

## INTRODUCTION

*“Our interest in privacy ... is related to our concern over our accessibility to others: the extent to which we are known to others, the extent to which others have physical access to us, and the extent to which we are subject of others’ attention ... They are related to the functions privacy has in our lives: the promotion of liberty, autonomy, selfhood, and human relations, and furthering the existence of a free society ... ”<sup>1</sup>*

The term ‘Privacy’ is derived from the Latin word ‘privatus’ which means separated from the rest. Though it is a variable concept and varies with cultural or social context, but actually it means, the right to be left alone. The need for Privacy is to create a balance between individual and social interests, which is equally applicable to past, present and future society. In this sense, the necessity of Privacy was found in the dawn of human civilization. The idea of Privacy is as old as Biblical periods. Also the growth and expansion of Privacy varied according to the variation in different stages of human civilization. Hence, the description of origin and history of Right to Privacy should proceed from the ancient period to the modern period. In fact, the idea of Privacy was originated in the animal society and gradually it has been incorporated into the human society.

The idea of Privacy, which was originated in the animal society, has been adopted in the primitive human society, where the traces of it were first found. According to different Anthropological studies, the idea of Privacy varied in respect of different primitive societies. With the evolution of primitive society to ancient society and then gradually to modern society, the idea of Privacy has been developed to get its present shape. The root of Privacy and its protection is embedded in the history of human civilization, which is characterized specially by transformation of primitive society into modern society. The social transformation has increased both the physical and psychological opportunities for Privacy and also proved to be fruitful for conversion of these opportunities into choices of values in the context of socio-political reality. Social transformation is the responsible factor for changing nature of Privacy as well as the changing character of Privacy violations from primitive societies to modern societies.

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<sup>1</sup> Ruth Gavison, “Privacy and the Limits of Law”, Yale Law Journal, Vol. 89, 1980, p.421.

The comparison of 'Privacy' between primitive and modern societies, establishes that, whatever may be the nature of society, primitive or modern, the need for Privacy or seclusion would always be there, for fulfilment of physical and psychological desires of man. The history of Privacy in the Western society starts from the evolution of Western political and social institutions since the time of Greek and Roman civilizations. The history of Privacy in modern democratic society is characterized by its political system, which plays the fundamental role for shaping its balance of Privacy. The comparative analysis of Privacy in different Western societies and cultures show that, Privacy is not a static, rather a dynamic concept. For creating an ideal modern society having the Right to Privacy, there should be a balance between the basic postulates of Individual Privacy, called Solitude, Intimacy, Anonymity and Reserve.

The origin of Privacy in ancient India was culminated into the term 'Avarana', in the idea of Meditation in Vedas and Upanishads and embedded in the idea of 'Dharma'. The history of Privacy in India was divided into the Hindu and Muslim periods, both of which were enriched with the rules and regulations of Privacy. Privacy was never an alien in India; rather it was embedded in the deep rooted custom of the rich cultural heritage of India. The development of Right to Privacy in U.S.A. in the modern period has been based on the Warren-Brandeis article and the search and seizure cases under Fourth Amendment of the U.S. Constitution, the final result of which is the Privacy Act, 1974. U.K. had no law of Privacy; instead there was the law of breach of confidence. With the help of various legal developments, the Younger Committee Report was submitted in 1972, the final outcome of which is the Data Protection Act, 1998. Though India is lagging far behind U.K. and U.S.A. for protection of Privacy in the modern period, but it is also enriched with various legislative and judicial developments, which ultimately has given rise to the Right to Privacy Bill, 2011, now known as Privacy Bill, 2014.

Right to Privacy is an important right under the Right to Life and Personal Liberty as also an integral part of Human Rights Law which is a matter of concern for everybody in the contemporary social scenario. Privacy does not only mean leading an isolated life, but specifically it denotes freedom from unauthorized and unwarranted interference into one's private life.

Currently violation of Right to Privacy is an important issue in the modern democratic societies, because technological advancements in the communication and

information systems are creating serious threats to the individual Right to Privacy by making it practically impossible. A major factor of the Privacy problem is the absence of legislation and organizational rules ensuring Privacy, confidentiality and due process to the subjects of computerized information. Data banks have been established at all levels of government, business and the military services without any real knowledge or concern for their potential impact over individual rights. This is the situation all over the world.

The need of the hour calls for an extensive work on existing legislations protecting the Right to Privacy in different legal systems confronting challenges in making new laws covering every aspect of Right to Privacy. Hence this comparative study of U.S.A., U.K. and India is taken up.

Privacy in general terms means, the right to be let alone. This expression was used by *Justice Cooley* in 1888 which was followed by *Louis Brandeis and Samuel Warren* in 1890 in the *Harvard Law Review*, in their article, “*The Right to Privacy*”. According to them, the object of Privacy is to protect ‘*inviolable personality*’. Professor *A. F. Westin*, in his landmark book, “*Privacy and Freedom*”, 1970, defines *Privacy as the desire of individuals for solitude, intimacy, anonymity and reserve*. According to him, *Privacy is the claim of individuals, groups or institutions to determine for themselves when, how and to what extent, information about them is communicated to others*.

According to the *Nordic Conference of Jurists on the Right to Respect for Privacy, 1967*, violation of individual Right to Privacy means, the interference with one’s private, family and home life, physical or mental integrity or moral or intellectual freedom, the attacks on honour or reputation, being placed in a false light, the disclosure of irrelevant, embarrassing facts relating to private life, the use of name, identity or likeness, the interference with correspondence, the spying, prying, watching and besetting, misuse of communication, written or oral and the disclosure of information given or received by one in circumstances of professional confidence.

Thus, the violation of the Right to Privacy includes violation of basic human rights of family, marriages, child-bearing, motherhood, education, information, reputation, personal liberty and many more, all of which are in the urgent need of protection in the contemporary social scenario. To make it more elaborate, it can be said that, the specific instances of violation of Right to Privacy are unauthorized and

unreasonable telephone-tapping, e-mail scanning, narcotic analysis, polygraph test and brain mapping, sting operation, biometric enabled national ID Cards, checking and abolishing the 'veil' system of Muslim women in various countries, the role of media in violating the Right to Privacy of public personalities by taking their photographs without permission and unauthorized interference into their private life, growing number of the heinous crime of female foeticide as the violation of Right to Privacy of a woman, making of counter-terrorism laws without concerning about the violation of Right to Privacy of the citizens of a country. All of these rights are included in the basic human rights of individuals and as such the violation of Right to Privacy amounts to violation of basic human rights of individuals.

The problem area in this field or sphere of study is that the Right to Privacy has not been adequately dealt with by the legislatures of different countries. The present legislations that deal with the protection of the Right to Privacy do not in fact secure this right to the greatest extent. Since protection of the Human Right to Privacy is an issue that attracts global norms transcending national boundary, therefore, the present study will take into account the development of the law relating to the Right to Privacy in the international and national field as well as the part played by the judiciary, as far as the protection and enhancement of these rights are concerned.

In the present context, particularly in this Cyber age, the concept of Right to Privacy has been expanded so much, that it includes within its ambit, almost every aspect of life. There are various international instruments, like Conventions, Declarations, Protocols etc. dealing with the provisions of Right to Privacy as also many Regional Conventions and Declarations which are very much worthy of mentioning in this respect.

In the international human rights law, 'Privacy' is clearly and unambiguously established as one of the basic human rights in 1948 with the proclamation of the *Universal Declaration of Human Rights*. Article 12 of this Declaration lays down that, *no one shall be subjected to arbitrary interference with his Privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks*. The importance of Privacy as a human right and its need for legal protection has been given in the various other international documents. Such as, *Article 17 of the International Covenant on Civil and Political Rights, 1966*,

which says that, *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.* Another one is *Article 10 of the International Covenant on Economic, Social and Cultural Rights, 1966.* It says that, *the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of development of children. Marriage must be entered into with the free consent of the intending spouses.*

In the regional level there are also various human rights conventions. *Article 8 of the European Convention for Protection of Human Rights and Fundamental Freedoms, 1950* provides that, *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 with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health of morals, or for the protection of the rights and freedoms of others.*

In 1965, the *Organization for American States proclaimed the American Declaration of the Rights and Duties of Man*, which called for the protection of numerous human rights including Privacy. The Inter-American Court of Human Rights has also begun to address Privacy issues in its cases. *Article 11 of the American Convention of Human Rights, 1969* sets out the Right to Privacy in terms similar to the Universal Declaration. This Article says that, *everyone has the right to have his honour respected and his dignity recognised. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks.*

The *African Charter on Human Rights and Peoples' Rights, 1981* deals with various human rights, but unfortunately there is no direct provision relating to the Right to Privacy. The only relevant provision is *Article 4*, which states that, *human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.* As such there are not much developments of Right to Privacy. But, the *African Charter on*

*the Rights and Welfare of the Child, 1999* speaks about the Right to Privacy. Article 10 of the Charter says that, *children should have a Right to Privacy*.

Here the Asian Charter is also required to be mentioned. In mid-2003 the *Asia-Pacific Privacy Charter Initiative* was launched under the auspices of the Asia-Pacific Privacy Charter Council (APPCC), a *regional expert group that seeks to develop independent standards for Privacy protection in the region, in order to influence the enactment of Privacy laws in the region in accordance with those standards, and the adoption of regional Privacy agreements in accordance with those standards*. Thus, it is found that, all the continents are concerned about the Right to Privacy and they are taking attempts to make Privacy laws in the regional level.

Following the directives, as laid down in the aforementioned Conventions, most of the economically advanced nations of the western and the eastern world have framed laws concerning the protection, recognition and enhancement of the Right to Privacy. The present study aims to highlight the position of Right to Privacy in the various parts of the world with special reference to the situation in U.S.A., U.K. and India along with their comparative study.

The first expression of the Right to Privacy under the *U.S. Constitution* was made by *Louis Brandeis and Samuel Warren* in 1890 in their famous *article in the Harvard Law Review* as stated above. The U.S. Constitution never used the word, "Privacy" directly, but has clearly given several important protections in the *Bill of Rights*. Since 1965, the *U.S. Supreme Court* started recognizing the right of personal Privacy or certain other areas of Privacy under the *U.S. Constitution*, in the *First Amendment, Fourth and Fifth Amendments, in Penumbra of the Bill of Rights, in the Ninth Amendment and in the concept of liberty guaranteed by the first section of the Fourteenth Amendment*.

According to those provisions, the Right of Privacy is not absolute. The government intrusion into the private property is allowed in cases of search and seizure, if reasonable. Therefore, Right to Privacy is available only against government action, and that too for search and seizure cases. No such protection against violation of Privacy by individual action is found.

The *Privacy Act of 1974* was also made by the U.S. Government. Since the passing of that Act, the U.S. Government has started protecting *specific Privacy concerns, like, financial Privacy, health care Privacy, credit report Privacy,*

children's Privacy, consumer Privacy etc. This Act provides for the maintenance of personal records by the government agencies and it prevents the unauthorized release or disclosure of those personal records. Therefore, this Act deals only with Data Privacy and regarding Individual Privacy, no such developments have been made. Besides, advancements of technology, computers and internet have created many new dimensions of Right to Privacy including Workplace Privacy which require new legislations. There is also the *Children's Online Privacy Protection Act, 2000* dealing with the Right to Privacy of children in U.S.A.

The law relating to the Right to Privacy in U.S.A. has been developed through various cases, important among them are *Grosjean v. American Press Co., (1935) 297 U.S. 233*, *Beard v. City of Alexandria, (1951) 341 U.S. 622*, *Griswold v. Connecticut, 381 U.S. 479 (1965)*, *Rowana v. Post Office Department, (1970) 397 U.S. 728* and *Cox Broadcasting Corporation v. Mortin Cohn, (1975) 420 U.S. 469*.

United Kingdom also started to protect the Right of Privacy since 1972. In that year the *Younger Committee Report on Privacy* was published in U.K. Then the *Final Report of the Royal Commission on the Press* was made in 1977. Both of these are two important documents on Right to Privacy in U.K.

But before all these, there was only *Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950* as stated above. *Article 10 of the Human Rights Act, 1998* also protects the 'right to respect for private and family life'. This article guarantees the right to freedom of expression of the citizens without any public interference. Therefore, this article only protects certain aspects of Right to Privacy and not all. Thus, in U.K. these two Articles have not given total protection to the Privacy right.

After the making of these legal provisions, the U.K. Parliament has enacted the *Data Protection Act* defining the legal basis for information handling of their people in 1998 which is a recent piece of legislation dealing with the law relating to Right to Privacy. This Act gives protection to the Privacy of data and personal information, but not the Individual Privacy. Protection of data of the citizens does not mean protecting every aspect of Right to Privacy. Hence, Individual Privacy is totally unprotected. Apart from that, no separate legislation covering all aspects of Right to Privacy is enacted till now. Thus, a new law is required which should cover the whole area exhaustively.

The law governing the Right to Privacy in U.K. has also been developed through various cases, important among them are, *Prince Albert v. Strange*, (1848) 2 *De G & Sm* 652, *Sheen v. Daily Telegraph*, (1961) unreported, *Re 'X' (a minor)*, (1975) *All.E.R.* 697, *Bernstein v. Skyviews*, (1977) 2 *All.E.R.* 902 (QBD), *Douglas v. Hello!*, (2001) 2 *All.E.R.* 289 at 316 and *Peck v. U.K.*, ECtHR 28/01/2003, no. 44647/98.

In India we find the origin of Privacy in the *ancient Hindu Jurisprudence*, like the description of the houses in the *Grihya-Sutras*, *Kautilya's Arthashastra* and the *epics of the Ramayana and the Mahabharata*. In the *medieval period*, Privacy was found in the habit of observing 'purdah' among the Muslim women to prevent public exposure of their faces. Then with the enactment of the Indian Constitution it took a new shape, though the *Indian Constitution* has never guaranteed the Right to Privacy as a fundamental right. To some extent under *Articles 19 and 21*, Privacy rights can be claimed by individuals but the Supreme Court has not recognized the Privacy right.

Then the era of developing the concept of Privacy by the Indian judiciary has begun. Some important judgments on this point are *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, *Govind v. State of M.P.*, AIR 1975 SC 1378, *State of Maharashtra v. Madhukar Narayan Gardikar*, AIR 1991 SC 207 and *Vishaka v. State of Rajasthan*, AIR 1997 SC 3014.

With the help of the above cases, the concept of Right to Privacy has been gradually developed in India, for which Indian Judiciary has played a significant role. However, in the Indian scenario, even after Kharak Singh's case and in spite of the other cases, no total protection has been given to the Right of Privacy till now. Although it is guaranteed as a part of Article 21, but not absolute under the Indian Constitution and can be enforced only against state action, but not against individual's action. As the question of Privacy is gaining much importance day by day in various new fields, proper legislation and enforcement machineries are necessary for such areas.

In India, no express legislative enactments governing the Right to Privacy are found, but some statutory provisions are worth mentioning in this respect, like *Section 22 of the Hindu Marriage Act, 1955*, *Section 33 of the Special Marriage Act, 1954*, *Section 53 of the Divorce Act, 1869*, *Section 18 of the Indian Easements Act, 1882*, *Section 509 of the Indian Penal Code, 1860*, *Sections 28, 29, 47, 48, 49*,

164(3) and 165 of the Code of Criminal Procedure, 1973, Section 13 of the Press Council Act, 1978, Sections 5(2) and 69(1) of the Indian Telegraph Act, 1885, the Family Courts Act, 1984, the Indian Post Office Act, 1898, the Indian Evidence Act, 1872, the Medical Termination of Pregnancy Act, 1971, the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, the Information Technology Act, 2000 and the Right to Information Act, 2005.

The *Right to Privacy Bill 2011*, now known as the *Privacy Bill, 2014* has been drafted where we find the statutory definition of Right to Privacy and the protection of the various aspects of the Right to Privacy. But this Bill mostly seeks to cover the Privacy laws relating to data protection in India. Thus, inspite of this Bill, there remains the necessity of passing legislations for the protection of Individual Privacy, which is absolutely important. Also we are craving for the creation of a new fundamental right, called the Right to Privacy, which should be a separate fundamental right after Article 21 of the Indian Constitution.

After the discussion of the existing laws relating to Right to Privacy all over the world, we need a comparative study of all these legal provisions. To compare the law relating to Privacy in U.S.A., U.K. and India, we are taking some specific aspects of Right to Privacy for our discussion, like, Individual Privacy, Privacy of Family, Marriage, Child, Motherhood, Information, Reputation and Personal Liberty. All of these aspects are not equally protected in these three countries.

Though the *Universal Declaration of Human Rights, 1948* and the *International Covenant on Civil and Political Rights, 1966* specifically speak for the Individual Privacy, Privacy of family, home, marriage and correspondence, no express legislation is found in either U.S.A. or U.K. or in India covering all these rights. Few areas have been covered in each of these rights in all the three countries. It is important to note that, *in camera proceedings* in divorce cases are found in some matrimonial statutes in India, such as *Section 22 of the Hindu Marriage Act, 1955*, *Section 33 of the Special Marriage Act, 1954* and *Section 53 of the Divorce Act, 1869*.

In U.S.A., there is one statute, called the *Children's Online Privacy Protection Act, 2000* protecting the Privacy of the child. But, in U.K. or in India, there are no express provisions covering the Right to Privacy of a child in totality, but a number of legislations are found providing partial protection in this respect.

In all the three countries of U.S.A., U.K. and India, only some rights of women for abortion, prevention of unjustified abortion and prohibition of female foeticide have been dealt with in some statutes, like the *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994* in India. But, the law governing the independent decision of a woman regarding her motherhood is found nowhere.

The aspect of Data or Information Privacy is dealt with adequately by the *Privacy Act, 1974* in U.S.A. and the *Data Protection Act, 1998* in U.K. In India, there is also the *Information Technology Act, 2000* and the *Right to Information Act, 2005*. But, a separate law covering the data protection is needed in India.

Privacy of Reputation is found in law of Torts in all the three countries, which is unwritten law. Also some express provisions of Criminal Law deal with this, like *Section 509 of the Indian Penal Code, 1860*. But, no separate legislation is there in any of the countries.

Right to Privacy is a part and parcel of right to Life and Personal Liberty. As such this right is guaranteed under the various Constitutional provisions of U.S.A., U.K. and India, like *First, Fourth, Fifth and Ninth Amendments of the U.S. Constitution and Articles 19 and 21 of the Indian Constitution*. There are various cases, by the judgments of which this right has been enriched and developed. But, a separate law covering the Right to Privacy guaranteeing the personal liberty is absent everywhere.

Apart from the specific aspects of Right to Privacy mentioned above, there are also various other facets of the Right to Privacy which are required to be adequately protected by express legislations in these three countries. The intention of this study is to highlight those aspects also and to suggest appropriate legislations covering all aspects of Right to Privacy.

After comparing the legal provisions in U.S.A., U.K. and India, it is found that the Constitutional and other legal provisions in U.S.A. and U.K. are much developed than in India. Though in India, the concept of Right to Privacy is found from the ancient period, but there are no such developments in the modern times. As stated above, this right is neither expressly guaranteed in the Indian Constitution nor in any other Indian Statute. Above all, a large section of the Indian masses are not even fully aware of their Right to Privacy. As such, the said right is not being exercised in totality. Here lies the need of a proper research work in this field.

The aforesaid discussion signifies that, the Human Right to Privacy has not been adequately and satisfactorily redressed by the legislature. Further, along with absence of proper law, there are weak implementation and failure of existing protective machineries. The problem is, therefore, of grave concern and is to be investigated from various angles including legal, sociological, psychological and judicial point of view to find out whether the concept of Right to Privacy in the context of protection of human rights has been adequately dealt with by the present laws, whether there is defect in the law/laws and whether new law is required to cope with the changing facets of the concept of Right to Privacy in the changing social order. A humble attempt would be made to bring out an appropriate suggestion. The present study is intended to contribute in this area.

The objective of the present study is to understand and summarize the various emerging dimensions of Right to Privacy and also to address the socio economic challenges confronting the protection of Right to Privacy in U.S.A., U.K. and India. In a nutshell, the objectives of the study are :-

- ★ To trace the historical background of the Right to Privacy.
- ★ To make a comparative study and to examine the various aspects of Right to Privacy in U.S.A., U.K. and India.
- ★ To examine the International, Regional and National Laws on Right to Privacy throughout the world.
- ★ To review the role of the Judiciary in U.S.A., U.K. and India on the protection of Privacy rights.
- ★ To evaluate the Outstanding Facets, Dimensions and Current Trends of Right to Privacy and to remove the conflict between Right to Information and Privacy.
- ★ The study also aims at providing certain remedial measures and suggestions to prevent the violation of Right to Privacy.

In the contemporary social scenario, where human rights of each and every individual is of utmost concern all over the world, the existing legislative policies of different legal systems prevailing in U.S.A., U.K. and India for securing and protecting the Right to Privacy of individual human beings, are insufficient and inadequate to confront the present threats, and there is an urgent need to modify or amend the existing laws or to frame a new legislation for specific purpose of

securing Right to Privacy of all individuals within the national territory of the subject nations.

In spite of the various national and international instruments, the Right to Privacy is not absolutely protected till now. There are various problems associated with this right, which are required to be solved.

Thus, the present study involves the following basic questions :-

- a) What does it mean by violation of Right to Privacy and what are its current trends?
- b) Are the existing laws on the Right to Privacy in U.S.A., U.K. and India sufficient? If not, what is to be done in this regard?
- c) What are the merits and demerits of the Right to Privacy Bill, 2011, now known as Privacy Bill, 2014 of India?
- d) How far the existing implementing machineries have been successful in redressing the violation of Right to Privacy in U.S.A., U.K. and India?
- e) What is the role of the Executive organs and the Judiciary in securing the individual Right to Privacy in U.S.A., U.K. and India?
- f) How can the law relating to the Right to Privacy be made more effective?
- g) What remedy to be provided to the victims of violation of Right to Privacy?
- h) Whether telephone-tapping, e-mail scanning and other security measures in the national interest amount to the violation of Right to Privacy?
- i) Whether narcotic analysis, polygraph test and brain mapping of the criminals amount to violation of their Right to Privacy?
- j) Whether checking and abolishing the 'veil' system of Muslim women in various countries amount to violation of their Right to Privacy or not?
- k) What is the role of media in violating the Right to Privacy of public personalities and how to prevent those violations?
- l) Whether the question of morality and immorality is associated with the violation of Right to Privacy or not?
- m) Whether female foeticide amounts to violation of Right to Privacy of a woman or not?
- n) Whether counter-terrorism laws amount to violation of Right to Privacy?

These are some relevant questions associated with this study. There are so many other questions of similar type and the purpose of this study is to find out the

answers of the questions. An attempt has been made in the present research work to find out the appropriate solution of the aforesaid problems.

Since the concept of human rights is a growing concept, it is changing day by day. As such, the concept of Right to Privacy is also increasing everyday. Though the instances of Right to Privacy have been found from the ancient period, but there are not many developments found in the said field till now. Thus, the significance of the study is to find out the necessity of making comprehensive legislations for protecting the Right to Privacy in the international and national field.

The purpose of this study is also to review the existing laws relating to Privacy, to make the general people aware of their Privacy rights, to address the socio economic challenges confronting the protection of Right to Privacy, to evaluate the concept of Privacy in Cyberspace and to remove the conflict between Right to Information and Privacy, to find out the need for creating a separate fundamental Right to Privacy after Article 21 of the Indian Constitution and to analyze the merits and demerits of the Right to Privacy Bill 2011, now known as the Privacy Bill, 2014. Finally, the aim of this research work is to provide certain remedial measures and suggestions to prevent the violation of Right to Privacy.

The Methodology of this research is mainly Doctrinal. It is doctrinal, because the research involves the study of the Constitutional and various Statutory provisions of U.S.A., U.K. and India dealing with the laws relating to the Right to Privacy.

The sources of Data have been both from Primary and Secondary Sources. As the Primary Sources, various Acts, Statutes, Codes, Rules, Regulations, Ordinances, International, National and Regional Instruments, like Conventions, Declarations, Protocols, Treaties and Judgments of various cases and also different Reports have been studied. As the Secondary Sources, different Books, Articles, Journals, Periodicals, Dailies, Websites, Conference Proceedings, Published and Unpublished thesis and Dissertations have been relied upon and consulted.

This research involves the developing and testing of various theories and hypothesis. Therefore, it is a fundamental or theoretical research. The present study has examined thoroughly the efficacy of the existing laws on Right to Privacy and has analyzed these in details. Thus, it has been called a Descriptive and Analytical Research.

This work is a comparative study of the laws concerning the Right to Privacy in U.S.A., U.K. and India. Therefore, the existing legislative provisions along with the comparative analysis have been given in the study whenever and wherever required.

As the study has been doctrinal, any tools or techniques of empirical study have not been used in this research.

In the present research, the collection of data has been made through the thorough study of various documentary materials as stated above. Also the published Statistics have been collected from various Government Departments and Internet. The scope of the use of the tools and techniques of empirical research, like Interview, Observation and Case Study is much less in this study.

The data collected through doctrinal study has been scrutinized and edited in order to reduce sampling error. After editing, the entire material has been analyzed and interpreted in the proper manner to find out the actual result. Finally, the Research Report has been prepared accordingly.

There has been a significant work in the past few years at the international and regional level as also in the countries of U.S.A., U.K. and India, through which initiatives have been taken at different fronts to solve the issues relating to the protection of right to privacy. These include various International Instruments, like Conventions, Declarations, Protocols, Treaties, Regional Conventions and Charters, country-wise Statutes, Acts, Codes and Cases including Reports and Conference Proceedings. In this part, the Researcher has consulted and reviewed those existing or previous literatures which are in the forms of Books, Articles and Cases.

### **BOOK REVIEW**

(i) The Handbook of Human Rights Law : An Accessible Approach to the Issues and Principles, by Michael Arnheim, Kogan Page Ltd., London, U.K. and Sterling, U.S.A., 2004, available at the British Council Library, Kolkata, is a book dealing with the intersection of law and human resources in the context of U.K. and European Legislation. It provides that, the Human Rights Act, 1998 has incorporated into U.K. Law, rights and freedoms guaranteed by the European Convention on Human Rights. This work contains an elaborate discussion on Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and Article 10 of the Human Rights Act, 1998. Both of these Articles are dealing with the law relating to right to privacy in U.K. this book has

got an exclusive coverage of interesting high profile English cases on right to privacy and the status and approach of the Human Rights Court in Strasbourg, U.K. on the privacy rights aspects.

(ii) Right to Privacy in India, by Prof. G. Mishra, Preeti Publications, Delhi, 1st Edition, 1994, available at the Indian Law Institute Library, New Delhi, is a book which throws light on the recognition of right to privacy in the legal and moral norms of ancient Indian society and traces the recognition of this right in the customary and statutory law of British and contemporary India. It is the only work in India making the thorough study of the right to privacy.

(iii) Privacy Law : A Comparative Study, by S. K. Sharma, Atlantic Publishers and Distributors, New Delhi, 1994, available at the Indian Law Institute Library, New Delhi, is a book which deals with the comparative analysis of the privacy law prevailing all over the world. The leading decisions of various courts, the Freedom of Information Act of U.S.A., the Younger Committee Report of U.K. and the Constitutional position of privacy in U.S.A., U.K., India as also in other countries have been critically analyzed and emphasized in this work.

(iv) Constitutional Law of India, by Dr. J. N. Pandey, Central Law Agency Publications, 40th Edition, 2003, is a book which incorporates all recent constitutional developments and judicial activism in India. It contains a brief, but lucid exposition of the main characteristics of the Indian Constitution. There are also important authoritative pronouncements of the Supreme Court at appropriate places. It is a very useful book for all the legal professionals.

(v) Human Rights, by U. Chandra, Allahabad Law Agency Publications, 5th Edition, 2004, is a book which deals with the nature, concept, origin and development of human rights, international, national and regional human rights instruments as also the enforcement machineries. At a glance, this book is a total coverage of the law relating to the human rights which is no doubt helpful for the students, researchers and legal professionals.

(vi) Privacy and Freedom, by Alan F. Westin, Atheneum Publication, New York, 1970, available at the Indian Law Institute Library, New Delhi, is a book containing the functions of privacy and surveillance in society, new tools for invading privacy and the American society's struggle for controls to achieve the right to privacy. In fact, it is a book which shows the situation and policy choices for the right to

privacy in 1970. It helps us to know the historical background of the modern privacy law.

(vii) *Privacy and Human Rights* (ed.), by A. H. Robertson, Manchester University Press, Manchester, 1972, is an edited book available at the Indian Law Institute Library, New Delhi. This book contains the Reports and Communications presented at the Third International Conference about the European Convention on Human Rights, organized by the Belgian Universities and the Council of Europe, with the support of the Belgian Government, held at Brussels, 30th September-3rd October, 1970. That conference was mainly based on the discussion on protection of right to privacy.

#### **ARTICLE REVIEW**

(i) *Right to Privacy – An Analysis of Developmental Process in India, America and Europe*, by Shrinivas Gupta & Dr. Preeti Misra, Vol. 18, 2005, CILQ, pp.524-552, is an article based on the definition and concept of right to privacy and it analyzes, the growth, development and recognition of the right to privacy by the Judiciary and Legislature in India vis-à-vis their European and American counterparts.

(ii) *Constitutional Control of Right to Pivacy*, by M. L. Upadhyay and Prashant Jayaswal, Vol. 2, 1989, CILQ, pp.39-58, is an article which highlights the origin, development and dimensions of the right to privacy as a human right and measures its depth and potentiality in the wider national interest. This work also analyzes the right to privacy in India as a peculiar blend of Constitutional, Customary and Common Law Right scattered over various legal fields.

(iii) *Right to Privacy Versus Freedom of Press : A Comparative Conspectus of Legal Position in U.S.A., U.K. and India*, by Dr. M. K. Bhandari, Vol. XI, 1991, IJLS, pp.178-191, is an article which provides a comparative analysis of the law relating to the freedom of press vis-à-vis the law of the right to privacy along with the important cases on these aspects in U.S.A., U.K. and India.

(iv) *Electronic Surveillance – A Tool for Invasion of Privacy*, by G. R. Lekshmi, Vol. 32:1&2, 2008, *The Academy Law Review*, pp.223-256, is an article which specifically emphasizes on the tools and techniques used for Electronic Surveillance in the national interest. This study suggests that, indiscriminate use of the technology in the domestic level becomes an attack on the right to personal privacy of the general public.

(v) Right to Privacy is an Aspect of Human Dignity, by Shrinivas Gupta, Vol. 17, 1985, Lawyer, pp.67-73, is an article which deals with the concept, origin and development of right to privacy with special reference to right to privacy in India. It specifically highlights the right to privacy as an aspect of the right to live with human dignity.

(vi) Right to Privacy of Parties in Matrimonial Disputes – An Analysis, by Dr. S. Srinivas Reddy, Vol. 1, 2009, ALT, pp.7-9, is an article which provides that, publication or telecast of any information relating to marital relationships of parties to the litigation in the matrimonial proceedings which are conducted in-camera, would be an invasion of the right to privacy of the litigating parties.

(vii) Privacy and Defamation : SC Defines Parameters, by Soli J. Sorabjee, Vol. 16, 1995, PCIR, pp.17-19, is an article which incorporates the views taken by the Indian Supreme Court on the right to privacy. It provides that, injury to a person's reputation is also the violation of his or her right to privacy, apart from constituting the tort of defamation.

#### **CASE REVIEW**

(i) Griswold v. Connecticut, 381 U.S. 479 (1965), is an important American case on the right to privacy. In this case, a general Constitutional right to privacy was articulated for the first time in U.S.A. Here, the Connecticut Law making the birth control measures a criminal offence was held unconstitutional as violative of the marital right to privacy of husband and wife.

(ii) Prince Albert v. Strange, (1848) 2 De G & Sm 652, is an important old English case, which is the foundation stone of the elaborate edifice of the law relating to the right to privacy. In this case, the unauthorized exhibition of the family portraits of Prince Albert and Queen Victoria without their permission was held to be the violation of their right to privacy. This decision left the field open for further development, which occurred with the publication of the seminal article, "The Right to Privacy", by Samuel Warren and Louis Brandeis, in 1890, in the Harvard Law Review.

(iii) People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568, is an important Indian case on the right to privacy. In this case, Section 5(2) of the Indian Telegraph Act, 1885, which empowers the State to intercept telephonic conversation held in private on specific grounds of national interest, was challenged. The Hon'ble Supreme Court held that, telephone tapping is a serious invasion of the individual

right to privacy guaranteed under Articles 19 and 21 of the Constitution and it can be permitted only in the gravest of grave circumstances in the public emergency.

(iv) *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295, is also an important Indian case on the right to privacy. The concept of right to privacy for the first time emerged under the Indian Constitution in 1963 from this case. In that case, a question was raised whether the right to privacy could be implied from the existing fundamental rights, like Articles 19(1)(c), 19(1)(d) and 21 or not. In this case, the sole question for determination by the court was whether ‘surveillance’ under the U. P. Police Regulations constituted an infringement of the citizens’ fundamental rights guaranteed by Part III of the Constitution. The court held that, since regulation 236(6), which authorized domiciliary visits, was violative of Article 21 as there was no law on which the same could be justified, it was unconstitutional.

(v) *Govind v. State of M.P.*, AIR 1975 SC 1378, is another significant case on the right to privacy in India. It continued in the same line with the *Kharak Singh*’s case. In this case, the right to privacy was regarded as a fundamental right, emanating from the rights to personal liberty, freedom of speech and freedom of movement.

(vi) *State of Maharashtra v. Madhukar Narayan Mardikar*, AIR 1991 SC 207, is the next important case on the right to privacy in India. Here, it was held that, even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one 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.

(vii) *Vishaka v. State of Rajasthan*, AIR 1997 SC 3014, is the next important case on the right to privacy in India which provides a landmark judgment. In this case, the Supreme Court has laid down exhaustive guidelines to prevent sexual harassment of working women in places of their work until a legislation is enacted for this purpose. The petition was filed by a social worker by way of Public Interest Litigation for the enforcement of rights of working women under Articles 14, 19 and 21 of the Constitution and in finding suitable methods for realization of the true concept of ‘gender equality’. Gender equality includes protection from sexual harassment and right to work with dignity, which is universally recognized human right. This judgment has opened a new door for the concept of right to privacy, which is the ‘right to privacy in work place’.

The significant works on the Right to Privacy have been honoured under the heads 'Bibliography' and 'Literature Review'. Finally, the Researcher has found that, the law relating to the Right to Privacy is at the developing stage in the countries of U.S.A., U.K. and India. No comprehensive legislation covering every aspect of Right to Privacy is found in any of the countries. This research work has tried to provide some suggestions in this respect.

There has been a humble attempt on the part of the Researcher to examine various dimensions of Right to Privacy and also to make a thorough study of different international and national laws on Right to Privacy of the countries like U.S.A., U.K. and India. Apart from Introduction, the present study has been comprised of Seven Chapters and has been categorized and divided into the following Chapters :-

**Introduction** – It introduces the area, nature and character of the research work as well as objectives of the study, hypothesis, research questions, significance of the study, research methodology and chapterisation.

**Chapter 1 : Right to Privacy : Conceptual Perspectives** – This Chapter deals with the meaning, concept, definition, nature, scope, purpose and functions of Right to Privacy. As the idea of Privacy centres around the concept of 'private space,' therefore, the amount of private space which everyone should enjoy freely and the time limit of outside interference over it, will be the scope, ambit and extent of Privacy. On the contrary, significance of Privacy means, the importance of Privacy in a civilized society. Privacy also has various effects. The effects of Privacy means, prevention of unwanted publicity and interference into human life to protect human dignity by recognition and enforcement of Right to Privacy in a complex social structure.

Over and above, Privacy has to perform different functions in a civilized society. According to Prof. Alan F. Westin, the Functions of Individual Privacy are Personal Autonomy, Emotional Release, Self Evaluation and Limited and Protected Communication. The functions of Privacy play an important role to protect personal autonomy by preventing unlimited and unprotected communication of information, which ultimately protect the right to live with human dignity in a modern democratic society.

**Chapter 2 : Right to Privacy : Origin and Historical Development in U.S.A., U.K. and India** – This Chapter deals with the origin, history and

development of Right to Privacy in U.S.A., U.K. and India. The origin of Right to Privacy can be traced back in U.K. to the famous English Case of *Prince Albert vs. Strange, 1848*, where privacy of royal couple Queen Victoria and Prince Albert, was violated by a photographer Strange in their private premises. In U.S.A., *Boyd vs. United States, 1886*, is an important case on Right to Privacy. In this case, it was held that, the purpose of prohibition against unlawful searches and seizures under Fourth Amendment of the U.S. Constitution were to protect security and privacy of persons, houses, papers and effects.

India also had a great historical background and a well-advanced law of privacy since the ancient period. In India, the origin of Privacy was found in the ancient Hindu Jurisprudence, in the description of houses in Grihya-Sutras, Kautilya's Arthashastra and the epics of Ramayana and Mahabharata. In the medieval period, Privacy was found in the habit of observing 'purdah' among the Muslim women to prevent public exposure of their faces.

The development of Right to Privacy in India in the modern period has been marked by a very old case, *Nuth Mull vs. Zuka-Oollah Beg and Kureem Oollah Beg, 1855*. It has been the first Indian case decided by the Sadar Diwani Adalat of the North-Western Provinces, in 1855, where the question of Right to Privacy has arisen. This case shows the evidence that, the Right to Privacy has been broadly recognized in India at least half a century before the U.S.A., where the idea has come in 1890 by the publication of the Warren-Brandeis article. It has been held by the Court in this case that, construction of a house should not be made in such a way, so that, the others premises may be looked into from the roof of the new house and thereby their Right to Privacy is violated. Hence, Customary Right to Privacy has been protected in India since the very old period.

### **Chapter 3 : Position of Right to Privacy in International Legal Arena –**

This Chapter deals with the position of various components of Right to Privacy in the international, regional and municipal legal arena. Right to Privacy is not a narrower local or regional human right, rather its scope and extent have been broadened so much that, it covers a wide range of globally accepted human rights within its periphery. In fact, Right to Privacy is considered as a global phenomenon in the modern age. It has international recognition and is effective in all parts of the world. International recognition of Right to Privacy has been started just after the end of Second World War and the establishment of United Nations in the year 1945.

It has got a remarkable development under the auspices of the United Nations. Presently, it is an internationally acclaimed human right. As such, it is incorporated as an important human right in numerous International Instruments. In this respect, it has a great international legal perspective.

In the international human rights law, 'Privacy' is clearly and unambiguously established as one of the basic human rights in 1948 with the proclamation of the Universal Declaration of Human Rights. The importance of Privacy as a human right and its need for legal protection has been given in the various other international instruments, like the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. In the regional level, there are also various human rights Conventions, which deal with the protection of Right to Privacy. Important conventions among them are the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, the American Convention on Human Rights, 1969, the African Charter on Human Rights and People's Rights, 1981 and the Asia-Pacific Privacy Charter, 2003.

Apart from the International and Regional legal instruments, Municipal Laws of various Countries are well-advanced on Right to Privacy. The Municipal Laws of different Countries can be divided into the Privacy Laws of Common Law Countries, Civil Law Countries and the Nordic Law Countries. A few other countries are also remaining, the Privacy Laws of which are important in this respect. Moreover, Privacy Laws are found all over the world in an all-round manner. In the modern period, the significance of Right to Privacy has been understood by all legal systems in the world and as such, the laws of Privacy enacted by them have become fruitful to portray the International Legal Arena of Right to Privacy.

**Chapter 4 : Right to Privacy : National Legal Framework of U.S.A., U.K. and India** – This Chapter deals with the existing national legal framework of U.S.A., U.K. and India as well as a comparative analysis of the said laws. Right to Privacy, although had never been guaranteed in the United States as a Constitutional Right, but had been judicially examined therein. With the progress and development of the new American nation, called U.S.A., the growth of Privacy protection laws have been occurred concurrently. There have been six phasic or periodic developments of Right to Privacy in U.S.A. The present Privacy laws in U.S.A. can

be categorized as the *U.S. Constitution, 1787, the Federal Privacy Laws and the State Privacy Laws*. The U.S. Federal and State Legislatures have enacted various legislations covering various aspects of Right to Privacy, so that, each and every component of this right would be protected.

At the very beginning, English laws were very slow and unwilling to develop Laws of Privacy. Gradually with the passage of time, recognition of this right came into being with the hands of the judiciary. In comparison to U.S.A., Privacy laws are not much enriched in U.K. In fact, there has been no existence of Privacy Laws in U.K. before the passing of the *Human Rights Act, 1998 and Data Protection Act, 1998*. Apart from the Common Law protection of Privacy in U.K., there are various statutory provisions enacted in the present era, few portions of which are directly applicable for the protection of Right to Privacy.

Right to Privacy in India is not of recent origin; it is an age-old concept and can be traced back from ancient Indian society. In fact, there are several customary rules prevailing in India which protect Privacy interest of an individual. Apart from that, constitutional provisions have provided protective umbrella to this right in indirect manner. Besides customary rules and constitutional provisions, several other statutes recognise Right to Privacy directly or indirectly in India. Privacy as a Customary Easement right was recognized in India since the very beginning in the *Indian Easements Act, 1882*. The main articles relating to protection of Privacy under the Indian Constitution are *Articles 19 and 21*.

A Comparative Analysis of the Privacy protection laws of U.S.A., U.K. and India projects the idea that, though India has started protecting Right to Privacy prior to U.S.A. and U.K., but in the present social scenario, it is lagging far behind the other two countries, inspite of having strong Customary Laws of Privacy since the ancient period.

**Chapter 5 : Role of Judiciary Enhancing Right to Privacy in U.S.A., U.K. and India** – This Chapter deals with the role of judiciary in U.S.A., U.K. and India regarding the protection of various components of Right to Privacy as well as provides a comparative analysis of the same. The role of judiciary enhancing Right to Privacy in U.S.A., U.K. and India has shown that, U.S.A. is the first and foremost country, which has recognised Right to Privacy in most scientific manner with the help of U.S. Judiciary. It is the most advanced country in the world with respect to the judicial development and protection of Right to Privacy. In comparison to

U.S.A., U.K. is lagging far behind in the field of Privacy protection, because it has recognised it only under the law of confidence and not otherwise. However, as regards judicial protection of Right to Privacy, U.K. is totally based on the case by case development of this right. But, it has not recognised it as a fundamental right, because it has no written constitution or a Bill of Rights unlike U.S.A. From this perspective, India is the follower of U.S.A. and has developed Right to Privacy as a fundamental right by recognising it as a part of personal liberty within the meaning of *Article 21 of the Indian Constitution* with the help of Indian judiciary. India has started its initiative long after U.S.A. and in this respect; India is lagging far behind U.S.A. But, activeness is far better than inactiveness and as such, the initiative taken by India for protection of Right to Privacy by way of judicial development is praiseworthy. The comparative analysis of judicial activism of U.S.A., U.K. and India has projected the idea that, Indian judiciary has been enriched with both the U.S. and U.K. judicial precedents regarding the protection of Right to Privacy, still India is lagging far behind the other two countries on the issue.

**Chapter 6 : Outstanding Facets, Dimensions and Current Trends of Right to Privacy in U.S.A., U.K. and India : A Comparative Analysis** – This Chapter deals with the legislative and judicial initiatives of U.S.A., U.K. and India regarding the protection of outstanding facets, dimensions and currents trends of Right to Privacy. It also provides the limitations of Right to Privacy and makes a comparative analysis of those elements along with the contemporary debates on Right to Privacy.

In the contemporary social scenario, a number of problems have been cropped up relating to various aspects of Right to Privacy which are closely associated with modern social life. In the present day society, human beings are subjected to various new habits and tastes owing to social change, which have created either threats on Right to Privacy or on human life and dignity. Such problems have also given birth to many new dimensions of Right to Privacy, which are non-existent in the previous century. Those are generally called the outstanding facets of Right to Privacy, because without addressing to those threats and challenges, any discussion on Right to Privacy would remain incomplete. More specifically, these areas are *Privacy vs. Private Life, Privacy of Women, Privacy of Children, Privacy vs. Scientific and Technological Developments* as well as *Data and Information Privacy*.

Legislations and judicial decisions on outstanding facets have created *many* new debates on Right to Privacy in the contemporary social scenario. Such debates have occurred in the areas of *Freedom of Information, Right to Information and Right to Privacy, Privacy and Biometric Enabled National ID Cards, Privacy versus Sting Operation, Privacy versus Narco-Analysis, Polygraph Test and Brain-Mapping* as well as the *Privacy versus LGBT Rights*.

Right to Privacy is not an absolute right and limitations can be imposed on it on the grounds of *Public Interest, Public Figure, Public Record, Public Disclosure, Consent, Privilege, Newsworthiness, Freedom of Information or Right to Information* and *Administration of Criminal Justice*. Limitations on Right to Privacy can also be imposed on the grounds specified under *Article 19(2) of the Indian Constitution*.

The comparative analysis of outstanding facets, dimensions and current trends of Right to Privacy as well as the contemporary debates on Right to Privacy provide the idea that, U.S.A. is the strongest country regarding Privacy protection, U.K. is at the middle level and India is a novice country with respect to the measurement of such protection.

**Chapter 7 : Conclusion and Suggestions** – This Chapter makes the conclusion of the whole study and provides a few suggestions for protection of Right to Privacy in U.S.A., U.K. and India. Finally, in this Chapter, the researcher has been dedicated to conclusion and suggestions, which are rounded-off with a note of overall re-evaluation of the present scenario of Right to Privacy in the aforesaid three countries. Accordingly, few humble suggestions have been provided for reformation of existing laws and effective implementation of the same regarding the protection of Right to Privacy therein.