The Evolving Jurisprudential Paradigms of Privacy Rights: A Juridical Analysis

Ivan Jose Nazhicheril and Anandhapadmanabhan Vijayakumar[*]

Abstract

The right to privacy is an emerging field of socio-legal and political jurisprudence, with its expansive interpretation finding its way into the fundamental rights milieu of the Indian constitution. The privacy right owes its genesis to a variety of socio-political issues that incorporates various degrees of non-interference by another into one's life into the civil rights discourse of the world population. Privacy rights assume significance as it represents diverse notions of human rights, spread across an expansive politico-legal milieu ranging from privacy rights of a crime victim from third party scrutiny, to the immunity from online surveillance. Privacy can be observed, analyzed and deduced from diverse jurisprudential sources, constituting itself with the intersection of civil rights discourse in each social issue. This paper intends to study various dimensions of privacy rights and to analyze its significance on the emerging notions on civil liberty with respect to recent legal developments.

[*] Ivan Jose Nazhicheril and Anandhapadmanabhan Vijayakumar are Students at National University of Advanced Legal Studies (NUALS), Kochi.

Introduction

"Privacy - like eating and breathing - is one of life's basic requirements."

Katherine Neville

As Justice Louis Brandeis wrote more than 100 years ago, we all are endowed with "the right to be let alone."[1] This includes the right to control the disclosure of personal information. Philosopher and Harvard Law Professor Charles Fried put it this way in a treatise on the subject: "*the ability to control what others know about us*"[2] is essential to the preservation of an autonomous self. The right to privacy - as an element of human rights, which restricts the intervention of both the state and another private individual in another person's life - is a long discussed one. But privacy rights require a detailed jurisprudential analysis with respect to the socio-political and economic milieu of the context in which they developed.

The right to privacy has been critically undervalued throughout the history and the argument of Governments and its supporters in most cases seems to be quite interesting. They assert that the Right to privacy cannot be deemed to be on the same pedestal as that of the other rights nor has it been encompassed as a freedom as such under the Indian Constitution. Nonetheless, this disposition of the Government needs to be necessarily evaluated as it places a formidable challenge in the current socio-legal context.

---

1 Murphy, W. (2011). Rape Victims' Privacy is Matter of Law, Not Shame. [online] Available at: http://www.readperiodicals.com/201101/2257568031.html [Accessed 10 Oct. 2015].

2 Murphy, W. (2011). Rape Victims' Privacy is Matter of Law, Not Shame. [online] Available at: http://womensenews.org/2011/01/rape-victims-privacy-matter-law-not-shame/ [Accessed 7 Oct. 2015].

Zeroing in on the considerably evolving legal system in India, it is to be taken into account that Privacy is one of the ingredients which is contained in Article 21 and it owes to personal liberty which is entailed in the same.

A. Privacy Rights under the Universal Declaration of Human Rights and the Evolution of General Principles in American Jurisprudence

The right to privacy is explicitly stated under Article 12 of the Universal Declaration of Human Rights: "*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.*"[3] Even though privacy rights found mention as a universal human right under the UN declaration, it was only under Earl Warren, the Chief Justice of US Supreme Court between 1953-1969, that privacy jurisprudence was revolutionized as a constitutional right. Known for the dramatic expansion of civil rights and civil liberties using constitutional law as an effective tool for progressive social and political reform,[4] Warren held in 1969 in *Griswold v. Connecticut*[5] that the American Constitution provided the right to privacy. The Supreme court invalidated the legislation that prohibited the use of "*any drug, medicinal article or instrument for the purpose of preventing conception*", giving shape to the privacy with respect to Marital and intimate affairs of individuals. It has to be noted that the landmark developments in privacy

---

3 The Universal Declaration of Human Rights. (1948). Paris: United Nations General Assembly, p.12.

4 The Supreme Court Historical Society. (2003). *The Warren Court, 1953-1969.* [online] Available at: http://supremecourthistory.org/timeline_court_warren.html [Accessed 4 Jun. 2016].

5 [1965]381 U.S. 479.

jurisprudence emanate from the principle of substantive due process under the fourteenth and fifth amendments of the US Constitution, giving the court the power to protect certain rights deemed fundamental from government interference. *Griswold* marks the interpretation of privacy rights as an aspect falling under the substantive due process, marking its recognition as a deemed fundamental right. This would prove vital in the days to come in extending the principles of privacy into diverse socio-legal and political issues.

Earl Warren was however succeeded by Warren Earl Burger who was as opposed to his predecessor, a conservative, raising expectations that he rule differently on various issues, unlike his liberal predecessor and may even reverse the precedents of Warren courts. However, he did not reverse any of the rulings of Warren courts and instead extended several doctrines of the liberal court under Warren. In *Roe v. Wade*[6], the Supreme Court under Burger struck down a Texas abortion law and thus restricted state powers to enforce laws against. Even though he later abandoned this precedent by the time of *Thornburgh v. American College of Obstetricians and Gynecologists*[7], *Roe v. Wade* is seen as a significant step in extending the privacy jurisprudence, which was in its infant stage back then. *Lawrence v. Texas*[8] was another landmark decision in 2003 that explicitly overruled *Bowers v. Hardwick*[9], which upheld a challenged Georgia statute and did not find a constitutional protection of sexual privacy. It struck down the sodomy law that previously facilitated the state to enforce its authority against sodomy in Texas, thereby

6 [1973]410 U.S. 113.
7 [1986] 476 U.S. 747.
8 [2003] 539 U.S. 558.
9 [1986] 478 U.S. 186.

invalidating the authority of the state to invade the space of people practising sodomy. The Supreme Court held that intimate consensual sexual contact is a subject matter well within the interpretation of the liberty protected by substantial due process under the 14th amendment. It is interesting to note that privacy rights, in the USA in its nascent stage, have been interpolated into the socio-juridical jurisprudential discourse through tort law, under four heads: 1) unlawful interference upon private affairs or seclusion or solitude; 2) public disclosure of private information that is embarrassing to the aggrieved on the event of disclosure; 3) publicity which positions an individual in false light in the public eye; and 4) appropriation of name or likeness.

The global surveillance disclosures of Edward Snowden in 2013 revealed the massive scale of online surveillance of NSA, CIA and other intelligence agencies under programmes such as PRISM and MYSTIC under the pretext of counter-terrorism.[10] They have been successful in misappropriating large quantities of metadata, Internet history, chat data, even recordings of phone calls, etc. The global surveillance leaks confirm that more than ten million online sources have been under surveillance. This includes even embassies and heads of other states, breaking numerous provisions under various treaties and constitutions. It has also resulted in the blatant intrusion of agencies into the sovereignty of another country.

This has provoked widespread international debates on the evolving jurisprudence of the right to privacy. The argument in favour of privacy has therefore come under a larger opposition to

---

[10] VítorFaria, J. (2014). *Edward Snowden: Leaks that exposed US spy programme.* [online] BBC News. Available at: http://www.bbc.com/news/world-us-canada-23123964 [Accessed 25 May. 2016].

intelligence operations carried out for political purposes and has become a contentious issue since it undermines the perceived need of nations to spy on the general population in order to maintain their power structures. However, privacy cannot be seen through the one-way definition of non-interference as it involves diverse discourse, filtering into the cross-sections of multi-aspects of social, economic and political life of people. Each aspect has to be understood differently in terms of the extent of interference it could undergo in order to maintain security, tranquility and normality of the society. The difficulty in analyzing the right to privacy as a homogeneous legal concept is due to the diverse considerations involved in the relation between the public domain and the personal life of an individual.

For example, privacy has to be seen differently in the case of a family, who is bound by a relationship covenant. However, a person's right to privacy even from the scrutiny of his family members may have to be taken into consideration. Similarly, the concept of privacy changes with the interpersonal relationship of an individual with the state, and the extent of privacy rights would rest on the nature of relation the individual shares with the state and society.

B. Indian Constitutional Jurisprudence on Privacy Rights

In India, apart from the physical security aspect that was only recognized by law, the latter started to consider and accommodate concepts such as the security of the spiritual self, which is basically inevitable and concerned with a human being. Article 21 that upholds the right to life and personal liberty was thus given a new

dimension and its horizons were expanded beyond the pre-conceived limits.

The concept of the right to privacy was ushered in 1963 in the case of *Kharak Singh v. State of Uttar Pradesh*[11], which was mainly concerned with the validity of certain regulations that permitted surveillance of suspects. In this case, the Supreme Court held that Regulation 236(b)[12] of U.P. Police Regulations, which authorised domiciliary visits, was unconstitutional. This power of regulation that was conferred upon the police by the State was contrary to Article 21 of the Indian Constitution assuming that a right of privacy was a fundamental right[13] derived from the freedom of movement guaranteed by Article 19(1)(d) as well as personal liberty guaranteed by Article 21.[14] However, in this particular case, the Court denied that "*personal liberty*" was confined to freedom from physical restraint or "*freedom from confinement within the bounds of a prison*" and held that '*personal liberty*' was used in the article as a compendious term to include within itself all the varieties of rights which go to make up the "*personal liberties*" of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with

---

11 [1964] 1 SCR 332.

12 Without prejudice to the right of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures: (a) Secret picketing of the house or approaches to the houses of suspects; (b) Domiciliary visits at night; (c) through periodical inquiries by officers not below the rank of Sub-Inspector into repute, habits, associations, income, expenses and occupation; (d) the reporting by constables and chaukidars of movements and absences from home; (e) the verification of movements and absences by means of inquiry slips; (f) the collection and record on a history- sheet of all information bearing on conduct.

13 *Ram Swarup v. The State* [1957]AIR 1958 All 119 p.121.

14 *Satwant Singh Sawhney v. Asst. Passport Officer* [1967]AIR 1967 SC 1836 pp.1844-45.

particular species or attributes of that freedom, "*personal liberty in Article 21 takes in and comprises the residue.*"[15] The right to privacy was acknowledged as "an essential ingredient of personal liberty" and that the right to personal liberty is "*a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures*".[16] Applying the test it was found that the entire regulation was violative of Article 21, and also of Articles 19(1)(a) and (d).

It was further held by the Court that the right to privacy is a part of the right to protection of life and personal liberty and thus the petitioner Kharak Singh could legitimately plead that his fundamental rights, both under Articles 19(1)(d) and 21, were infringed by the State. The Court asserted that "*the right to privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III*".[17]

The question of privacy was raised again in *Govind v. State of Madhya Pradesh*,[18] wherein it was stated that the regulation that provided for surveillance by various means is not disregarding Article 21 as the regulation was carried out through "*procedure established by law*". The Court contemplated a right of privacy included, among others, in the right to personal liberty but upheld regulations similar to the one invalidated in the *Kharak Singh* case because the regulations had statutory basis. It was stated that such right would not be absolute but must be subject to reasonable restrictions so that a provision for domiciliary visits would not be unreasonable if

---

15 *Kharak Singh v. The State Of U. P. & Others* [1962]AIR 1963 SC 1295
16 *Id.*
17 *Id.*
18 [1975] 2 SCC 148

confined to habitual criminals or persons having criminal antecedents.[19]In this case, it was also identified that even if a right is not specifically mentioned under Article 19(1)[20], it may still be regarded as a fundamental right if it can be regarded as '*an integral part*' of any of the fundamental rights specifically mentioned in Article 19. Privacy right, however, is considered as an integral part of the freedom of movement under Article 19(1)(d).[21] Further, Matthew, J. made the interesting observation: "*The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy an emanation from them which one can characterize as a Fundamental Right, we do not think that the right is absolute.*" Having said that, it is noteworthy that the court accepted the impact this case had on the Right to privacy within a limited sphere. The court held that many of the fundamental rights of citizens could be described as contributing to the right to privacy in this case.

In yet another case, R. *Raja Gopal v. State of Tamil Nadu*[22] (1995), the right to privacy was identified with more clarity. The Supreme Court observed that "*the right to privacy is implicit in the right to life and liberty guaranteed to the citizens*" of this country by Article 21. It is a "*right to be let alone*". A citizen has a right "*to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education*

---

19 *Govind v. State Of Madhya Pradesh & Anr* [1975] AIR 1975 SC 1378 p.28; *State Of Maharashtra And Another v. Madhukar Narayan Mardikar* [1990] AIR 1991 SC 207 p.8.

20 *Maneka Gandhi v. Union of India* [1978] AIR 1978 SC 597.

21 *Kharak Singh v. The State Of U. P. & Others* [1962] AIR 1963 SC 1295.; *Govind v. State Of Madhya Pradesh & Anr* [1975]AIR 1975 SC 1378.

22 [1994] 6 SCC 632.

among other matters."[23] None can publish anything concerning the above matters without his consent– whether truthful or otherwise and whether laudatory or critical. If he does so, he would be "*violating the right to privacy of a person concerned and would be liable in an action for damages*".[24] With this case, the Right to Privacy was given a much broader range.

There are some other prominent cases which paved the way for the evolution of Right to Privacy like that of Peoples Union for Civil Liberties v Union of India.[25]This case discussed whether the act of phone tapping is an infringement of the right to privacy under Article 21. The Supreme Court, in this case, observed that: "*We have, therefore, no hesitation in holding that 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.*" Through this case, the view that right to privacy is a part of the right to life and personal liberty enshrined under Article 21 was re-emphasized.

---

23 In an American case, *Jane Roe v. Henry Wade*, 410 US 113, the U.S. Supreme Court has observed regarding the right to privacy: "*Although the Constitution of the U.S.A. does not explicitly mention any right of privacy, the U.S. Supreme Court recognizes that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution, and that the roots of that right may be found in the First Amendment, in the Fourth and Fifth Amendments, in the penumbras of the Bill of Rights, in the Ninth Amendment and in the concept of liberty guaranteed by the first section of the XIV Amendment and that the "right of privacy is not absolute"*
The Supreme Court in India has taken into consideration the U.S. position as well as Art. 8 of the European Convention on Human Rights that defines the Right to Privacy.

24 Chhibber, M. (2015). The many public battles over the right to privacy. *The Indian Express.* [online] Available at: http://indianexpress.com/article/explained/the-many-public-battles-over-the-right-to-privacy/ [Accessed 11 Aug. 2015].

25 *Peoples Union for Civil Liberties v. Union of India* [2003]AIR 2003 SC 2363.

In another case, *State of Maharashtra v. Madhukar Narayan Mardikar*[26], the argument that even the Right to Privacy of a Prostitute was fairly esteemed was underscored when the Court stated that even a "*woman of easy virtue*" is entitled to her privacy and no one can invade her privacy as and when he likes. Thus, the Supreme Court exhibited great concern for the right to privacy of a prostitute in this case. "*The right to privacy has now become established in India as part of Art. 21 and not as an independent right in itself, as such a right, by itself, has not been identified under the Constitution.*"[27] However, the right to privacy remains too broad and moralistic to be defined judicially as a concept. Whether it can be claimed or has been infringed in a given situation would hinge on the facts of the particular case.

Privacy is weighed equivalent to personal liberty by virtue of the aforementioned cases in the history. The UPA government's endeavour to enact a law on privacy by putting forth a bill in 2011 ended in vain. This happened mainly due to some discrepancies and shortcomings, one of them being that the UPA overlooked the inevitable clause that should have been incorporated in the bill for it corresponded to Article 21 of the Indian Constitution. However, the Committee of Experts which was set up by the UPA government was headed by Justice A.P. Shah, the former Chief Justice of Delhi High Court and this panel under him was supposed to study and make suggestions regarding the privacy laws and related bills promulgated by various countries. The Committee had cited nine exceptions to privacy such as "national security, public order, disclosure in the public interest, prevention, detection, investigation and prosecution of criminal offences and protection of the rights of freedom of

---

26 *State Of Maharashtra And Another v. Madhukar Narayan Mardikar* [1990]AIR 1991 SC 207.

27 Jain, M. (2014). *Indian constitutional law.* 7th ed. LexisNexis, p.1170.

others"[28]. They even recommended a new law to protect privacy and also the appointment of privacy commissioners at the Centre and in states.

Since the new government has assumed power, it has been crusading on various ventures to bring about changes in the Privacy laws in India. Another aspect about Privacy laws is that they may conflict with the RTI Act if a fine balance is not maintained between these two, i.e., a person's right to know may turn out to be in dissonance with another person's right to privacy. So basically, one's liberty should not be of the nature that which may likely curtail the right of another. The notion that the right to information and the right to privacy emanate from the right to life and personal liberty should be noted and more importantly, they should go in conformity with each other.

C. The Right to be Forgotten: An Evolving Paradigm

The growing jurisprudential milieu of privacy rights should be analyzed also with the help of diverse considerations surrounding privacy, generated from the perspectives of those who are affected by the intrusion. An interesting example of such notion of privacy is the right to be forgotten, which has got the approval of a large majority of people. The right to be forgotten includes the right of a person who has a 'history' recorded in an unofficial portal about his life to be taken down at his discretion. This could range from an age-old crime record relating to the person to the news reports of a 'party night' against the aggrieved party. The supporters of this unusual right have

---

[28] Chhibber, M. (2015). The many public battles over the right to privacy. *The Indian Express*. [online] Available at: http://indianexpress.com/article/explained/the-many-public-battles-over-the-right-to-privacy/ [Accessed 19 Sep. 2015].

raised concerns in support of the victim who would be forever blamed and seen in a low light by the right-thinking members of the society. The European Court of Justice ruled in *Google Spain v AEPD and Mario Costeja Gonzalez*[29] (2014) that European Union citizens have a "*Right to be Forgotten*" which was highly unprecedented and even unexpected. Despite this being an unusual right, it was encouraged and embraced by a large number of people, especially the ones who had suffered the ignominy by virtue of their online reputation being injured as well as the privacy advocates who had strived to see the light of this decision.

These changes started setting about after a Spanish man complained in 2010 that when his name was being searched on the Internet, the results that came up were regarding his home being repossessed in the 90s. Since this incident, Google has run into over 2 lakh requests to take down pages ranging to more than 1 million from its search index as a matter of safeguarding the privacy of the people. On the other hand, the Internet is an ocean of information where every scrap of data is preserved and stacked away when postulated and it is maintained so as to ensure the convenience of the citizens, to provide them with information whenever mandated. Google does not commission these posts whereas they just enlist them in its subject index. Considering the fact that it is done to ensure the easy access of data by the citizens, they can argue that they are not liable to bear the brunt of something they did *bonafide*. To the contrary, it does not extenuate in any way the smudge branded on the image of the person who had to endure through the same. However, the Court's ruling in 2014 that sprung up from the conflation of

---

[29] *Google Spain v. AEPD and Mario Costeja Gonzalez* [2014] C-131/12 Vol.1 p.70-79 (Grand Chamber).

desires of the majority brought about a vast aura of rapture.[30] This decision reaffirmed the faith of the people in the system by rendering them recourse to law if such cases of infringing personal privacy are likely to happen in the future. If we analyze these events, the fact that citizens have transcended from the orbit of "*Right to Privacy*" to a higher level of even "*Right to be forgotten*" is really intriguing. The demand for one's rights which is right to privacy, in this case, ought to be respected as it is absolutely justified but the way in which this right is being surpassed in such a way that it is superseding the different domains of personal life is disputable and indeed a food for thought.

Nevertheless, the privacy rights, currently in India is in a nascent stage as compared to the European counterpart, and furthermore, confined to an informed minority of the population. The shortfall of privacy rights is that it is neither well defined by the constitution nor the exact boundaries of privacy rights pertaining to diverse spheres of public life are accurately interpreted. This creates confusion as to the extent of interference an individual, state or society can have on another person's life. Furthermore, the real problem of the right to privacy is that it is something to be fought for and not readily given as contrast to the well-defined fundamental rights. Although it falls under the broad classification of the right to life and personal liberty, it is not ascertained in definite terms even under the constitution or by the precedents that followed that right to privacy remains something to be proved and fought for to a great extent. There is no predetermined regulatory legal mechanism to ensure the privacy of a person under the scrutiny of another entity. This should be seen as a major problem behind the enforceability,

---

30 *Id.*

considering the fact that litigation under article 32 and 226 represent a minority of total dispute that is addressed by the legal system. The absence of well-laid provisions limits the capability of law and enforcement machinery (Police) in approaching issues involving infringement of privacy Concurrent to this situation, people who have limited access or limited awareness to the privacy enforcement remedies are systematically excluded from the very ambit of the privacy rights. Unless it is guaranteed as a predetermined right with the boundaries of its extent and degree clearly analyzed and interpreted, it is impossible to guarantee the privacy rights to people as a right on its own.

D. Privacy And Data Protection In An Information Intensive Social Order

The correlation of privacy rights and commerce has emerged recently, as a prominent area of enquiry in privacy jurisprudence, especially in the light of globalization and the increasing global interdependence of various economic systems in the realms of trade and investments. An even more profound area of inquiry is the correlation between privacy and data protection. This is in the backdrop of advanced industrial societies all over the world undergoing a paradigm shift from capital and labour based economies into knowledge economies as an aftermath of the recent information technology revolution, made possible by worldwide interconnectedness through the Internet. Crucial services, innovation, commerce, communication is being increasingly digitalized, which raises significant questions intertwined with the privacy rights of persons. The understanding of privacy in relation to information is inextricably linked to all sorts of human activities that had been prone to the influence of digitalization. Be it trade and commerce,

intellectual property protection, defense and security and several more. Cyber-crime is one among the most frequent and the most intensively impactful activity in the modern Information age that carries crucial questions on privacy rights also.

Lack of uniform laws against cyber-crimes involving abuse of computer systems made prosecution of cross-border hackers difficult. In spite of being the third largest IT market in the Asia pacific, Indian companies on an average spent only 0.8 percent of their technology budgets on security, against a global average of 5.5 percent.[31] The office of National Statistics of the UK said in its report that the incidents of cyber-crime amounted to 25 million in 2015 alone, representing almost 10 per cent of the population of England and Wales. But experts believe that this only represents a fraction of those who've been victims of cyber-crime.[32] Hacking attacks are no longer isolated to just the computer you use to send emails and browse the web. In April of 2011, the Sony PlayStation network had to shut down for a few days as well as their Qriocity service due to an "*external intrusion*" that compromised an external intrusion that compromised an estimated 77 million user accounts.[33] In the year 2008 alone there was an estimated $1 Trillion dollars' worth of

---

31 Shetty, S. (2016). *Gartner Says India IT Spending to Reach $71.0 Billion in 2016.* [online] Gartner. Available at: http://www.gartner.com/newsroom/id/3161319 [Accessed 1 Jun. 2016].

32 Palmer, D. (2015). *2.5 million cyber crimes committed in UK in a year, says Office for National Statistics.* [online] http://www.computing.co.uk. Available at: http://www.computing.co.uk/ctg/news/2430622/25-million-cyber-crimes-commited-in-uk-in-a-year-says-office-for-national-statistics [Accessed 27 May. 2016].

33 Poulter, S. (2011). *Credit card alert as hackers target 77 million PlayStation users.* [online] Mail Online. Available at: http://www.dailymail.co.uk/sciencetech/article-1381000/Playstation-Network-hacked-Sony-admits-hackers-stolen-77m-users-credit-card-details.html [Accessed 29 May. 2016].

intellectual property stolen due to hackers gaining access to confidential data stored on enterprise systems worldwide.[34]

Privacy Discourse becomes a necessity in the light of these atrocities that is an attack on the fundamental right of privacy, guaranteed by the Constitution and threatens the very economic foundations of the society. As a move to counter the infringement of privacy of data, encryption has been seen as an effective counter method, which gives rise to another set of debate into the extent of privacy a person can have from the eyes of society especially when it involves a social cost, and often, security interests. The recent FBI-Apple encryption dispute is part of the debate that encompasses highly relevant jurisprudential paradigms on the privacy of users, irrespective of who the user is. The tech giant Apple Inc. received at least 11 orders by the United States District court under the All Writs Act of 1789 to override the security encryption that iPhone has, to extract information from the phone, to assist the criminal investigation.[35] The problem, however, lies in the fact that creating an overriding software could itself be hacked or be misused, leaving the entire user population of iPhone vulnerable to privacy infringement. Doubts persist that such vulnerability could be abused by even terrorist organizations in achieving their objectives. Therefore, the

---

[34] Cybersecurity. (2016). *Statistics.* [online] Available at: http://bewareofcybersecurity.weebly.com/statistics.html [Accessed 26 May. 2016].

[35] Yadron, D. (2016). *FBI confirms it won't tell Apple how it hacked San Bernardino shooter's iPhone.* [online] The Guardian. Available at: https://www.theguardian.com/technology/2016/apr/27/fbi-apple-iphone-secret-hack-san-bernardino [Accessed 26 May. 2016].; Kharpal, A. (2016). *Apple vs. FBI: All you need to know.* [online] CNBC. Available at: http://www.cnbc.com/2016/03/29/apple-vs-fbi-all-you-need-to-know.html [Accessed 27 May. 2016].; Raghavan, R. (2016). *Why Apple refuses to oblige the FBI.* [online] The Hindu Business Line. Available at: http://www.thehindubusinessline.com/opinion/why-apple-refuses-to-oblige-the-fbi/article8264565.ece [Accessed 29 May. 2016].

line of demarcation on the necessity to uphold privacy is bleak and depends on the facts and circumstances, which are densely contested with conflicting interests and lasting effects. This could even necessitate in the total discarding of the rule of precedents and *stare decisis*, as the interests involved in each case of invasion of privacy could be radically different in scope, objectives and its effects on society. Observers indicate judicial hyper activism as the natural consequence of such a situation, if efforts address this, is not initiated in its onset.

Conclusion

The right to privacy, even though is read into the fundamental rights of our Constitution, it is not considered to be an absolute right. Instances might arise when the right to privacy ought to be repressed as to ensure the unruffled flow and protection of rights and freedom of others. Therefore, when there is a conflict between the right to privacy and the public interest, the latter prevails. However, the advancement of science and technology put forth formidable challenges in realms of its knowledge economy, necessitating the need to safeguard privacy, sometimes even at the cost of public interest The efficacious safeguarding of privacy seems to be a baffling matter, taking into consideration the deeply contested stakes that the new world order has in question. On a more personal note, we can see that using unnecessary and untrammelled means to impinge on the right to privacy of a person is precluded whatsoever. Privacy is emerging as one of the most pivotal rights of social change and to an extent, even a necessary instrument in safeguarding humungous stakes involved in the protection of information, which accounts fundamentally in modern day knowledge economy. Principles of privacy are therefore an area that needs immediate

structural, functional and conceptual overhaul, in order to encompass within itself the challenges put forth by the widening information age.

The paradigms put forth in this paper commingled with the intrinsic nature of the privacy domain are thought provoking as much as it elicits new insights on the deeper aspects of the subject. Furthermore, analyzing the much disputed question of privacy, its origin, and how it has been identified from time to time by the courts in India as well as across the globe is nothing less than engrossing.