

RIGHT TO PRIVACY: ISSUES AND CHALLENGES IN THE TECHNOLOGICAL ERA

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Abstract

The article is an effort to reflect the concept and to focus on various facets of right to privacy in India. The right to privacy has been construed as an unarticulated fundamental right under the Constitution of India. Technological, political, social, and economic changes in the country necessitate the recognition of new rights. Law changes according to its social transformation. Right to privacy is one amongst such right which has arisen after widening up the scope of Article 21. In spite of this right has been guaranteed by the Supreme Court as a fundamental right under Article 21 and several other provisions of the Constitution read with the Directive Principles of State Policy, this right is not an absolute one. As it is a right part & parcel to life and personal liberty, its growing violation by the State on grounds (that are not always bona fide) has encouraged the Indian Judiciary to take a pro-active role in protecting this right.

The researcher has discussed various issues and challenges in the technical era in respect to privacy laws with special reference to UIDAI, Data Protection in Telecom Sector, Cyber Privacy, Real Time Tracking etc. The paper concludes with the steps and measures that can be taken to deal with the aforesaid challenges. It will deal in the fields where government needs to pay the most attention so that the rights of the individuals remain intact.

KEYWORDS-*Fundamental Right, Right to Privacy, Technology, Cyber Privacy, Constitution of India.*

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Right to Privacy: Issues and Challenges in the Technological Era

“All human beings have three lives: public, private, and secret.” -

Gabriel García Márquez

INTRODUCTION:

Through the early time technology is considered as the driving vigor of advancement. From movable type, to television, to the internet, technology has been embraced and incorporated into our daily lives. The digital revolution has altered conceptions of time and distance. It has shaped a wealth of information that is available at the hit of a key. In the 21st century a rapid growth in innovations and development in the technology can be easily witnessed. With this humongous development in the technology, internet slowly and gradually got converted into an inevitable part of one's life, almost every individual either directly or indirectly is connected with this huge network. As the world is progressing day by day with the advancement in the technology, so is the amount of cases relating privacy invasion are increasing. The technology drives privacy towards attacking crimes. However, crime also drives technology, creating a vicious cycle. Without technology no intruder could easily enter any stranger's life. Contrariwise, without the technology that same criminal would escape the law enforcers. So, the question is that whether the technology shield citizens' privacy, or it exposes one's whole life?

Acknowledging the fact that being the wildest increasing crime of these days, it is projected that in every 79 seconds an identity is being stolen.³ This is not just the only case where privacy is infringed by the use of technology. There are many more issues in the current era of technology relating to the privacy invasion.

“Privacy” is a notoriously difficult concept to define and cannot be understood as a static and one-dimensional concept. It can only be construed as a group of rights.⁴ For understanding the concept of privacy invasion and impact of technology on privacy it is important to know what does “Right to Privacy” means. According to Black's Law Dictionary ‘Right to Privacy’ means “the condition or state of being free from public attention to intrusion into or interference with one's acts or decisions”⁵ which concludes to the right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live

³<https://www.bartleby.com/essay/Technology-and-the-Invasion-of-Privacy-FKJ6QWAZTC>

⁴ J. L. MILLS, *THE LOST RIGHT* 4 (Oxford University Press 2008).

⁵ *Black's Law Dictionary*, Eighth Edition, South Asian Edition, Pg1233.

Without any unwarranted interference by the public in matters with which the public is not necessarily concerned. The right to privacy is derived from an English Common Law maxim which asserts that “Every man’s house is his castle”.⁶The existence of a “private” element in an individual’s life has also been recognized by Jeremy Bentham.⁷

Privacy has also been considered a “type of social isolation”⁸; “right against unwarranted intrusion by the state”⁹; a “right against the intrusion on an individual’s personal life or affairs”¹⁰ but presently right to privacy has become a burning issue regarding to concerns raised against government’s initiatives to collect personal data from citizens. Though privacy is not a fundamental right specifically mentioned in the Constitution of India but it is now seen as an ingredient of personal liberty. Various issues are now being raised for the government’s initiatives such as Unique Identification Authority of India (UIDAI), Digital Locker, and other digital services through Digital India Scheme. The right to privacy has been developed by the Supreme Court over a period of time. With the expansive interpretation of the phrase “personal liberty” this right has been read into Article 21 of the Indian Constitution. The expression "personal liberty" includes the right of privacy also.¹¹However it cannot be treated as an absolute right, as some limitations on this right have been imposed.

INTERNATIONAL INSTRUMENTS ON RIGHT TO PRIVACY

The constitutional right privacy has been recognized by almost all the democratic states in the world. It is expressed in a variety of the legislative provisions such as the Privacy Act (1974) in the USA, the proposed Open Democracy Act in South Africa (1996) and the Data Protection Act in England. The other statues which have a universal status also contains provisions recognizing the right to privacy.

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

⁶Semayne’s case ((1603) 5 Coke’s Rep. 91a: 77 ER 194 (KB).

⁷ Glenn Negley, *Philosophical Views on the value of Privacy*, 31 LAW & CONTEMP. PROBS. 321-22 (1966).

⁸Mannheim, Karl & John Stephen Eros, Ed., “*An Introduction To The Study Of Society*” (Literary Licensing, Llc 2013).

⁹Basu, Durga Das, *Commentary On The Constitution Of India* 4772 (3rd Ed. Lexis Nexis 2016).

¹⁰Great Britain And David Calcutt, “*The Calcutt Report Of The Committee On Privacy And Related Matters*” 7 (Stationery Office Books 1970).

¹¹*R. Rajagopal v. State of Tamil Nadu* (1994) 6 SCC

632. ¹²Article 12 of UDHR,1948.

- **International Covenant of Civil and Political Rights** (to which India is a party) states “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation”.¹³
- **European Convention on Human Rights** states “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with 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 protection of health or morals or for the protection of the rights and freedoms of others.”¹⁴

RIGHT TO PRIVACY: INDIAN STATUS QUO

"Privacy makes possible individuality, and thus, freedom."¹⁵ The right to privacy is considered as the most comprehensive and one of the most valued right by a civilized man.¹⁶ Privacy is defined as 'the state of being free from intrusion¹⁷ or disturbance in one's private life or affairs"¹⁸ Privacy as a universal concept and a legal right are two different issues which must be dealt separately. Though everyone has their own definition of privacy, but the fundamental idea on which the concept of privacy drives has existed from centuries but the courts are still developing the concept of legal right of privacy through the judicial pronouncements.¹⁹

BEFORE 1975: RIGHT TO PRIVACY NOT EXPRESSELY RECOGNISED

Right to privacy has not been defined as a Fundamental Right under Constitution of India. In 1954, the Supreme Court in *M. P. Sharma v. Satish Chandra*²⁰, rejected the contention that there exists a right to privacy under Article 20(3)²¹, due to the absence of any provision analogous to the Fourth Amendment of the US Constitution.

¹³Article 17 of ICCPR,1976.

¹⁴Article 8 of ECHR,1953.

¹⁵Robert S. Peck, *The Right to Be Left Alone*, 15 HuM. RTS. 26, 27 (1987).

¹⁶*Olmstead v. United States*, 277 U.S. 438,478 (1928).

¹⁷*Sharda v.Sharam Pal*, Air 2003 SC 3450.

¹⁸*District Registrar & Collector v. Canara Bank*, 2005(1) SCC

496. ¹⁹*Griswold v. Connecticut*, 381 U.S. 479, 483 (1965).

²⁰AIR 1954 AIR 300.

²¹Article 20 of *The Constitution of India*.

The scope of this right first evolved in *Kharak Singh v. The State of Uttar Pradesh & others*²², which was concerned with the validity of certain regulations that permitted surveillance of suspects. This right of privacy is considered as the right to be let alone. In the context of surveillance, it has been held that surveillance, if intrusive and seriously encroaches on the privacy of citizen, can infringe the freedom of movement, guaranteed by Articles 19(1)(d) and Article 21 of Indian Constitution. Although, the Supreme Court began to accept certain points of the minority view²³, the right to privacy was still waiting for its place in Indian constitutional jurisprudence²⁴

DURING 1975-2000: RIGHT TO PRIVACY IMPLICIT IN ARTICLE 21 OF INDIAN CONSTITUTION

In *Govind v. State of Madhya Pradesh*²⁵, Justice Mathew accepted that, the right to privacy as an emanation from Art. 19(1)(a), (d) and 21, but right to privacy is not absolute right. “The fundamental rights clearly guaranteed to a citizen have penumbral regions and that the right to privacy is itself a fundamental right, the fundamental right must be question to restriction on the very root of compelling public interest”.²⁶ Surveillance by which the domiciliary visits are not always be an unreasoning invasion in privacy of a person owing to the character and antecedents of the person subjected to surveillance as also the objects and limitation in which the surveillance is setup. The privacy right deals only with ‘persons not places’. In this decision, Justice Mathew taking the US jurisprudence²⁷ into consideration, observed that the right to privacy exists within the penumbral zones of the Fundamental rights²⁸ explicitly guaranteed under Part III of the Constitution²⁹.

In another case *Smt. Maneka Gandhi v. Union of India & Anr*³⁰, the Supreme Court held that ‘personal liberty’ under article 21 shelters a variety of rights and some have status of fundamental rights and given additional protection under Article 19 of the Indian Constitution. The Triple Test for any law intrusive with personal liberty:

²²AIR 1963 SC 1295.

²³*State of West Bengal v. Ashok Dey*, AIR 1972 SC 1660.

²⁴Jain, M.P., *The Supreme Court and Fundamental Rights* in S. K. VERMA, KUSUM (EDS.), *FIFTY YEARS OF THE SUPREME COURT* (Oxford University Press 2015).

²⁵1975 AIR 1378, 1975 SCR (3) 946.

²⁶*Bowers v. Hardwick*, 478 U.S. 186 (1986).

²⁷Charles Henry Alexandrowicz-Alexander, *American Influence on Constitutional Interpretation in India*, 5 AM. J. COMP. L. 98, 100 (1956).

²⁸*Griswold v. Connecticut*, 381 U.S. 479.

510. ²⁹*Jane Roe v. Henry Wade*, 410 U.S.

113. ³⁰1978 AIR 597, 1978 SCR (2) 621.

(1) It must prescribe a procedure; (2) the procedure must endure the test of one or more of the fundamental rights conferred under Article 19 of Indian Constitution which may be applicable in a given situation and (3) It must withstand test of Article 14.

The law and procedure authorizing interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.

In *P.U.C.L. v. Union of India*³¹, the Supreme Court of India, while laying down the standards for telephone wire tapping had observed that the right to privacy is an integral part of the fundamental right to life enshrined under Article 21 of the Constitution and this right shall be available only against the state. Prior Justice P.N Bhagawati had also observed that the right to life and personal liberty also includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as proper nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings. The actions which may damage individual's dignity will constitute the violation of his right to live and it would have to be in accordance with reasonable, fair and just procedure recognized by the law which stands the test of other fundamental rights." Hence, one could observe from the above cases that the Supreme Court had acknowledged that the human dignity implies expressing oneself in diverse forms and acknowledges the worth of all individuals in the society.³²

2000 TO PRESENT: RECGONITION AND SAFEGUARDSALONG WITH REASONABLE RESTRICTIONS TO THE RIGHT TO PRIVACY

In *Mr X v. Hospital Z*,³³ the apex court held that, right to privacy in doctor patient relationship is not absolute. Right to healthy life would justify breach of confidentiality or right to privacy of another person.

In another case *Directorate of Revenue v. Mohd Nisar Holla*,³⁴ the court held that an individual who does not break any law would be entitled to enjoy his life and liberty which include the right not to be disturbed. A right to be let alone is recognized to be a right under article 21.³⁵

³¹(1997)1 SCC 30.

³²*Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Others*, (1981)2 SCR 516.

³³(1998)8 SCC 296.

³⁴(2008) 2 SCC 370.

³⁵*Gobind v. State of M.P.* [(1975) 2 SCC 148].

In the most recent judgement of the case *K.S. Puttaswamy (Retd.) and Ors. v. Union of India (UOI) and Ors.*,³⁶ the apex court of India held that, if the observations made in *M.P. Sharma and Ors. v. Satish Chandra and Ors.*³⁷ and *Kharak Singh v. State of U.P. and Ors.*³⁸ are read literally and putative as law, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 of the Indian Constitution would be denuded of vigor and vitality. Institutional integrity³⁹ and judicial discipline⁴⁰ requires that assertion made by superior benches of this Court cannot be overlooked by the smaller benches without appropriately clearing up the reasons for not following the decrees pronounced by the larger benches. It is better that the ratio decidendi in the two cases is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the privacy right which is asserted or referred be examined and authoritatively decided by a bench of appropriate strength.

Lord Denning contended for the acknowledgement of right to privacy that, "English law should recognize a right to privacy."⁴¹ Any infringement of it must give a cause of action for damages or an injunction as the case may require. It should also recognize a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So, a body of case law will be established."⁴²

The Apex Court has admitted that personal liberty is taken as a compendious term to embrace the varieties of rights which maintain the 'personal liberties' of an individual other than those dealt with in Article 19(1). The court held that, while Article 19(1) deals with particular types or parts of freedom, "personal liberty" in Article 21 takes in and encompasses the residue.⁴³ However, the right to privacy may not be absolute and in exceptional circumstances surveillance as per statutory provisions may not violate such a right.⁴⁴

³⁶2015 (8) SCALE 747.

³⁷1954 AIR 300.

³⁸AIR 1963 SC 129.

³⁹*Indore Development Authority v Shailendra (Dead) Through LRS. & Ors*, Civil Appeal No.20982 Of 2017

⁴⁰*State of Haryana v M/s G.D.Goenka Tourism Corporation Limited*, SLP No. 8453/2017

⁴¹Lord Denning, 'What Next in Law', 1982, Lexis Law Publishing.

⁴²Ibid

⁴³*Kharak Singh v. State of U.P.* AIR 1963 SC 1295.

⁴⁴*Ramlila Maidan Incident, Re*, (2012) 5 SCC 1.

TECHNOLOGY AS A THREAT TO PRIVACY

We are presently experiencing the so-called technological age which can be described as an era where economic activities and others are mainly data based. This is mainly a result of development and use of technology. The chief features of this era can be abridged as a rise in the number of knowledge workers, a world that has become more open in the sense of communication between national as well as at the international level.

This move towards the technological era brings new ethical and juridical difficulties which are mainly related to problems such as the right of access to information, the right of privacy which is endangered, the emphasis on the free movement of information, and the safety of the economic interest of the owners of intellectual property.

Prior to the use of technology in the processing of personal and private information can be dealt with, it is important to briefly pay attention to the concept technology. For the purpose of this paper the definition of *Van Brakel* will be used, namely: *“the gathering, organizing, storage and distribution of information in various formats by means of computer and telecommunications techniques based on micro-electronics.”*⁴⁵

In the present era because of the majority is directly linked with the technology and it is becoming more intrusive to our personal lives in such circumstances the following below discussed are the foremost challenges which have been traced out as of biggest concern to privacy in the recent times:-

■ TELEPHONE TAPPING

Originating from an individual's right to privacy is the question of telephone tapping. Telephone tapping constitutes a grave invasion to the right to privacy. Is it constitutionally allowed in India? If so, in what limits and subject to what protections? The Apex Court was called upon to consider these interrogations in *People's Union for Civil Liberties v. Union of India*.⁴⁶ In the light of the precedents, the court determined:

*We have, therefore, no hesitation in holding that the right to privacy is a part of the right to 'life and personal liberty' enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed except according to procedure established by law.*⁴⁷

⁴⁵Van Brakel, (P.A.1989, p. 240) Inligtingstegnologie: Verkenning van navorsingstemas. *Suid-Afrikaanse Tydskrif vir Biblioteek- en Inligtingkunde*, 57 (3).

⁴⁶AIR 1997 SC 568.

⁴⁷Ibid

Telephone dialog is an important facet of a man's private life. Right to privacy will also include telephone conversation in the confidentiality of one's home or office.⁴⁸ This clearly means that telephone tapping would violate Article 21 except if it is permitted under the procedure recognized by the law. The procedure ought to be 'just, fair and rational.' Moreover, conversation on a telephone amounts to exercise by a person of his right to freedom of speech and expression protected by Article 19(2) which provides that the telephone tapping or mobile phone tapping also comes in the ambit of limitations under Article 19(2), will infract Article 19(1)(a)⁴⁹. Telephone tapping is allowed in India in Section 5(2) of the Telegraph Act, 1885. The Court held that the Section is not unconstitutional as the section lays down the conditions and the grounds when an instruction for tapping of a telephone may be approved.⁵⁰ It is also to be noted that even an act of tapping by the husband of conversation of his wife without her knowledge is also an infringement of her right to privacy.⁵¹

■ DATA PROTECTION IN TELECOM SECTOR

Enormous fears are already prevailing in respect to the right to privacy. Contributing to it, the protection of personal data and information also gets arisen as a point of concern as security of the personal data and information is the essence of the right to one's privacy. The right to privacy refers to the specific right of an individual to control the collection, use and disclosure of personal information. Personal information could be in the form of personal interests, habits and activities⁵², family records, educational records, communications (including mail and telephone) records, medical records⁵³ and financial records⁵⁴, credit card details,⁵⁵ to name a few.⁵⁶

The Information Technology Act, 2000 ("ITA")- The ITA was enacted to provide a comprehensive regulatory environment for e-commerce. In connection with the right to privacy on the Internet, it is pertinent to examine Section 69 and Section 75 of the Act. Section 69 is similar to the provision of Section 5 (2) in the Indian Telegraph Act, 1885 and empowers the controller to direct any agency of the Government to intercept any information

⁴⁸Rayala M. Bhuvaneshwari v. Nagaphanender Rayala, AIR 2008 AP 98

⁴⁹Centre for Public Interest Litigation v. Union of India, SCC (2011) (1) 560

⁵⁰Dharambir Khattar v. Union Of India & Another, W.P. (CrI) 1582/2007

⁵¹Rayala M. Bhuvaneshwari v. Nagaphamender Rayala, AIR 2008 AP 98.

⁵²Daniel Soper, "Is Human Mobility Tracking a Good Idea? Considering the tradeoffs associated with human mobility tracking," Communications of the ACM, 55(4), (April 2012), pp. 35-37.

⁵³ Alison Bass, "Computerized Medical Data Put Privacy on the Line," The Boston Globe, (February 22, 1995)

⁵⁴Burnham, Pg. 78-79

⁵⁵Rothfeder, "Invasion of Privacy."

⁵⁶[http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Right to Privacy - data protection.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Right_to_Privacy_-_data_protection.pdf)

transmitted through any computer resource, and requires that users disclose encryption keys or face a jail sentence upto 7 years. Section 72 on the other hand is the only expressed provision in the act connected with privacy and breach of confidentiality. It provides that any person who discloses the contents of any electronic record etc. without the consent of the person concerned shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.⁵⁷ However, both the provisions in the Information Technology Act, 2000 deal specifically with the powers of the Government in connection with the privacy of individuals.

By an overview of the Indian legal circumstances, it can be concluded that there exists no Indian legislation that covers the protection of rights of privacy, which can be interpreted in the realm of transactions between individuals and other bodies or between two different parties over the Internet.⁵⁸

- *REAL TIME TRACKING*

Real time tracking have many synonyms such as live time tracking, vehicle tracking etc. This Vehicle tracking system was first been used in the shipping industry because people wanted to know the live location of there each vehicle at any given time. Nowadays, however, with the rapid growth in the technology, automatic vehicle stalking system is being used in a variety of ways to track and display vehicle locations in real-time.⁵⁹

The design in-vehicle device works using Global Positioning System (GPS) and Global system for mobile communication / General Packet Radio Service (GSM/GPRS) technology that is one of the most common ways for vehicle tracking. The device is generally attached with the vehicle whose position is to be determined and tracked in real-time. A micro controller is used to control the GPS and GPRS or GSM modules. The tracking system uses these modules to get geographic coordinates at regular time intervals. Thereafter by the help of GPRS or GSM module the position of the vehicle is conveyed to the database. A Smartphone software is also developed for continuous monitoring the vehicle's position. The application Google Maps is used to display the vehicle on the map in the Smartphone. Therefore, users will be gifted to now uninterruptedly screen a moving vehicle by using the

⁵⁷Sec 72 of *IT Act*, 2000.

⁵⁸ <https://www.lawteacher.net/free-law-essays/business-law/data-protection-laws-in-india-business-law-essay.php>

⁵⁹*State v. Campbell*, 759 P.2d 1040, 1044 (Or. 1988)

Smartphone and can easily make an estimated distance and time for the vehicle to arrive at a given destination and other important information.⁶⁰

The technology is great, and the concern adjoined to it is of greatest concern. GPS tracking provides the ample of information after examining the activities of a person. It is pretty possible that a person's right to privacy may be violated over the benefits that GPS is providing.⁶¹

In the modern society as the technology is getting developed day by day, the threat to privacy is also simultaneously getting increased. The development of technology is making it more and more probable to discover out ways by simple modification in the available technology to infringe someone's right to privacy. Tracking individuals personal life by the help of GPS is becoming common. GPS can be found in many areas of our lives, such as cell phones and cars. GPS is a powerful tool. U.S. Appeals Court Judge Douglas Ginsburg wrote: "A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient, an associate of particular persons or political groups — and not just one such fact about a person, but all such facts." It is a grave infringe of the right to privacy of one as without the consent of an individual information related to him is getting received by someone else.⁶²

According to the Kantian Theory most people make use of GPS with a simple reason: To know what someone is up to. It is not always bad to watch someone, it depends on who is other party is. If your daughter is being kidnapped by someone, you can use GPS to track her location, saving her in time. Thus, it would not be wrong to say that GPS tracking is a double edge sword as it has its negative as well as its positive impacts also.

- UIDAI

The Right to privacy is fundamental right which is provided to us by the constitution of India irrespective of individual's identity under article 21⁶³. Right to privacy does not only protect our passwords but it also contains our minutest personal information and UIDAI by its UID scheme is infringing an individual's right to retain personal information private. Unique identification authority of India (UIDAI) is a governmental body which works as an

⁶⁰ http://law.scu.edu/wp-content/uploads/site/open_road.pdf

⁶¹ <https://edition.cnn.com/2011/11/07/opinion/crump-gps/index.html>

⁶² *United States v. Jones*, 132 S.Ct. 945 (2012)

⁶³ *Govind v. state of Madhya Pradesh*, AIR (1975) SC 1378.

Issuing authority of UID to every individual. So the question which arises is that whether UIDAI violates the right to privacy or not?⁶⁴

A unique identity card (UID) is an identity which is issued by the UIDAI a government authority to provide a unique identity to every individual after obtaining his finger prints, iris pattern, name, address, date of birth etc to provide every individual with a unique identity. This kind of information is considered as the most private thing that an individual hold as it includes biometric information. However in 2010, a bill was floated to lift the confidentiality of biometrics information, allowing it to be sharing in the interest of national security⁶⁵.

Speaking about the manner in how UIDAI violates the Right to Privacy is that UDI for the unique identification has allotted many government as well as private organizations to get the biometrics information, due to which these private information of an individual is at risk as it can be used by any person for any purpose. The storing of biometrics data in huge deposits is also considered risky for the security of these information as hacking and destroying the data is easily possible.

The safety of biometrics data is considered as one of the utmost duty of the authorities as to which only in the year 2011, Planning Commission of India managed a group of specialists to carefully examine and suggest new dimensions to Indian privacy laws. Justice Ajit P. Shah who chaired this committee recommended nine principals of notice, informed consent, collection and purpose limitation, access and correction, non-disclosure, security, openness and accountability.⁶⁶ Attorney General in Supreme Court supported his arguments with the outdated cases with the police authority to seize and search the private property⁶⁷. The Apex Court held UID violating the right to privacy and if any individual wants, can waive the right by voluntarily handling their biometrics information but this argument was considered as against the public policy as if one can waive this right then it will directly result in infringing the fundamental rights which cannot be waived in anyway. This situation was affirmed by Supreme Court in 1958⁶⁸.

Inspecting deep into the topic we came onto a very important facet of government's constant attempts to alter the fundamental rights as government is directly touching the privacy rights through UIDAI. The government is indirectly compelling its citizens to share

⁶⁴ http://www.business-standard.com/article/economy-policy/privacy-a-fundamental-right-here-are-5-concerns-with-aadhaar-117071900278_1.html

⁶⁵ Clause 33(b) of the *National Identification Authority of India Bill*, 2010.

⁶⁶ *Kharak Singh v. State of Uttar Pradesh*, (1964) 1 SCR 332.

⁶⁷ *M.P. Sharma v. Satish Chandra*, AIR (1954) SC 300.

⁶⁸ *Bheshwar Nath v. Commissioner of Income Tax*, AIR 1959 SC 149.

their private information with the government as in various government schemes it has been made mandatory to provide Aadhar card for availing benefits of the schemes such as Aadhar based Direct Transfer Subsidy, Jan Dhan Yojna, Passport in 10 days, Digital locker, Voter Card Linking, Monthly Pension Provident Fund, Opening bank account, Digital Life Certificate SEBI facilities and now you cannot even get a mobile connection if you don't provide your personal information to the government but it is laid down in the case of *Keshavnanda Bharti v. State of Kerala*⁶⁹ that any part of the constitution can be altered except the basic structure of the constitution.

The major question is whether it is against Right to Privacy or not?

Justice P.S. Puttaswamy, retired judge of Karnataka High court argued, "There are no safeguards or penalties and no legislative backing for obtaining personal information, and the proposed law introduced by the government has been rejected by the Parliamentary Standing Committee on Finance. Provisions for collection and retention of biometric data have been held impermissible in the United Kingdom and France by their top courts."⁷⁰

The remedy which the government must take to resolve this problem is to completely terminate this biometrics information providing system in UIDAI as it will not further lead to any privacy issue. But complete elimination of the UID will require lots of capitals by the government and lot of time, so as to deal with all problems the sole way is to terminate only the biometric data and the general data should remain as it is.

ISSUES TO BE CONSIDERED

Following below given are some of the issues that the Indian Legislature must keep in mind while making privacy laws.

1. Protection from illegal and arbitrary interference: by the Private and the government parties— The law makers must ensure that an individual's right to privacy must not be interfered with in an arbitrary and unlawful fashion. Currently, the judicial precedents forbid abuse of the right to privacy of an individual by Government agencies. A comprehensive law must provide for protection from intrusion by the Government as well as private parties. The legal framework must also address problems relating to trespass upon individual privacy, audio and video surveillance and interception of communications (including digital and electronic communications). It must also try and prohibit/curtail the use of cutting-edge technology to trespass upon privacy rights and personal data. Currently, the right to privacy

⁶⁹(1973) 4 SCC 225.

⁷⁰J.Venkatesan, *Aadhar Infringes Privacy*, THE HINDU, Sep 23, 2013.

on the Internet is being endangered due to numerous elements such as web cookies,⁷¹ unsafe electronic payment systems, Internet service forms, browsers⁷² and spam mail.⁷³

2. Protection of Medical Records – Medical records were used chiefly by physicians and medical insurers. However, with the formation of electronic records and large databases of medical data, the number of health professionals and organizations with access to medical records has increased. While such availability allows for research that can improve the understanding of diseases and treatments across broad populations, the number of parties with routine access to personally identifiable medical data has raised concern about the

Potential misuse of this data.⁷⁴ It is essential that such data is not collected and sold to researchers in the field biomedical science, without the consent of the patients. With the advent of the internet, it has become increasingly difficult to track such data and not only does it amount to an invasion of privacy, but it also amounts to breach of the duty of confidentiality that medical professionals owe their patients. However, in interest of the general public if any action taken in that regard cannot be termed as unconstitutional as under Article 47.⁷⁵

3. Protection of financial records – As the cases of fraud are increasing rapidly it is also needed that to pass special guidelines in order to prevent frauds and various other crimes. Financial records of individuals must be protected from being distributed and circulated among banks and financial companies without the consent and knowledge of its holder except in accordance to the procedure established by law, as it may result in the misuse of such information which will also result in the breach of right to privacy of an individual and may also lead to various other crimes such as kidnapping, extortion etc.

4. Preventing excessive monitoring of employees by the employer – Another major concern, especially among the working class is the excessive surveillance of employee's Activities by their employers. This is an issue of rising importance and must be dealt with in a comprehensive manner. This relates to personal information as discussed earlier. This is done by so-called electronic eyes. The explanation by companies for the use of such technology is to increase efficiency. *Stair*, however, in argument of this practice, evidently points out the

⁷¹<http://www.cookiecentral.com/faq/>

⁷²An Internet Browser interprets HTML the programming language of the Internet, into the words and graphics that are seen by Internet users when viewing a web page.

⁷³Spam is the use of e-mail addresses for a purpose that consumers have not consented for and constitute a violation of personal rights.

⁷⁴"US Report to Congressional Requesters on Medical Records Privacy", www.epic.org/privacy/medical/gao-medical-privacy399.pdf.

⁷⁵*M. Vijaya v. Singareni Collieries Co. Ltd.*, AIR 2001 AP 502.

ethical problem pertaining to the use of this technique. According to him the privacy of an individual in the workplace is endangered by these devices. This can also lead to a feeling of anxiety and of all time being monitored the so-called panopticon phenomenon.⁷⁶

CONCLUSION:

The term “privacy” has been defined as the right of the individual to limit the extent to which he desires to share of himself with others. In many States, the right to privacy has not been given expressly to their citizens, rather discovered from judicial interpretations. The constitutional makers might not have envisioned the said right in the Constitution, but the technology we are experiencing presently is far unlike and advanced from of the lives of generations who drafted the constitution. So, there is a need for modification in the method of resolution for the newly emerging problems and solutions must undergo a procedure of re-engineering.

It can thus be concluded that the use of technology in the processing of information, poses important questions with regard to a person's right to privacy. So, practical guidelines in the handling of these problems must be formulated according to the norms of freedom, truth and human rights.

⁷⁶Stair, R.M. *Principles of Information Systems. A Managerial Approach*. Boston: Boyd & Fraser, Pg665, 1992.