ABSTRACT

The concept of privacy is not easy to capture in words or phraseology. It is known that privacy as an aspect of life is absolutely imperative; one can not do without privacy or one’s ‘space’.

Privacy is therefore, an extremely precious and valuable aspect of one’s personality.

The quest of privacy is an inherent instant of all human beings. As a matter of fact it is natural need of an individual to establish individual boundaries with almost perfect seclusion. The concept of privacy in its broad sweep covers a number of prospects like non disclosure of information, sexual affairs, business secrets and non observance by others.

It may be said that the privacy is antithesis of being public, if any private letters to one’s friend are published by anyone without his express or implied permission then his privacy would come to be violated. Similarly if one’s neighbour peeps into his house from out side then it would also constitute violation of his right to privacy.

The growth of right to privacy usually starts from the Warren and Brandies view published in the name of right to privacy in 1890, the learned lawyer laid down that the right to life has come to mean the right to enjoy life,.....the right to be let alone; the right to liberty secures the exercise of extensive civil privileges. This development of law was inevitable.

Definition of privacy became prominent in the second half of the twentieth century and deeply affected by the development of privacy protection in the law. Some define privacy as focusing on control over information about oneself, while others define it as a broader concept required for human dignity, or crucial for intimacy. Other commentators define privacy as necessary for the development of varied and meaningful interpersonal relationship, or as the value that accords us the ability to control the access others have to us, or as a set of norms.
necessary not only to control access but also to enhance personal expression and choice, or some combination of these.

Privacy is perhaps the most difficult to define and circumscribe, definition of privacy vary widely according to context and circumstances. Alan F Westin defines privacy as, “The claim of individuals, group or institutions to determine for themselves when how and to what extent information about them is communicated to others.” Robert Ellis Smith defines privacy, as the desire by each of us for physical space where we can 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 privacy. “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 Treatise. The modern privacy benchmark 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.
In India we do not have sound legal framework and clear concepts of privacy. Right to privacy gained recognition mainly through judicial activism. It is not a fundamental right but still an essential ingredient of a fundamental right. Such right is incorporated under Article 21, through various judicial pronouncements, from Kharak Singh to till today there are lots of judgment deals with the issue of right to privacy. Though there are certain statutes which have traces the right to privacy in it i.e. Criminal Procedure Code 1973, Indian Penal Code 1860, Hindu Marriage Act 1955, Children Acts 1960, Indian Easement Act 1882, Indian Contract Act 1872, Information Technology Act 2000, Right to Information Act 2005, Indian Post Office Act 1898, Credit Information Companies Act 2005 and the Copy Right Act 1957.

**Aims of Research**

Privacy is an abstract word that has various meaning scope and dimensions to individuals depending on each individual’s background, psychology, belief and ethics. However most individual relates its meaning to their right to act freely from unauthorized intrusion and to their right to keep what they believe to be private from others.

Privacy as a legal concept remains vague and obscure in Indian Jurisprudence. The judges are confused, Juris differ and academicians stumble in defining the extent, nature and limits of the concept. In India lack of authoritative studies on this aspect further complicates the problem. The result is that we are yet to have the much needed indigenous definition of right to 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. The aim of this research is to solve this problem by providing various meaning and accurate definition to the term privacy.

Initially, the right to privacy had a very narrower scope as such thought to be included only ‘right to be let alone’ the increasing maturity levels of the democratic systems, rapid strides in science and technology made its scope more wider, the researcher in the present study try to find out the real scope of the right to privacy in India and to carve out the separate zone of privacy and
will try to keep a proper balance between the compelling interest of individual in particular and society at large in general.

Intrusions upon privacy are gradually becoming the order of the day. It has therefore become a matter of great concern. Privacy in the sense of the protection from government intrusion into the private sphere of its citizens is still very much issue. It is turning difficult to protect the privacy of individual in the cyber world. The current debates about privacy and media raises a series of questions.

Privacy as a right shall develop even more due to the immense development in the field of media, technology and scientific thinking.

Hypothesis

- Right to privacy developed in India is an extension of the fundamental rights, provided under the Indian constitution.
- Right to privacy is not a new concept it is recognized in various ancient religions world over.
- In India we do not have specific provision dealing with the concept and definition of privacy.
- The judiciary performs on active role in protecting the right to privacy of the person.
- Constitutional protection of right to privacy does not include right to privacy in cyber age.
- Investigative Journalism based on advanced technology leads to intrusions in to the individual privacy.
- Electronic surveillance is a new threat to the right to privacy.

Methodology

Law is a normative science that is a science which lays down norms and standard for human behaviour in a specified situation or situations enforceable through the sanctions of the state. What distinguishes law from other social sciences is its normative character. This fact along with the fact that stability and certainty of law, desirable goals and social values to be of primary concern to a legal researcher. Doctrinal research of course, involves analysis of case
law, arranging, ordering and systematizing legal propositions and study of legal institutions, but it does more it creates law and its major tools to do so is through legal reasoning or rational deduction.

The present study is based on doctrinal method of research. The researcher has drawn help form various books articles, newspaper, reports conventions, commissions committee and judicial decisions.

This topic for study is chosen as the researcher is of the view that the privacy issue needs immediate attention.

Chapterisation

For the purpose of discussing various aspects of right to privacy in India the study is organized in to eight chapters.

Chapter – I

The problem of protection of privacy in India is presented in the introduction. Review of literature provides a bird’s eye view of the research done in the field of “Protection of privacy in India”. It also states objective of the study, hypothesis and methodology adopted to conduct this study.

Chapter-II

Chapter two deals with Nature and Concept of privacy, this chapter is divided into four parts. First part deals with an overview of Nature and Concept of privacy. Second part deals with Meaning and Definition of privacy, third part deals with basis of privacy and fourth part deals with Importance of Privacy.

Chapter -III

Chapter three deals with privacy in religious perspective which is divided into four parts. First part deals with an overview of privacy under different religions. Second part deals with privacy under Hinduism, third part deals with privacy under Islam and lastly fourth part deals with privacy under Christianity.
Chapter -IV

Chapter four deals with development of privacy in National perspective. This chapter is divided into three parts. First part deals with an overview of right to privacy under National perspective. Second part deals with development of privacy in Indian Constitution and third part deals with privacy under other Statutes.

Chapter -V

Chapter fifth deals with Development of privacy in Comparative International Perspective, this chapter is divided into seven parts. First part deals with an overview of Comparative International development of privacy, Second part deals with Development of privacy in United States of America, Third part deals with Development of privacy in United Kingdom, Fourth part deals with Development of privacy in Australia, Fifth part deals with Development of privacy in Canada, Sixth part deals with Development of privacy in Ireland and lastly Seventh part deals with Development of privacy in Germany.

Chapter -VI

Chapter sixth deals with Scope of right to privacy in India. This is divided into six parts. First part deals with an overview of Scope of right to privacy in India and Second part deals with right to privacy and telephone tapping, Third part deals with right to privacy and HIV/AIDS patient, Fourth part deals with right to privacy and woman dignity and bodily integrity and lastly Fifth part deals with right to privacy and Restitution of Conjugal rights.

Chapter - VII

Chapter seventh deals with Emerging Threats of Information Technology and privacy. Which is divided into four parts, First part deals with an overview of right to privacy and emerging threats of information technology? Second part deals with privacy and electronic surveillance,
Third part deals with privacy and internet and lastly Fourth part deals with privacy and investigative journalism.

Chapter -VIII

Chapter eighth deals with judicial Approach on right to privacy.

Conclusion and Suggestions

The concept of privacy has grown in with leaps and bounds in the present day society. With the electronic and telecommunication boom throughout the globe the right to privacy has become more pivotal right. With the burgeoning science and technology it has become a herculean task for any individual or for that matter the state to protect one's privacy. The increasing sophistication of information technology with its capacity to collect, analyze and disseminate information on individuals has introduced a sense of urgency to the demand for more stringent legislation in the area of privacy rights.

In the internet age, information is so centralized and so easily accessible that one tape on a button could throw up startling amount of information about an individual. Camera cell phones, mini camera, 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.

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 U.P.*, the question was whether right to privacy might be implied from existing fundamental rights in the Constitution of India Article 19(1)(d), Article 19(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 Justice Subba Rao was in favour of inferring right to privacy from right to personal
liberty is 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 a united 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.

R. Rajgopal v. State of Tamil Nadu, is 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 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) of the Indian Telegraph Act, the court prescribed stringent measures to protect the individual privacy to the extent possible.

In ‘X’ v. Hosital ‘Y’, The Supreme Court was confronted with the test of striking a balance between two conflicting fundamental rights: the AIDS patient’s 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 cannot 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.

The most significant development apart from search and surveillance issues is the recent decision of the High Court of Delhi in the Naz Foundation Case, 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 another’s 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 with out 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 jurists have not made an attempt to define privacy. They have relied largely on foreign definition and court rulings, 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 issues 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 law on privacy needs 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.