CONCLUSION
&
SUGGESTIONS
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“There is a sacred realm of privacy for every man and woman where he makes his choices and decisions—a realm of his own essential right and liberties in to which the law, generally speaking, must not intrude.”

(Geoffrey Fisher)

The concept of privacy is not a simple or isolated issue. Its protection through law inevitably conflicts with other important values. Privacy is an unusually broad term, encompassing both fundamental Constitutional rights such as freedom from government intrusions into homes and the right of citizens to make decisions about marriage, contraception and abortion and less well defined and arguable less critical issues.

Privacy is subjective and often emotional issue, what threatens individual’s sense of privacy may not concern to another person. Sociologist as well as psychologist agrees that a person has a fundamental need for privacy. Most discussion about this extremely intricate subject take as their preliminary point the phrase ‘the right to be let alone’ coined by Cooley and adopted by Warren and Brandies in a Seminal Harvard Law Review article, which has been held as providing the basis for the birth and development of the law in this area.

It is one of the most difficult tasks to define the term privacy, as the meaning of privacy varies widely depending upon the context and circumstances. It has been described as the rightful claim of the individual to determine the extent to which he wishes to share himself with others. It means right to withdraw or to participate as he sees fit. It also means the individual’s right to control dissemination of information about himself in his own personal possession.

Privacy originates from the word ‘Privi’ which means something very secret. This shows that there are certain actions or moments in man’s life which he wishes to discharge them without any interference from any one. A person has a right to safeguard the privacy of his own, his family, marriage,
Cone fusion, motherhood, child bearing and education among other matters. No one can publish anything concerning the above matters without his consent whether truthful or otherwise or whether laudatory or critical.

Privacy has also been defined by Edward Shills “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”.

The concept of privacy is used to describe not only rights purely in the private domain between individuals but also constitutional rights against the state. The former is concerned with the extent to which an individual or media is entitled to personal information about another. The later is about the extent to which state can intrude into the life of the citizens to keep watch over his movement. Another noted author Alan F. Westin defines privacy as, “The claim of individuals, groups or institutions to determine for them when how and to what extent information about them is communicated to others”.

Robert Ellis Smith define privacy as “the desire by each of us for physical space where we can be free of interruption, intrusion, embarrassment or accountability and the attempt to control the time and manner of disclosures of personal information about ourselves”.

In 1990, the Calcutt Committee in the United Kingdom adopted its definition on privacy as “the right of the individual to be protected against intrusion into his personal life or affairs or those of his family, by direct physical means or by publication of information”.

The conclusion reached at the Nordic conference of Jurists in May, 1967 gives a considerable broader definition of the legal field covered by the concept of privacy. According to these conclusions, “The right to privacy means the right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.”

Privacy is recognized around the world in diverse regions and cultures it is protected in the Universal Declaration of Human Rights and in many other International and Regional Human Right Treaties. The modern privacy bench
Conclusion & Suggestions

Mark at an international level can be found in the 1948 Universal Declaration of Human Rights, which specifically protects territorial and communications privacy. Article 12 states: No one should be subjected to arbitrary interference with his privacy, Family, home or correspondence nor to attack his honour or reputation every one has the right to the protection of the law against interference or attack.

Article 8 of the 1950 convention for the protection of Human Rights and fundamental freedom states:

- Every one has the right to respect for his private and family life, his home and his correspondence.
- There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country.

In a nutshell it may be inferred that privacy as a right has acquired varied dimensions but the conceptual and ideological vacuums persist even today. It would not be wrong to admit that privacy as a concept is the brain child of neo-liberalist philosopher even though its existence can be found in every legal system. Privacy is one legal right which is intricately indulged in the social pattern and is influenced by it. The varied approaches discussed above clearly indicate that this philosophico-legal concept can not be circumscribed into water tight compartments nor can there be a universal approach to privacy. Of course there are few incidents that are common to all legal systems irrespective of time. But the similarities seem very small and when we settle down to analyze the variations it would lead us to a plethora of contradictory and irreconcilable ideological approaches.

We do not have sound legal frame work and clear concept of privacy. This in consequence results in denial of privacy rather than securing it. Only a clear law and literature can out do this definitional dilemma thus making way
towards securing individuals their privacy not as a privilege of few but as a matter of right for all.

Man’s need for privacy is rooted in his animal’s origins and that men and animals share several basic mechanisms for claiming privacy among their own fellows. But human beings are individuated differently in different cultures. The value of a cultural lies not only in raising and enlarging the internal man but also in shaping his external existence and advance towards high and great ideals.

Hindus, Muslims, Christians and Sikhs and many other religious sects in India live side by side in relative harmony. The right to privacy is one of the fundamental rights recognized in the entire communities’ world over. If we go through the religious texts we find special references to privacy in ancient Greek Literature in various Sanskrit epics viz The Mahabharata, The Ramayana and in Puranic literature. In Islam the principles that defines the boundaries of privacy are rooted in the textual source of Islamic law, The Quran and The Sunna (Tradition) of the Prophet Mohammad (PBUH). In Christianity privacy is accepted as a social norms, one can see several references of privacy in The Holy Bible.

Hindus Dharam shastras also recognized the concept of privacy. The ancient Indian theory based on the Upnishadic Literature prescribes meditation which is not possible without concentration and concentration is possible if the person concentrating is not disturbed. The policy underlying the rules regulating the constructions of the houses found in Grihya Sutras, The Ramayana, The Mahabharata manifests ample consideration and respect for one’s privacy. A person was not to be disturbed while studying, sleeping, meditating and while attending or discharging his religious duties. The use of curtains as described in the Ramayana is pointer in the same direction. Enjoyment of sex and food was also recommended in a place where one could exclude the side of other persons. There were stringent rules punishing those who used to disclose or divulge the confidential information. A duty was
imposed to avoid seeing a naked woman when she used to dress herself and while giving birth to a child. Peoples were respected and treated with dignity.

Islamic law is divinely ordained comprehensive system regulating public and personal matters as well. The Quran the holy book of Islam revealed to the Prophet Mohammad (PBUH) and traditions of Prophet Mohammad are the principal source of Islamic law. Islamic law explicitly protects privacy of home as a fundamental Human right. The home derives its importance as a sanctuary for the family and carries with it associations and meaning which makes it particularly important. In this context Quran States:

O ye, who believe, enter not houses other than your own, until you have asked permission ………. This is for your own good, so what you might bear in mind. Hence, if you find no one in the house do not enter it until you are given leave; and you are told “turn back” the turn back. This will be most conductive to your purity: and God has full knowledge of all you do.

The Prophet Mohammad (PBUH) also emphasized the right of the people to be protected against unreasonable intrusions into their privacy. He stated:

If a person looks at you (referring here to a man’s home where he expects privacy) without your permission and you pelt with a stone and put out his eye, no guilt will be on you. Thus we have found that the privacy of the home is guaranteed under Islamic law as a core value and fundamental Human right.

The Bible does not treat privacy specifically but we can see several references of privacy therein. The Bible says that in a marriage relationship sexual union is to be done in Private. Jesus Christ taught his followers to keep their generosity private, at least to the extent in which they were able. Another inference of privacy is on the description of Nooh after the great flood, he lay uncovered in his tent and Ham violated his father’s privacy by looking upon his father naked and by telling his brothers about it.
Even though the need to privacy was accepted by ancient societies, the evolution of privacy as a legal right is of recent origin. It has become one of the most important Human Rights of the modern age.

In India there are no comprehensive or sectoral privacy legislations or any independent oversight agency. Neither the Constitution of India expressly recognizes the right to privacy. In fact, curiously enough, some scholars have even questioned whether privacy is, after all, a value somewhat alien to Indian culture. While the right to privacy is not explicitly enumerated in the Indian Constitution only judicial pronouncement of the Supreme Court of India provide the basic resources for both the purposes and the content of the right to privacy.

For the first time in M.P. Sharma’s case the right to privacy was invoked in context of search and seizure.

It took a quarter of century of the functioning of the constitution before the right to privacy received the status of a constitutional right. The main issues relating to the recognition of privacy have confronted the state power of searches and surveillance. The Indian Supreme Court adopted a narrow and formalistic approach, pointing to the absence of a specific constitutional provision analogous to the fourth amendment of the US constitution to protect the right to privacy of Indian from unlawful searches. This disappearing decision was followed nearly a decade later by Kharak Singh v. State of UP where in the right to privacy was again invoked to challenge police surveillance of an accused person.

The majority said that personal liberty in Article 21 is comprehensive to include all varieties of rights which go to make up the personal liberty of a man other than those dealt with in Article 19(1) (a). According to the court while Article 19(1) (d) deals with the particular types of personal freedom, Article 21 takes in and dealt with the residue.

Govind v. State of Madhya Pradesh is another case on domiciliary visits. The Supreme Court laid down that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing
interest is shown to be superior if the court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest. Over the course of the next three decades, the court has established other aspects of the right to privacy.

Right to privacy gained recognition mainly through judicial activism. It is not a fundamental right but still an essential ingredient of fundamental right. Such right is incorporated under Article 21 through various judicial pronouncements, though there are certain statutes which have recognizes the right to privacy in it. Such as Sections 28, 29, 164(3) and 165 of Criminal Procedure Code 1973, Sections 228, 376A, 376B, 376C, 376D, 509, 494, 495, 295 and Section 352 of Indian Penal Code 1860, Section 22 of Hindu Marriage Act 1955, Section 36 of the Children Act 1960, Section 18 of the Indian Easement Act 1882, Right to privacy is further encompassed in the field of Law of Torts, Section 74 of the Indian Contract Act 1872, and Section 122 of the Indian Evidence Act 1872. There are certain provisions under Information Technology Act 2000 i.e. Sections 30, 33, 66, and Section 72 which deals with law relating to privacy, Sec. 8(1) of The Right to Information Act 2005, Section 2(1) of the Indian Post Office Act 1898, and Section 20 of the Credit Information Companies (Regulation) Act 2005 Enumerates Privacy principles.

The concept of privacy differs from nation to nation in terms of the impact of culture on interpersonal relations. Indeed the law of a nation reflects and recognizes its fundamental norms. Right to privacy has been developing in many countries of the world to meet the needs to protect the individual from unreasonable intrusions in to areas of intimate concern. 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.

An originating point of reference in the process of assessing an information privacy law would involve examining the US Federal privacy statute—an ‘ideal privacy law’ that has kept pace with the rapidly evolving
facets of individual privacy, since its inception in 1974, still the most comprehensive federal privacy legislation in the United States. Thus despite the fact that the US federal privacy statutes seem to be a fairly comprehensive statute with regard to securing, protecting and use of personal information relating to individuals due to contemporary technological developments and the emergence of newer and still evolving facets of individual privacy, the United State’s Government has enacted various legislations that are seemingly adequate in the efforts to conserve and protect individual privacy.

The United States Government has dealt in full measure with these emerging privacy issues by enacting a slew of statutes and legislations and making concerted efforts towards the conservation of individual privacy. Some of the key legislations enacted by the US Government are the Bank Secrecy Act, Cable TV privacy Act of 1984, Electronic Communications Privacy Act, Fair Credit Reporting Act, Family Educational Right to Privacy Act, Freedom of Information Act, Privacy Act of 1974, Right to Financial Privacy Act of 1978 and the Video privacy protection Act of 1988 as also the Children’s Online Privacy Protection Act (COPPA). The main goal of COPPA and the rules thereunder is to protect the privacy of children using the internet. Key provisions of the final rule privacy notice on the website, verifiable parental consent, choice regarding disclosure to third parties etc.

It may hardly be doubted that the lack of a clear legal remedy in respect of the non-consensual disclosure of personal information are one of the most serious lacunae in United Kingdom is increasing day by day. Warren and Brandies had rightly observed that “press ability and willingness to inflict through invasions of privacy i.e. mental pain and distress for greater than could be inflicted by mere bodily injury”.

United Kingdom does not have a written constitution or a specific law on privacy. However, in 1998, the parliament approved the Human Rights Act intended to incorporate the European Convention on Human Right into domestic law, a process that will establish an enforceable right of privacy. The Act came into force on October 2, 2000.
There are also a number of other laws containing privacy components, most notably those governing medical records and consumer credit information. Other laws with privacy components included Rehabilitation of Offenders Act of 1974.


The privacy picture in the UK is mixed, at some levels there is strong public recognition and defense of privacy. There has been a proliferation of CCTV cameras in hundreds of Towns and cities in Britain. In March 2001 the Scottish parliament introduced a freedom of Information bill that has been generally regarded as stronger that the English FOIA Act, But still featuring broad exemptions coupled with the threat of high access Costs.

The UK is a member of the Council of Europe and has signed and ratified the Convention for the protection of individuals with regard to automatic processing of personal data along with the European convention for the protection of Human Rights and fundamental freedoms. In addition to these commitments the UK is a member of the Organization for Economic Cooperation and Development and has adopted the OECD guidelines on the protection of privacy and Transborder flows of personal Data.

While privacy issues are not featured prominently in the daily news in Australia, the legal safeguards for personal information remain limited. Privacy law in Australia comprises a number of common wealth (federal) statutes covering particular sector and activities, some state or territory laws with limited effect and the residual common law protections, which have very occasionally been used in support of privacy rights through actions for breach
of confidence, defamation, trespass or nuisance. The Principal Federal Statutes is The Privacy Act of 1988 which has four main areas of application, which gives partial effect to Australia’s commitment to the OECD guidelines to the International Covenant on Civil and Political Rights (ICCPR), Article 17 of ICCPR creates a set of eleven Information Privacy Principles (IPPs) based on those in the OECD guidelines that apply to the activities of most federal Government Agencies. In November 1999, the Australian Security Intelligence Organization Legislation Amendment Act 1999 was passed by the common wealth parliament.

There is no explicit right to privacy in Canada’s Constitution and Charter of Rights and Freedom. However in interpreting Section 8 of the charter, which grants the right to be secure against unreasonable search or seizure Canada’s Courts, have recognized an individual’s right to a reasonable expectation of privacy. The federal Parliament of Canada approved the Bill C-6 and passed the Personal Information Protection and Electronic Documents Act in April 2000. The Act adopts the CSA International Privacy Code.

Canada appears to have fashioned its private sector privacy law with an eye to achieving ‘adequacy’ by EU standards and there by forestalling trade disputes like the controversy that later nearly triggered a trade war between the USA and the EU over export of European personal data to America.

In Irish Constitution there is no express reference to a right to privacy, the Irish Supreme Court has ruled an individual may invoke the personal rights provision in Article 40.3.1 to establish an implied right to privacy this article provides that “The state guarantees in its laws to respect and as far as practicable by its laws to defend and vindicate the personal rights of citizens”.

Ireland has signed and ratified the European convention for the protection of Human Rights and Fundamental freedoms.

The freedom of Information Act was approved in 1997 and went in to effect in April 1998. Ireland is a member of the Organization for Economic Cooperation and Development and has adopted the OECD guidelines on the protection of privacy and Transborder flows of personal Data. It is also a
member of the Council of Europe and as mentioned above it introduced the 1988 Data Protection Act to give effect to Convention for the protection of individuals with regard to automatic processing of personal Data.

Lastly as in other prosperous countries both state and private organization in Germany maintains a vast variety of data systems on private persons. The world’s first data protection law was passed in the German Land of Hessen in 1970. In 1977 a Federal Data Protection Law (BDSG) followed, which was reviewed in 1990, amended in 1994 and 1997. The general purpose of the law is to protect the individual against violations of his personal right by handling person-related data.

Even with the adoption of legal and other protections violations of privacy remain a concern. In many countries, laws have not kept pace with the technology leaving significant gaps in protection. In other countries, law enforcement and intelligence agencies have been given significant exemptions. Finally, without adequate oversight and enforcement, the mere presence of a law may not provide adequate protection.

The current situation is that despite the existence of the legislative framework and the efforts of National and international data protection authorities and bodies, privacy abuse continues on a vast and persistent scale.

The right to privacy is recognition of the individual’s right to be let alone and to have his personal space inviolate. The need for privacy and its recognition as a right is a modern phenomenon. In early times, the law afforded protection only against physical interference with a person or his property. As civilization progressed, the personal, intellectual and spiritual facets of the human personality gained recognition and the scope of the right to privacy expanded to give protection to these needs.

The concept of privacy 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 is entitled to personal information about another individual. The later 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.

This aspect also concerns the extent to which government authorities can exercise control over personal choices: for instance by determining whether a pregnant women has the right to abortion, or whether on HIV infected person has the right to marry or have children. Whether women of easy virtue is entitled to privacy and whether a remedy of restitution of conjugal rights violates the right to privacy.

Telephone conversation is a part of modern man’s life. It is considered so important that more and more people are carrying mobile phones in their pocket. Telephone conversation is an important facet of man’s private life. Telephone tapping would thus interact Article 21 of the constitution unless it is permitted under the procedure established by law. Section 5(2) of the Indian Telegraph Act, 1885 empowers the Central Government or the State Government or any specially authorized officer to intercept message if satisfied that it is necessary or expedient so to do in the interest of sovereignty and integrity of India, the security of the state, friendly relation with foreign states, public order or for preventing incitement to the commission of an offence. It can be done in the event of the occurrence of public emergency or in the interest of public safety for reasons to be recorded in writing. A division bench of the Supreme Court in Peoples Union for Civil Liberties v. Union of India laid down certain procedural safeguards to be observed before resorting to telephone tapping under section 5(2) of the Indian Telegraph Act.

In Mr. X. v. Hospital Z, the Supreme Court held that Right to privacy is not absolute and may be lawfully restricted for the prevention of crime, disorder or for protection of health or morals or protection of rights and freedom of others. When a patient was found to have HIV positive, its disclosure by a doctor would not be violative of either on the ground of confidentiality or the patients right to privacy as the lady with whom the patient is likely to be married is saved in time by such disclosure, or else, she would have been infected with the dreadful disease had her marriage taken place and
consummated. Therefore, the right which would advance the public morality or public interest would alone be enforced through the process of law for the reason that moral consideration can not be kept at bay.

In regard to right to privacy of woman the Supreme Court held in State of Maharashtra v. Madhulkar Narain that any woman of easy virtue is entitled to privacy and no one is entitled to invade her privacy as and when one likes. She is entitled to protection if there is any attempt to violate such right against her wish.

However in state of Maharashtra v. R.J Gandhi Court held that a female, who was the victim of a sexual assaults kidnap, abduction or like offence, should not further be subjected to the indignity of her name and the incident being published in press/media.

Right to personal privacy includes the abortion decision, but this right is not unqualified and must be considered against important state interest in regulation. The pregnant woman can not be isolated in her privacy. The situation there are is inherently different from marital intimacy, bedroom possession or obscene materials or marriage or procreation or education. It is reasonable and appropriate for a state to decide that at some point in time another interest that of health of the mother or that of potential human life, becomes significantly involved. The woman’s privacy is no longer sold and any right of privacy she possesses must be measured accordingly.

In Suchitra Srivastava’s case court held that there is no doubt that a woman’s right to make reproductive choices is also a dimension of personal liberty as understood under Article 21 of the constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a women’s right to privacy, dignity and bodily integrity should be respected.

This means that there should be no restriction whatsoever on the exercise of reproductive choices such as women’s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. There are many aspects of privacy, including the right to privacy in
the light of restitution of conjugal rights which requires special attention. The question of relation between the right to privacy and restitution of conjugal rights arose for the first time in T. Sareetha v. T.V. Subbaiah. The decision in T. Saritha’s case is forthright and aggressively bold. It was the first decision by an Indian High Court to invalidate a law as violating the decisional privacy of a woman. The court in this case categorically held that a women’s right to privacy which is implicit in Article 21 includes the right to marital privacy.

We are rapidly entering the age of no privacy, where every one is open to surveillance at all times, where there are no secrets from the Government. The aggressive breaches of privacy by the Government increase with geometric proportions. “Wiretapping” and “bugging” run rampant, without effective judicial or legislative control. Secret observation booths in government offices and closed television circuits in industry, extending even to rest rooms, common; offices, conference rooms, hotel rooms and even bed rooms are “bugged for the convenience of government. Federal agents are often wired so that their conversations are either recorded on their persons or transmitted to tape recorders some blocks away….They have broken and entered homes to obtain evidence.....The dossiers on all citizens mount in number and increase in size. Now they are being put on computers so that by pressing one button all the miserable, the sick, the suspect, the unpopular the off-beat people of the nation can be instantly identified.

The significance of the right to privacy has enormously increased in the present social set-up as a rapid development in the field of technology and communication which has vested us with numerous sophisticated electronic and computer devices that have increased the chances of direct and indirect intrusion in the area of an individual’s privacy. Camera cell phones, mini cameras, mini microphones and other surveillance devices are just enemies of right to privacy as they are being used and would also be used in future to maintain a check over the right to privacy of citizens. A computer can store hundreds and thousands of most personal information of which one may remain quite unaware. Today a sensitive microphone can record even
whispering from quite a long distance and one would never come even to realize this fact.

In India media has played a critical role for stirring up the conscience of the people and bringing forth evil in the society. Media has achieved great heights with the latest technology and it has become a cardinal part in the lives of everyone. Today the absence of media in our lives is something next to impossible. The presences of media in our society assure us of justice in every way. A common man can distrust government but not the media. Hence any finger raised over media puts a question over our democracy too.

Advancing technology enabled the media to make even more searching intrusions into the individual privacy and reach of the television with the assistance of satellite. The advent of miniaturized audio and video technology, specially the pinhole camera technology, enables one to clandestinely make a video/audio recording of conversation and actions of individuals. In India, the media has been first to grab this state of the art technology to conduct 'sting operations' to expose an offence before the police or the judiciary takes the cognizance of the matter. The phrase 'sting operation' illuminates the impact of secret media coverage on a person's reputation by creating a wide spread perception of guilt regardless of any verdict in a court of law. In India, in the absence of law regulating the sting operations, the media has violated and distorted the rules of natural justice and particularly the basic fundamental right of right to privacy enshrined under Article 21 of the Constitution.

This view gaining currency is that "invasion of privacy" can not be condoned and the Government ought to have some mechanism to address such cases, Union Information and Broadcasting Ministry is considering a regulatory mechanism to protect the privacy of individuals.

In view of above propositions we may safely conclude that Indian Constitution has not yet granted but only reasoned this right. The existing law just affords a principle which if properly invoked may protect the privacy of the individual. Indian judiciary has been using judicial activism to widen the ambit of the Article 21 of the constitution of India. Where the seeds of the
privacy right may be found. The journey began in 1963, when for the first time the issue regarding right to privacy was raised in Kharak Singh v. state of UP. The Question was whether right to privacy might be implied from existing fundamental rights in the constitution of India Article 19(1)(d), Article (1) (e), and 21. Majority opinion was that our Constitution does not in express terms confer any such right on the citizens. The dissenting opinion of Subba Rao Justice was in favour of inferring right to privacy from right to personal liberty as the basis of the evaluation of the right to privacy in India. Even though the Supreme Court has vociferously declared the existence of a Constitutional right to privacy.

In Govind v. State of M.P, this right again came for consideration before the Supreme Court of India, and this time Supreme Court took a more elaborate view and accepted that right to privacy as an emanation from Articles 19(1)(a), and Article 21. It was also said that the right is not absolute so reasonable restrictions may be imposed on this right.

In R. Raj Gopal v. State of T.N. (the watershed in the development of the Indian law of privacy), the court recognized two aspects of the right to privacy, the tortious law of privacy which affect on action for damages resulting from an unlawful invasion of privacy, and secondly the Constitutional right “to be let alone” implicit in the right to life and liberty under Article 21.

The court hastens to add that “the principles above mentioned are only the broad principles. They are neither exhaustive nor all comprehensive indeed no such enunciation is possible or advisable.

However the decision In State of Maharashtra v. Madhukar Narain is an exception in this category of cases but the judgment also has its limitations. It is high time that our courts disregards this attitude of self restraint and wait for the privacy from right to go through a case by case development and assert itself and use this right to invalidate laws and actions violating privacy.

Indian court seems to having very serious problems in defining the essence and scope of privacy right. In People’s Union for Civil Liberties v. Union of India, court held that telephone tapping a form of technological
“Eavesdropping” infringed the right to privacy. Finding that the government had failed to lay down a proper procedure under section 5(2), the court prescribed stringent measures to protect the individual privacy to the extent possible.

In X v. Hospital Z, The Supreme Court was confronted with the test of striking a balance between two conflicting fundamental rights: the AIDS patients right to life which included his right to privacy and confidentiality of his medical condition, and the right of the lady to whom he was engaged to lead to healthy life. Supreme Court held that right to privacy is an essential component of right to life but it is not absolute and may be restricted for the prevention of crime, disorder or protection of health or morals or for the purpose of protection of rights and freedom of others. Therefore the right which would advance the public morality or public interest would alone be enforced through the process of law for the reason that moral consideration can not be kept at bay. Cases related to the restitution of conjugal rights, a concept abolished in more civilized courtiers, have not recognized the right to privacy in India, this area is yet to develop, T Sareetha v. Venkata Subbaiah is perhaps the only major decision in India involving decisional privacy.

One of most frequently quoted explanations of the Supreme Court’s approach to privacy is in District Registrar and Collector, Hyderabad & Anr. v. Canara Bank & Ors, striking down a provision of a State law as invalid court held that:

Once we have accepted in Govind and in later cases that the right to privacy deals with "persons and not places", the documents or copies of the documents of the customer which are in a bank, must continue to remain confidential vis-a-vis the person, even if they are no longer at the customer's house and have been voluntarily sent to a bank. If that be the correct view of the law, we cannot accept the line of Miller in which the Court proceeded on the basis that the right to privacy is referable to the right of "property" theory. Once that is so, then unless there is some probable or reasonable cause or reasonable basis or material before the Collector for reaching an opinion that
the documents in the possession of the bank tend to secure any duty or to prove or to lead to the discovery of any fraud or omission in relation to any duty, the search or taking notes or extracts therefore, cannot be valid. The above safeguards must necessarily be read into the provision relating to search and inspection and seizure so as to save it from any unconstitutionality.

This ‘persons and not places’ emphasis is consistent with the Indian Supreme Court developing Article 21 in the direction of data protection principles, but it has not occurred as yet, as almost all cases on Article 21 are about search and seizure or telecommunications surveillance.

The most significant development apart from search and surveillance issues is the recent decision of the High Court of Delhi in the Naz foundation v. Government of NCT of Delhi, in which the Court held that Section 377 of the Indian penal code violated Articles 21, 14 and 15 of the Constitution, insofar as it criminalizes consensual sexual acts of adults in private. Because of the doctrine of severability, it ‘will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors’ [under 18].

Right to privacy in respect of abortion is another such area which has not discussed in any Indian legislation.

Recently in Suchitra Srivastave and anothers v. Chandigarh Administration, the Supreme Court observed that, there is no doubt that a woman’s right to make reproductive choices is also a dimension of personal liberty as understood under Article 21 of the Constitution of India. It is important to recognize that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a women’s right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as women’s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Further more, women are also free to choose birth control methods such as undergoing sterilization procedure. Taken to their logical conclusion reproductive rights
include a women’s entitlement to carry pregnancy to its full term, to give birth and to subsequently raise children.

The Supreme Court decision in Smt. Selvi & Ors. v. State of Karnataka is a welcome development in respect of protection of privacy. In which the court held that narco, polygraph and brain mapping tests can no more be conducted on anyone, either an accused or a suspect, without his/her consent. A bench of Chief Justice K.G. Balakrishnan and Justices R.V. Raveendran and J.M. Panchal said that the forcible administration of these tests was "an unwarranted intrusion into the personal liberty" of those facing criminal offences.” No individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty,” The recent verdict of the Supreme Court that narco analysis, polygraph and brain mapping tests can not be conducted on an accused or a suspect without his or her consent has been hailed by members of the legal fraternity and human rights activists as a notable contribution to the cause of personal liberty and privacy.

Law is not static, it is ever-changing and dynamic and therefore, the right of privacy as a judicial and Constitutional right is a developing right. In Indian law, the right of privacy is in its infant stage. It is just present in Article 21 of the constitution of India. There is an urgent need for the law to address such lacunas.

To conclude the right to privacy in India as in any other jurisdiction, though not statutorily codified as yet. Its scope is by the lack of such a codification neither extremely narrow nor considerably wide. It is on the other hand relatively ambiguous. This implies that this aspect should be handled with a great deal of care and circumspection. After going through the study of the whole research I have come to the conclusion that the presumed hypothesis has been proved correct by the researcher.
Suggestions

1. There is no comprehensive legislation on privacy in India; it has been left to the judiciary to interpret privacy within the realm of existing legislations. A proper law guaranteeing privacy is therefore an urgent demand of the hour.

2. Indian jurist have not made an attempt to define privacy. They have relied largely on foreign definition and court ruling, the result is that we need to have an indigenous definition on right to privacy.

3. Right to privacy has been upheld by the Supreme Court of India as an integral part of Article 21, fundamental right to life which is available only against the state not against the private persons. There should be a law which should be available against private persons also.

4. The privacy of personal communications including telephone calls is protected under the Indian Telegraph Act of 1885, but it has been frequently violated by the intelligent agencies. A proper law guaranteeing privacy is therefore an urgent and vital matter that needs the government immediate action.

5. It is an irony that in India no law has been passed yet to protect the rights of the HIV/AIDS affected persons in respect of their privacy. Government should take steps at the earliest to enact the laws that take into account the privacy of the person living with HIV/AIDS.

6. In cases relating to abortion women’s right to privacy dignity and bodily integrity should be respected by passing the clear cut law at this point.

7. A remedy of restitution of conjugal rights, a concept abolished in most civilized countries, should be abolished in India because it is a clear cut violation of the right to privacy.

8. Privacy is one of the most contentious legal issue arising in cyber world, India’s first cyber law namely the Information Technology Act 2000, has omitted to deal with the crucial issue of privacy. The IT Act does not define privacy. It does not even touch or address the critical issue of protecting privacy online. It only deals privacy at one place i.e. Sec. 71.
as ‘Breach of Confidentiality and Privacy’ cyber legislation on privacy seems to be the only answer to protect-online privacy.

9. In India awareness about privacy is at a very low level in the actual world leave aside cyberspace. Government should take appropriate measure to create awareness about privacy.

10. It is the burning need of the hour to educate the citizens of India at large that their privacy is extremely valuable and that the same needs to be protected at any cost.

11. There exists in India an impending need to frame a model statute which safeguards the privacy of an individual especially given the emergence of customer service corporate entities.

12. The urgency for such a statute is augmented by the absence of any existing regulation which monitors the handling of customer information data bases or safeguards the right to privacy of individuals who have disclosed personal information under specific customer contracts viz contract of insurance, credit card companies etc.

13. Keeping in mind the growth and implications of international trade, especially with the influence of internet, it is imperative that India cooperate with the world community to establish laws strictly pertaining to protection of privacy and personal data.

14. Government surveillance of private conversations is possible so long it is unlikely to touch on the absolutely protected private sphere. If government surveillance unexpectedly touches upon absolutely protected personal information, it must be halted immediately. Any recording made must be destroyed and data collected can not be used in criminal procedure.

15. Sting operations also infringe a person’s privacy if the intent is not proved. If the issue is about exposing a public wrong then one can not seek protection of privacy. In the US only the federal government and the FBI alone has the right to use a hidden camera and go for sting operation. In India too some body like CBI or any other body must be
legalized to perform sting operation and their conduct must be regulated
through the legislation.

16. Given the new age threats to individual privacy, clear cut laws are the
need of the hour. Article 21 is not enough. The laws on privacy need to
be codified and put in a composite form.

17. In India not only the need of prospective privacy, legislation or its
intricacies, but the need to put in place a privacy law enforcement
regime that address the emergent privacy issues.

18. Privacy protection is an area that needs our law maker immediate
attention. A detailed enactment in respect of the right to privacy is the
need of the hour, which should cover the left over.

19. For the fundamental right to privacy to truly become the law of the land
a larger seven judges Bench of the Supreme Court is to be constituted in
favour of establishing the full fledge law relating to right to privacy.

20. The National Commission to Review the working of the Constitution
made recommendation to add Article 21B in the Constitution which
reads as follows:

Article 21 B

1. Every person has a right to respect his private and family life, his home
and his correspondence.

2. Nothing in clause (1) shall prevent the state from making any law
imposing reasonable restrictions on the exercise of the right conferred in
clause (1).

The aforesaid recommendation given by the commission may work as a
foundation for making comprehensive amendment in the constitution dealing
with right to privacy keeping in view the amazing scientific and technological
development.

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