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Ground Reality of Right to Privacy in India

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ABSTRACT

Nowadays, there is always harm to the Privacy of a human being, and that should not be infringed in any manner. Moreover, there is an excellent use of social media, which also dramatically harms a person's Privacy. There is no specific definition for the fight for Privacy, but it can be said that the right to Privacy is a human right that every person can cherish by the edge of their existence. Privacy includes dignity, protection from state surveillance, persona autonomy, bodily integrity, compelled speech confidentiality, and freedom to dissent, move, or think.

The hassle placed on this subject or sphere of observation is the Right to Privacy has now no longer been competently treated by the legislatures of various countries. The present legislation that deals with protecting the right to Privacy does not secure this right to the greatest extent. Since the safety of the Human Right to Privacy is an issue that attracts global norms transcending national boundaries, therefore, the existing observation has taken into consideration the improvement of the regulation referring to the Right to Privacy with inside the worldwide and countrywide fields in addition to the element performed via way of means of the judiciary, as some distance because the safety and enhancement of those rights are concerned.

Existing laws in relation to privacy purpose of this study are to review and make people aware of their Right to Privacy in Cyberspace, and evaluate the concept of Privacy in Cyberspace, to find out the need for forming a separate Fundamental Right to Privacy after Article 21 of Constitution of India, and to analyse merits and demerits of Right to Privacy Bill, 2011 which is now known as Privacy Bill, 2014.

Keywords: *dramatically harms, state surveillance, persona autonomy, bodily integrity, transcending national boundaries.*

I. INTRODUCTION

Every individual has his own secrets, talks, planning etc. which they do not want to show, tell, and discuss with others. So right to privacy plays an important role in the freedom and liberty of a person and if our fundamental right given under Article 21 of Indian Constitution, 1950. We all are individuals and have our unique thoughts, unique experiences in life so there are many experiences in our life which we do not want others to know because that might affect our

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image, people get a chance to blackmail us, that might cause negative impression in a society and people will judge us in a negative way and that might create a lack of opportunity for us at the place of job and many other fields.

We also have some family privacy, every family have different thinking different situation(like husband or wife's affair, fight between family members, profit and loss in business, cruelty, mental harassment and many other things) and different rituals (according to caste, sex and religion), so we don't want anyone to know about that and no person have a right to question us on that and ask us our family personal matters and if any person know about that then he/she should not hurt the privacy of that family by telling others or interrupting herself/ himself. If someone forcefully ask you about your personal incident and details or check your phone or computer secretly without your permission even if that person is your family member or friends, then it is violation of your fundamental right which is under in Article 21 of Indian Constitution. Privacy protects our information we do not want shared publicly (such as health or personal finances).

II. BACKGROUND

The Constitution of India provides its citizens the Right to Privacy under Article 21, which is a requisite of right to life and personal liberty. Stressing on the term ‘privacy’, it is a dynamic concept which was needed to be elucidated. The scope of Article 21 is multi-dimensional under the Indian Constitution. Law of torts, Criminal Laws as well as Property Laws also recognize right to privacy. Privacy is something that deals with individual privacy, and which was needed to be protected earlier before the passing of a landmark case, i.e., *K.S. Puttaswamy v. Union of India*² in 2017 as it was, previously, not considered a fundamental right under the Indian Constitution. However, our Indian judiciary has, at present, carved out a distinctive precinct regarding privacy and an upshot of that is Right to Privacy, it is, now, recognized as a fundamental right, which is intrinsic under Article 21.

(A) Concept of Right to Privacy

According to Black’s Law Dictionary, Right to Privacy means “right to be let alone”; the right of a person to be free from any unwarranted interference.’ The terms privacy and Right to Privacy can’t be easily hypothesized and to understand this better, privacy has been taken in different ways in different situations.³ Tom Gaiety said ‘right to privacy is bound to include

² AIR 2017 SC 4161.

³“Privacy And Data Protection In India: A Critical Assessment”, available at: <https://www.jstor.org/stable/45148583> (last visited on November 18, 2022).

body' inviolability and integrity and intimacy of personal identity including marital privacy.⁴

Jude Cooley explained the law of privacy and has asserted that privacy is synonymous to the right to be let alone. Edward Shills has also explained privacy is 'zero relationship between two or more persons in the sense that there is no interaction or communication between them if they so choose'. The relationship between persons or groups or between groups and persons is neutral. Privacy is a value, a cultural state or condition that is intended towards individual on collective self-realization varies from society to society. Right to privacy as to right to be let alone thus regarded as a manifestation of "an inviolate personality", a hub of freedom and liberty from which the human being had to be free from invasion. Right to privacy has justified the need of being left alone.

The basic thought behind prefacing of such a principle was to protect personal writings and personal productions and its scope extends not only from theft and physical misuse but against publication in any form. Hence, due to continuous changes in technology and development caused the threatening of individual in public gawk then various suggestions were given by many eminent jurists and suggested the aspect of 'right to be left alone' to be added in the law of privacy.⁵

(B) Right to privacy is not an absolute right

The right to privacy is guaranteed by our constitution in Article 21. However fundamental right is subject to some limitation by to maintain social order in the country. To prevent the terrorism, crime, disorder, and related activities many countries tend to curb this trend. Intrusion in privacy can be made by the legislature, executive and judiciary but the law should be fair and reasonable. It must go into proportionality of intrusion vis-à-vis a purpose sought to be achieved.

III. EVOLUTION

(A) Ancient India

The concept of privacy can also be pragmatic in the ancient text of Hindus. Looking at the Hitopadesh which enumerates that certain matter such as worship, sex and family matters should be protected from disclosure. The very concept is not entirely non-familiar to Indian Culture, but some jurist like Sheetal Asrani-Dann has certain doubts about the right to privacy in India, in view of this, she also explains Upendra Baxi's view, but Upendra Baxi is clearly

⁴ Dr. P.K. Rana, "Right to Privacy in Indian Perspective", 2 IJL 07 (2016).

⁵Shubham, "Evolution of Right to privacy in India", available at: <http://www.legalserviceindia.com/legal/article-276-evolution-of-right-to-privacy-in-india.html> (last visited on November 8, 2022).

alarmed with kindness, sympathy, humanity or gentleness, which is an unabated curiosity; it is not about ill-will. Even the privacy in ancient time was related to 'Positive Morality'. So, despite this, right to privacy was vague in the ancient Indian text.⁶

(B) Modern India

In present time, the issue of Right to Privacy was discussed for the very first time in debate of constituent assembly, where an amendment was moved by K.S. Karimuddin, where B.R. Ambedkar gave it only snobbish support and Right to Privacy was not incorporated in the Indian Constitution. The issue of privacy was dealt with both as a fundamental right under the Constitution and as a common law right since the 1960's. Privacy was not considered as a fundamental right was first held by the Supreme Court in the year 1954 by an eight-judge bench in *M.P. Sharma v. Satish Chandra*⁷ case, while dealing with the power to search and seize documents from the Dalmia Group, dismissed the existence of a right to privacy on the basis that the makers of Constitution.⁸

Our desire for a private life made a comeback after ten years (approx.) before a six-judge bench of the Supreme Court in the case of *Kharak Singh v. State of Uttar Pradesh*⁹, it was only to be rejected again. The Supreme Court held that there is no fundamental Right to Privacy but went on to strike down the provision which allowed night visits for violation of 'personal liberty'. As dissented by Justice Subba Rao, wherein he said that Right to Privacy is still an essential component of personal liberty though such provision was not incorporated as well as declared as a fundamental right under the Indian Constitution.

After eleven long years (approx.), the Supreme Court where a smaller three – judge bench when faced with a similar factual matrix in *Gobind v. State of Madhya Pradesh*¹⁰, held the existence of a fundamental right to privacy under Article 21. Though Gobind lost, privacy won for the first time and gained a small recognition under personal liberty under the Indian Constitution.

By this time, privacy had rooted in our fundamental rights. It never faced such a strong challenge of its existence as it faced before the nine-judge bench in the case of *K.S. Puttaswamy v. Union of India*¹¹ in 2017, after the passing of this judgment it is clear that right to privacy is a fundamental right and it will not lose its status amongst the Golden Trinity of Article 14 (Right

⁶ Evolution of Right to Privacy, India, available at: <https://www.lawteacher.net/free-law-essays/constitutional-law/evolution-of-the-right-to-privacy-constitutional-law-essay.php> (last visited on November 21, 2022).

⁷ AIR 1954 SCR 1077.

⁸ Right to Privacy - A Comprehensive Review, available at: <https://www.legalserviceindia.com/legal/article-2572-right-to-privacy-a-comprehensive-review.html> (last visited on November 18, 2022).

⁹ AIR 1964 (1) SCR 332.

¹⁰ 1975 (2) SCC 14.

¹¹ AIR 2017 SC 4161.

to Equality), Article 19 (Right to Freedom) and Article 21 (Right to Life and Personal Liberty).

(C) A Recent Landmark Case in relation to Right to Privacy

*Justice K.S. Puttaswamy v. Union of India*¹² also known as Aadhaar Card case or Right to Privacy verdict

a. Brief Facts of the Case:

This is a recent case of Right to Privacy which was brought by 91-year-old retired Karnataka High Court Judge Puttaswamy against the Union of India before a nine-judge bench of the Supreme to determine whether the Right to Privacy was guaranteed as a fundamental right under the Indian Constitution.

This case was concerned with an issue to a challenge to the government's Aadhaar scheme (a form of uniform biometrics-based identity card) in which the government made mandatory for availing the government services and benefits. The issue was made before a three-judge bench of the Supreme Court on the basis that this scheme violated the right to privacy. Accordingly, a Constitution Bench was set up and concluded that there was a need for a nine-judge bench to determine whether there is a fundamental Right to Privacy within the provision of Article 21 of Constitution of India.

It was argued by the petitioner before the bench that Right to Privacy is a Fundamental right and should be guaranteed as right to life with dignity under Article 21 of the Constitution. Submissions made by the respondent were that the Constitution only recognized personal liberty which may include Right to Privacy to a limited extent.

b. Decision of the Supreme Court

The nine-judge bench of the Supreme Court unanimously recognized that the Constitution guaranteed the Right to Privacy as an intrinsic part of the right to life and personal liberty under Article 21 in its remarkable and wide ranging 547-page judgment. The Court however, overruled *M.P. Sharma*¹³, and *Kharak Singh*¹⁴ in so far as the latter did not expressly recognize the right to privacy as a Fundamental Right.

IV. LEGAL BACKGROUND

(A) India

a. Article 21

¹² AIR 2017 SC 4161.

¹³ *M. P. Sharma vs. Satish Chandra*, (1954) 1 SCR 1077

¹⁴ *Kharak Singh v. State of Uttar Pradesh*, AIR 1964 (1) SCR 332.

No person shall be deprived of his life or personal liberty except according to procedure established by law as envisaged under Article 21 of the Constitution of India infers the term life that is inclusive of Article 21 includes all those aspects of life which go to make a man's life meaningful, complete, and worth living. The strategy adopted by the Supreme Court adopted this strategy of Right to Privacy with a view to expand the ambit of Article 21.¹⁵

b. Right to Information Act, 2005

Technological advancement has led the privacy considerably vulnerable to intrusion by the State as well as non-state actors. Innovative technologies and practices constantly challenging privacy. It enables routine sharing of personal data and sensitive information (including biometrics and DNA makeup) to curbe the disclosure of public records over the internet more than 60 countries have adopted a comprehensive law that gives individuals some control over the collection and use of these data by public and private bodies.

Likewise, access to governmental information widely to the public is become common across the world. These can be eased through new information and communication technologies, and Web sites containing searchable government records are becoming even more widely available. Various international organizations have fragmented stern laws on access to personal information of the governmental bodies held by the public. We need to understand that both privacy and RTI have their significance in their respective discipline and neither the privacy nor access takes precedence over the other. For this both the rights must be considered in a manner that is equal and balance.¹⁶

The RTI is requisite for the very exercise of democracy. Democracy is based on the consent of the citizens, and that consent turns on the government informing citizens about its activities and recognizing their right to participate. The collection of information by governments is done on behalf of its citizens, and the public is only truly able to participate in the democratic process when it has information about the activities and policies of the government.

c. The Indian Post Office Act, 1898

Section 26 of the Act¹⁷ states that on the occasion of any public emergency or in the interest of public safety or tranquillity, the Central Government, State Government, or any officer specially authorized by the Central or State Government may direct the interception, detention or disposal

¹⁵ Hinailiyas, "Right to Privacy under Article 21 and the Related Conflicts", available at: <http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html>(last visited on Feb. 22, 2019). ¹⁵ Freedom of Religion, available at: https://en.wikipedia.org/wiki/Freedom_of_religion (last visited on November 18, 2022).

¹⁶ Gautam Bhatia, "State Surveillance and the Right to Privacy in India: A Constitutional Biography"

¹⁷ The Indian Post Office Act, 1898 (Act No. 6 of 1898).

of any postal article, class, or description of postal articles in the course of transmission by post. Moreover, in case of existence of any doubt regarding public emergency, public safety, and tranquillity under section 26, then a certificate would be given by the Central Government or the State Government that would be considered as a conclusive proof.

d. The Code of Criminal Procedure, 1973

Section 91 of the Code states that a Court in India or any officer in charge of a police station may summon a person to produce any document or any other "thing" that is necessary for the purposes of any investigation, inquiry, trial, or other proceeding under the Code of Criminal Procedure.

e. The Indian Wireless Telegraphy Act, 1933

Section 3 of the Act states that the possession of any wireless telegraph apparatus that too without license is an offence and moreover unauthorized establishment or the operation of the wireless communications networks for the purpose of intercepting, monitoring and surveillance on communications is an offence.

f. The Central Motor Vehicles Act, 1898 and its Rules, 2012

The Rule 138A of the Central Motor Vehicles Rules, 1989 which came in October 2012, mandates the installation of radio frequency identification tags on all light and heavy motor vehicles to enable their instant identification.

(B) International concepts

a. The Universal Declaration of Human Rights, 1948

According to Article 12 of the Convention¹⁸, a person's privacy, home, family, or correspondence should not be subjected to any arbitrary intrusion, or his honour and reputation should be attacked. Law confers on every person the right to be protected from such intrusion or attacks.

b. The International Covenant on Civil and Political Rights, 1966

As per the Article 17 of the Convention¹⁹, (to which India is a party) a person's privacy, home, family, or correspondence should not be subjected to any arbitrary intrusion nor his honour and reputation should be.

¹⁸ The Universal Declaration of Human Rights, 1948, "available at: Right To Privacy Under Article 21 and the Related Conflicts (last visited on November 11, 2022).

¹⁹ The International Covenant on Civil and Political Rights, 1961, "available at: Right To Privacy Under Article 21 and the Related Conflicts (last visited on November 13, 2022).

c. The European Convention of on Human Rights, 1953

According to Article 8 of the Convention²⁰, a person's privacy, home, family, or correspondence should not be subjected to any arbitrary intrusion, or his honour and reputation should be attacked and there shall be no interference by a public authority except such as is in accordance with law.

V. VARIOUS ASPECTS OF RIGHT TO PRIVACY

(A) Phone Tapping and Right to Privacy

Phone tapping and right to privacy is affected by latest technological developments relating to a person's correspondence and hence has become a debating issue. In *R.M. Malkani v. State of Maharashtra*²¹, the Supreme Court observed that the Court will not tolerate safeguards for the protection of the citizen to be imperilled by permitting the police to proceed by unlawful or irregular methods. Telephone tapping being an incursion of right to privacy and freedom of expression and government cannot impose restrictions on publishing defamatory materials against its officials that make it violative of Article 21 and Article 19(1) (a) of the Constitution.

As per the observation made by Justice Kuldeep Singh in the case of *People's Union for Civil Liberties v. Union of India*²² that right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as right to privacy. In this case Supreme Court held that telephonic conversations are private in nature and hence phone tapping amounts to violation of one's own privacy.

(B) Gender Priority on Privacy

Another aspect of right to privacy includes gender priority that implies not merely the prevention the incorrect portrayal of private life but the right to prevent it being depicted at all. Every female has the basic right to be treated with decency and proper dignity.

But in case of *Harvinder Kaur v. Harmander Singh*²³, the Delhi High Court held that though sexual relation constitutes most important attribute of the concept of marriage, but they do not constitute its whole content. Sexual intercourse is one of the elements but goes to make up the marriage.

²⁰European Convention on Human Rights, 1953, "available at: <http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html>(last visited on November 10, 2022).

²¹ AIR 1973 SC 157.

²² AIR 1997 SC 568.

²³ AIR 1984 DEL 66

(C) Health and Privacy

Health sector is an important matter of concern in privacy as health information not only includes information about the health or disability, but also the information related to health service one may receive. It's a human tendency that the information regarding health is considered highly sensitive by many people. The right to life is subsequently important that it supersedes right to privacy. A doctor is under an oath or under medical ethics for not to disclose the secret information about the patient as the disclosure will adversely affect or put in danger the life of other people.²⁴

In case of *Mr. 'X' v. Hospital 'Z'*²⁵, it was held that doctor- patient relationship though basically commercial, is professionally a matter of confidence and therefore, doctors are morally and ethically bound to maintain confidentiality. Public disclosure of true facts in such a situation may lead to the spar of one person's right to be let alone and the other person's right to be informed.

(D) Right to Privacy in context of Privacy by State

The first case that alarmed the basis of right to privacy in India was the Kharak Singh case, where a seven judge bench of the Supreme Court was required to check the constitutionality of certain police regulations that authorizes the police to do any domiciliary visit and surveillance of persons with criminal record and the constitutionality of the provision was challenged in the above case as it was violative of under the term 'personal liberty 'under Article 21 of the Constitution of India.²⁶

(E) Power to Search and Seizure

The Court held that any legislation obtrusive on the personal liberty of a citizen must in order to be constitutional, laid down the triple test by the Supreme Court in the case of *Maneka Gandhi v. Union of India*.²⁷

This triple test requires any law interfering with the concept of Personal Liberty under Article. 21, to meet certain standards:

- It must prescribe a procedure.
- The procedure must withstand the test of one or more of the fundamental rights

²⁴ The Fundamental right to privacy: Part (III) SCOPE by Amber Sinha

²⁵ AIR 1999 SC 495.

²⁶ Astha Saxena, "Evolution of Right to Privacy as Fundamental Right", available at: <http://www.legalservicesindia.com/article/2445/Evolution-of-Right-to-privacy-as-Fundamental-right.html>(last visited on November 17, 2022).

²⁷ AIR 1978 SCR (2) 621.

conferred under Article 19, which might be applicable in a given situation

- It must also be liable to be tested with reference to Article 14.” The impugned provision was held to have failed this test. Whether the financial records were stored in a citizen’s home or in a bank were not of so much material.

(F) Privacy in context of Sexual Identities

One of the aspect relating to right to privacy, which has embedded its space under Article 21 of the Indian Constitution was read down in the case of *Naz Foundation v. Union of India*²⁸, in which Delhi High Court ‘struck down’ Section 377 of the Indian Penal Code, 1860 so as to decriminalize a class of sexual relations between consenting adults and intrusion by state only if the state was able to establish a compelling interest, was one of the critical arguments, protected under Article 21 of the Indian Constitution.

In a recent case of *Navtej Singh Johar v. Union of India*²⁹ The Supreme Court of India held that Section 377 of Indian Penal Code, 1860 insofar as it applied to consensual sexual conduct between adults in private is constitutional.

(G) Right to Privacy and Security of State³⁰

India implemented a wide range of data sharing and surveillance schemes after the Mumbai attacks in 2008 to increase public safety by tackling crime and terrorism. To centralize the interception of communications, data and enable law enforcement agency to access. The Central Monitoring System is created. It would be connected to the Telephone Call Interception System (TCIS) which will help monitor voice calls, SMS and MMS, fax communications on landlines, CDMA, video calls, GSM and 3G networks. Other projects and schemes include the Lawful Intercept and Monitoring (LIM) systems, NATGRID, CCTNS Projec, etc.

(H) Third party information:

A public authority should not straightway reject a written request for information simply on the ground that it relates to a third party. The public authority if satisfied may obtain consent from the third party for disclosure. Right to life includes right to lead a healthy life as to enjoy all the faculties of the human body in their prime condition, and the disclosure that the prospective spouse is a HIV (+) can in no way be said to violate the rule of confidentiality or the right to privacy. However, the unwarranted invasion may trigger the exemption even if the information

²⁸ 160 Delhi Law Times 277.

²⁹ AIR 2018 SC 4321

³⁰ State of Privacy India, available at: <https://privacyinternational.org/state-privacy/1002/state-privacy-india> (last visited on, November 05, 2022).

is associated with the public interest or benefit. But the large public benefit may lead to disclosure of the personal and sensitive information of the public.

VI. RECENT DEVELOPMENTS

After the recognition of right to privacy under Article 21 as a fundamental right, it will be enough to encroach into any sphere of activity. With the advancement of technology and the social networking sites the intrusion of such a right has become extremely difficult. The extent to which privacy matters in individuals is subjective and differs from person to person. Section 43 of The Information Technology Act, 2000 also includes Right to Privacy which makes unauthorized access into a computer resource as an offence.

Article 19(1) (a) of the Indian Constitution includes right to press which sometimes come in conflict with right to privacy. Then a question arises as to where is a conflict between Right to Privacy of any individual and right to press of another person?

Such question is well responded by bringing the concept of ‘public interest’ and ‘public morality’ and other provisions mentioned under Article 19(2) of the Constitution of India. The publication of personal information of an individual without his approval is justified if such information forms part of public records including Court records.³¹

In several aspects, right to privacy may come in conflict with the investigation of police. Various tests such as Narco-Analysis, Polygraph test or Lie Detector test and Brain Mapping tests make unwarranted intervention into the Right to Privacy of a person.

In case of *Selvi and others v. State of Karnataka*³² the Supreme Court acknowledged the distinction between physical privacy and mental privacy and this case establishes the intersection of the right to privacy with Article 20(3) of the Constitution.

(A) The Personal Data Protection Bill, 2018

A final report and a draft bill were released by the committee in July 2018, which was called as the Personal Data Protection Bill, 2018. The Personal Data Protection Bill provided for the establishment of a Data Protection Authority to oversee activities that involve processing of data. The need to protect personal data under the fundamental right to privacy arised. There was also a need to create a collective culture that foster a free and fair digital economy was to be taken into consideration, respecting the informational privacy of individuals, progress, and

³¹ Legal Analysis of Right to Privacy in India, available at: <https://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html> (last visited on November 16, 2022).

³² (2010) 7 SCC 263.

innovation.³³

Additionally, the objective behind the formulation of such a bill was to protect the autonomy of individuals in relation with their personal data. It should also specify the flow and usage of personal data to create a relationship between persons and entities processing their personal data but also provide remedies for unauthorized and harmful processing and ensured the accountability of entities processing personal data.

VII. CONCLUSION

Right to privacy is a requisite of the right to life and of personal liberty in Article 21 of the Indian Constitution. Right to privacy is not an absolute right, it may be subject to certain reasonable restrictions for prevention of crime, public disorder, and protection of others but, it may, apart from contract, also arise out of a specific relationship that may be commercial, matrimonial, or even political and where there is a conflict between these two derived rights, the one, which advances public morality and public interest, will prevail.

Looking at the previous judgments of the Apex court in its seminal years, one can observe the cachet of the court to treat the Fundamental Rights as water-tight compartments in the case of *A.K. Gopalan v. State of Madras*³⁴, the relaxation of this stringent stand could be felt in the decision of *Maneka Gandhi v. Union of India*³⁵, the right to life was considered not to be the epithet of a mere animal existence, but the guarantee of full and meaningful life.

Considering ourselves a part of a society, we often countermand that we are individuals first and in this world each person or individual need his/her private space. To give everyone that right, the State accordingly is giving the private moments to be enjoyed with those whom they want without the prying eyes of the rest of the world.

As every day is advancing, this right is becoming more and more essential. Though all our lives are being exposed to the media through social networking sites or the spy cameras, the protection is to be given to everyone and it should act in such a manner that no one should think to intrude the right to privacy of the individuals. Privacy should be protected in every aspect, but it is subjected to reasonable restrictions under the provision of Constitution of India and other relevant statutory provisions in force. One needs to understand that privacy should be keep in mind and within the confined limits not to explain to rest of the world.

³³ Vartika Phogat, "Right to Information in Consance with Right to Privacy".

³⁴ AIR 1950 SC 27.

³⁵ AIR 1978 SC 597.

VIII. SUGGESTIONS

From the above-mentioned discussions in detail, it may be suggested:

1. Protection from Citizen's Identity Theft

A separate legislation regarding right to privacy should be made to provide protection from the theft of citizen's identity whether it may be theft of personal identity or financial identity which may take account of criminal identity theft and financial identity theft.

2. Prohibition of interception of communications

There may be prohibition of interception of communications except in certain cases but only with the approval of Secretary-level officer.

3. Constitution of a Central Communication Interception Review Committee

A Central Communication Interception Review Committee may be constituted to examine and review the interception orders passed by the concerned authority.

4. Establishment of Data Protection Authority

A data protection authority may be established which might protect data and whose function will be to monitor the development in data processing.

5. Imposition of Penalty

Penalty should be imposed upon such person who tries to obtain any information from any resource or any officer of government under any pretext.

6. Recommendations by the Justice BN Shreekirshna's committee

Processing (collection, recording, analysis, disclosure, etc) of personal data should only be done for specifically clear and lawful purposes. Only that data which is necessary for such processing is to be collected from anyone.

Personal data may be processed by the central and state government if necessary for the function of the government. It allows processing of personal data for prevention of offense and contravention of law.

Committee suggest the Right to be forgotten which means that once the purpose of using the personal data has ended it must be restrict or prevent any display of the personal data.

Personal data needs to be stored on servers located within India, and transfers outside the country will need to be subject to safeguards. Critical personal data, however, will only be processed in India.

The committee recommended that sensitive personal data (such as passwords, financial data, sexual orientation, biometric data, religion, or caste) should not be processed unless someone gives explicit consent- which factors in the purpose of processing.

The committee recommended that the amendment amend Section 8(1)(j) of the RTI Act that pertains to the disclosure of personal information in the larger public interest. The old Section 8(1)(j) said there would be no obligation to reveal personal information which was not related to public authority or interest or would be an invasion of privacy.
