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Emergence of Right to Privacy in India

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ABSTRACT

“Gradually the scope of legal rights broadened; and now the right to life has come to mean the right to enjoy life – the right to be let alone.”

– *Louis Brandeis, J. (1890)*

India has fought a long war with recognizing the rights of privacy. From antithetical case judgments to a reconciled analysis of the emergent need of this right, there have been many noteworthy changes that should be studied and appreciated, in order to undermine the present scenario of privacy rights in India. Spanning over a course of 67 years, until finally pronouncing the Right to Privacy as a Fundamental Right, this is a journey that has undergone myriad reforms, interpretations, reviews and has finally been shaped as a law, which protects the private life of individuals from unnecessary intrusion. This right is restricted not just to celebrities or to noteworthy persons of fame, but also to the common man whose personal details like his financial statements and health issues should not be information that others can access. Privacy is the right to be left alone. If a person has the right to be recognized through means of reservation and special laws, they also deserve to withhold information that concerns their life and of those close to them. This paper traces the journey of privacy rights from various junctures in time which have led us to one of our latest Fundamental Rights. It also includes an analysis on how there are still some battles left to fight in order to ensure a strengthened and upgraded structure that protects and the solitude of each individual while being at par with other developed nations..

I. INTRODUCTION

Privacy is a principal human right, cherished in various instruments of universal Human Rights. Not only is it vital to the insurance of human pride but also structures the premise of any society that hails democracy. It additionally underpins and fortifies different rights; for example, right to freedom of expression, association, information, etc. Each individual has a characteristic need to self-governance and command over their personal lives. This need is inalienable in human conduct and now has been perceived as the human right to privacy.³ Presently, with the

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³ Right to Privacy: The Indian Perspective, Lawteacher.net (2018), <https://www.lawteacher.net/free-law-essays/constitutional-law/right-to-privacy-the-indian-perspective-constitutional-law-essay.php#ftn1> (last visited

growing popularity of social media being used by more and more persons everyday, there is enormous profit generated through establishing connections between them. Thus, it is essential that we consider and decide how far invasions might be made into the private existence of the people.⁴

Right to privacy has often been defined as “right to be left alone”. In the famous phone tapping case of *Olmstead vs US*, 1928, when majority held the evidence to be admissible, Judge Brandeis in his dissenting opinion upheld this right and called it “right to be let alone”. The Black’s Law dictionary defines right to privacy as “right to be left alone” too, which would mean the freedom given to an individual from unwarranted indulgence. Jude Cooley in his work on torts has asserted that privacy is synonymous to “right to be let alone”.⁵

As man takes birth alone, leaves it alone, and is separated from everyone else responsible for his life, he may be presumed to have by the law of his tendency, the full option to live alone and in the way however he sees fit.⁶

II. LAW OF TORTS ON RIGHT TO PRIVACY

The law of Torts acknowledges five distinct kinds of privacy rights. To begin with, the law of torts gives people the option to sue another when their solace or isolation has been encroached upon in a nonsensical and exceptionally hostile way. Second, people also have an option to sue another when data concerning their private life is unveiled to general society in a profoundly offensive manner. The third instance is borne out of instances where other people publish something that places the highlight on somebody incorrectly. Fourthly, a case may be constituted when a person or group of persons are prohibited from misusing somebody's name without their assent. And fifthly, when business contenders are restricted from taking part in unfair trade by stealing confidential information.⁷

(A) FALSE LIGHT PUBLICITY

The tort of false light publicity shields people from the publication of incorrect information about their social position. The data need not be of a personal issue nor must it be abusive, as must offensive and libelous explanations, before punishment to be imposed. Rather, a deceptive

Feb 25, 2020).

⁴ John Gilmer Speed, *THE RIGHT OF PRIVACY*, 163 *The North American Review* (1896), <https://www.jstor.org/stable/25118676> (last visited Feb 25, 2020).

⁵ Shubham Mongia, *Legal Analysis of Right To Privacy In India* Legalserviceindia.com, <http://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html> (last visited Feb 25, 2020).

⁶ *Supra* note 2.

⁷ *Privacy - Common Law*, Law.jrank.org, <https://law.jrank.org/pages/9409/Privacy-Common-Law.html> (last visited Feb 25, 2020).

distribution will amount to tort of false light publicity when it is put before a crowd in general, such that a prudent individual would attribute it as antagonistic. Be that as it may, all instances of distribution of a false story to an individual, or a gathering of individuals, isn't viewed as adequately open to establish publicity.⁸

(B) INTRUSION ON SECLUSION

Courts usually necessitate that the interruption to be as a "physical trespass." This can be met by entering onto private property, or by an electronic or optical interruption, for example, utilizing long range focal points or profoundly delicate mouthpieces to photograph or record an individual who would reasonably expects some privacy. A court would think about this as a "physical trespass" if one's utilization of stalking gear was the main source to get your data or recording.⁹

(C) MISUSE OF NAME

People who misuse the name or resemblance of someone else are liable for committing a tort of intrusion of privacy. All people are granted selective property right in their name. No individual, business, or other elements may misuse somebody's name or similarity without their consent. By prohibiting the non-consensual utilization of an individual's name or resemblance, the law permits a person to protect their face, body, notoriety, renown, and their image. However, it must be noted that all uses of name of another person does not amount to a tort. In this case, a tort will be committed when an individual's name has been misused to get a prompt and direct favorable position. Such need not necessarily yield a monetary profit. In any case, the simple accidental utilization of somebody's name is definitely not a compensable invasion of privacy.¹⁰

(D) PUBLISHING PERSONAL INFORMATION

Laws ensure your entitlement to keep the subtleties of your private life from turning out to be general knowledge. For instance, publicizing information about an individual's wellbeing, sexual life, or money related difficulties is likely an intrusion of privacy. By demoralizing the publicity of such private and individual issues, the law of torts puts a high incentive on the right of people to control the dissemination of data about themselves, including the option to sift through humiliating and hurtful information that may impact other's assessment.¹¹

⁸ *Id.*

⁹ Elements of an Intrusion Claim | Digital Media Law Project, Dmlp.org, <https://www.dmlp.org/legal-guide/elements-intrusion-claim> (last visited Mar 3, 2020).

¹⁰ *Id.*

¹¹ What Is Invasion of Privacy?, Findlaw (2020), <https://injury.findlaw.com/torts-and-personal-injuries/what-is->

III. RIGHT TO PRIVACY IN ANCIENT INDIA

The idea right to privacy has been explored in ancient scriptures of Hindus. In the event that one happens to have a look at the Hitopadesh, it says that specific issues of families, sex and devotion ought to be shielded from revelation. Hitopadesh can't be based upon 'Positive Law', since even in its own time, it was identified with 'Positive Morality' instead. In case of present-day India, the issue of the right to privacy was first talked about in Constitutional Debates which took place while the drafting of the Constitution was in progress. Kazi Syed Karimuddin moved an amendment on the lines of the Constitution of the United States of America, but B.R. Ambedkar allowed restricted reinforcement and hence, Right to Privacy wasn't included in the Constitution of India.¹²

IV. INDIAN JUDICIAL INTERPRETATION OF PRIVACY

(A) M.P. SHARMA V. SATISH CHANDRA

The M.P. Sharma vs Satish Chandra¹³ case has been the pivotal judgment by the Supreme Court that has spoken about privacy and its protection on a level of which the apex court took due recognition. The case was registered after examination of undertakings of the Dalmia Group companies of which, some documents were searched and seized.¹⁴ After filing an FIR, warrants were issued by the District Magistrate, and thereafter, a search took place. of documents of the Dalmia Group of companies owned by Mr R.K. Dalmia who challenged such procedure in the apex court under Articles 19(1)(f) which is the right of the citizens to hold, acquire dispose of property, and 20(3) which is prohibition of self-incrimination by stating that such seizure was illegal and violated his privacy. The 8-judge bench opined that¹⁵:

“A power of search and seizure is, in any system of jurisprudence, an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of the fundamental right to privacy, analogous to the American Fourth Amendment, there is no justification for importing into it, a totally

invasion-of-privacy-.html (last visited Feb 25, 2020).

¹² Right to Privacy: The Indian Perspective, Lawteacher.net (2013), <https://www.lawteacher.net/free-law-essays/constitutional-law/right-to-privacy-the-indian-perspective-constitutional-law-essay.php#:~:text=It%20is%20not%20a%20right,this%20right%20as%20fundamental%20right.> (last visited Feb 26, 2020).

¹³ M. P. Sharma And Others V. Satish Chandra, 1954 AIR 300

¹⁴ M. P. Sharma And Others V. Satish Chandra, 1954 AIR 300.

¹⁵ Supra

different fundamental right by some process of strained construction.”

It was argued that since the drafters themselves did feel it necessary to include privacy as a legal right, let alone a fundamental one, the inclusion of such would not be deemed as essential either. However, with the growth in the scope of possibilities that surround us in today's hour, a tight system that protects each citizen's personal information and privacy is absolutely crucial.

(B) KHARAK SINGH V. THE STATE OF U. P. AND OTHERS

The second name that reflects in this timeline is that of the landmark case of Kharak Singh vs State of Uttar Pradesh. Kharak Singh was tried for the crime of dacoity but was acquitted since there weren't enough evidences to support such claim by the Prosecution. The police however, started keeping a watchful eye on him even after his acquittal. Kharak Singh then accused the policemen of having violated his Fundamental Rights by observing his activities. He filed a writ petition in the apex court stating that such surveillance carried out by the Police included domiciliary visits during night time, keeping an eye on his movement, and frequent investigation. It was challenged that such activity by policemen under the Uttar Pradesh Police Regulations constituted an encroachment upon Fundamental Rights. It was held that the Police was doing the surveillance as a part of their job in furtherance of interests of public and therefore such activity did not amount to a violation of fundamental rights and in the instance that it did such would be recognised as a reasonable restriction. The court decided that "privacy was not a constitutional right". Regardless, the arrangement permitting domiciliary visits was held to be unlawful and inconsistent to the constitution.¹⁶

Subbarao, J. gave a dissenting opinion by stating that despite the fact that privacy was not perceived as a fundamental right, it was basic to personal liberty within Article 21. Surveillance measures were also unconstitutional according to him.¹⁷

(C) STATE OF UTTAR PRADESH V. KAUSHALIYA AND OTHERS

In the case of State of Uttar Pradesh v. Kaushaliya¹⁸, the issue was whether the ladies who were practicing prostitution could be coercively expelled from their living arrangements and spots of occupation, or whether they were entitled, alongside different residents of India, the freedom to move and travel unreservedly all through the territory of India, and to settle in any part of India under Article 19(1)(d) and (e) of the Constitution of India. At the end of the day, did these

¹⁶ Kharak Singh V. The State Of U. P. & Others, 1963 AIR 1295.

¹⁷ *Id.*

¹⁸ The State of Uttar Pradesh V. Kaushaliya and Others AIR 1964 SC 416.

ladies have an outright claim on right of privacy over their choices in regard to their occupation and spot of living arrangement? Supreme Court denied this and held that the work of a prostitute in a specific zone are against ethics and thus inappropriate for her general well being, and hence it would essential to allow expulsion from the place of such trade. The suppression of women involved in prostitution under the Immoral Traffic (Prevention) Act, 1956, was not unconstitutional as it comprised a “reasonable restriction”.¹⁹

(D) GOVIND V. STATE OF MADHYA PRADESH AND ANR

The constitutionality of Madhya Pradesh Police Regulations relating to surveillance was challenged by the Petitioner. He affirmed that there were various unfounded indictments on him based on which police put him under observation. The petition was dismissed but the apex court suggested some reforms on the Madhya Pradesh Police Regulations as they were “verging perilously near unconstitutionality”.²⁰ It's important to take note of that the well known Roe v Wade case which was used as a reference, that managed a lady's entitlement to abortion under the right to privacy.

Govind v. State of Madhya Pradesh formed the obscure thought of the acknowledgement of the right to privacy. What they really did was that they deciphered the target of creators of the Constitution of India and afterwards widened the ambit of Article 21, so privacy can come under it. They found that the goal of them is to guarantee the conditions positive for the quest for satisfaction, feelings and sensations. They acknowledge the proposition of Professor Crown, freedom from government ought to be the premise of the fundamental rights.²¹

(E) R. SRIDHAR V. R. SUKANYA AND OTHERS

R Sridhar, who was the spouse of Sukanya, a south Indian actress moved to the court over separation and conjugal conflict. Sridhar, who was based in United States of America, pleaded in his petition that Indian courts lacked jurisdiction to hear their separation suit since their marriage took place in the United States of America according to the Foreign Marriage Act, 1969. Sukanya however, wanted the media to be restricted from publishing information on the suit involving her personal dispute because she viewed it as a violation of her privacy. The High Court of Madras, dismissing the judgment of Trial Court, held that the media should be restricted from publishing details about the case but the proceedings of the suit will be

¹⁹ *Id.*

²⁰ Govind V. State Of Madhya Pradesh & Anr, 1975 AIR 1378.

²¹ Right to Privacy: The Indian Perspective, Lawteacher.net (2018), <https://www.lawteacher.net/free-law-essays/constitutional-law/right-to-privacy-the-indian-perspective-constitutional-law-essay.php#ftn1> (last visited Feb 25, 2020).

conducted in-camera. This judgment acted as a pioneer in deciding cases for Right to Privacy over distribution of news.²²

(F) RAYALA M. BHUVANESWARI V. NAGAPHANENDER RAYALA

A divorce petition was filed by the petitioner in the Court against his spouse, and to validate his case he delivered an external storage device containing the discussion of his spouse recorded in the United States of America with others. She refused to admit certain portions of the recording. The act of a husband without the consent of his wife, recording a conversation was held by the court to be an illegal infringement of a wife's right to privacy. These recordings, regardless of whether genuine or not, can't be admissible in court of law. The spouse can't be compelled to undertake voice test and afterward request that the specialist should examine the similarity between the two. The Court saw that the purity of relation among a couple is the premise of marriage. The spouse was recording her discussion on phone with her companions and guardians in India without her insight which is an utter violation of the right to privacy of the spouse. On the off chance that husband is of such a nature and has no confidence in his spouse even about her discussions to her family, the marriage itself becomes void in character.²³

(G) PEOPLE'S UNION OF CIVIL LIBERTIES (PUCL) V. UNION OF INDIA (UOI) AND ANR.

It was held in this case that privacy might be excessively wide and moralistic to characterize judicially. Regardless of whether right to privacy can be guaranteed or has been encroached upon in a given case, the decision would rely upon the circumstances of the said case. Be that as it may, the right to hold a phone discussion in the boundaries of one's house or office without impedance can unquestionably be guaranteed as a 'Right to Privacy'. Discussions on the phone are usually of a private character. It is considered significant from the steady rise in the number of individuals possessing cell phones. Phone discussion is a significant feature of a man's private life. Right to privacy would be of absolute character with respect to phone discussion in the boundaries of one's home or office. Phone tapping would, along these lines, violate Article 21 of the Constitution of India except if it is allowed under the procedure established by law.²⁴

(H) JUSTICE K. S. PUTTASWAMY (RETD.) AND ANR. V. UNION OF INDIA AND ORS.

The case emerged out of a constitutional challenge to the Aadhaar venture, which had a goal

²² R. Sridhar V. R. Sukanya And Others, (2005) 1 MLJ 214.

²³ Rayala M. Bhuvanewari V. Nagaphanender Rayala, AIR 2008 AP 98.

²⁴ People's Union Of Civil Liberties (PUCL) V. Union Of India (Uoi) And Anr., AIR 1997 SC 568.

to manufacture a database of individual identification and biometric data covering each and every Indian. A huge population of India has so far been enlisted in the Aadhaar program, which gives residents a 12-digit number that adjusts to explicit biometric information, for example, retina scans and fingerprints. Possessing an Aadhaar card is presently made mandatory for various activities like opening an account in any bank, filing of tax returns, etc. In 2012, Justice K.S. Puttaswamy (Retired) challenged the constitutional validity of Aadhaar in light of the fact that it infringes the right to privacy by the way of a petition in the Supreme Court. It was to be determined whether privacy in such a case is guaranteed by the Constitution or not. In favour of privacy, it was argued that it is an independent right, guaranteed under Article 21 by the right to live with dignity. The opposition stated that right to privacy can be granted only up to an extent under personal liberties.²⁵ The judgments of the eight-judge bench in the case of M.P. Sharma and six-judge bench in the case of Kharak Singh vs State of Uttar Pradesh²⁶ had made it amply clear that in order to overturn the policy of privacy previously established, a larger bench was to be constituted. Based on the arguments delivered by the then Attorney General of India, Mukul Rohtagi, in addition to the ratio decidendi of the above cases, called for the establishment of a larger bench than that of M.P. Sharma vs Satish Chandra²⁷, viz. a nine-judge bench.

The Supreme Court bench comprising 9 judges collectively perceived that the Constitution ensured the right to privacy as an essential piece of the right to liberty and life under Article 21. The Court overruled M.P. Sharma, and Kharak Singh as the right to privacy was not interpreted as a part of fundamental right expressly. The right to privacy was fortified by the bench of this case it held that the right to privacy incorporates freedom of decisions (for example utilization of meat of cow), bodily integrity along with the privacy of personal data. The Supreme Court has, in any case, explained that like most other fundamental rights, the right to privacy isn't a "absolute right". It could be overridden on certain conditions.

Justice Chandrachud in an important section of the joint judgment analyses the concept of privacy as being founded on autonomy and as an essential aspect of dignity which was titled "Essential Nature of Privacy".²⁸

²⁵ Justice K. S. Puttaswamy (Retd.) and Anr. V. Union Of India And Ors., WRIT PETITION (CIVIL) NO 494 OF 2012.

²⁶ 1964 SCR (1) 332

²⁷ 1954 SCR 1077

²⁸ "Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination"

The case extends opportunity of articulation by perceiving right to privacy as an autonomously enforceable right, instead of a right that is accessible just to the extent it impacts constitutionally ensured liberty. This accommodates assurance of clearly recognizing rights, for example, the right against state surveillance that is discretionary and not regulated, the option to communicate one's sexual preferences, devotional beliefs and protection of information. The judgement was delivered by a notable nine-judge constitutional bench of the Apex Court. Accordingly, it sets up a binding precedent on all Courts, except if overruled by a bench comprising more judges. It is additionally of more extensive importance in light of the fact that by putting the right to privacy in the very basic structure of the Constitution on the planet's biggest democracy-based country, it is probably going to give help and motivation to advocates of the right to privacy around the globe.²⁹

A very important inference drawn from the study of the judgment in the case of Justice Puttaswamy is that the right to privacy has been given the stature of a legally enforceable fundamental right but it misses a stand-alone, express character. This is because privacy is seen as an innate element of our right to life and personal liberty. Privacy carries with it an ambiguous line of scope which differs from one case to another. Because of its dynamic character, this right shall be subject to alteration with each instance because the definition of the term 'privacy' itself differs from one individual to another. Furthermore, it is clear that the Right to Privacy cannot stand alone in itself without the support of the Golden Triangle³⁰ viz. Articles 14, 19 and 21. The essence of this right lies in the totality of the study of the Golden Triangle and other fundamental rights. The Constitution is to be interpreted in the light of the Preamble, a read of which states terms like "Liberty" and "Dignity", of which Privacy is seen as an indispensable part.

V. RIGHT TO PRIVACY IN INTERNATIONAL LAW

The provisions of the Constitution should be interpreted in a manner that strengthens their adherence to international instruments and conventions ratified by India over the years.

(A) UNITED NATION GENERAL ASSEMBLY

The United Nations General Assembly, in December 2013, embraced resolution 68/167, which communicated profound distress at the negative effect that reconnaissance and interference of

²⁹ Puttaswamy v. India - Global Freedom of Expression, Global Freedom of Expression, <https://globalfreedomofexpression.columbia.edu/cases/puttaswamy-v-india/> (last visited Feb 26, 2020).

³⁰Golden Triangle, References, Indian Law Journal, (April 24th, 2020, 17:25) https://www.indialawjournal.org/archives/volume3/issue_2/references_rushminsunny.html

communication may have on human rights. The General Assembly asserted that the rights held by individuals disconnected from internet should likewise be ensured on the web, and it called upon all sovereign member States to regard and secure the right to privacy in digital communication. The General Assembly approached all States to audit their techniques, practices and enactment identified with surveillance of communication and assortment of private information and underlined the requirement for States to guarantee the full and successful usage of their commitments under worldwide human rights law. As General Assembly resolution 68/167 reviewed, global human rights law gives the all inclusive system against which any impedance in privacy rights of an individual must be reviewed.³¹

(B) UNIVERSAL DECLARATION OF HUMAN RIGHTS

The UDHR was formed during the years 1946-48, of which Article 12³² talks about right to privacy. From the earliest starting point, it was obvious that the right to privacy would be guaranteed in some form or another. A conversation on whether to include it or not didn't take place.

(C) THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The International Covenant on Civil and Political Rights, sanctioned by 167 States, gives that nobody will be exposed to discretionary or unlawful obstruction with their privacy, family, home or communication, nor to illegal charge on a person's social position. It further expresses that everybody has the right against such impedance or charge.³³

(D) EUROPEAN UNION

European Union laws, as created by the European Union Commission has developed into a solid privacy protection system, yet with noteworthy impediments. Comprehensively, this collection of law reflects the American picture in two regards. Like the United States of America, the European Union ensures remote nationals within the boundary of the nation however not when they are outside European Union boundaries. Moreover, both the United States of America and European Union law demand (in principle) that obstruction with privacy

³¹ Right to Privacy in the Digital Age, Ohchr.org (2020), <https://www.ohchr.org/en/issues/digitalage/pages/digitalageindex.aspx#:~:text=The%20International%20Covenant%20on%20Civil,or%20her%20honour%20and%20reputation.> (last visited Feb 28, 2020).

³² Universal Declaration on Human Rights, Article 12, “*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*”

³³ International Convention on Civil and Political Rights, Article 17, “*1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

2. Everyone has the right to the protection of the law against such interference or attacks.”

is allowed just when it is essential and proportionate to the quest for legal purposes.³⁴ Article 8 of European Convention on Human Rights³⁵ expressly talks about right to privacy, it is titled “Right to Respect for Private and Family Life”.

VI. RIGHT TO PRIVACY AND DATA PROTECTION

With multi-dimensional evolution in technology and law, there is a paradigm shift from the industrial revolution to the information revolution which has based itself on information, digitalization and artificial intelligence. Albeit, such advancement brings with it a host of more complex safety concerns borne out of cybercrimes, especially in today's virtual world. The need of the hour without further ado, calls for the structuring and execution of a compendious legal framework to ensure that privacy is protected at all costs.

The landmark judgment of Justice K.S. Puttaswamy vs. Union of India held that personal liberty means a life free from encroachments that are untenable from legal action³⁶. The Court opined that privacy permits an individual to lead a life of dignity, without which the right to life and personal liberty would be meaningless. Article 21 of the constitution considers unauthorized invasion into an individual's real and virtual space as an assault on his personal privacy and liberty³⁷.

The Supreme Court, after the Puttaswamy³⁸ case directed the central government to establish a committee headed by retired Supreme Court judge, Justice B.N. Srikrishna to devise a comprehensive data protection law to further uphold and effectuate the fundamental right to privacy³⁹. The findings and recommendations of the Srikrishna committee led to the introduction of The Personal Data Protection Bill in the Lower House of the Parliament on December 11, 2019⁴⁰. The objective of this bill was to secure the privacy of the personal data of individuals and establish a Data Protection Authority of India that would look into such matters of protection of personal data. This bill, is a near supplant of the Information

³⁴ Stephen J. Schulhofer, *An international right to privacy? Be careful what you wish for*, 14 International Journal of Constitutional Law 238-261 (2016), <https://academic.oup.com/icon/article/14/1/238/2526788> (last visited Feb 28, 2020).

³⁵ European Convention on Human Rights, Article 8, "1. Everyone 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 such as is 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 or morals, or for the protection of the rights and freedoms of others."

³⁶ Justice K.S. Puttaswamy (Retd.) & Anr v Union of India & Ors, (2017) 10 SCC 1 part T(F).

³⁷ Kharak Singh v. State of U.P. AIR 1963 SC1295

³⁸ Justice K.S. Puttaswamy (Retd.) & Anr v Union of India & Ors, (2017) 10 SCC 1.

³⁹ Ibid

⁴⁰ Personal Data Protection Bill, 2019, Bill No. 373 of 2019.

Technology Act 2000 and is descriptive of procedural aspects of collection, processing, usage, disclosure, storage and transferability of personal data⁴¹. The Bill also proposes protection to not just “personal data”, involving identity and attributes of a natural person⁴² but also “sensitive personal data” such as financial data, health data, official identifier, sex life, sexual orientation, biometric data, genetic data, transgender status, intersex status, caste or tribe, religious or political beliefs.⁴³The said bill awaits final approval by the government.

The discussion inevitably can be seen pointing towards S.69 of the Information Technology Act which is the exception to the general rule of privacy and secrecy of information⁴⁴. It states that authorized officials of the Central and State governments “can intercept, monitor or decrypt any information transmitted received or stored through any computer resource” in the interest of not just sovereignty and defense of the State, but can also extend access into personal information, if need be.

The General Data Protection Regulation, 2016, adopted by the European Parliament is a germane example of the importance of protection of privacy and steps adhered to ensure so. Protection of privacy is regarded as an innate part of Human Rights and therefore, the GDPR is drafted in such a way that it provides ample regulation for countries that would export data from European citizens with minimal chances of breach of security. The GDPR can be taken as a specimen precedent to more effectively regulate privacy laws in India which require urgent amelioration to be at par with the developed countries.

VII. CONCLUSION

The Constitution of India starts with ‘We the People’. The people ought to comprehend that even in a democracy system, no right is absolute and they need to subsume a part of their rights to empower the administration to work in a viable way. Privacy is a fundamental human right acknowledged in various international declarations like the United Nation Declaration of Human Rights, the International Covenant on Civil and Political Rights and in several international and state treaties. Privacy is a part of human dignity and various fundamental principles such as right to life and personal liberty and freedom of speech. It has become one of the most important human rights matter in the recent times. Right to privacy is a basic segment of right to life and liberty under Article 21 of the Indian Constitution. Right to privacy

⁴¹ Sec. 2(29) of the Personal Data Protection Bill, 2019.

⁴² DLA Piper's Data Protection Laws of the World Handbook, (Apr. 22, 2020 18:49) <https://www.dlapiperdataprotection.com/index.html?c=IN&c2=GB&go-button=GO&t=law>.

⁴³ Sec. 2(36) of the Personal Data Protection Bill, 2019.

⁴⁴ Vijay Pal Dalmia, Data Protection Laws in India, (Apr. 22, 2020 18:49) http://www.vaishlaw.com/article/information_technology_laws/data_protection_laws_in_india.pdf

isn't an absolute right; it is like every other fundamental right subject to reasonable restrictions for avoidance of wrongdoing.

However, it has not been defined expressly anywhere in the Constitution of India which is problematic in our personal opinion. People are not aware about the importance of privacy and therefore do not take much action to protect it. Government should accelerate the process of protecting the privacy of its citizens and make them aware about it. Such shall not only boost the confidence in the administrative and judicial procedures but also make them aware of their responsibility towards the State.
