CHAPTER-1
CHAPTER - I

Introduction

1.1 Statement of the Problem

Protection of privacy in India: Law and Juridical concerns “Privacy is not something that I am merely entitled to, it’s an absolute prerequisite;”

(Marlon Brando)¹

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.²

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 seclusion³. 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 any one with out 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.⁴

The growth of right to privacy usually starts from the Warren and Brandies view published in the name of the 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. The intense intellectual and emotional life and the heightening of sensations which came with the advancement of civilization made it clear to men that only a part of the pain, pleasure and profit of life lay in physical things, thought, emotions and sensations demanded legal recognition, and the beautiful capacity for
growth which characterizes the common law, enabled the judges to afford the requisite protection, without the interposition of the legislature.\(^5\)

The concept of privacy has historical origins from well known philosophical discussions most notably Aristotle’s distinction between the public sphere of political activity and the private sphere associated with family domestic life yet historical use of the term is not uniform and there remains confusion over the meaning, value and scope of privacy. 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.\(^6\)

Privacy is perhaps the most difficult to defined and circumscribe. Definitions of privacy vary widely according to context and environment.

Prof. Westin maintains that man’s need for privacy is rooted in his animal origins and that man and animals share basic mechanisms for claiming privacy among their own fellows. But human beings are individuated differently in different culture. The value of a culture lies not only in raising and enlarging the internal man but also in shaping his external existence and advance towards high and great ideals. Thus the growth of man’s personality is to a great extent predicated upon a sound political, economic and social institutions.\(^7\)

Describing the conceptual vacuum surrounding the notion of privacy Parker has rightly observed that currently, there is no consensus in the legal and philosophical literature on a definition of privacy. For some privacy is a psychological state, a condition of “being apart from others” closely related to alienation.\(^8\)
According to Gray L. Bostwick privacy is divisible into three components Repose, Sanctuary and intimate decision. These three components he holds that the last one is an eminently more dynamic privacy concept as compared to repose and sanctuary. Privacy is concerned with a man’s dignity and liberty.  

Drilling down to a deeper level, privacy turns out not to be a single interest but rather has several dimensions:

- Privacy of the person, sometimes referred to as bodily privacy; this is concerned with the integrity of the individual’s body.

- Privacy of the 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 public places. Which is sometimes referred to as media privacy?

- Privacy of personal communications, individuals claim an interest in being able to communicate among themselves using various media, without routine monitoring of their communications by other persons or organisations. It is sometimes referred to as interception privacy.

- Privacy of personal data, individuals claim that data about themselves should not be automatically available to other individuals and organisations and that, even where that is possessed by another party, the individual must be able to exercise a substantial degree of control over that data and its use. This is referred as ‘data privacy’ and ‘information privacy.’

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.

It is a fundamental human right guaranteed by international law. It has been an inalienable and integral part of human life since long; Initially it had a very narrower scope as such thought to be included only ‘right to be let alone’ later, the increasing maturity levels of the democratic system, rapid strides in science and technology, made its scope more wider, now the right to privacy
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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.  

Privacy is an important aspect of human dignity. It is acquisition and transmission of private information about the persons without his or their consent or knowledge. Distinct from the right of publicity protected by state, common or statutory law, a broader right of privacy has been inferred in the constitution. Although not explicitly stated in the text of the constitution. The concept of privacy as a legal entity was unheard in the seventeenth century and neither eighteenth and nineteenth century case law nor precedent established for their arguments. Both in the United States and United Kingdom, a properly called right was protection of privacy interest was mentioned only in dicta and judicial philosophy, never as precedent. In fact, the right of privacy in both its statutory and constitutional forms is purely an American development.

The law of privacy is not much developed in India as in the United States of America, but the Supreme Court of India had looked for how different countries court decided the issue. Historically judicial pronouncement of the Supreme Court of India provides the basic resources for both the purposes and the content of the right to privacy. The concept of privacy is not new in India, the ancient Indian theory of knowledge based on upnisadic literature, prescribes meditation, which is to be done without any outside disturbances, “The policy underlying the rules regulating the construction 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 and discharging his religious duties. The use of curtains as described in the Ramayana is pointer in the same direction. Islamic law explicitly protects privacy of home as a fundamental human right. In this context Quran states: This is for your own good, so that you might bear in mind, if you find no one in the house do not enter it until you are given leave; and if you are told “turn back” then turn back.
The Prophet Mohammad (PBUH) also emphasized the right of the people to be protected against unreasonable intrusions into their privacy. In Christianity there are several references of privacy. The Bible, the Holy text of Christian's states: that in a marriage relationship sexual union is to be done in private. Jesus taught his followers to keep their generosity private.

In modern times 'the right to let alone' is being given fresh thought in view of invention of new means and methods to outrage one's personal domain. The technologies have enhanced the possibilities of invasion into the privacy of individual and provided new tools in the hand of eavesdroppers; individual privacy is at greater stake than ever before. Computer and internet can be used to a mass huge amount of data regarding people profile in it various ways, commodify it and deal with it in a manner which could violate individual's privacy. The practices commonly used to the internet like, cookies, web bugs, hacking, spamming, could lead to the violation of privacy.

However, in this mad rush, one aspect of human life that every body values has been ignored to a point of oblivion privacy. People are concerned about privacy. Even in countries other than India where privacy had been considered essential to human existence and personal liberty, the concept of privacy as a right started generating new thinking with a view to accord it legal recognition so that its breach could be remedied by the courts. Privacy was being given wider and wider field of operation including there in matter pertaining to health, personal communications, family, personal relations and a right to be free from harassment and molestation. This development was the result of frequent violations of right to privacy to notable personalities and the consequent public concern for upholding this right.

There has been large number of cases alleging the violation of privacy which has further increased because of modern technology and investigative journalism. The right to privacy derives from an individual right to his (or her) own life, liberty, property and pursuit of happiness. The fact that celebrities make million, for being popular doesn't meant that they forfeit there rights and
become public property, each person's life is his own, celebrity or not. The photographer who invaded her privacy deserves moral blame.

The more serious aspect of this problem is that the allegations of violation of privacy are not only against the individuals or media but even against the government. Where it is often alleged that it is violating the privacy by ordering telephonic communication and secretly monitoring the movements of opponents and sometimes of other public figure.

1.2 Objective of the study

The concept of 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. Privacy is an abstract word that has various meanings scope and dimensions to individuals depending on each individual’s background, psychology, beliefs and ethics. However most individual will 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. These 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 the research is to solve this problem by providing various meaning and accurate definition to the term privacy.

The concept of privacy is differing from place to place and society to society, what is regarded as violation of privacy by one society may not be such violation in other. In this society, however there is certain expectation which would be taken as much for granted as the air we breathe. There would be special privilege arising from the position at birth or from wealth. Each one of us would be encouraged to develop our natural abilities to the full, to give to
the community the best of which one is capable. Each one of us as a matter of
ing the best of which one is capable. Each one of us as a matter of right would be able to live in decent and dignified surroundings and to withdraw himself from the gaze of others and intrusion in to personal life including thing necessary for and incidental to this whenever one's legitimate needs as an individual prompted him to do so.

For rights to become a reality, they must be governed by a system of law established by the political authority.

Rights being immunities denote that there is a guarantee that certain things can not or ought not to be done to a person against his will. Therefore, it necessitates the establishment of such a legal system which, while granting rights should also take in to account the right of others, the life of the group and life of mankind as a whole. Privacy is concerned with a man's dignity and liberty it is a fundamental human right guaranteed by national and international law. It has been an inalienable and integral part of human life since long. Initially, it had a very narrower scope as such thought to be included only 'right to be let alone" later, the increasing maturity levels of the democratic systems, rapid strides in science and technology made its scope more wider the researcher in the present study try to find out the real scope of the right to privacy in India.

In a modern state, when means of communication and communication networks have undergone a radical change, the threat to the right of privacy appears to be real and threatening concern. The basic aim of the research is to carve out the separate zone of privacy and will keep a proper balance between the compelling interest of individual in particular and society at large in general.

Indian constitution does not include the 'right to privacy' as a fundamental right. Its existence, therefore as a constitutionally guaranteed fundamental right is debatable right to privacy gained recognition mainly through judicial activism. Such right is incorporated under Article 21 through various judicial pronouncements. In the light of various judgments given by the
court time to time, researcher is trying to find out the answer of these questions:

- Does privacy right fulfill characteristics of a fundamental right?
- What is the extent and limit of the right to privacy?
- To what extent judiciary has been succeeded in enforcing such right?

In our country sole credit goes to the judiciary for recognizing the concept. Still a lot more has to be done for the recognition and protection of privacy by law. In India as a matter of fact this concept is quiet in primitive stage of its development. But its development is bound to have tremendous effect on the individual’s living. However if we go through various statutes of our country to understand the position of the concept of privacy, then we would find several provisions which have been enacted for protecting privacy.

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 protection from government intrusion into the private sphere of its citizens is still very much in issue.

On the basis of the above studies the researcher has described some hypothesis which is given below:

1.3 Hypothesis

1. Right to privacy developed in India is an extension of the fundamental rights, provided under the Indian constitution.

2. Right to privacy is not a new concept it is recognized in various religions all over the world.

3. In India we do not have specific provision dealing with the concept and definition of privacy.

4. The judiciary performs an active role in protecting the right to privacy of the person.

5. Constitutional protection of right to privacy does not include right to privacy in cyber age.

6. Investigative Journalism based on advanced technology leads to intrusions in to the individual privacy.

7. Electronic surveillance is a new threat to the right to privacy.
1.4 Review of Literature

The studies on "Protection of privacy in India" have been conducted by researchers of diverse backgrounds. However, several studies have been conducted on right to privacy in India, examining the nature, extent, and magnitude of the problem. In this context, how different studies have tackled the various dimensions of the problem of protection of privacy in India will be examined in the review of the literature in the following pages.

Hyman Gross in his book "Privacy: Its Legal Protection" laid down that privacy cannot exist at all without protection. Bare physical intrusion of private things cannot be secure in private places; all measures to provide safeguards for their communication or disclosure are pointless. In society, there are two interests, i.e., making privacy secure is one interest, and making lives properly is another interest. There should be a balanced between these two interests for the smooth functioning of the society.

K.K. Mathew in his book "Democracy, Equality and Freedom" laid down that exercise of the right to express oneself might in certain circumstances come into conflict with those interests of other individual rights to privacy, i.e., the right of a person to be free at some point from intrusion by society into his intimate and personal affairs. There should be proper balance between the life of a person as an individual and his life as a member of society.

David M.O. Brein in his book "Privacy Law and Public Policy" revealed logical fallacies and failure to account for various kinds of privacy interest and litigation. Right of privacy is products of social structure, conventions, and legal policy. Moreover, such right does not include when and how one will have privacy? Therefore, in order to elucidate the legal boundaries of privacy, an alternative analysis of privacy must construct a framework that does not confuse privacy and the right of privacy.

Paul O Higgins in his book "Cases and Materials on Civil Liberties" agreed that the concept of privacy embodies values which are essential to the working of a free society. Any general civil remedy would require hardly less general qualification in order to enable the court to achieve an acceptable balance.
between values implicit in respect for privacy and other values of at least equal importance in a free society of the unimpeded circulation of true information. Govind Mishra in his book “Right to privacy in India”, examines critically and thoroughly the treatment given by judges and scholars in India to the constitutional aspect of the right to privacy. He throws light on the recognition of privacy in the legal and moral norms of ancient Indian society and traces the recognition of the right in the customary and statutory law of British and contemporary India.

S.K. Sharma in his book “Privacy law: A comparative study”, had attempted to express privacy in national and international perspective. He lays down that privacy is the guarantor of individual moral autonomy. A basic value in a democratic system of government. Privacy can be defined as the right to control one's information and one's physical being. Both rights are closely related to the principle of respect for person. Both must be reinterpreted in the light of technological context.

Nandan Kamath in his book, “A Guide to cyber laws”, laid down the personal data privacy in the online context. According to him, the essence of the privacy of the personal data is the understanding that individual can legitimately claim that data about themselves. Privacy is the interest that individuals have in sustaining a ‘personal space’ free from interference by other people and organizations.

D.D. Basu in his book, “Law of the press”, is of the view that privacy is a recent development in the realm of law and the stream of its development is still flowing. It is very difficult to give an extensive definition of what privacy means in law. Loosely, it has described as the right of a person to be ‘let alone’ or his right of repose in his private life and home.

R.K. Suri, Parag Diwan, Shammi Kapoor in his book, “Information technology laws, law relating to cyber and e-commerce”, laid down the classic definition of the privacy concept that it consists of the right to be let alone in terms of isolation from the scrutiny of others.
Colin John Bennett Charles D Raas\textsuperscript{25} in his book "Policy instruments in global perspective", offers a broad and incisive analysis of the governance of privacy protection with regard to personal information in contemporary advanced industrial states. Based on research across many countries, it discusses the goals of privacy protection policy and the changing discourse surrounding the privacy issue, concerning risk, trust and social values.

Mashood A. Baderin\textsuperscript{26} in his book, "International Human rights and Islamic law", laid down the right to Privacy in Islam, the right to privacy is also generally well stressed under Islamic law. The shariah prohibits any unlawful intrusion into the private life. Specific aspect of privacy addressed by the HRC includes family home, correspondence honour and reputation etc.

S.P. Sathe\textsuperscript{27} in his book "Right to information", laid down that the right to freedom of speech and expression often collides with two rival rights namely the right to privacy and the right to fair administration of justice. Both the rights are protected by the law of tort and contempt of court respectively.

M.P. Jain\textsuperscript{28} in his book "Constitutional law" which has been concerned with the several developments which have taken place in the area of Indian constitutional law. There has been surfeit of case law after the 60 years of the constitutional law. Some of the judicial pronouncement is very significant and turning point in the constitutional law. The Supreme Court has been displaying a very creative and activist streak. Article 2, has been given a completely new orientation. The court has implied a bundle of rights for the people from Art 21 such as right to privacy etc.

S.V. Joga Rao\textsuperscript{29} in his book, "Law of cyber crimes and Information Technology law", laid down that major human rights concern in the cyber space is the threat to individual's privacy rights, the vast quantity of personal information about the individual is likely to increase rather than decrease. Regional bodies such as the Commission of the European Union, have attempted to uphold privacy principles by limiting the transfer of personal data to countries, which do not offer comprehensive and effective National laws for the protection of privacy.
Ajay Dash in his book, “Sting operation by media” tries to bring out the hidden secrets of the sting he tried to prevent the intricacies associated with the skilful tactics in a very lucid manner, taken in to account the right to privacy, he comment that the right to privacy and the public right to know are often cast as opposite but both are vital in a modern democracy, freedom of media is essential in maintaining an informed, confident and prosperous nation. A right to privacy is essential in preserving our dignity.

Prof. Narendra Kumar in his book, “Constitutional law of India”, has attempted to express complicated ideas with clarity and accuracy. His work incorporates all the important judgments of the Apex Court and the High Court related to privacy law in India.

James. B. Rule and Graham Green leaf in his book “Global Privacy protection”, traces the birth and early history of privacy, and the need for its protection as a public issue. He focuses on controversies over the fate of personal data held by government and private institutions in conventional or computerized files. He laid down what forms of privacy protection were readily accepted in each country and which were contested what different government agencies did and did not define roles for themselves in protecting people’s interest in treatment of ‘their’ data.

Hariom Marath in his book, “Justice delayed justice denied”, attempt to laid down the law relating to privacy he laid down that intrusion into privacy may be by legislative provisions, administrative orders and by Judicial orders. The legislative intrusions must be tested on the touch stone of reasonableness as guaranteed by the constitution and for that purpose the Court can go into the proportionately of the intrusion.

J.N. Pandey in his book “Constitutional law of India”, 46th Edition of the book has been brought up to date by incorporating all constitutional developments and judicial decisions relating to the several aspects of the privacy protection in India.
1.5 Research Methodology

Law is a normative science that is a science which lays down norms and standards 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 are desirable goal and social values to be perused, make doctrinal research 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 tool to do so is through legal reasoning or rational deduction.\textsuperscript{35}

The present study is based on the doctrinal method of research. The researcher has drawn help from various books, articles, newspapers, gazettes, report of commissions and committees and judicial decisions. Use of internet was also made together, important information relating to the subject of study. The research is analytical and descriptive in nature mode of citation is uniform through out the work. Articles from journal are cited as suggested by the respective Journals themselves. While citing a text book, the author's name is cited first, followed by the name of the book, page number and publisher. Place of publication and year of publication.

This research work is limited to statutory provisions, its efficacy, achieving the desired objectives, short comings/ loopholes and its impact on society though very limited materials are available on the subject but the present researcher has made his best possible efforts to incorporate the available study materials in the thesis. This topic for study is chosen as the researcher is of the view that the issue of privacy protection needs immediate attention.
1.6 Chapterization

For the purpose of discussing various aspects of right to privacy in India the study is organized into seven 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, Forth 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**

Devoted a summary of findings, conclusion and suggestions with respect to Protection of privacy in India: Law and Juridical Concerns based on an in depth study on the research problem.
Notes & References


2. Dr. Tabrez Ahmad, “Right to privacy: Constitutional issue and judicial responses in USA and India, Particularly in Cyber Age” (29 July 2009) available at SSRN: http://ssrn.com/abstract=1440665

3. All India Reporter January 2009 vol. 96 part 1141 “Analysis of concept of privacy in India”.


11. Supra Note 2, p. 6.


15. Ibid at pp. 22-23.


35. S.N. Jain, “Doctrinal and Non-doctrinal Legal Research, 17\textsuperscript{th} Journal of Indian Law Institute, 516 (1975).