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A CONCEPTUAL JOURNEY OF PRIVACY RIGHTS IN INDIA

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INTRODUCTION

Privacy is a fundamental right[1], essential for the freedom, democracy, pyschological well- being, individuality, creativity and other ends. Privacy is an issue of profound significance and is one of the most crucial concepts in todays technology-drived society, yet it is in state of disarray. The attempts made by legal theorist, jurists and philosophers to conceptulize the privacy, show that such endeavours failed to bring a useful, distinct and coherent concept of privacy [2]. It has been argued that traditional privacy principles may not be well-suited to address the challenges posed by the dramatic increase in the volume and use of personal data, advances in computing, and global flows of data[3].

The concept of privacy appears to encompass everything, and therefore it appears to be nothing in itself. J.Thomas Mc.Carthy[4] observed:

"*It is apparent that the word "privacy" has proved to be a powerful rhetorical battle cry in a plethora of unrelated contexts..... Like the emotive word "freedom," "privacy" means so many different things to so many different people that it has lost any precise legal connotation that it might one have had"*

The Supreme Court of India acknoweldged that the concept of the right to privacy, as seen from jurispurdence in India and abroad has evolved from the basic right to be let alone, to a range of negative and positive rights. Thus, it now includes, 'the right to abort a foetus; rights as to procreation, contraception, general family relationship, child rearing, education, data protection, etc[5].Therefore, the privacy rights includes the natural rights of an individual which are recognized under the Constitutions, Statutes and Judicial decisions across all the legal systems touching on the right to freedom of thought, control over personal information, freedom from surveillence, protection of one's reputation and protection from searches and interrogations.

The attempt in the present work is to trace the concept of privacy in its varied versions as propounded by several legal scholars, in the precedents of Indian Apex Court with referrence to the relevant U.S. case laws.

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1 In India, privacy right is declared as fundamental right with decision in*Justice K.S. Puttaswamy (Retd) v Union of India*reported in (2017) 10 SCC 1 (Nine Judge Bench). The ruling in*Puttaswamy*overruled judgments of*M. P. Sharma v Satish Chandra reported in (1954) SCR 1977 (eight-judge bench)*and*Kharsk Singh v State of UP reported in (1964) 1 SCR332*

2 Prof. Arthu Miller has declard that privacy is "difficult to define beacuse it is exasperatingly vague and evanescent. *The Assault on Priavcy by Arthur R. Miller, Ann Arbor Michigan: University of Michigan Press, 1970. I*n 1971 Prof. Arthur Miller warned that a "Dossier society" natured by computers threaten to destroy the

essence of the personal privacy that is fundamental to democracy. Professor Miller in his book suggest, the present state of the law on privacy is unsettled and strained as social philosophers and legislators are applying doctrine to changes far beyond their original contemplation. Accordingly to philosopher Julie Innes, the legal and philosophical discourse of privacy is in a state of "chaos":*Privacy, Intiimacy and Isolation, New York, Oxford University Press, 1992*

3 White Paper of the Committee of Experts on a Data Protection Framwork for India, see page no.7 of the report

4 The Rights of Publicity and Privacy 2nd E. 2019 by J. Thomas McCarthy and Roger E.Schechter

5 *Justice K.S. Puttaswamy (Retd) v Union of India*reported in (2017) 10 SCC 1 (Nine Judge Bench) Per R.F. Nariman, J at paragrapah 42

Concept of Privacy – state of disarray:

A concept is generally accepted collection of meanings or characteristics associated with certain objects, conditions, situations and behavior. It answers the question "What does it mean?"

Therefore, the question as to what is "privacy", is essential for making legal and policy decisions. It is an admitted fact that there is lack of agreement over the precise meaning of the word "privacy". This lack of clarity creates difficulty while enacting a legislature on the issues toucing the concept of privacy or resolving a case because lawmakers[6] and judges[7] cannot easily articulate the privacy harm, unless there is clarity in the concept of privacy.

There is an extensive scholarly and judicial writings on privacy that produced many different conceptions of privacy. However, these concepts of privacy can be broadly classifed into six groups – 1) the right to be let alone; 2) limited access to the self- the ablity to shield onself from unwanted access by other; 3) secrecy – the concealment of certain matters from others; 4) control over personal information – the ablity to exercise control over information about oneself; 5) personhood – the protection of one's personality, individuality and dignity; and 6) intimacy – control over, or limited access to, one's initmate relationships or aspects of life.

There is overlap among the conceptions referred supra under six headings and they are by no means are independent of each other. For instance, control over personal information can be seen as a subset of limited access to the self, which in turn bears significant similarities to the the right to be let lone[8]. Therefore, it would be necessary to briefly understand the concept of privacy under different headings with reference to its application in the Indian precedential laws, and the critical note of each concept in arriving at a conclusion that none of the broadly classified six concepts of privacy show that a common denominator is broad enough to encompass nearly everything involving privacy risks, being overinclusive or too vague, so also a narrower common denominator risks being too restrictive.

1) The right to be let alone:

Samuel Warren and Louis Brandies in their famous article " The Right to Privacy"[9] argued for the legal recognition of a right to privacy, which they defined as a "right to be let alone". They observed that instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechinical devices threaten to make good the prediction that '*what is whispered in the closet shall be proclaimed from the house-tops'*. The authors argued that right to privacy could be derived from the common law and declared that the underlying principle of privacy was "*that of inviolate personality*".

6 The Younger Committee in England was constituted to enact the law on privacy in the year 1972, the report of the committe show that it faced difficulty in trying to define "privacy" for lack of any clear and generally agreed definition of privacy. Therefore, statute could not be enacted for protection of privacy. See: Privacy: Younger Committed Report, HL Deb*06 June 1973 vol 343 cc104-78*

7 Justice Mathew of Supreme Court of India in*Gobind vs State of Madhya Pradesh And AnrAIR 1975 SC 1378,* observed the most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the privacy right which is too broad and opined that too broard definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. (This observation show that unless the concept of privacy is concretized it would to difficult to

apply such concept in decision making process)

8 Understanding Privacy by Daniel J. Solove, Harvard University Press, Cambright, Massachusetts, London, England. The six concepts of privacy discussed in present work are the formulation by Daniel J.Solove.

9 Harvard Law Review Vol.IV December 15, 1890 NO.5

The concept of privacy based on common law principle of the "*right to be let alone*[10]" came to be invoked by Justice Brandies of US Supreme Court in*Olmsted v United States* [11],writing his dissent opinioin, he decalred that the framers of the US Constuttion "*conferrred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men".*In 1967 the U.S. Supreme Court overruling its decision in*Olmsted*in*Katz v United States*[12],adopted the dissenting opinion of Justice Brandeis in*Olmstead*.

The concept of "*right to be let alone*" was referred by Supreme Court of India in*Gobind vs State of Madhya Pradesh And Anr*[13] where the survelliance right[14] of police was questioned as violative of the fundamental right guaranteed under Articles 19(1)(d) and 21 of the Indian Constitution.

The following observations of Justice Mathew, who delivered the judgment of the Supreme Court of India do indicate a constitutional recognition of the right to be let alone :

"*There can be no doubt that the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness. They certainly realized as Brandeis, J. said in his dissent in Olmstead v. United States, the significance of man's spiritual nature, of his feelings and of his intellect and that only a part of the pain, pleasure, satisfaction of life can be found in material things and therefore, they must be deemed to have conferred upon the individual as against the government a sphere where he should be let alone*"

Emphasising individual autonomy and the dangers of individual privacy being eroded by new developments that "*will make it possible to be heard in the street what is whispered in the closet*", Justice Mathew had obvious concerns about adopting a broad definition of privacy since the right to privacy*"was not explicit in the Constitution of India"*. Observing that the concept of privacy overlaps with liberty, the Surpeme Court of India noted thus :

"*Individual autonomy, perhaps the central concern of any system of limited government, is protected in part under our Constitution by explicit constitutional guarantees. In the application of the Constitution our contemplation cannot only be of what has been but what may be. Time works changes and brings into existence new conditions. Subtler and far reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet.*Yet, too broad a definition of privacy raises serious questions about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. *Privacy interest in autonomy must also be placed in the context of other rights and values."*[15] *(emphasis supplied)*

10 The phrase adopted from Judge Colley's famours treatise on torts. See: A Treatise on the Law of Torts: Or the Wrongs which Arise Independently of Contract by Thomas McIntyre Cooley, John Lewis, Callaghan, 1907

11 277 U.S. 438, 478 (1928)

12 389 U.S.347 (1967)

13 AIR 1975 SC 1378, 1975 CriLJ 1111, (1975) 2 SCC 148, 1975 3 SCR 946 (Three Judge Bench)

14 Based on Regulations 855 and 856 of the Madhya Pradesh Police Regulations purporting to be made by the Government of Madhya Pradesh under Section 46(2)(c) of the Police Act, 1961

15 *Gobind vs State of Madhya Pradesh And Anr*AIR 1975 SC 1378, 1975 CriLJ 1111, (1975) 2 SCC 148, 1975 3 SCR 946 (Three Judge Bench)

The observation of Justice Mathew that there are serious problems of defining the essence and scope of right to privacy is an acknowledged fact among the legal scholars across the globe. Understanding privacy as being*"right to be let alone"*does not inform us about the matters in which we should be let alone. The right to be let alone views privacy as a type of immunity or seclusion. Many jurists make critic of this concept and opine that defining privacy as*"the right to be let alone,"*is too broad.

2) Limited Access to the Self – the ablity to shield oneself from unwanted access by others:

The concept of privacy under this head recognizes the indivdual's desire for concealment and for being apart from others. Therefore, limited access to the self appears to be closely related to the concept of right to be let alone. This concept in a way clinch with the freedom from government interference, as well as from intrusions by the press and others. Under this concept of privacy, "*privacy constitute the right to decide how much knowledge of personal thought and feeling... private doing and affairs.... the public at large shall have*[16]" The right to privacy entitles one to exclude others from watching, utlizing and invading his private realm. Some view limited access as a choice, a form of individual control over who has access to the self.

This concept of '*limited access to self'*appears to have been invoked in the minority opinion of Justice K. Subba Rao in*Kharak Singh v The State of UP and Ors* [17] where the Supreme Court of India had occasion to consider the validity of Regulation 236 of the U.P. Police Regulations entitling police to have survelliance rights.

Justice K. Subba Rao writing for the minority was of the opinion that the word 'liberty' in Article 21 was comprehensive enough to include privacy also. He said that although it is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the right is an essential ingredient of personal liberty, that in the last resort, a person's house where he lives with his family, is his castle that nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy and that all the acts of surveillance under Regulation 236 infringe the fundamental right of the petitioner under Article 21 of the Constitution. And, as regards Article 19(1) (d), he was of the view that that right also was violated. He said that the right under that sub-Article is not mere freedom to move without physical obstruction and observed that movement under the scrutinizing gaze of the policemen cannot be free movement, that the freedom of movement in Clause (d) therefore must be a movement in a free country, i.e., in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control and that a person under the shadow
-of surveillance is certainly deprived of this freedom. He concluded by saying that surveillance by domiciliary visits and other acts is an abridgement of the fundamental right guaranteed under Article 19 (1) (d) and under Article 19(1) (a)[18].

The minority opinion of Justice K.Subba Rao in*Kharak Singh case*show that an individual freedom to live in his house includes his ablity to shield himself from any unwanted access by others including the government. This approach is followed later in*Puttaswamy case*by nine bench judges of the Supreme Court of India.

In similar lines, wire tapping issue came before the Supreme Court of India in*R M Malkani*

16 See Privacy Law: Cases and Materials by Richard C. Turkington & Anita L. Allen,, West Group; 2nd edition (August 1, 2002)

17 1963 AIR 1295, 1964 SCR (1) 332 six judge bench

18 In Justice (Retd) Puttaswamy v Union of India WRIT PETITION (CIVIL) NO 494 OF 2012 referrred to the minority opinion of Justice K.Subba Rao in Kharak Singha case

v State of Maharashtra[19] where*inter alia*it was contended that tape recorded conversation that formed one of basis for conviction of appellant therein, was inadmissible because it infringed Articles 20(3) and 21 of the Constitution. While rejecting a privacy based challenge under Article 21 the Supreme Court of India observed that :

"*Article 21 was invoked by submitting that the privacy of the appellant's conversation was invaded. Article 21 contemplates procedure established by law with regard to deprivation of life or personal liberty.The telephone conversation of an innocent citizen will be protected by Courts against wrongful or high handed interference by tapping the conversation. The protection is not for the guilty citizen against the efforts of the police to vindicate the law and prevent corruption of public servants. It must not be understood that the Court will tolerate safeguards for the protection of the citizen to be imperilled by permitting the police to proceed by unlawful or irregular methods.*" [20] (empahsis supplied).

The Supreme Court of India ruled that the telephone conversation of an innocent citizen will be protected against wrongful interference by wiretapping. Hence, right of privacy was recognized based on the concept of "*limited access to the self*" entitling an individual to protect himself from unwanted interference by the government by way of wiretapping.

In *Ramlila Maidan Incident v Home Secretary, Union of India* [21] , Justice B S Chauhan in a concurring judgment held that:

"Right to privacy has been held to be a fundamental right of the citizen being an integral part of Article 21 of the Constitution of India by this Court. Illegitimate intrusion into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. Such a right has been extended even to woman of easy virtues as she has been held to be entitled to her right of privacy. However, right of privacy may not be absolute and in exceptional circumstance particularly surveillance in consonance with the statutory provisions may not violate such a right."

Dealing with media's power and individual's privacy rights, in*Sanjoy Narayan v High Court of Allahabad*[22], the Supreme Court of India dealt with a contempt petition in respect ofpublication of an incorrect report in a newspaper which tarnished the image of the Chief Justice of a High Court. It was observed:

"The unbridled power of the media can become dangerous if check and balance is not inherent in it. The role of the media is to provide to the readers and the public in general with information and views tested and found as true and correct. This power must be carefully regulated and must reconcile with a person's fundamental right to privacy."

It is seen that the concept of*'limited access to self'* has be invoked in the judments referred to above. However,the critics opine that privacy under the concept of "*limited access to the self*" explanation provides no understanding as to the degree of access necessary to constitute a privacy violation. Like the right to be let alone, the limited access conception of privacy suffers from being too broad and too vague.

19 (1973) 1 SCC 471 =1973 AIR 157 = 1973 SCR (2) 417
20 Ibid, at page 479 (para 31)
21 (2012) 5 SCC 1
22 (2011) 13 SCC 155

1) Secrecy – the concealment of certain matters from others:

The word "privacy" seems to mean at least two distinct interest. One is the interest in being left alone The other privacy interest, concelament of information, is invaded whenever private information is obtained against the wishes of the person to whom the infomation pertains.[23] Therefore, under the secrecy view of privacy concept, privacy is violated by the public disclosure of previously concealed information. Even, this conception of privacy can be understood as a subset of the limited access to the self.

The concept of privacy under the*"secrecy"*view appears to have been invoked by the Supreme Court of India in*Mr X v Hospital Z* [24]. In light of the case facts[25], Justice Saghir Ahmad, speaking for a

Bench of two judges of the Supreme Court of India,adverted to the duty of the doctor to maintain secrecy in relation to the patient but held that there is an exception to the rule of confidentiality where public interest will override that duty. (emphasis supplied)

In this case, the judgment of Supreme Court of India dwelt on the right of privacy under Article 21 and other provisions of the Constitution relating to the fundamental rights and the Directive Principles and referred to the case-law[26] on privacy in India. It was held that the right to privacy is not absolute and is subject to action lawfully taken to prevent crime or disorder or to protect the health, morals and the rights and freedoms of others. Public disclosure of even true facts, was held, may amount to invasion into the right to privacy or the right to be let alone when a doctor breaches confidentiality. The Surpeme Court of India held that:

"Disclosure of even true private facts has the tendency to disturb a person's tranquillity. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the right of privacy is an essential component of the right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others."

Therefore, the disclosure that the appellant was HIV+ was held not to be violative of the right to privacy of the appellant on the ground that the woman to whom he was to be married "was saved in time by such disclosure and from the risk of being infected".The decision is significant for the reason that it recognized disclosure of true confendential private infomation in public as invasion of an individual's right to privacy.

23 The Economics of Justice by Richard A. Posner, Harvard University Press; Reprint edition (January 1981)

24 (1998) 8 SCC 296

25 The appellant was a doctor in the health service of a state. He was accompanying a patient for surgery from Nagaland to Chennai and was tested when he was to donate blood. The blood sample was found to be HIV+. The appellant claiming to have been socially ostracized by the disclosure of his HIV+ status by the hospital, filed a claim for damages before the National Consumer Disputes Redressal Commission (NCDRC) alleging that the hospital had unauthorizedly disclosed his HIV status resulting in his marriage being called off and in social opprobrium.

26 *" Right to privacy has been culled out of the provisions of Article 21 and other provisions of the Constitution relating to the Fundamental Rights read with the Directive Principles of State Policy. It was in this context that it was held by this Court in Kharak Singh v. State of U.P. [AIR 1963 SC 1295 : (1964) 1 SCR 332] that police surveillance of a person by domiciliary visits would be violative of Article 21 of the Constitution. This decision was considered by Mathew, J. in his classic judgment in Gobind v. State of M.P. [(1975) 2 SCC 148 : 1975 SCC (Cri) 468] in which the origin of "right to privacy" was traced and a number of American decisions, including Munn v. Illinois [94 US 113 : 24 L Ed 77 (1877)] , Wolf v. Colorado [338 US 25 : 93 L Ed 1782 (1949)] and various articles were considered. "*

The judgment of Supreme Court of India in*Bihar Public Service Commission v Saiyed Hussain Abbas Rizwi*[27] dealt with the provisions of Section 8(1)(g)[28] of the Right to Information Act, 2005. A person claiming to be a public-spirited citizen sought information under the statute from the Bihar Public Service Commission on a range of matters relating to interviews conducted by it on two days. The commission disclosed the information save and except for the names of the interview board. The High Court directed disclosure. Against such order of High Court, matter went to Supreme Court of India.

Justice Swatanter Kumar, speaking for the bencht, held thus:

"Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there

may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy.Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India."(emphasis supplied)

Significantly, though the Supreme Court of India was construing the text of a statutory exemption contained in Section 8, it dwelt on the privacy issues involved in the disclosure of information furnished in confidence by adverting to the constitutional right to privacy.

Going on similar lines, while considering the constitutional validity of the Constitution (Ninety-Ninth Amendment) Act, 2014 which enunciated an institutional process for the appointment of judges, the concurring judgment of Justice Madan B Lokur in*Supreme Court Advocates on Record Association v Union of India*[29] dealt with privacy issues involved if disclosures were made about a candidate under consideration for appointment as a Judge of the Supreme Court or High Court. Dealing with the right to know of the general public on the one hand and the right to privacy on the other hand, Justice Lokur noted that the latter is an "implicit fundamental right that all people enjoy". Justice Lokur observed thus:

"The balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far-reaching impact on his/her reputation and dignity. The 99 th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual. This is important because it was submitted by the learned Attorney General that the proceedings of NJAC will be completely transparent and any one can have access to information that is available with NJAC. This is a rather sweeping

27 (2012) 13 SCC 61

28 Section 8(1)(g) provides an exemption from disclosure of information of the following nature: "information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement and security purposes."

29 (2016) 5 SCC 1

generalization which obviously does not take into account the privacy of a person who has been recommended for appointment, particularly as a Judge of the High Court or in the first instance as a Judge of the Supreme Court. The right to know is not a fundamental right but at best it is an implicit fundamental right and it is hedged in with the implicit fundamental right to privacy that all people enjoy. The balance between the two implied fundamental rights is difficult to maintain,but the 99 th Constitution Amendment Act and the NJAC Act do not even attempt to consider, let alone achieve that balance.

The decisions as adverted to above show that the concept of privacy under the "*secrecy*" view was applied by the Supreme Court of India acknowleding that discloure of private infomation of an individual in public would be violation of an individual's privacy right. However, several theorist have claimed that understanding privacy as secrecy conceptiualizes pirvacy too narrowly. The privacy as secrecy conception fails to recognize that individuals want to keep things private from some people but not others. Therefore, although most threorists would recognize the disclosure of certain secrets to be a violation of privacy, many commonly recognized privacy invasions do not invovle the loss of secrecy. Therefore, it is argued that secrecy as the common denominator of privacy make the conception of privacy too narrow.

3) Control over personal information – the albity to exercise control over information about oneself:

Privacy is the claim of individual, groups, or institutions to determine for themselves when, how and to what extent infomation about them is communicated to others[30]. The U.S. Supreme Court has stated that privacy constitutes the individual's control over information concerning his or her person.[31]

This concept of privacy under the head of '*control over personal infomation'*appears to have been invoked in one particular decision of Supreme Court of India in*District Registrar and Collector, Hyderabad v Canara Bank*[32] , where the Supreme Court of India considered the provisions of the Indian Stamp Act, 1899 (as amended by a special law in Andhra Pradesh). Section 73, which was invalidated by the High Court, empowered the Collector to inspect registers, books and records, papers, documents and proceedings in the custody of any public officer 'to secure any duty or to prove or would lead to the discovery of a fraud or omission.

The matter dealt with the application of Section 73 of the Indian Stamp Act (as amended), to documents of a customer in the possession of a bank. The Supreme Court of India held:

"Once we have accepted in Gobind [(1975) 2 SCC 148 : 1975 SCC (Cri) 468] and in later cases that the right to privacy deals with "persons and not places", the documents or copies of documents of the customer which are in a bank, must continue to remain confidential vis-à-vis the person, even if they are no longer at the customer's house and have been voluntarily sent to a bank. If that be the correct view of the law, we cannot accept the line of Miller [425 US 435 (1976)] in which the Court proceeded on the basis that the right to privacy is referable to the right of "property" theory. Once that is so, then unless there is some probable or reasonable cause or reasonable basis or material before the Collector for reaching an opinion that the documents in the possession of the bank tend to secure any duty or to prove or to lead to the discovery of any fraud or omission in relation to any duty, the search or taking notes or extracts therefore, cannot be valid.

30 See The Right to Privacy by Adam Carlye Breckenridge, U of Nebraska Press, 1970
31 US Dept of Justice v Reporters Comm. For Freedom of the Press, 489 U.S.749,763 (1989)
32 (2005) 1 SCC 496

The above safeguards must necessarily be read into the provision relating to search and inspection and seizure so as to save it from any unconstitutionality."

The reading of the reasoning in the ruling above give an understanding that the Supreme Court of India repudiated the notion that a person who places documents with a bank would, as a result, forsake an expectation of confidentiality.In the view of the Apex Court, even if the documents cease to be at a place other than in the custody and control of the customer, privacy attaches to persons and not places and hence the protection of privacy is not diluted.. The significance of this decision is that the right to privacy is not lost as a result of confidential documents or information being parted with by the customer to the custody of the bank. The reasoning in the decision implies that information provided by an individual to a third party (in this case a bank) carries with it a reasonable expectation that the utilised party (in this case a bank) carries with it a reasonable expectation that it will be utilised only for the purpose for which it is provided. Parting with information (to the bank) does not deprive the individual of the privacy interest. The reasonable expectation is allied to the purpose for which information is provided. Therefore, in essence, the concept of control-over information appears to have been invoked in this case.

The control-over-information conception can be viewed as a subset of the limited access conception. The theory's focus on information however, makes it too narrow, for it excludes those aspects of privacy that are not infomational, such as the right to make certain fundamental decisions about one's body, reproduction, or rearing of one's children. Moreover, the theory is too vague because it fails to define the types of information over which indiviudals should have control.

4) Personhood – the protection of one's personality, individuality and dignity:

Paul Freund coined the term "personhood" to refer to "those attributes of an individual which are irreducible in his selfhood"[33]. Under this view privacy is a form of protecting personhood. Privacy is a unifed and coherent concept protecting against conduct that is "demeaning to individuality", " an affront to personal dignity." or an " assault on human personality"[34]

The U.S. Supreme Court has used the privacy theory of personhood in its right to privacy decisions such as*Griswod v. Connecticut* [35],where a statute criminalzing contraceptive for married couples was held as unconstitutional because it invaded the 'zone of privacy' protected under U.S. Constitution. Similarly in*Eisenstadt v Baird* [36],the ruling of*Griswod*was extended to the use of contraceptives by unmarried indidivudals. In*Roe v. Wade* [37],it was held that the consitutional right to privacy encompases the decision to procure an abortion. The most elaborate explantion of what the constitutional right to privacy encompases is stated by U.S. Supreme Court in*Planned Parenthood v Casey*[38],where it was observed:

"*These matter, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Forteenth Amendement. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the atrributes of personhood were they formed under compulsion of the state"*

33 Address at the American Law Institute, 52nd Annual Meeting, California law review, Volume 81, Issues 1-3
34 Privacy as an Aspect of Human Dignity by Edward J.Bloustein, NewYork University, School of Law, 1964
35 381 U.S. 479 (1965)
36 405 U.S.438 (1972)
37 410 U.S. 113 (1973)
38 505 U.S. 833 851 (1992)

In India, the concept of privacy in the view 'personhood' heading appears to have been recognized under several decisions of Supreme Court of India.

In *Suchita Srivastava v Chandigarh Administration* [39] Supreme Court of India had occasion to deal with the autonomy of a woman and, as an integral part, her control over the body in the context of the Medical Termination of Pregnancy Act (MTP) Act, 1971. It was held:

"There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."

The decision in*Suchita Srivastava*dwells on the statutory right of a woman under the MTP Act to decide whether or not to consent to a termination of pregnancy and to have that right respected where she does not consent to termination. The statutory recognition of the right is relatable to the constitutional right to make reproductive choices which has been held to be an ingredient of personal liberty under Article 21. The Apex Court deduced the existence of such a right from a woman's right to privacy, dignity and bodily integrity.

Dealing with rights of transgenders in*National Legal Services Authority v Union of India*[40]Justice K S Radhakrishnan of Supreme Court of India held that:

"Gender identity, therefore, lies at the core of one's personal identity, gender expression and presentation and, therefore, it will have to be protected under Article 19(1)(a) of the Constitution of India. A transgender's personality could be expressed by the transgender's behaviour and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality. Often the State and its authorities either due to ignorance or otherwise fail to digest the innate character and identity of such persons. We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognise those rights"

The decision referred to above indicate that the concept of privacy under "personhood" concerning with the right of transgender is recognized by Supreme Court of India.

The privacy right of a women over her person was referrred in*State of Maharashtra v*

39 (2009) 9 SCC 1
40 (2014) 5 SCC 438

Madhukar Narayan Mardikar[41] where in the given facts[42], Justice A M Ahmadi, the Chief Justice of Supreme Court of India held that though the victim had admitted "the dark side of her life", she was yet entitled to her privacy :

"The High Court observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacyand no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution unto himself before accepting her evidence."

The issue before Supreme Court of India was primarily based on the appreciation of the evidence of the rape victim by the High Court. However, the observations of Supreme Court of India make a strong statement of the bodily integrity of a woman, as an incident of her privacy.

While dealing with a case involving the rape of an eight year old child, the Supreme Court of India in*State of Karnataka v Krishnappa* [43] held:

"Sexual violence apart from being... dehumanising... is an unlawful intrusion of the right to privacy and sanctity... It... offends her... dignity."

Similar observations were made in*Sudhansu Sekhar Sahoo v State of Orissa* [44].

The decision*Lillu @Rajesh v State of Haryana* [45] emphasized the right of rape survivors to privacy, physical and mental integrity and dignity. The Supreme Court of India held thus:

"*In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy."*

The question of DNA test of child to dispute the paternity was dealt by the Supreme Court of

41 (1991) 1 SCC 57
42 It is a case of a police inspector who was alleged to have attempted to have non-consensual intercourse with a woman by entering the hutment where she lived. Following an enquiry, he was dismissed from service but the punishment was modified, in appeal, to removal so as to enable him to apply for pensionary benefits. The High Court quashed the punishment both on the ground of a violation of the principles of natural justice, and by questioning the character of the victim.
43 (2000) 4 SCC 75
44 (2002) 10 SCC 743
45 (2013) 14 SCC 643

India in*Bhabani Prasad Jena v Orissa State Commission for Women* [46] it was held that:

"In a matter where paternity of a child is in issue before the court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties but may have devastating effect on the child. Sometimes the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception."

The observation of Apex Court recognized the delicacy invovled in issue of disputed paternity and ordering for DNA test of a child. In a way the privacy rights of both mother and child would be invaded in case is DNA test is conducted effecting their personhood, individuality and dignity irrespective of the result of such test.

In*Selvi v State of Karnataka* [47] the Supreme Court of India dealt with a challenge to the validity of three investigative techniques: narco-analysis, polygraph test (lie-detector test) and Brain Electrical Activation Profile (BEAP) on the ground that they implicate the fundamental rights under Articles 20(3) and 21 of the Constitution. As to privacy rights of individual, it was observed as under:

"...*Therefore, it is our considered opinion that subjecting a person to the impugned techniques in an involuntary manner violates the prescribed boundaries of privacy. Forcible interference with a person's mental processes is not provided for under any statute and it most certainly comes into conflict with the "right against self- incrimination"*

Apart from the significance of the decision under the criminal law, it recognized the privacy rights of the individual and intrusion with the mental faculty of an individul was treated as being violative of his privacy right, mostly under the conception of privacy under "personhood" heading.

The Supreme Court of India decisions referred to above show that it conceptulized the protection of privacy as the state's noninterference on certain decisions that are essential to defining personhood. However, theories of privacy as personhood fail to elucidate what privacy is, because they frequently do not articulate an adequate definition of personhood for it often being too broad. This concept is critized on ground that if privacy concerns only those exercises of state power that threaten the 'totality of our lives', then it is diffcult to conceive of anything that would beprotected.

6) Intimacy – Control over, or limited access to , one's initmate relationship or aspects of life:

Under the concept of Initmacy, privacy consists of some form of limited access or control, and it locates the value of privacy in the development of personal relationship. We form relationships with differing degrees of intimacy and self-revelation, and we value privacy so that we can maintain the desired levels of intimacy for each of our varied relationships. Intimacy, accoridng to Charles Fried "*is the sharing of information about one's actions, beliefs or emotions which one does not share with all, and*

which one has the right not to share with anyone. By conferring this right, privacy creates the moral capital which we spend in friendship and love"[48].

46 (2010) 8 SCC 633
47 (2010) 7 SCC 263
48 An Anatomy of Values: Problems of Personal and Social Choice by Charles Fried,Harvard University Press, 1970

The Supreme Court of India in*PUCL v Union of Indi*a [49] dealt with telephone tapping. The petitioner challenged the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1885 and urged in the alternative for adopting procedural safeguards to curb arbitrary acts of telephone tapping.

Telephone conversations were construed to be an important ingredient of privacy and the tapping of such conversations was held to infringe Article 21, unless permitted by 'procedure established by law, speaking for the bench Justice Kuldeep Nair observed:

"*The right to privacy — by itself — has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the 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".Conversations on the telephone are often of an intimate and confidential character.Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephoneconversation in the privacy of one's home or office. Telephone- tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law." (emphasis supplied)*

The supra decision indicate that the Supreme Court of India recognized the telephonic conservation as an intimate and confidential character and wiretapping without the authorization of law was held to be voilative of privacy rights of individuals. It appears that privacy under the view of 'secrecy' was invoked in recognizing the telephonic conversion as intimate and confidential in nature.

In*ABC v The State (NCT of Delhi)* [50] *, the*Supreme Court of India dealt with the question whether it is imperative for an unwed mother to specifically notify the putative father of the child of her petition for appointment as guardian of her child. It was stated by the mother of the child that she does not want the future of her child to be marred by any controversy regarding his paternity, which would indubitably result should the father refuse to acknowledge the child as his own. It was her contention that her own fundamental right to privacy will be violated if she is compelled to disclose the name and particulars of the father of her child. Looking into the interest of the child, *the bench directed that "if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the contrary"*

The decision appears to have agreed with the right of the women to maintain "secrecy" concerning the paternity of her child under the concept of women's right to privacy.

The critics of this concept of privacy hold that view that "Intimacy" captures the dimension of private life that consists of close relationship with other, but it does not capture the dimension of private life that is devoted to the self alone. In all, privacy under "intimacy' concept can be too broad if it does not adequately define the scope of "intimancy".

49 (1997) 1 SCC 301
50 (2015) 10 SCC 1

CONCLUSION:

In research methodology, concepts are viewed as the beginning point for all research endeavors, and are often very broad in nature. They are the bases of theories, and serve as a means to

communicate, introduce, classify, and build thoughts and ideas. To conduct research, the concept must first be taken from its conceptual or theoretical level to an observational level. In other words, one must go from the abstract to the concrete before research can occur. This process is often referred to as conceptualization[51].

The conceptual journey of privacy rights in India show that depending on the facts and circumstance of each case, the conceptions of privacy under various heads were invoked by the Supreme Court of India. The evolving jurisprudence in India recognized right to privacy and declared such right as fundamental right[52] and there are some statutes[53] which value the privacy rights of individual in India. The international instruments[54] and statutes[55] across the globe show that the privacy rights are recognized being paramount to the human existence.

However, there is an unanimous understanding among the legal theorist that the concept of privacy could not be settled as each of the conceptions of privacy as dealt above under present work show that each concept elaborates upon certain dimension of privacy and contain many insights. But settling upon any one of the conception results in either a reductive or an overly broad account of privacy. There are serious attempts made of the legal scholars in defining the concept of privacy[56].However, there is need for more research and findings to attain a conceptual clarity of privacy.

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51 Reserch Methodology for Criminalogy and Criminal Justice A Premier by M.L. Dantzker nad Ronald D. Hunter, 2nd editiion, Jones and Bartett Publisher.

52 With decision in *Justice K.S. Puttaswamy (Retd) v Union of India* reported in (2017) 10 SCC 1 (Nine Judge Bench) overruling the earlier judgments of *M. P. Sharma v Satish Chandra reported in(1954) SCR 1977 (eight-judge bench)* and *Kharsk Singh v State of UP reported in (1964) 1 SCR 332,* privacy right is declared as fundamental right protected under the Constitution of India.

53 The Information Technology Act, 2000, See Section 66 E providing for punishment for violation of privacy. The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 ("Data Protection Rules"), these rule are now under challenge before the Supreme Court of India on grounds of lack of adequate remedy for Indian citizens against foreign entities such as Facebook, Twitter and Google whose Indian subsidiaries do not have any control over data. See the report of the MeiTy Committee for Data Protection Law in India The Right to information Act, 2005, See: Section 8(1)(g) provides an exemption from disclosure of information valuing the privacy rights.

54 APEC (Asia-Pacific Economic Cooperation) created a voluntary Privacy Framework that was adopted by all 21 member economies in 2004 in an attempt to improve general information privacy and the cross-border transfer of information: See :Article 8 of the European Convention on Human Right, which was drafted and adopted by the Counsel of Europe in 1950 and currently covers the whole European continent except for Belarus and Kosovo, protects the right to respect for private life. The 1995 Data Protection Directive (officially Directive 95/46/EC) recognized the authority of National data protection authorities and required that all Member State adhere to universal privacy protection standards. In 1980, the OECD (Organization for Economic Co-operation and Development) adopted the voluntary OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data in response to growing concerns about information privacy and data protection in an increasingly technological and connected world. Article 17 of the International Convenant on Civil and Police Rights of the United Nations in 1966 also protects privacy: "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. Everyone has the right to the protection of the law against such interference or attacks. Source:https://en.wikipedia.org/wiki/Privacy_law

55 Data Protection Act, 1998 (United Kingdon), Data Protection Directive (European Union), Data Protection and Privacy law (Russia), Electronic Communications Privacy Act (United State), General Data Protection Regulation (European Union), Global Privacy Enforcement Network Information Privay, Information Privacy Law, Peronsality right, Privacy Act of 1974 (United State), Privacy Act, 1988 (Australia), Right to be forgotten, Source:https://en.wikipedia.org/wiki/Privacy_law
One such attempt is presented in the book: Understanding Privacy by Daniel J. Solove, Harvard University Press, Cambright, Massachusetts, London, England.