CHAPTER-II
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NATURE & CONCEPT OF PRIVACY

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2.1 An Overview

The term “Privacy” is used frequently in ordinary language as well as in political and legal discussion, yet there is no single definition or analysis of the term. 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 and domestic life. Yet historical use of the term is not uniform, and there remains confusion over the meaning, value and scope of the privacy.

Most theorists take the view that privacy is meaningful and valuable concept. Definitions 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.

Of all the human rights in the international catalogue, privacy is perhaps the most difficult to define and circumscribe. Definitions of privacy vary widely according to context and environment. Keeping in view the vast literature available on the subject, a review of a few important definitions is mentioned in this chapter.

2.2 Meaning and Definitions of Privacy

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 and the environment. 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 it is his own personal possession.¹

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 safe guard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical.²

Then insecurity in Privacy is increasing with the passage of time and technological advancement. The psychological prison is thrown around a man’s life by a complex technology not knowing when and by whom he is being watched or overheard. In black stone’s time eaves dropper were known who listened concealing themselves near walls or windows, but in our day electronic surveillance has left no aspect of man’s life uncovered. But to equate the Black Stonian eavesdropping and the electronic surveillance said justice Douglas, is to treat man’s first gun powder as the same level as the atomic bomb.³

All along with others have been described as an added new and menacing dimension to familiar threat to privacy.⁴

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.⁵ For some, privacy is a psychological state, a condition of “being apart from others” closely related to alienation.⁶ According to Gray L. Bostwick Privacy is divisible into three components. (a) Repose (b) Sanctuary and (c) intimate decision. These three components he holds that the last one is an eminently more dynamic privacy concept as compared to repose and sanctuary.⁷ For other an important aspect of privacy is the freedom not to participate in the activities of others, a freedom which is lost when we are forced to hear the roar of automobile traffic or breathe polluted air.⁸
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.\(^9\)

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 latter is about the extent to which state can intrude in to the life of the citizens to keep watch over his movements.

According to Black Law Dictionary Privacy means “The right to be let alone, the right of a person to be free from unwanted publicity. The term right of privacy is generic term encompassing various rights recognized to be inherent in concept of ordered liberty and such right prevents governmental interference in intimate personal relationship or activities, freedom of individual to make fundamental choices involving himself his family and his relationship with others.”\(^10\)

According to Webster Dictionary, the term privacy means, “the state of being apart from company or observation, seclusion.”\(^11\)

According to Oxford dictionary, privacy means the state of being alone and not watched or disturbed by other people. The state of being free from the attention of the people.\(^12\)

The term “Invasion of Privacy means the unwarranted appropriation or exploitation of one's personality, publicizing one’s Private activities, in such a manner as to cause mental suffering, shame or humiliation to person of ordinary sensibilities.”\(^13\)

Another noted author Alan F. Westin defines privacy as, “The claim of individuals, groups or institutions to determine for themselves when, how and to what extent information about them is communicated to others”.\(^14\) Gaity defined Privacy as “an autonomy or control over the intimacies of personal identity.” Thus the absence of consensus is wide ranging writers on the subject
do not agree “whether privacy is one concept or many? Whether privacy has independent existence or has parasitic or derivative existence?

They neither agree on the nature of privacy nor on its characteristics. Given such diversity. For many scholars, lawyers and administrators, Protection of Privacy appears random, adhoc and unprinted. They are led to believe that the concept of privacy has no core meaning. In 1888, Cooley planted the seed of privacy for the legal profession interest in the soil of the Unites States of America. According to him the right to respect for private life is the right to be let alone.

A couple of years later in 1890, Warren and Brandies cultivated the notion with the initial analysis of the concept of Privacy. Political, Social and economic changes, they argued, entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demand of society. In very early times, the law gave a remedy only for physical interference with life and property. Later, there came recognition of man’s spiritual nature, of his feeling and his intellect. Gradually, the scope of these rights broadened and now the right to life has came to mean the right to enjoy life the right to be let alone.

Recent inventions and business methods call attention to the next step which must be taken for the protection of person, and for securing to the individual what Judge Cooley calls the “right to be let alone”. Instantaneous photographs and news paper enterprises have invaded the sacred precincts of private and domestic life; the numerous mechanical devices threats to make good the prediction that “what is whispered in the closet shall be proclaimed from the house tops” the press is over stepping in every direction the obvious bunds of propriety and of decency Gossip is no longer the resource of the idle and the victims, but has become a trade, which is pursued with industry as well as effrontery to satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendance upon advancing civilization, have rendered necessary some retreat from the world
and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and Privacy have become more essential to the individual, but modern enterprises and inventions have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury.\textsuperscript{21}

Relying upon the opinion of Yates J., in Miller v. Taylor\textsuperscript{22}, they have argued that the common law secures to each individual the right of determining ordinarily; to what extent his thoughts, sentiments and emotions shall be communicated to others. No other has the right to publish one’s productions in any form without his consent. This right is wholly independent of the material on which, or the means by which, the thought, sentiment, or emotion is expressed. It is entirely independent of the Copy right laws. Analyzing other cases, they concluded that the protection afforded to thoughts, sentiments, and emotion, expressed through the medium of writing or of the arts, so far as it consists in preventing publication is merely an instance of the enforcement of the more general right of the individual to be let alone. The Principle which protects personal writings and all other personal productions, not against theft and physical appropriation but against publication in any form, is in reality, not the principle of private property, but that of inviolate personality.\textsuperscript{23}

Thus concluded they were of the opinion that the existing law affords a principle which may be invoked to protect the privacy of the individual from invasion either by the too enterprising press, the photographers, or the possessor of any other modern device for recording or reproducing scenes or sounds. But since the latest advances in photographic art have rendered it possible to take pictures surreptitiously, the doctrine of contract and of trust are inadequate to support the required protection, and the law of tort must be resorted it.\textsuperscript{24}

The principle which protects personal writing and any other productions of the intellect or of the emotions is the right to privacy, and the law has no new principle to formulate when it extends this protection to the personal appearance, sayings, and acts and to personal relation, domestic or otherwise.\textsuperscript{25}
In 1960, Prosser, having analyzed the concept in several judicial pronouncement concluded that the law of privacy comprises four distinct kinds of invasions of four different interests of the plaintiff, which are tied together by the common name, but otherwise have almost nothing in common except that each represents an interference with the right of the plaintiff in the phrase coined by judge Cooley, “to be let alone”.26

These four torts may be described as follows:

1. Intrusion upon the plaintiff's seclusion or solitude, or into the Privacy action which has been allowed in cases like a young man intruding upon a woman in childbirth”, “Intruding into the plaintiff's name, his hotel room and a woman's state-room on a steam boat” and “for as illegal search of her shopping bag in a store, “will overlap, to a considerable extent at least, the action for trespass to land and chattels. This principle was, however, extended to eaves dropping upon private conversations by means of wiretapping and microphones. The tort has been found in the case of unauthorized preying in to the plaintiff's bank account and as illegal blood test. It is clear, however, that there must be something in the nature of preying or intrusion which must be offensive or objectionable to a reasonable man. It is clear also that the thing into which there is preying or intrusion must be, and be entitled to be, private. On the public street, or in any other public place, the plaintiff has no right to be alone, and it is no invasion of his privacy to do no more than follow him about. On the other hand, when he is confined to a hospital bed and in all probability when he is merely in the seclusion of his home, the making of photography without his consent is an invasion of a private right of which he is entitled to complain. It appears obvious that the interest protected by this branch of the tort is primarily a mental one. It has been useful chiefly to fill in the gaps left by trespass, nuisance, the International infliction of mental distress, and whatever remedies there may be for the invasion of constitutional rights.27
2. Public disclosure of embarrassing private facts about the plaintiff because of its background of personal annoyance from the press, the article of Warren and Brandies was primarily concerned with the second form of the tort, which consists of public disclosure of embarrassing private facts about the plaintiff. The tort, in question is explained by the California Court in Melvin v. Reid, a prostitute was prosecuted for the charge of murder in a sensational murder trial. After her acquittal she had abandoned her life of shame, became rehabilitated married a man named Melvin and had led a life of rectitude in respectable society, among friends and associates who are unaware of her earlier career. Seven years afterward the defendant made and exhibited a motion picture, called “The Red Kimono”, which enacted the true story and ruined her new life by revealing her past to the world and her friends, relying in part upon a vogue constitutional provision that all men have the inalienable right of “pursuing and obtaining happiness, the court held that this was an actionable invasion of her right of privacy.

3. Publicity which places the plaintiff in a false light in the public eye. The false light cases obviously differ from those of intrusion or disclosure of private facts. The Interest protected is clearly that of reputation, with the some overtones of mental distress as in defamation. There is a resemblance to disclosure; but the two differ is that one involves truth and the other lies, one private or secret facts and the other invention both require publicity. There has been a good deal of overlapping of defamation in the false light cases, and apparently either action or both will very often lie. The privacy cases do go considerably beyond the narrow limits of defamation, and doubt have succeeded in affording a needed remedy in a good many instances not covered by the other tort.

4. Appropriation, for the defendant’s advantages, of the plaintiff’s name or likeness- there is little indication that Warren and Brandies intended to direct their article at the fourth branch of the tort, the exploitation of
attributes of the plaintiff's identity. It consists of the appropriation, for the defendant's benefit or advantage, of the plaintiff's name or likeness. There are many great decisions in which the plaintiff has recovered when his name or picture or other like has been used without his consent to advertise the defendant's product, or to accompany an article sold\textsuperscript{30}, to add luster to the name of a corporation\textsuperscript{31}, or for other business purposes\textsuperscript{32}. It is the plaintiff's name as a symbol of his identity that is involved here, and not his name as a mere name. It seems sufficiently evident that appropriation is quite a different matter from intrusion, disclosure of private facts, or a false light in the public eye. The interest protected is not so much as mental as proprietary one, in the exclusive use of the plaintiff name and likeness as an aspect of his identity.\textsuperscript{33}

It has been observed that Prosser's re-examination presents a paradox either there is no single privacy interest and privacy is inherently ambiguous, or privacy can be adequately protected by other interests in which case protection of privacy parse is redundant.\textsuperscript{34}

According to Richard B. Parker Privacy is control over when and by whom the various parts of us can be sensed by others.\textsuperscript{35} Explaining the term 'Sensed' as used in the above definition, Parker says that by 'sensed' is meant simply seen, heard, touched, smelled or tasted. 'Sense' is used in the above definition, as a summary for the verbs "see", "hear", "touch", "smell" and "taste", as these words are ordinarily used. By 'parts of us' is meant the parts of our own bodies, or voices, the products of our bodies and includes objects very closely associated with us. By 'closely associate' is meant primarily what is especially associated. The objects which are "parts of us" are objects we usually keep with us or locked up in a place accessible only to us. "In our culture", Parker observes, "these objects might be the contents of our purse, pocket or safe deposit box or the pages of our diaries. For some other culture these objects might be eating utensils or the inside of a personal shrine."\textsuperscript{36}
Parker further maintains that there is no necessary connection between a loss of control over private information and a loss of privacy. If we tell someone that we are homosexual, we lose control over private information, but we do not necessarily lose privacy. This distinction led Parker to view the collection of data by government and other institutions, as described by Westin and Miller, not as a loss of privacy parse, but rather a threat to one privacy.\(^\text{37}\)

It may be observed that parker has ruled out psychological factor in the definition of privacy, but his ideal definition based on data is nothing but "shared institutions", a psychological element, Again, Parker think a definition of privacy relative to a particular culture is undesirable but while describing the term closely associated\(^\text{38}\) he falls back upon our culture to identify objects closely associated with us.

According to Ruth Gavison, there are three elements in privacy secrecy, anonymity and solitude. It is a state which can be lost, whether through the choice of the person in that state or through the action of another.\(^\text{39}\)

Gavison point out that if something in common is found, a simple definition of privacy can be provided. If there is no doubt or controversy concerning the dictates of the ideal of truth, no other criterion should be met, and the ideal of truth need not be compromised.\(^\text{40}\)

Gavison maintains that perfect privacy is impossible in any society and total loss of privacy is as impracticable as perfect privacy. The more important concept, according to him, is therefore, loss of Privacy. He defines it as follows:

Privacy is a situation (or a condition) of an individual vis-à-vis others, which is related to the extent to which one is known to others, is physically accessible to others, and is the subject of others 'interest' and attention.\(^\text{41}\)

Robert Ellis Smith, editor of the privacy journal, defined 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.\(^\text{42}\)
According to Edward Bloustein, Privacy is an interest of the human personality. It protects the inviolate personality the individuals’ independence, dignity and integrity.\(^{43}\)

In defining privacy Hymon Gross appears to oscillate between viewing it as a “condition of life as a form of control”. In his first articles he defines it in the following words:

Privacy is the condition of human life in which acquaintance with a person or with affairs of his life which are personal to him is limited.

In his another article on the same subject, in which the first article is not referred to, he describes privacy as:

The condition under which there is control over acquaintance with one’s personal affairs by the one enjoying it.\(^{44}\)

Gross further explains the meaning of ‘Control’ in the context of privacy according to his analysis, if A voluntarily exposes himself to B, by either giving B some information or by enabling B to overhear A’s conversation, and if B is bound by some convention obligating him not to disclose the information thus acquired, A loss no ‘control’ over the information, although he opens himself to a risk of loss of ‘control’, voluntary exposure without the presence of restrictive convention, or acquisition of information about A against his wish despite his efforts to prevent it are instances of loss of control.\(^{45}\)

Charles Fried offers the following definition: Privacy is not simply an absence of information about us in the minds of others; rather it is the control we have over information about ourselves. The person who enjoys privacy is able to grant or deny access to other……privacy, thus, is control over knowledge about oneself.\(^{46}\)

Arthur R. Miller, also defines privacy as the ‘individual’s ability to control the circulation of information relating to him, a power that often is essential to maintaining social relationship and personal freedom.\(^{47}\)
According to Julie Inness ‘Privacy’ is the state of possessing control. Over a realm of intimate decision, which includes decision about intimate access, intimate information and intimate actions.\textsuperscript{48}

According to William Parent, privacy is the condition of not having undocumented personal information known or possessed by others. Parent stresses that he is defining the condition of privacy, as a moral value for people who prize individuality and freedom and not a moral or legal right to privacy. Personal information is characterized by parent as factual and these are facts that most persons choose not to reveal about themselves, such as facts about health, salary, weight, sexual orientation etc. Personal information is documented, on parent view, when it belongs to the public record that is, in newspapers, court records, or other public documents. Thus once information becomes part of a public record there is no privacy invasion.

Constitutional right to privacy is viewed by parent as better understood as an interest in liberty, not privacy. In sum there is a loss of privacy on parent’s view, only when other requires undocumented personal information about an individual.\textsuperscript{49}

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 in to his personal life or affairs, or those of his family, by direct physical means or by publication of information.”\textsuperscript{50}

The Preamble to the Australian Privacy charter provides that, “people have a right to the privacy of their own body, Private space, privacy of communications, information privacy (right concerning information about a person) and freedom from surveillance”. ….. A free and democratic society requires respect for the autonomy of an individuals and limits on the power of both state and private organization to intrude on that autonomy. Privacy is a value which underpins human dignity and other key values such as freedom of association and freedom of speech. Even those privacy protections and limitations on surveillance that do exist are being progressively undermined by technological and administrative changes. New forms of protection are
therefore required. It should not be assumed that a desire for privacy means that a person has ‘something to hide’. Privacy is basic human right and the reasonable expectation of every person. People who wish to protect their privacy should not be required to justify their desire to do so. The maintenance of other social interests (public and private) justifies some interference with privacy and exceptions to these principles. The onus is on those who wish to interfere with privacy to justify doing so.51

The conclusions reached at the Nordic Conference of jurists in May, 1967 give 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 lead his own life protected against:

- Interference with his private, family and home life.
- Interference with his physical or mental integrity or his moral or intellectual freedom.
- Attacks on his honour or reputation.
- Being placed in a false light.
- The disclosure of irrelevant, embarrassing facts relating to his private life.
- The use of his name, identity or likeness.
- Spying, drying, watching and besetting.
- Interference with his correspondence.
- Misuse of his private communications, written or oral.
- Disclosure of information given or received by him in circumstances of professional confidence.52

Privacy is recognized around the world in diverse regions and cultures it is protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and Regional Human right treaties.

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 everyone has the right to the protection of the law against interferences or attacks.  

Numerous international human rights treaties specially recognize privacy as a right. The UN Convention on Migrant workers and the UN Convention on Protection of the Child adopt the same language. On the regional level, various treaties make these rights legally enforceable. Article 8 of the 1950 convention for the protection of Human rights and fundamental freedom states:

1. Every one has the right to respect for his private and family life, his home and his correspondence.
2. 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, for the prevention of disorder or crime, for the protection of health of morals or for the protection of the rights and freedom of others. The convention created the European commission of Human Rights and the European Court of Human Rights to oversee enforcement. Both have been active in the enforcement or privacy rights and have consistently viewed Article 8 protections expansively and interpreted the restrictions narrowly. The commission found in 1978, the right to respect “private life” is the right to privacy, the right to live, as for as one wishes, protected from publicity……

In the opinion of the commission, however, the right to respect for private life does not end there. It comprises also to a certain degree the right to establish and develop relationships with other human beings, especially in the emotional field for the development and fulfillment of one’s own personality.

India is a signatory to the International Convention on Civil and Political Rights, 1966 which, by Article 17 provides that (1) No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his honour and reputation.
Before examining constitutional position in India as well as the world over, it may be necessary to examine the guidelines along with the extent of the right to privacy may be determined. The guidelines, which may be generally taken as accepted, have been framed by a European organization, named the Organization for Economic Co-operation and Development (OECD) in 1980. The principles are as follows:

1. **Collection limitation Principle:** There should be limits to the collection of personal data and any such data should be obtained by lawful and fair means and where appropriate, with the knowledge or consent of the data subject.

2. **Data quality Principle:** Personal data should be relevant to the purposes for which they are to be used and, to the extent necessary for that purposes, should be accurate, complete and kept up to date.

3. ** Purpose specification Principle:** The purposes for which personal data are collected should be specified not later than at the time of collection and the subsequent use limited to the fulfillment of those purposes or such others as are not incompatible with those purposes and as are specified on each occasion of change of purpose.

4. **Use limitation principle:** Personal data should not be disclosed, made available or otherwise used for purpose other than those specified in accordance with (Principle 3) except:
   
   (a) With the consent of the data subject; or

   (b) By the authority of law.

5. **Security safeguards Principle:** Personal data should be protected by reasonable security safeguards against such risks or loss or unauthorized access, destruction, use modification or disclosure of data.

6. **Openness Principle:** There should be a general policy of openness about developments, practices and policies with respect to personal data. Means should be readily available of establishing the existence and nature of personal data, and the main purposes of their use, as well as the identity and usual residence of the data controller.
7. **Individual Participation Principle:** An individual should have the right:

(a) to obtain from a data controller, or otherwise, confirmation of whether or not the data controller has data relating to him;

(b) to have communicated to him, data relating to him;
   - with in a reasonable time;
   - at a charge, if any, that is not excessive;
   - in a reasonable manner; and
   - in a form that is readily intelligible to him;

(c) to be given reason if a request made under sub paragraph (a) and (b) is denied, and to be able to challenge such denial; and;

(d) to challenge data relating to him and, if the challenge is successful to have the data erased, rectified, completed or amended.

8. **Accountability Principle:** A data controller should be accountable for complying with measure which gives effect to the principles stated above.

Privacy as a legal concept remains vague and obscure in Indian Jurisprudence. The judges are confused, Jurist differs and academicians stumble in defining the extent, nature and limits of the concept. Though the problem of defining privacy is not limited to Indian Jurisprudence, here lack of authoritative studies on this aspect further complicates the problem. The Indian judges and Jurists have not made an attempt to define privacy. They have relied largely on foreign definitions and court ruling in this regard. Some among them have admitted their despair in trying to define it while some other complains that it has overtones beyond legal orbits and hence evades definition.

The result is that we are yet to have the much needed indigenous definition of right to privacy, because privacy as a value changes from place to place and society to society. What is regarded as violence of privacy by one society may not be such violation in another. Indian courts have traced the
genealogy of our fundamental rights to ancient times; even to the Vedic period. These rights enable a man to chalk out his own life in the manner he likes best and are manifests of men inviolable and fundamental freedom. Right to privacy fulfills the characteristics of a fundamental right. The concept of privacy was known and developed in India even in the ancient period and was a cherished value. Further privacy is an expressed fundamental right in various constitutions of many major democratic republics and United Nations Declaration of Human Rights.

Taking cue from the American Court the apex Court of India has also categorically ruled that privacy is a right implicit in right to life and liberty which can be conferred the status of Fundamental right.

2.3 Basis of Privacy

In early time the law gave remedy only for physical interference with life and property for trespass. Then the right to life served only to protect life from battery in its various forms; Liberty meant freedom from actual restraint and the right to property secured to all the individual, his land and cattle; later there came a recognition of spiritual nature of his feeling and his intellect. Gradually, the scope of these legal rights has come to mean the right to enjoy the life, the right to be let alone.

Generally speaking, a civilized man has a different concept of life and consequently of his home. The danger of not having a private zone for every individual was indicated by Douglas J. He said, “That a time may come when no one can be sure whether his words are being recorded for use at some future time. When everyone will be in fear that his most sacred thoughts are no longer his own but belong to the Government, when the most confidential conversation are open to eager, prying ears; when that times comes privacy and with it liberty is gone.”

If a man’s privacy is invaded at will who can say that he is free? If his every word is taken down and evaluated or if he is afraid of every word he says, who can say he enjoys freedom of speech? If his conversations with his
associate are purloined, who can say that he enjoys the freedom of association?\textsuperscript{70}

The demand that individual privacy be respected is becoming more common and more instant in our age. This probably reflects a rapidly increasing need for privacy arising from converging ecological, cultural, technical and social changes. The population explosion together with modern urbanization has made it much more difficult for the individual to get away physically and psychologically, from the crowd of strangers around him. The growing allegiance to political individualism and moral autonomy has caused the individual to resent and resist legal regulation and social interference more intensely. At a time when bugging and other techniques of surveillance have been perfected to an alarming degree, the development or computers enables as to store and retrieve vastly increased amount of information about any specified individual in even very large populations. Finally, as organizations have grown larger in size and more bureaucratic in structure, their tendency to invade the life of the individual has grown space in the United States, whatever may be the case in other societies, the legal system has responded to these changes by relying mainly on statutory safeguards.\textsuperscript{71}

That the individual shall have full protection in person and in property is a principle as old as Common law, but it has been found necessary from time to time to define a new, the exact nature and extent of such protection Political, social and economic changes entails the recognition of new rights, and the common law in its eternal youth, grows to meet the demand of society, the right to liberty secures the exercise of extensive civil privileges.\textsuperscript{72}

The intense intellectual and emotional life and the heightening of sensations which came with the advancement of civilizations made it clear to man 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 legislature. Recent invention and business method call attention to the next step which
must be taken for the protection of the person, and for securing to the individual what judge coolly calls the right to be let alone. Instantaneous photograph and newspaper enterprise has invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that “What is whispered in the closet shall be proclaimed from the house tops”. For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons, and the evil of invasion of privacy by the newspapers long keenly felt has been but recently discussed by an able writer.

Of the desirability indeed of the necessity of such protection, there it is believed to be no doubt that the press is over stepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the ideal and of the vicious, but has become trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the column of the daily newspapers. To occupy the indolent, column upon column is filled with idle gossip, which can only be processed by intrusion upon the domestic circle. The intensity and complexity of life, attended upon advancing civilization have rendered necessary some retreat from the world, and man, under the refining influence of culture has become more sensitive to publicity, so that solitude and privacy has become mere essential to the individual.  

2.4 Importance of Privacy

“Privacy is the interest that individual have in sustaining a ‘Personal space’ free from interference by other people and organization.”

Privacy as defined in black dictionary, Right of a person and the persons properly to be free from unwanted public scrutiny and exposure privacy as a right has changed by leaps and bounds in recent times. The theory that an action may lie for the invasion of the right of privacy or as it has been said, the right to be let alone was propounded in 1890 by two American lawyers Samuel D Warren and Louis D. Brandeis.
Right to privacy is a violable Human right. The quest of privacy is an inherent instant of all human beings. As a matter of fact it is a natural need of an individual to establish individual boundaries with almost perfect seclusion it is the ability of an individual or group to seclude them or information about themselves and there by reveal them selectively.\textsuperscript{76}

The right to privacy is deeply connected with a person self respect, that invasion of privacy being connected to shame and dignity. Liberal political theory makes essential use of this category in assessing the permissible sphere. Privacy has always been considered as a mark of privilege.\textsuperscript{77} Privacy is the quietest of our freedoms, because it serves to prevent the simple pain of embarrassment. The exposure of certain behaviour, actions or physical attributes to the public may cause embarrassment especially when individuals keep those behaviours, actions or physical attributes from the view of other based upon social practices.\textsuperscript{78} As a society we are upset about such disclosure, not because they reveal a secret; rather we are upset because these aspects of human life have been socially relegated to the private sphere and as such are connected to human dignity.\textsuperscript{79}

Privacy is also valuable in its ability to construct intimacy. The ability to selectively reveal personal information partly creates intimacy. Intimacy must exist between two individuals in order for their relationship to evolve from the basic respect due to all human beings in to relationship of trust. Friendship or love- privacy fosters the construction of deep social relationship by allowing individuals to display certain behaviors unseen in public areas such as playfulness, child likeness and certain types of physical touching. Surveillance arguably could inhibit the free and spontaneous display of care and affection toward others.

Basically, Privacy serves three essential purposes for those who value human dignity and flourishing. Individuality, intimacy and liberty. Privacy is essential to our sense of self. We have a conversation with ourselves in our heads, and then we speak and act among others. By being allowed privacy, we
can create and restore our individual self. At it most cemented, privacy permits and sustain individuality.80

According to Edward Bluestein “The man who is compelled to live every minute of his life among others, and whose every need, thought desire, fancy or gratification is subject to public scrutiny, has been deprived of his individuality and human dignity. Such an individual merges with the mass. His opinions, being public, tend never to be different his aspirations, being known, tend always to be conventionally accepted ones. His feeling being openly exhibited, tend to lose their quality of unique personal warmth and to become the feeling of every man (or woman) such a being......is not an individual.”81

In practice, privacy in society can be absolute. Other values, including security compete with liberty and its component parts, of which privacy is one. Compromise is made. The legitimacy of the compromise depends partly on the integrity and transparency of the process through which the compromise are reached, partly on the legitimacy of the authority that decides the final shape of the compromise and party on the accountability of those who exercise new powers that curtails privacy.82

Another value of privacy is that it protects against improper uses of personal information. This is the value of privacy that integration affects the most. The misuse of personal information occur in two ways, first it can unduly influence on otherwise fair process that distributes benefit and burdens.

Employment opportunities, political offices and respect as well as animosity, disrespect and imprisonment are granted or denied us based upon information about ourselves if society allocates these social benefits and burdens based upon inaccurate information technology accurate but misleading information or inappropriately considered information, unfairness may result.

Second the misuse of information can make us vulnerable to unlawful, disingenuous and prejudicial acts. Not only the knowledge of our home phone number and address expose us to harassers and stalkers, but accessible personal information can also make us vulnerable to identity theft, vulnerability of individuals can result in significant social consequences. Such vulnerability can
chill individuals from engaging in perfectly legal, but unpopular activities that can corrode private experimentation deliberation and reflection. This self-suppression can result in bland, unoriginal thinking and could undermine the self critical.  

Many authors and human liberty activists, concerned with privacy have adopted the slogan “Knowledge is power”, but not in the positive approach that teachers preach to motivate their students to learn. The acquisition of information about the communications and interactions between people has been expressed as, violation of a citizen's right to privacy in the interest of allowing some individuals to exploit others. Whether for financial, political or personal reasons. We must be very concerned about technology impact on privacy and power. Once the public realize how much information can be collected and used against them in modern times, they behave “for the record” and lose their freedom of actions and expressions, and care more about how levels of authority will perceive them. The government’s use of any surveillance techniques actually manipulates people behaviors. People speak more freely when they don’t think any one is taking down what they say. The idea of free speaking in a world of audio and visual surveillance translates to the idea of free typing in the computer world. Justice Brennam of the Supreme Court once said. “Electronic surveillance strikes deeper than at the ancient feeling that a man’s home is his castle; it strikes at freedom of communication, a postulate of our kind of society...... Freedom of speech is undermined where people fear to speak unconstrainedly in what they suppose to be the privacy of home and office.”

With the rise of technology, unprecedented changes in the exchange of information must be closely analyzed in relation to the survival and protection of the individual, which has only begun to implant the idea that people everywhere require explicit privacy rights. This technology links to privacy by way of the law. The main purpose of establishing enforceable law is to enable individuals to survive along side of other individual.
2.5 Recapitulation

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 define, and arguable less critical issues.

Privacy is subjective and often emotional issue, what threatens individual’s sense of privacy may not concern 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 task 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.

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 through 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 philosopho-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 framework 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.
Notes and References

13. Supra note 10 p. 739.
15. Paul A Freund, “Privacy one Concept or Many”, Privacy Nomos XIII, 182.
20. Ibid.
21. Id at 196.
23. Supra Note 18, 205.
24. Id. at 211.
25. Id, at 213.
27. Id. At 391-392.
29. Supra Note 26, pp. 400-401.
30. Neyland v. Home pattern Co. 65 F. 2d 363 (2d Cir. 1933).
31. Von Thodrovich v. Franz Jusef Beneficial Ass’n, 154 (fed 911 (E.D. pa 1907)
34. Supra Note 16, p. 8.
35. Supra Note 5, p.275.
36. Id. 281.
37. Id. 285.
38. Ibid.
39. Robert Ellis smith, Ben Franklin website 6 (Sheridan Book 2000) <file:
111 D:/ constitution/ 29/ Privacy int/20 art htm 7% 5 B6% 5D visited on Jan 2008.
41. Id. 24.
42. Supra Note 40.
45. Id. 170-171.


53. Article 12 of the Universal Declaration of Human rights (1948).

54. Article 14 of the UN Convention on Migrant Workers.

55. Article 16 of the UN Convention on Protection of the Child.


58. Ibid.


63. This confusion regarding privacy is evident from the observation of Mathew J, in Govind v. state of M.P, A.I.R. 1975 SC 1378.

64. In India, other than some articles in legal journal no authoritative study of literature exists in this regard.


68. Right from Kharak Singh's Case AIR 1963 S.C. 1297, the Indian courts have laid down the importance of Privacy.

69. Warren and Brandeis" the Right to Privacy" Harvard Law Review"
Vol. IV December 15, 1890 No.5.


72. Ibid.


75. Selected Essays on Torts, p. 122.

76. All India Reporter, vol. 96 part 1141, January (2009).

77. Right to Privacy in the epoch of Information and Communication Pragya Bharawaj & Sandeep Chauhan, Eastern law publication at p.5.


80. Id at 1213.


82. Solove supra Note 79, p.1214.

83. Id at 1216-17.