person** - Sometimes referred to as 'bodily privacy'. This is concerned with the integrity of the individual's body. Issues include compulsory immunisation, blood transfusion without consent, compulsory provision of samples of body fluids and body tissue, and compulsory sterilisation;

- **Privacy of personal behaviour** - This relates to all aspects of behaviour, but especially to sensitive matters, such as sexual preferences and habits, political activities and religious practices, both in private and in public places. It includes what is sometimes referred to as 'media privacy';

- **Privacy of personal communications** - Individuals claim an interest in being able to communicate among them, using various media, without routine monitoring of their communications by other persons or organisations. This includes what is sometimes referred to as 'interception privacy'; and

- **Privacy of personal data** - Individuals claim that data about themselves should not be automatically available to other individuals and organisations, and that, even where data is possessed by another party, the individual must be able to exercise a substantial degree of

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control over that data and its use. This is sometimes referred to as 'data privacy' and 'information privacy'.

It is to be noted here that this categorization is in not exclusive but inclusive. Globally, the right to privacy is one of the most carefully guarded rights, especially in an age, where vast amounts of personal information is provided, used, traded and even stolen. With the close coupling that has occurred between computing and communications, particularly since the 1980s, the concept of Privacy can only be ignored at one's own peril48.

1.13 Role of Media and Privacy-

In the modern world we are undeniable against the media power in the present world 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 manage with the media for proper influence on our lives when the world exists in the plentiful Information Age.

Describing the desirability and necessity for protection against encroachment to personal life, Samual D. Warren and Louid D. Brandeis argued,

"The press is overstepping in every direction the obvious bounds of propriety and of decency; gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcasting the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip which, can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that the modern enterprise and invention have, through invasion upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.\(^{49}\)."

Although, privacy is an ambiguous concept which is not easy to be defined, yet "One common view is that the right to have privacy means the right to be left alone or control unwanted publicity about one's personal affairs. In contrast, the media are in the business of not leaving people alone. Their duties are in the direction of revelation, not concealment". Thus, the balance of the individual's interest in privacy is against the interest of the public in derivative of information. The public

right to know can cause the conflicts with the individual rights. Where the lines should be drawn, as to what is permitted and what is not? That is still being question among people into the media line.

Media which is best known as fourth estate in a democracy is nowadays having interference in every aspect of life be it public, semi-public or public. In the name of freedom of speech and expression the necessary gap between right to know and right to keep privacy is hardly maintained. Freedom of speech and expression has to be exercised subject to the degree to which private information is exposed therefore depends on how the public will receive this information, which differs between places and over time. The rules against unsanctioned invasion of privacy by the government, corporation or individuals are part of many countries' privacy laws, and some cases, constitution. Media has often infringed this right to privacy particularly the electronic media after coming up 24 hours news channels. There are security threats as well, the challenge before democratic nation-states, is to find the optimal balance between surveillance and duty to protect the freedom of its citizens. The Committee on Petitions of Rajya Sabha under the Chairmanship of Shri M. Venkaiah Naidu, has prepared its 132\textsuperscript{nd} report on the petition regarding misuse of right to freedom of speech and expression by print and electronic media and the need to restrict it under Art.19(2) of the Constitution. The Committee observes that even though the right to know takes precedence over the right to privacy, the right to privacy should not be encroached upon, under the garb of freedom of the Press unless prompted by genuine public interest. The Committee, therefore, expects the media to contribute to success of democracy by protecting the freedom of individual including his/her right to privacy.\textsuperscript{52} Legislative silence on

\textsuperscript{50} Post 9/11 and 26/11.

\textsuperscript{51} 132\textsuperscript{nd} Report of Committee on Petition of Rajya Sabha (2008).

privacy legislation also made judiciary to give word of caution to media time and again in the cases like. Media guideline case and Mumbai terror attack case.\textsuperscript{53}

1.13.1 Celebrity Privacy Rights and Paparazzi-

The paparazzi are photographers who will certainly do anything to achieve their aim, gaining the profit from the photos of famous people and their families. They sell the photos to tabloids or anyone else who is willing to pay them a high price. The word paparazzo were first released on Italian film “La Dolee Vita” in 1960. La Dolee vita, it was the story of one tired journalist, Marcello, and his photographer, Paparazzo”. Federico Fellini who was director of the film describes the word of paparazzo; “Paparazzo suggests to me a buzzing insect, hovering darting stinging. Moreover, Fellini drew a picture of the paparazzo’s character that looks like a vampirish insectile, implied that paparazzi are like mosquitoes and also parasites. After that, “Paparazzi” is a word to explain the behavior of photographers who chase up the celebrities to get the information about them to reveal in the public the same as the act on film.

As we see from some of celebrity’s cases who are a victim of the hunter in the name of paparazzi. There are many reproaches against paparazzi of their behavior ravaging into the society. Someone propose to issue a law to prevent and limit the terrible danger that may happen when the paparazzi follow the celebrities. It is not wrong for photographers to take pictures of the famous people, but it is wrong to take pictures without their permission. The lack of privacy and human right realization of media may cause the paparazzi problem.

\textsuperscript{53} Sahara India Real Estate Corp. Ltd. and Ors. v. Securities and Exchange Board of India and Ors, 2012 Cr. L J 4584 SC; Mohammad Ajmal Mohammad Amir Kasab v. Statue of Maharashtra, 2012 Cr. L J 4770 SC
1.14 Technology and Privacy Violations-

The 'Right to Privacy' has assumed much importance with the emergence of internet, bio-banks (gene bank etc.), business process outsourcing, knowledge process outsourcing, development of software industries, enactment of antiterrorist laws, deterioration of the law and order situation, rising levels of crime rates (theft and fraud cases etc.) These developments led to the rampant privacy invasions. Despite its legal guarantee as a basic human right, it is invaded incessantly by the individuals and institutions. The 'internet' has penetrated into every sphere of human activity. It is intricately and inextricably connected with the day-to-day life of the present day. Modern man's life has been changed drastically and all his transactions have become more internet-based, internet-dependent in this global village. Personal information of an individual in this internet age is not just confined to four walls, or in our traditional desk, but is connected to the vast networked internet system. This is leading to privacy invasions. Most of our day-to-day transactions (financial, medical, school/college etc.,) are no more secure now. Our personal information is tracked, stored and later mis-utilized in the manner we do not wish often without our knowledge or consent. The law enforcing authorities too, under the veil of combating terrorism are infringing the innocent individual's Right to Privacy through their acts such as, phone tapping, surveillance of private lives and searches and seizures without complying necessary legal formalities etc. Today's technology gives the media powerful new tools for intrusion into private lives. Cameras are smaller and easier to hide. Conversations are easily recorded surreptitiously. Computers and the Internet provide the ability to rummage through the closets of your life in ways that have never before
been possible.\textsuperscript{54} Many suits against the media now claim invasion of privacy, not libel. Jurors have strong feelings in this area. So do judges. Privacy cases focus on personal, emotional beliefs in conflict with each other.\textsuperscript{55} We inherited criminal trespass from British Common Law. But that protects your real estate from intrusion. The idea of a right to privacy in your personal life was not even conceived until the 1890s, when newspapers became more sensational with stories of gossip and sexual scandal. They even published pictures, which do nothing with public interest.

\textbf{1.14.1 UID and Right to Privacy-}

The Unique Identity Project has been depicted to be a new face of development that technology could bring about. It has been sold to masses in India as a solution for accessibility to the service delivery and as a tool for the eradication of ill governance, but there are issues of larger importance that have gone unnoticed. These include the privacy and dignity of an individual being affected by the UID scheme. UID is a product of what started as an idea of biometric identity cards for the Border States in India in the wake of the increased terrorist activity. The consulting agency suggested that the identity cards could be implemented to the entire country. Now the government is trying to implement the new UID scheme by making it as a development agenda. Deeper question of surveillance by the State and invasion of privacy at all levels arise as a result of UID project. ALL the data pertaining to an individual could be accessed at one time. This could lead to a situation where an individual’s autonomy could be severely compromised. It is evident that the UID scheme could lead to providing more power to the hands of the State. We


\textsuperscript{55} Winning with the News Media, 2005 Edition By Clarence Jones.
should not forget that in the Rwanda genocide it was by using identity cards that the demarcation of the Tutsis and Hutus could be done.\textsuperscript{56}

The main privacy concerns brought by the UID projects are territorial and data privacy. Territorial privacy addresses freedom from encroachment in domestic and official spaces by the way of surveillance. Identity and information privacy or data privacy deals with the protection of information, especially sensitive information. It is important to note here that the concept of privacy in social sphere is not as prevalent as it is in Europe or the United States. It is relevant to quote here from the famous article on privacy by Warren and Brandeis,\textsuperscript{57}

"The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, the man, under the reeling influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprises and invention have, through invasion upon his privacy, subjected him to mental pain and distress, for greater than could be inflicted by mere bodily injury."

\textbf{1.14.2 Law Lags Behind Technology-}

The law has generally lagged well behind the technology. The old statutes forbidding wiretaps became ineffective. Better ways had been invented. It was no longer necessary to physically tap into telephone lines. Electronic "bugs" and inductance devices were widely used to pick up conversations and were technically not an illegal "tap."

\textsuperscript{56} Dev Prasad, “Analyzing the Right to Privacy and Dignity with Respect to the UID”, available at http://cis-india.org/internet-governance/blog/privacy/privacy-uniddevprasad, visited on 18.3.13 at 12.12 p.m. IST, see also The National Identification Authority of India Bill, 2010.

Generally speaking, you have little or no right of privacy from the media if you are in a public place. So long as everybody in that public place can see you, the media can photograph you, write about what you did there, and publish the pictures. You have no legal recourse. If you don’t want to be seen, don’t go out in public. India seems to be still in its infancy when it comes to Cyber Laws. Most of us are grossly unaware of our rights as far as online privacy laws are concerned. While most Indian companies have vendor-specific privacy policies, it is high time that our legal system implements laws that are uniformly applicable to all relevant industries. In our judiciary, the only reference to online privacy is seen in the IT Act of 2000.\(^{58}\)

1.15 The Counter Point of View: The Right to Privacy Should be Limited-

There are two sides of every coin and to understand an advocate any concept is best possible only in the light of counter view point. There is no doubt that none of the right can be absolute. According to critics, the ‘right to be left alone’ is the counterproductive as a generalized doctrine, a fault that can be attributed to its abstract treatment of freedom of choice. It fails to come to terms with the complex interrelationship between self and society that makes the concept of individual choice meaningful. Hence rather than supporting, it undermines and in extremis would dissolve, that individual autonomy and human freedom it attempts to serve. In effect, it would serve no one, for the self-the subject of ethical disclosures-that freedom serves should be minimized.\(^{59}\) The doctrine of the ‘right to be left alone” is dangerously seductive because we tend to restrict our attention to the many instances of freedom of choice that enhance human life in our society. There are clear and

\(^{58}\) http://www.nasscom.in.

\(^{59}\) A. Kaplan, “The Right to Be Left Alone Is a Right to be No One.” (World and I, Sep. 1990)
convincing reasons to support the “right to be left alone” within some limits, and those limits are less restrictive in a pluralistic society such as ours than in a more culturally homogeneous society.60 “The generalization of the right to privacy is destructive of the very values it is designed to uphold.”

A board right to privacy harms institutions such as the family because this right defies valuable social sanctions against immoral behavior. Kaplan maintains, for example, that dangerous acts such as drug abuse or promiscuity are often committed under the protection to right to privacy. Kaplan states that this right sanctions immoral acts as acceptable and threatens the foundation of society. It is highly likely that many of the asocial and antisocial activities of the current period—including drugs and widespread dishonesty—are caused in part by the philosophy that underlies the concept of a generalized right of privacy.61

From a moral standpoint, we do owe respect to the opinions of others. But that respect is limited by our mutual obligation to observe boundaries have a reasonable relationship to the needs of the society and the individuals in it. The concept of individual is meaningless in the absence of society. The self and its identifications are the product of the transaction with others. Hence it is not possible or desirable entirely to eliminate external sanctioning.62 He further argues that it is undemocratic for the Supreme Court63 to recognize a new right to privacy while it still

60 Ibid.
61 Ibid.
63 Supreme Court of U.S.A.
lacks predominant and sustained support, let alone while it remains a minority point of view.\textsuperscript{64}

Inspite of the arguments against privacy protection, the dangers of non-protection of privacy, particularly in the present age of technology may prove detrimental not only to the physical but also the moral and psychological and spiritual well being of the individual. The benefits of a medicine cannot be ignored only because it tastes bitter.

1.16 Right to Privacy is not Absolute-

Every right come with a duty, hence the right to privacy is also not absolute. It is subject to some limitations like other rights. Though the right to privacy is not explicitly carved out in the Constitution, yet it is recognised as a fundamental right under right to life and personal liberty. For this reason, it is subject to reasonable restrictions. Generally, those restrictions are justification, which are in the interest of general public, security of the State, public order, decency or morality etc.

Right to privacy does not prohibit the publication of any matter of public or general interest, as where the plaintiff has become a public personage and has to that extent, waived the right, or in connection with the life of any person in whom the public has a rightful interest.\textsuperscript{65} Public figures has limited protection of right to privacy.

\textsuperscript{64}“Privacy" is s broad, abstract and ambiguous concept which can easily be shrunken in meaning but which can also, on the other hand, easily be interpreted as a constitutional ban against many things other than searches and seizures.....For these reasons I get nowhere in this case by talk about a constitutional ‘right to privacy” as an emanation from one or more constitutional provisions. I like my privacy as well as the next one, but I am nevertheless compelled to admit that government has a right to invade it unless prohibited by some specific constitutional provision. HUGO BLACK, dissenting in Griswold v.Connecticut,1965.

\textsuperscript{65}Abernathy v. Thornton, 263 Ala, 496, 83 SO 2\textsuperscript{nd} 235.
Since, the celebrities have a popular image in the society, people generally tend to personalize them as their friends and become curious about every personal aspect of their lives ranging from their personal affairs in lives to something as trivial as to the clothes that they wear, the cosmetics that they apply, the places they visit. However, the celebrities don't know the public and hence there is no natural exchange of information. Therefore, the celebrities try to control their personal information since the disclosure of the same might put them in a situation of embarrassment, humiliation and thus make them feel insecure.

One of the most popular judicial opinions has been given in the case of *Barber v. Times Inc*\(^{66}\) wherein a photographer took pictures of Dorothy Barber giving a pregnancy delivery to a baby boy. Ms. Barber had filed a suit of "Invasion of Privacy" against *Time Inc.* for unauthorized and forceful entry in to her hospital room and for photographing her despite her protests. Ms. Barber was successful in her suit and the court while awarding damages of 3000$, opined-

"In publishing details of private matters, the media may report accurately and yet - at least on some occasions - may be found liable for damages. Lawsuits for defamation will not stand where the media have accurately reported the truth, but the media nevertheless could lose an action for invasion of privacy based on similar facts situations. In such instances the truth sometimes hurts."

*Time, Inc. v. Hill*\(^{67}\) did elevate the newsworthiness privilege, or the sweep of the media’s right to disclose true facts concerning “Public affairs.” However, JUSTICE BRENNAN opinion for the court held that the Hills could recover damages for invasion of privacy if the factual

\(^{66}\) 159 SW.2d 291 (Mo. 1942)58.

\(^{67}\) *Id.*
errors were made knowingly by life, or were made with reckless disregard of truth.

The right to privacy has a limited application at public place.⁶⁸ On the public streets and public places, right to privacy is not protected and in case of such invasions, recovery of damages was denied by the courts. The privacy is to bow whenever the public interest in openness outweighs the public interest in privacy or confidentiality. When the facts have justification for disclosure because of public interest, the individual may not take refuge of right to privacy. The disclosures which are part of public record or, judicial proceedings, are not privileged for the protective umbrella of privacy.

Consent, express or implied curtails the amplitude of privacy. Under the common law, one who expressly or impliedly consents to an invasion of one’s privacy in any of its forms has recourse against the privacy invader only if the invader exceeds the scope one’s consent⁶⁹.

Actions for invasion of privacy are subject to the defence of privilege. Privilege mean that a person stands in such relation to the facts of the case that he is justified in saying or writing that would be slanderous or libelous in anyone else. It can be absolute or privileged. A statement is absolute privileged when no action lies for it even though it is false and defamatory and made with express malice. On certain occasions the interests of society require that, a man should speak out his mind fully and frankly without thought or fear of consequences for e.g. Parliamentary Proceedings, Judicial Proceedings, Military/Naval Proceedings, and State Proceedings. A statement is said to have a qualified privilege when no action lies for it even though it is false and defamatory unless the plaintiff proves express malice. For e.g.

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⁶⁹ *Volenti non fit injuria*.
communications made in the course of legal, social or moral duty; for self-protection; for protection of common interest; for public good and; parliamentary reports judicial proceedings and proceedings at public meetings. Communications made in cases of confidential relationship also come under qualified privilege. For e.g. relationship between husband & wife, father and son, guardian and ward, master and servant, principal & agent, Solicitor and client, partner or even intimate friends.

It is therefore clear from the above discussion that law, which is the instrument to balance the competing interests, both the rights namely the right to receive information, guaranteed under Art. 19 (1) and right to privacy as part of Art 21 as conceived by judiciary shall be put with fine balancing. It can be best quoted in the words of Lord Denning\textsuperscript{70} on the right to privacy as a public interest element in the context of English law,

“English law should recognize a right to privacy. Any infringement of it should give a cause-of-action for damages or an injunction as the case may require, it should also recognize a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights are absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness overweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the courts. As each case is decided, it will form a precedent for others. So a body of case law will be established.”

Nowadays, the press freedom directly invades into the privacy and human rights, but some privacy rights are essentially attacked for the news informing to the public. The gossips news photographers such

paparazzi ought to concerns a choice between what he saw as his respectable job and the privacy of one’s conscience.

As the influence of mass communication constantly widely spread and almost touch in every parts of society. It is important that the mass media should be more concerned in ethics and morality as well. That is the best way to reduce the conflict between journalists and the person who is a source of the news. Richard Johannesen defines ethics in the concept of responsibility in his book Ethics in Human Communication, stated that “responsibility includes the elements of fulfilling duties and obligations, of being accountable to the other individuals and groups, and of being accountable as evaluated by agreed up on standards...That is, the responsible communicator would carefully analyze claims, soundly assess probable consequences, and conscientiously weigh relevant values. In a sense, a responsible communicator is responsible. She or he exercise the ability to and communication of others in sensitive, thoughtful, fitting ways”. On the other hand, we can think of mass media ethics is the great “responsibility” on the part of both media creators and consumers.\footnote{Available at http://www.advancedwriters.com/blog/essay-paparazzi/ visited on 27.06.13 at 3.40 p.m. IST.}

1.17 Hypothesis-

The study shall proceed on the hypothesis-

- Whether the Right to Privacy is sufficiently protected under the Constitution of India,

- Whether there is potential threat of interference of privacy emanation by media freedom of speech and expression in India,
• Whether the right to privacy has matured as a right and it needs separate statutory protection.

**1.18 Objective and Purpose of the Study**

The Doctrinal Research is being worked out upon academic object. The object to this study may be underlined like this:

• To understand the concept of privacy and its limitations.

• To understand and analyze the relationship of privacy and freedom of press.

• To undertake the study of legal regime and jurisprudential aspects of right to privacy and freedom of media.

• To develop convincing rationale for the specific law on privacy.

**1.19 Significance of the Study**

Democracy breathes in the oxygen of freedom of speech and expression. The media is a powerful tool to represent the public opinion. Freedom of speech and expression is guaranteed by the Constitution itself as a fundamental guarantee. Freedom of Press is integral part of the freedom of expression. Infant print media has grown up as a youth with tremendous dimensions viz, electronic media: Radio (FM), television (24x7), mobile (network unlimited) social networking, internet, blackberry and more. The created demand for breaking news sometimes results in the invasion of privacy expectations of a person in a justified way. The study crucially highlights that freedom of speech and expression assured to media has to be exercised subject to the degree to which private information is exposed therefore depends on how the public will receive this information, which differs between places and over time. The rules against unsanctioned invasion of privacy by the government, corporation or individuals are part of many countries' privacy laws, and
some cases, constitution. The brutal murder of 14yr teenager at Noida is one of such 'stories'. Every day the viewers got 'updated' news regarding the case. Personal e-mails of victim to her parents, family videos, photographs, letters were shown making their life public. The media crossed all its limits causing mental harassment to her family. Sensationalized journalism has also had an indirect impact on judiciary. Through media-trial, news stories circulated by media have steadily posed a grave threat to the presumption of innocence. The controversial role of media on 26/11, causing threats to security in Taj attack case caught ire of the judiciary.

The purpose of the study is to understand whether media is functioning properly, are the norms to regulate media are virtually followed, should there be checks on media freedom or it is against the democratic principle of freedom of speech and expression. Further, to analyze the limitation on people's right to know and how far appropriate.

It is hoped that the study will be helpful for the members of legal fraternity and for further research on the subject to a great extent.

1.20 Research Methodology-

This research work is basically doctrinal and analytical. The very object of this study is to analyses and determine the freedom media in context of privacy. The research methodology in non-empirical. It is carried out on legal propositions by way of analyzing the existing statutory provisions and cases by applying reasoning. The study is based on primary and secondary data, which consist of primary documents—United Nations’ Charter, Universal Declaration of Human Rights, U.N. Conventions, Constitution of India, Statutory provisions relating to privacy protection, Reports of Law Commission and other commissions, and Supreme Court and High Courts’ Judgments as well as secondary -
1.21 Research Questions-

The researcher has formulated the following research questions and endeavour is made to answer these questions in the body of the thesis-

1. What is privacy and what are its limitations?

2. What are the protections available to the right to privacy under the law?

3. What is the relationship of media and right to privacy?

4. Do the media transgress the right to privacy?

5. If media transgress its limit, what should be the protection to right to privacy?

6. Are present rules for privacy protection are sufficient or there is a need for specific legislation for privacy protection?

1.22 Review of Literature-

The researcher has scrutinized the available work of the Indian as well as foreign authors on the subject. The researcher also surveyed the relevant case law pertaining to the subject. Further, the researcher has gone through National and International Statutes, Reports of Law Commissions, e-sources, newspapers, periodicals and Law Reports, Digests and Journals. The researcher has also gone through some reference books to understand the perception of the authors on the
subject. The researcher has been gathering and analyzing the study material available in different libraries.

Following is the selected review of some literature referred-

• **Articles:***

1. Right to Privacy is the only Constitutional right with its birthday, when it was first advocated by Justice Louis d. Brandeis and he co-wrote a landmark Harvard Law Review article titled ‘The Right to Privacy,” with Samuel Warren. Instantaneous photographs and newspaper enterprise," they wrote, "Have invaded the sacred precincts of private and domestic life."It would not be wrong to state that this article stood as the bedrock of the future right to privacy justifying establishing and recognizing it in International as well as Municipal legislation.

2. “White Paper on Privacy Protection in India” by Vakul Sharma is another worth quoting article on privacy which has been helpful in understanding privacy.

3. “Media and Law”, by G.N. Ray, the President of Press Council of India, presents the views about the balancing between independence of judiciary and freedom of the press.

4. “The Right to Privacy in the Age of Information and Communication” by Madhavi Diwan (2002) 4 SCC (Jour) 12, has been of much help to understand privacy in modern age of technology and advance of media.

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• **Books:**

1. William Cohen & David J. Danelski's co-authored book, *Constitutional Law: Civil Liberty and Individual Rights* (1997(first Rep. 2002) by Foundation Press New York) This book has been really of much help because it made the researcher conceptually as well as content wise clear about privacy. This book also has been helpful to understand privacy in America through Constitutional and Judicial developments.


4. *Facets of Media Law* -by Madhavi Diwan Gordia, (Eastern book Company) is another book referred on the subject. The author of the book has explained enough on the history of the media law in Indian legal system. He has mentioned series of cases, views, opinions of the eminent professionals etc. This has facilitated the researcher to support his critical analysis. The cross-examination part is vital part when media criticism is in question; the author has lucidly mentioned all the pros and cons of it, which has again helped the researcher.

5. *Indian Constitutional Law* by M.P. Jain of Wadhwa Publication, Nagpur, (2008), is used by the researcher as the base book to study the constitutional dimensions and judicial response to right to life and personal liberty and further the interpretation of right to privacy by the H’ble S.C. and H.Cs.

1.23 Chapterization Plan-

In order to achieve the objective of the study, the thesis is divided into seven chapters.

1. Chapter One- Introduction
2. Chapter Two- Historical Perspective of Media Freedom and Right to privacy
3. Chapter Three- Media Freedom and Right to Privacy in India- Constitutional Protection and Judicial Response
4. Chapter Four- Statutory Protection to Right to Privacy
5. Chapter Five- Role of Media vis-à-vis Right to Privacy and in India
6. Chapter Six- Global Perspective of Role of Media and Right to Privacy
7. Seven- Conclusion and Suggestions

1. **Chapter One-** The chapter Introduction is introductory in nature. It briefly describes what are the meaning, justification and limitation on right privacy. A brief discussion over concept of right and relation of it with duty is also taken up to establish the claim of privacy. This chapter also describes the amplitude of freedom of media and its relation with privacy. Further the objective, significance, research methodology and hypothesis and review of selected literature of the study is brought forth.

2. **Chapter Two-** Historical Perspective of Media Freedom and Right to privacy in India will describe the development of the concept of freedom
of media as well as right to privacy in from the philosophical and evolutionary perspective. It further undertakes to study the important milestones in the growth and development of relation between privacy rights and media freedom.

3. Chapter Three- This chapter undertakes a detailed discussion over Freedom of Press under the Constitution, its limitations and judicial exposition to it. Further there is elaborate study of the development of Right to Privacy under Indian Constitution, its relation with media and Judicial Response towards it. As in India the privacy right is recognized by and protected through the judicial pronouncements, once and again, the role of judiciary is very important for establishing the claim for privacy protection; hence, the researcher went through the classical as well as latest judicial pronouncement on privacy protection. There is also discussion over the limitation on privacy right as observed by the judiciary.

4. Chapter Four - Statutory Protection to Right to Privacy, as the title suggests, lucidly discusses the available statutory and regulatory privacy protection regime and their limitations. This chapter also underlines the need to fill the legislative lacuna for privacy protection.

5. Chapter Five- Role of Media vis-a-vis Right to Privacy in India is the focal point of the study. Media freedom and privacy both are important. Hence, the treatment of this topic needs an objective and impartial approach to handle it delicately. The researcher has extensively discussed the relationship of media and privacy in India in this chapter.

6. Chapter Six- Global Perspective of Role of Media and Right to Privacy, 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?

7. Conclusion and Suggestions - Conclusion and Suggestions, puts forth conclusion and suggestions based on analyzed study.