

CHAPTER 2

RIGHT TO PRIVACY : ORIGIN AND HISTORICAL DEVELOPMENT IN U.S.A., U.K. AND INDIA

2.1. Prologue

Idea of Privacy encompasses a very broad ambit as its nature, basis and significance. Generally, nature of Privacy lies in the exclusion of all others from the periphery of a particular individual, whereas, the basis of Privacy rests upon the protection of 'inviolable personality' of human beings. The significance of Privacy means the importance of Privacy in a civilized society. Apart from the broad and general ambit, Privacy also covers various specific areas, like Intimate Privacy, Family Privacy, Individual Privacy, Community Privacy, Professional Privacy, Workplace Privacy, Privacy in Cyberspace and so on. But, the most important point is that, whatever may be the nature or type of Privacy, violation of Privacy always causes the infringement of one basic human right and that is the infringement of Right to live with Human Dignity. Hence, Privacy and Human Dignity are directly proportional to each other, thereby violation of one causes the violation of other.

Privacy is a state of affairs subjected to solitude, intimacy, anonymity and reserve, which includes the conditions necessary to preserve the human dignity in any social order. Such state of affairs is obvious for the development of physical as well as emotional and intellectual quality of human beings in a civilized society. Privacy is also playing various functions in a civilized society, like Personal Autonomy, Emotional Release, Self Evaluation and Limited and Protected Communication. The sum total of all these functions provides the idea that, protection of Personal Autonomy is must for the protection of Right to Privacy in a civilized society and for this purpose; unlimited and unprotected communication of information should be prohibited.

Functions of Privacy are much more relevant in a complex social order, in a modern civilized society. But, that does not mean that, Privacy had no functions to play in the old, primitive, ancient societies or during the age of social

transformation. There was the existence of Privacy in the old and ancient societies and as such, the relevance of functions of Privacy was also recognized. The only difference was that, functions were simple in the old simple societies, whereas, those have become critical in the modern complex societies. Hence, Privacy is a universally acclaimed concept and equally applicable for past, present and future society. Though it may vary with the variation of time, place and society, but nobody can deny the existence of Privacy in each and every society, be it primitive, ancient or modern, be it civilized or uncivilized. Accordingly, any study of Privacy would remain incomplete without the discussion of origin, history and development of Privacy in different social systems.

The term 'Privacy' is derived from Latin word 'privatus' which means separated from the rest. Privacy implies an inclination to be left alone. The term 'Privacy' has various implications in different contexts. It differs as per cultures of the people.¹ Its meaning has varied with the times, the historical context, the state of culture and the prevailing judicial philosophy.² It has many variables relating to culture, personal notions, time in history and geographical area.³

Right to Privacy is an absolute and intimate right to an individual, which is a matter of grave concern for social scenario. But, very few persons have the knowledge that, it is not a right of recent origin, rather it has a great historical background and can be traced back since the very old past. Right to Privacy, at the very outset may mean, the leading of an isolated life, but specifically it denotes the freedom from unauthorized and unwanted interference into one's private life.⁴

The value of Right to Privacy as an inherent human right was realized since time immemorial, rather since the times of ancient human civilizations. This right acts as a catalyst in promoting and developing personality, integrity, dignity, reserveness, intimacy, anonymity, solitude and freedom of individual persons. It is recognized as a valuable human right due to its working towards the furtherance of

¹ Sunita Khariwal, "Parameters of Right to Privacy", Indian Socio-Legal Journal, Vol.XXXIX (1&2), 20'13, pp.129-134 at p.129.

² Hyman Gross, *Privacy-Its Legal Protection* (Introduction to the 2nd.edn.), Oceana Publications Inc., New York, 1976, p.ix.

³ *Supra* Note 1 at p.129.

⁴ Sangeeta Chatterjee & Dr. Rathin Bandyopadhyay, "Confidentiality of Information as Right to Privacy : A Comparative Analysis of Indian, U.S. and British Laws", India International Journal of Judicial Sciences, Vol.1(1), March 2012, pp.1-16 at p.3.

basic human relationships of love, friendship, respect, parentage, son ship, conjugal relationship etc. Privacy is not only a good technique for furthering the fundamental human relations, but also without privacy, these are simply unthinkable. In fact, all these fundamental human relations require a context or the possibility of privacy for their existence. Therefore, privacy is considered as a factor forming the basis of our personal and social relationships and every individual enjoys this right as a part of his or her personal liberty.⁵

The need for 'Privacy' in a 'free society' is clearly explained by Prof. Hyman Gross. According to him, the fundamental consideration in a free society lies in the balancing of individual and social claims. This ultimate tendency of balancing between individual and social rights gives rise to a dynamic tension between individual and state, because individuals try to achieve their Right to Privacy and state tries to protect the interests of society at large.⁶

Hence, the need of Privacy can be well-understood from the words of Prof. Hyman Gross, where the balancing of the individual and social interests, is the prime concern of the Right to Privacy. The 'Functions of Individual Privacy' as propounded by Prof. Alan F. Westin, have also enlightened us on the same issue. Accordingly, the functions of individual privacy are to uphold personal autonomy by limited and protected communication, but every individual should maintain a balance between secrecy and disclosure in the public interest. This need of Privacy in a free society is equally applicable in past, present and future society. Therefore, the scope and ambit of Privacy existing in the present day society, was existed in the past society also. In this sense, it is clearly evident that, the necessity of Privacy was found since the very old period, i.e. since the dawn of human civilization.

According to Smt. Kiran Deshta, the idea of Privacy is as old as Biblical periods.⁷ The studies of animal behavior and social organization suggests that man's need for privacy may well be rooted in the animal origins, and that men and animals share several basic mechanisms for claiming privacy among their own fellows.⁸ The traces of Right to Privacy are found in Bible, where the 'feeling of shame' was

⁵ E. J. Jathin, "*Human Genome Project : Emerging Challenges of Right to Privacy vis-à-vis Insurer's Right to Know*", Cochin University Law Review, Vol.XXXI (2007), pp.1-28 at p.3.

⁶ *Supra* Note 2 at p.ix.

⁷ Kiran Deshta, *Right to Privacy under Indian Law*, Deep and Deep Publications Pvt. Ltd., New Delhi, 2011, p.81.

⁸ Alan F. Westin, *Privacy and Freedom*, Atheneum Publication, New York, 1970, p.8.

recognized for the first time in consequent to violation of privacy. The first case of privacy violation was considered to be the case of Adam and Eve in the Bible. Accordingly, it is stated in the Bible that, after Adam and Eve had eaten the fruit of the tree of knowledge, “the eyes of both were opened, and they knew that they were naked, and they sewed fig leaves together and made themselves aprons.”⁹

The growth and expansion of Privacy has varied according to variation in different stages of human civilization. Starting from the Biblical period to the modern day society, the concept of ‘Privacy’ has been expanded enormously and today it has become a part and parcel of everyday life. The idea of privacy also varies from society to society and culture to culture, but without privacy any society or any individual is simply unthinkable. As the Right to Privacy is part and parcel of Right to live with Human Dignity, violation of Right to Privacy causes violation of Human Dignity. Hence, guarantee of this right was necessitated in every society in their own interest. This necessity for protection of Right to Privacy has gradually given birth to the statutory recognition of Right to Privacy and different Privacy legislations, which ultimately resulted into the present legal framework of Right to Privacy all over the world.

As regards origin, history and development of Right to Privacy, it is pertinent to mention that, this right was originated in the animal world and then it gradually moved towards the primitive human civilizations and then gradually passed from the primitive society to the modern day society of human beings. Hence, the description of origin, history and development of Right to Privacy will also proceed in the same direction.

2.2. Privacy : The Origin

Man thinks that, the Right to Privacy is a special characteristic of human beings and the desire for privacy is a human function for the unique ethical, intellectual and artistic needs. But, the social scientists engaged in animal studies have disproved this typical human thinking. Accordingly, it is written by Prof. Alan F. Westin in his book that, “studies of animal behavior and social organization suggest that man’s need for Privacy may well be rooted in his animal origins, and that men and animal share several basic mechanisms for claiming privacy among

⁹ Charles Fried, “*Privacy*”, Yale Law Journal, Vol.77 (475), 1968, p.478.

their own followers.”¹⁰ The Origin of Human Right to Privacy lies in the origin of man, i.e. in the animal world. Hence, discussion of man’s patterns of privacy should be started chronologically from the man’s evolutionary heritage.

2.2.1. Privacy in the Animal Society

The social scientists engaged in animal studies have reached at a basic finding that, virtually all animals seek periods of individual seclusion or small-group intimacy. This basic tendency of animal beings is called ‘tendency towards territoriality’. Owing to this tendency, an organism tries to impose private claim on an area of land, water or air including the defense against intrusion by members of its own species.¹¹ Studies have found that, due to the tendency of territoriality, the animals generally act absolutely for the “animal joy of life.” More specifically, it is the craving of privacy by the animals within their borders or private territories to prevent the intruders entering into their territories.¹²

The social scientists have again propounded that; the territorial patterns of animal beings are used by them to serve various important purposes, like -

- (i) habitation of the species in different territories depending upon the availability of natural resources;
- (ii) selection of “worthy males” for providing animal breeding and to fulfill the requirement of male assistance to raise the young ones;
- (iii) providing physical frames for different group activities , e.g. learning, playing, hiding etc.;
- (iv) informing the group members in advance against the entry of intruders.

In fact, the territory rules in animal life and the law of trespass in human society are synonymous with each other. Both of them are having same value in each society. In each case, the organism craves for ‘private space’ to promote individual and small group intimacy. Hence, it is proved that, the need for ‘private space’ does not only exist in the human society, but animal society also.

¹⁰ *Supra* Note 8 at p.8.

¹¹ H. E. Howard, *Territory in Bird Life*, London, 1920; W. C. Allee, *The Social Life of Animals*, Boston, 1958; C. R. Carpenter, “*Territory : A Review of concepts and Problems*,” in A. Roe and G. G. Simpson (eds.), *Behaviour and Evolution* , New Haven, Conn., 1958; H. Hediger, “*The Evolution of Territorial Behaviour*,” in S. L. Washburn (ed.), *Social Life of Early Man*, New York, 1961; V. C. Wynne – Edwards, *Animal Dispersion in Relation to Social Behaviour*, New York, 1962.

¹² Robert Ardrey, *The Territorial Imperative*, New York, 1966, p.95.

In this sense, the necessity of Privacy among animals and human beings can be compared to each other. Studies have found that, both animals and human beings usually maintain distance or territorial spacing with the other. There are various rules of distance among animals, e.g. personal distance, intimate distance, social distance and flight distance. ‘Personal distance’ is subjected to the space between two non-contact animals, e.g. Spacing of birds on a telephone wire.¹³ ‘Intimate Distance’ is the distance regulating space between mates or parents and their offspring.¹⁴ This rule is followed mostly among birds and apes. ‘Social Distance’ is the distance between different animal groups.¹⁵ ‘Flight Distance’ is the point of approach at which an animal will flee from an intruder of another species.¹⁶ The same rules of distance are followed by human beings also and for that reason, we find different types of Privacy in the human world, like Personal Privacy, Intimate Privacy, Social Privacy and Community or Group Privacy. The classification of Privacy is based on the rules of distance-setting mechanism. Man has only eliminated ‘Flight Distance’ due to the incapacity to fly, but usually maintains the personal, intimate and social distance in the interpersonal relationships like mammals in the animal world.¹⁷

Apart from the maintaining of different kinds of distance man uses various “*animal*” or physical senses, like touch, taste, smell, sight and hearing for the purpose of defining the boundaries of privacy. The sensory mechanisms of odor, noise, visual intrusion or touch are the common deciding factors for invasion of privacy for human beings in their everyday life. When someone comes “*too close*” to one by means of any of these factors, then it amounts to violation of Privacy. In this respect also, human beings are equated with animal beings, because the use sensory organs in the human society is having its origin in the animal society.

Therefore, it is proved that, animals need privacy for various purposes. They usually maintain distance or territorial space from one another for various individual and intimate activities. As stated above, the social scientists have categorized the distance setting mechanisms under several heads and hence, there are different types

¹³ Edward T. Hall, *The Hidden Dimension*, New York, 1966, pp.15, 16-37.

¹⁴ *Id* at p.20.

¹⁵ *Id* at pp.13-14.

¹⁶ *Id* at pp.10-14.

¹⁷ *Id* at pp.39-70.

of 'distance' among animals. Furthermore, ecological studies have clearly specified that, animals are also having the minimum needs for 'private space' like human beings, without which their survival would be seriously jeopardized.

Finally, the animal studies have also found that, there is another similarity between animal beings and human beings. Both of them are under the need for social stimulation alongside the need for privacy. Hence, the animals go for seclusion or privacy to perform certain activities and when those activities are completed, they again come and join the groups. Thus, it is proved that, privacy and social stimulation both are two important parts of animal lives.

Hence, it can be summed-up by saying that, there should be a balance between privacy and participation in the animal world; otherwise their struggle for existence would be seriously jeopardized. This theory of balancing the privacy and participation is equally applicable to human beings as well as to animal beings. This contention further proves that, need for privacy is not restricted to human beings, but it is the need of every form of life.

2.2.2. Privacy : The Existence in Primitive Human Society

Though the origin of privacy is found in the animal society, but it gradually has been adopted by human society. Primitive human society is the first one, where the traces of 'Privacy' have been found. In this respect, it is pertinent to mention that, dominant anthropological studies on privacy have shown that, our contemporary norms of privacy are the creation of modern society and those advanced values of privacy are absent in the primitive human societies of past and present times. It is evident that, privacy is more or less the creation of civilization and the uncivilized societies are not subjected to the Right of Privacy, even in the present times. There is nothing private and everything is public in the everyday activities of life in various primitive and tribal societies found today also.

This point can be explained with the example of *Dorothy Lee*, whose work as a cultural anthropologist centers around the relation between freedom and culture in various societies. She has created a contradistinction between privacy in American society and inter-personal life among the Tikopia of Polynesia.¹⁸ According to *Mrs. Lee*, in child rearing, Americans concentrate on teaching the child to be "himself"

¹⁸ Dorothy Lee, *Freedom and Culture*, Englewood Cliffs, N.J., 1959, pp.31-32.

and “*self-dependent*”, preparing for his individual struggle in life and also giving the mother important privacy during child rearing.¹⁹ Hence, it is found that, the need for privacy is imperative in the American Society.

More fully, the views of *Mrs. Lee* provide the idea that, life among the Tikopia was special due to its special characteristics, which were exclusive to the primitive societies, but unacceptable in the modern societies. One of such important characteristics was that, they imposed greater emphasis on social values rather than individual values. Therefore, social rights were upheld therein over the individual rights. They supported the notion of joint family system, instead of the nuclear family. As for example, they used to sleep together in a crowded place along with their children, parents, brothers and sisters, by mixing sexes and generations. The custom of adoption of a child or a brother was also recognized to get rid of the loneliness of a single widow. Hence, Family Privacy was recognized in the Tikopian society. In case of work life, the concepts of private office or lonely workplace were not found as opposed to the modern work culture. The habit of at least taking a child alongside was practiced in case of a lonely workplace. Hence, Workplace Privacy was also not recognized in the Tikopian society.

Studies on life among the Tikopia conducted by *Mrs. Lee* clearly show the absence of Privacy in the primitive societies. In support of this view, again, another study conducted by *Margaret Mead* on another primitive society, called ‘Samoa’, can be referred.

Margaret Mead has conducted a famous study on the society of ‘Samoa’, where the basic American concept of Right to Privacy was absent. More or less, Samoans were equated with the Tikopians on the point of privacy in their lives. Idea of privacy was found in the construction of houses at Samoa. There were no walls in the Samoan house and only mosquito net performs the function of wall between the sleeping married couples, children and old people. In this respect, they were also sleeping together like the Tikopians. They had also supported the notion of joint family system, instead of the nuclear family system. Some of the basic features of the Samoan society are as under:-

¹⁹ *Id at pp.74-75.*

- (i) Samoan adults used to wear little clothes, but children remained without clothing.
- (ii) Bathing in the sea was performed without clothes.
- (iii) The beaches were used as open latrines.
- (iv) No privacy was observed during the processes of birth and death.
- (v) Children were permitted to observe the moments of intimacy.²⁰

If all the characteristic features of the Samoan society are coupled together, then only one idea would flow from it and that is, there was no sense of shame as well as no recognition of Right to Privacy in the Samoan society. There was no concept of Personal Privacy, Family Privacy, Social Privacy or Group Privacy. Most important point was that, there was not only the absence of Privacy, but there was absence of shame, which is the basis criterion of civilization. Hence, they were called the primitive uncivilized society.

Third example of absence of Privacy in primitive societies can be given from the writings of *Livingston Jones*, on another area of the world, the Tlingit Indians of North America. There was no question of Intimate or Family Privacy in the society of Tlingits. In this sense, they were equated with Tikopians and Samoans. The only difference was that, there was the presence of shame to a limited extent among the Tlingits, as they used to wear clothes. They were also the supporters of joint family system and they used to live together in a bunch. The concept of Privacy of Information was not recognized among them. Accordingly, they were very much curious about one another and every activity of birth, death or even a quarrel was considered as an attention drawing event and also followed by a crowd. They were not habituated of knocking at the door before entering one another's house. More shocking was that, a woman used to change her clothes in front of a stranger came to visit her husband, without any embarrassment. It was the acute example of absence of shame, though with a limited extent.²¹

Therefore, all the studies conducted on primitive societies can be summarized by one common finding of all of them. These studies have found that, there are no fixed principles of Privacy which are universally applicable to each and every society. But, it does not totally disapprove the inference of existence of

²⁰ Margaret Mead, *Coming of Age in Samoa*, Mentor ed., New York, 1949, pp.82-85.

²¹ Livingston F. Jones, *A Study of the Tlingits of Alaska*, New York, 1914, p.58.

universal norms, values and needs of Privacy. Rather, it prescribes that, the norms and values of Privacy varies from time to time, society to society and culture to culture. In this sense, Privacy may be present in every society in one form or the other, but it may not be visualized by the persons belonging to different society supporting different norms of Privacy. Hence, the studies prove that, Privacy is a variable concept since its inception.

Apart from that, various studies of Anthropology, Sociology and different survey reports of major ethnographic studies, and also the Human Relations Area Files at Yale University suggest four general aspects of Privacy, which are virtually present in every society. The general aspects of Privacy Common to every society are discussed below:-

(i) Anthropological studies have found that, every individual is subjected to privacy and disclosure or companionship at different parts of the life. This rule is virtually applicable to every society, which is formally clothed with the terms 'social distance' and 'avoidance rules' by the social scientists.²²

(ii) *Robert F. Murphy* of Columbia University has conducted a study on this distance-setting process. According to him, '*reserve and restraint*' are two elements of individual privacy which are '*common*' factors in '*all social relationships*'. *Murphy* has called it the main '*dialectical process of social life*'.²³

(iii) Every individual has to play different roles with different persons at different social situations and for this purpose, one has to present one as a different '*self*' at different times.²⁴

(iv) Restriction of information and emotions of oneself is necessary for protection of the individual from stresses and strains of the social interaction and for this, privacy as well as social distance is required not only within the casual relations, but also within the intimate relations

The study of *Robert F. Murphy* on Privacy is the most important study in this respect. *Murphy* has conducted his study on the Tuareg tribes of North Africa. The Tuareg men were habituated with shielding their eyes and mouth with a veil to

²² *The Sociology of Georg Simmel*, in Kurt Wolff (tr. and ed.), New York, 1950.

²³ Robert F. Murphy, "*Social Distance and the Veil*," *American Anthropologist*, Vol.66, 1964, pp.1257-74.

²⁴ Gardner Murphy, "*Social Motivation*", in Gardner Lindzey (ed.), *Handbook of Social Psychology*, Cambridge, Mass., Vol.1, 1954, pp.601-31.

protect their privacy at the time of making interpersonal relations with others. As the eyes and mouth are the instruments of 'exposure', therefore, Tuareg people were covering their faces with veil, which would protect their physical as well as psychological privacy. *Murphy* has observed that, the 'Tuareg veil' was the visual example of distance-setting process among human beings. He has also concluded that, 'Tuareg veil' was the symbolic realization of the need for privacy in every society. Such examples are also found now-a-days, like covering of faces of the women with a fan at the time of making relations with men, use of dark glasses by the people of high society in Middle East, Latin America and Hollywood etc.²⁵

Basically, the studies of *Dorothy Lee* and *Margaret Mead* have shown the absence and non-recognition of 'Privacy' in the primitive societies. More or less, those studies have proven that, there were no needs of 'Privacy' in different primitive societies and everything remained public. In this respect, those studies have highlighted a contradistinction between primitive societies and modern societies on the issue of Privacy. But, gradually various other studies have been found, which expressed a different contention. One example of such study is the Anthropological study of *Robert F. Murphy*. *Murphy's* study has shown the existence of 'Privacy' in some primitive societies. Hence, that study gives us the idea of social transformation due to which the primitive societies gradually started to recognize 'Privacy'. The doctrines of 'Social distance' and 'Avoidance rules' propounded by various social scientists as well as found in the studies of *Murphy*, are the burning examples of that social transformation, which has proven the existence of 'Privacy' in the primitive societies. There are also other studies in support of the existence of 'Privacy' in the primitive societies, which are discussed hereunder.

2.2.2.1. Norms of Privacy in Interpersonal Relations

The primitive human societies are subjected to Privacy in matters of different interpersonal relations. When individual Privacy is claimed on the one side,

²⁵ Robert F. Murphy, *op. cit.*

interpersonal disclosure becomes limited on the other side. Various instances of individual Privacy are found in different primitive societies, which are as follows:-

- (i) More or less, all societies had rules for concealment of female genitals and restrictions on its exposure.²⁶
- (ii) Hence, complete nudity practiced by few societies was just an exception to this general rules.²⁷
- (iii) According to *George P. Mardock*, “*modesty about natural functions*” was the basic characteristic of all primitive societies.²⁸
- (iv) But, the practical situation was somewhat different. Practically, openness was found regarding evacuation in the most non-literate societies and it was made a “*public affairs*”. Hence, the situation was contrary to the modern norms of Privacy in the societies, like United States.
- (v) The moments of individual Privacy, like birth, illness and death were considered as taboo in many societies and thereby kept secluded from general view.²⁹
- (vi) Again, in some cases, few societies considered these affairs as public matters, which were just exceptions and not the norms of Universal Privacy.
- (vii) Need for Privacy in the intimacy of sexual relations was recognized in all the societies.
- (viii) But, there were few exceptions to this general rule that, men and women would seek seclusion at the time of performing sexual act.
- (ix) The survey conducted by *Ford and Beach* on sexual patterns in 190 societies had proved the situation. According to them, “*human beings in general prefer to copulate under conditions of Privacy.*”³⁰
- (x) The survey highlighted a few societies as exceptions, like the Formosan and Yap natives of the Pacific, who used to perform sexual acts openly in public.

²⁶ Clellan S. Ford and Frank A. Beach, *Patterns of Sexual Behaviour*, paperback edn., New York, 1951, pp.102-104.

²⁷ *Ibid.*

²⁸ George P. Mardock, “*The Universals of Culture*,” in E. A. Hoebel, J. D. Jennings and E. R. Smith (eds.), *Readings in Anthropology*, New York, 1955, P.5; J. W. M. Whiting and I. L. Child, *Child Training and Personality*, New Haven, Conn., 1953, pp.84-86, 116.

²⁹ Sigmund Freud, *Totem and Taboo*, New York, 1950, pp.27-29,33.

³⁰ Ford and Beach, *op.cit.*, pp.77-79, 81-83, 92, 196.

(xi) But, there were certain differences between these two societies. Formosans usually did not have intercourse in the presence of children.³¹

(xii) Yapese couples usually secluded at the time of intercourse, but they did not mind in the presence of any other person in the scene.³²

The above-mentioned instances are the examples of existence of Privacy in different primitive societies in matters of interpersonal relations. The views also provide a clear idea on existence of 'Privacy' in respect of performance of various essential functions of human life in the primitive societies. This contention can be further illustrated with the views of *Prof. A. R. Holmberg*, who wrote an essay about the situation of Privacy among the Siriono Indians of eastern Bolivia. According to him, Siriono Indians were habituated with performing sexual intercourse in the bush rather than in the house. The main reason behind it was that, Privacy was almost impossible within the hut, because they used to reside in small huts and more or less fifty hammocks usually hung in the confined space of five hundred square feet, within their huts.³³ Hence, staying in those huts was itself a hardship, thereby the question of Privacy was almost unthinkable.

2.2.2.2. Norms of Privacy in the Family Household

Again, norms of Privacy are also found in the family-household settings of primitive life. Whether the primitive household was nuclear or extended, most societies had rules limiting free entry into the house by non-residents, as well as rules governing the outsider's conduct after entry.³⁴ Apart from that, less privacy was found for the individual or pair in an extended household rather than in a nuclear family. This contention was based on the criterion that, more people used to see and exercise influence over each other's behavior in the extended household.

The most important norm of Privacy is the norm relating to 'avoidance rules'. Actually, the idea of Privacy is embedded in the concept of 'avoidance rules',

³¹ *Id at p.77.*

³² *Ibid.*

³³ A. R. Holmberg, *The Siriono* (unpublished Ph.D dissertation), Yale, 1946, p.183, quoted in Ford and Beach, *op.cit.*, p.78.

³⁴ Qukan, in M1, J.25, 3033, *Human Relations Area Files*, Yale University; W. E. Freeman, "The Family Systems of the Iban of Borneo," in Jack Goody (ed.), *Cambridge Papers in Social Anthropology*, No.1, 1552, London, 1958, p.52; Aurel Krause, *The Tlingit Indians*, New York, 1956, p.112.

because one needs to avoid others in respect of private matters to achieve Privacy. This principle was followed in the primitive societies, which was formally known as 'avoidance rules' and owing to these rules, the entry of outsiders were restricted or limited in the primitive households. There were various practices in the primitive societies, which had proven the existence of avoidance rules. These rules were followed to ensure psychological Privacy of individuals among the crowding.³⁵ It was the foremost effect of these rules. Another example of observance of these rules was the restriction in the flow of information in an extended household by covering the face, averting the eyes, going to one's mat or facing the wall. This system of withholding information for claiming Privacy was followed, more or less, in all the societies. Basically, this system was embedded in the social structure of primitive societies.³⁶ In this context, *R. M. Underhill* conducted a study on the Papago Indians. The study found that, the households of Papago Indians usually contained ten or more people living and sleeping in a one-room house, but surprisingly their 'avoidance rules' were so strong that, they skillfully managed their movements in that small place without touching one another. This situation of Privacy was contrary to the Europeans, who had more Privacy, but they never maintained such avoidance rules of not touching one another.³⁷

Another study is found on the maintenance of norms of Privacy in the household, conducted by *Clifford Geertz*, by comparing household-privacy in two Indonesian societies, Bali and Java. The study found that in Java, people usually lived in small houses made of bamboo and their family structure was mostly nuclear family including mother, father and unmarried children. Sometimes it might include an aged grandparent, but none else. Generally, the Javanese houses contained a street facing cleared front yard, loosely and thinly woven house walls and the houses were, excluding the walls or fences around the house and the houses were without doors. In fact, absence of Privacy was not only found in the construction of Java houses, but within the houses also. People moved freely from one place to another within the house. Even outsiders were allowed freely in the house during day time

³⁵ William J. Goode, *The Family*, Englewood Cliffs, N. J., 1964, pp.53-54; Beatrice Blackwood, *Both Sides of the Buka Passage*, Oxford, 1935, pp.22-23.

³⁶ Murphy, *op.cit.*, p.1274.

³⁷ R. M. Underhill, "Social Organization of the Papago Indians," *Columbia University Contributions of Anthropology*, Vol.30, p.119.

and early evening. Privacy was almost 'non-existent' there, because anybody could enter into the bedroom of sleeping inmates. Every place was almost open for everyone and prior intimation of presence of an outsider was not required. Privacy, to some extent, was found only in the bathing enclosure, where people were usually changing their clothes and outsiders were restricted only in that place. Clothing was practiced among them, but the clothes were too short and usually covered only from shoulders to knees of a man or woman. Hence, Javanese literally had almost no physical shield against the outside world.³⁸

Though there was the absence of Physical Privacy in the Java families, but they were subjected to Psychological Privacy. In fact, their openness towards outsiders and absence of physical or social barriers against the outside world had made them prone to psychological barriers of Privacy. The study found that, Java people were very restrained in their relationships within their household and outside; they were soft spoken, usually hiding their feelings from everyone and always behaved with appropriate decorum. They maintained good amount of etiquette and developed very high patterns of politeness, which were added with emotional restraint and they usually showed that attitude in both speech and behavior, while dealing with the outsiders. Most significantly, the attitude and behavior of Java people were same in private and public sphere. Hence, they maintained no difference in private and public life. In this sense, their attitude was quite 'stuffy' in the modern sense of the term. The final outcome of the study on Java people proved the existence of Privacy in the Java society, but only of psychological nature. In the absence of Physical or Social Privacy, Java people usually maintained the Privacy of their personal lives in the same manner both in private life as well as in public life. They created no difference between public and private in comparison to modern society.³⁹

Next comes the living style of people in Bali. In Bali, the house yards of the people were usually surrounded by high stonewalls coupled with a narrow, half blocked-off doorway. The family structure in Bali was also different from Java. In the Bali house yards, usually lived a patrilineal extended family consisting of a

³⁸ Dr. Geertz's paper was delivered informally at a seminar on privacy conducted by members of the Center for Advanced Study in the Behavioral Sciences, Stanford, Calif., in 1959. Quoted with permission of Dr. Geertz by Alan F. Westin, *op.cit.*, pp.16-17.

³⁹ *Ibid.*

number of Javanese type of nuclear families. The number of nuclear families in a Bali house was ranging from one to a dozen or more. Generally the heads of those nuclear families were related patrilineally and the members of those families were father, his two married sons, his two married brothers, his father and the unmarried children of all of them. In some cases, those members might include a set of cousins with their families who were sons of two brothers and likewise. As regards the entry of outsiders within the house, Bali house was again different from Java house. Non-kinsmen were not allowed within the house, except with invitation on ceremonial occasions. If the other people wanted to see a number of Bali family, they needed to bring that person outside the house by sending a child. Other patrilineal relatives and friends of the family used to visit the family members in the early evening for gossiping. Except these people, nobody could enter into the house and family members were free from public life within their family for leading their private life peacefully. They were surrounded by their immediate family members only within the house. Hence, in Bali household, privacy was maintained as a matter of right and there were differences between public and private life in the Bali society.⁴⁰

If a comparison is made between the life in Java society and the life in Bali society, then the following points may be emerged:-

- (i) The constructional structures of Java and Bali houses were different from each other. Openness was the feature of Java house, whereas, closeness was found in Bali house.
- (ii) Java house were small, made of bamboo, loosely woven, excluding the fences and doors. Whereas, Bali house yards were big, surrounded by high stone walls and coupled with a narrow, half blocked-off doorway.
- (iii) Family structure in Java was nuclear, whereas, family structure in Bali was patrilineal.
- (iv) In a Java house, usually a single nuclear family resided. On the contrary, in a Bali house, a patrilineal extended family resided containing a number of nuclear families of Javanese type.
- (v) Outsiders were allowed in the Java house without any restriction. But, except patrilineal relatives, no outsiders were allowed in the Bali house.

⁴⁰ *Ibid.*

(vi) Javanese people had no physical or social privacy, they only had psychological privacy. Whereas, in Bali, people had both physical as well as psychological privacy.

(vii) Java people had no private life and their psychological privacy was same for the family members and outsiders. On the other hand, Bali people had their private life and they usually had different behaviors for family members and outsiders.

(viii) Java people created no difference between private and public life. Whereas, Bali people created the difference between public and private life.

The above-stated comparison between Java and Bali society, clearly shows the difference regarding the idea of Privacy in these two societies. In fact, Java society was more open towards everyone and thereby there was absence of physical privacy in the individual life, they were only subjected to psychological privacy. On the contrary Bali society was more close or interwoven among themselves, which prevented the entry of outsiders in that society. Hence, they enjoyed much more privacy in the individual life than the Java people. They were subjected to both physical and psychological privacy. In this sense, it can be said that, though both the societies were primitive, but Bali society was quite modern than the Java society in respect of Right to Privacy.

2.2.2.3. Norms of Privacy in different Ceremonies of Human Life

Apart from the interpersonal relations and settings of family household, existence of norms of Privacy are also found in various other activities of human life in the primitive societies. Those areas need specific elaboration.

One special kind of human activity in the primitive society was the 'rites of passage', where boys and girls were kept secluded after attaining a certain age. In those cases, Privacy was required for certain group ceremonies of the boys and girls. Usually, in such cases, those boys and girls were withdrawn from the whole group for participation in special ceremonies in secluded places. Generally, they re-entered the main group after attaining adulthood. Girls and boys were sent in separate places for observation of separate ceremonies. Girls were kept in the all-female society from several days to several months, where they received sexual instructions and marriage information from other women. On the contrary, boys were sent to the all-men society for the same period, where they faced various ordeals designed to test

their manhood, after the passing of which they received sexual instructions. The age of seclusion for boys and girls, was generally the age of puberty. This seclusion of the youths was an acute example of Privacy for observance of special ceremonies in the primitive societies.⁴¹

Hence, studies have found that, there was another aspect of Privacy, called '*Ceremonial Privacy*', existed in the primitive societies. In this respect, *Margaret Mead* again suggests that, "*the enforcement of privacy for the ceremonies of various sub-groups in the community rests on the feeling that the presence of 'spectators' would affect the psychological feeling of unity and belonging of the participants.*"⁴² The theory behind the '*Ceremonial Privacy*' lies in the feeling of insecurity and lack of confidence based on the loss of group-unity in the primitive societies.

In this respect, *Margaret Mead* has thrown light on the issue by giving the example of the night dances among the Samoans, which usually ended in openly promiscuous relations. As a matter of general rule, only men and women of full age did participate in those dances. Children and old people could not participate therein, not even they were allowed as spectators, which were considered indecent. Same attitude was followed in cases of all emotionally charged events, like a woman's weaving bee, a house-building or a candle nut burning, which were all events of formal ceremonial nature. All these were the examples of cases of '*Ceremonial Privacy*', which had been given great importance in the primitive human societies.⁴³

Last but not the least, the importance of '*Ceremonial Privacy*' in the primitive societies, lies in the fact that, more or less it was present in every society and there were various ceremonies common to every society, which could not be performed without Privacy. In those ceremonies various parts of the whole group or community had been excluded. A few examples of such ceremonies were the ceremonies for warrior males, cult members, women etc. In case of violation of Privacy in these ceremonies, strict punishments were prescribed. Apart from that, taboos were found prohibiting ordinary people, except priests from entering into the sacred places of the society.⁴⁴

⁴¹ Arnold van Gennep, *The Rites of Passage*, Chicago, 1960, pp.180-185.

⁴² Mead, *op.cit.*, p.85.

⁴³ *Ibid.*

⁴⁴ Georg Simmel, "*The Sociology of Secrecy and Secret Societies*," *American Journal of Sociology*, Vol.11, 1906,p.441; Hutton Webster, *Primitive Secret Societies*, New York, 1908; Camilla H.

Finally, it can be summed-up by drawing an inference from the various Anthropological studies and studies of various other Social Sciences on 'Privacy' that, at the dawn of human civilization, there was no concept of 'Privacy' in the primitive human societies. But, with the occurrence of social transformation, when the primitive societies developed gradually, alongside the concept of 'Privacy' came into being. Thus, the origin of Privacy was found in the animal society, which gradually incorporated into the human world, by way of non-existence of Right to Privacy to the existence of Right to Privacy in the primitive human societies.

2.3. Privacy : The History

The Origin of Right to Privacy is found in the animal society, which gives the idea of existence of Privacy not only in the human life, but also in all forms of lives on the earth. The idea of Privacy originated in the animal society has been incorporated into the human society, at the first instance, in the primitive human society. Gradually, the primitive societies have been transformed into modern societies and hence, the concept of Privacy is advanced with the passage of time. While, the primitive societies are subjected to no Privacy or little Privacy, the modern societies are subjected to great amount of Privacy, which has become the part of modern human lives subsequently. With the advancement of modern technologies, surveillance in human society has become an essential aspect of human life, consequent to which the cases of privacy violations have been increased. This situation has given rise to the social concerns for protection of Privacy all over the world.

In the modern technologically advanced society, when the violations of Privacy are a contemporary social issue, no one can outweigh the importance of Privacy in every human society. To deal with the present day problems of violation of Privacy, every individual should know the root cause of those problems. In this context, it is pertinent to mention that, 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. Therefore, the study of

Wedgewood, "The Nature and Functions of Secret Societies," Oceania, Vol.1, 1930, p.129; George Schwab, *The Tribes of the Liberian Hinterland*, Cambridge, Mass., 1947; George Harley, *Notes on the Poro in Liberia*, Cambridge, Mass., 1941.

history of Privacy should be started from the era of transformation of Primitive societies to Modern societies.

2.3.1. Privacy in the Context of Transformation of Primitive to Modern Societies

The Anthropological studies conducted by various Social Scientists have suggested that, the social transformation from primitive to modern societies is a very important criterion for historical development of Right to Privacy. The transformation has increased both the physical and psychological opportunities for Privacy. Hence, the needs for Privacy have become possible for individuals and family units to a greater extent. It is also proved to be fruitful for conversion of these opportunities into choices of values in the context of socio-political reality. Some of the Anthropologists, like John Honigmann, have explained this situation as an 'increase in the scale of life'.

Honigmann's study has defined the 'increase in scale of life'. According to him, increase in scale of life is equated with freedom. It is also directly related to freedom, as it increases, freedom also increases. Though this increase brings forth centralization tendencies, but the most important impact of it, is the freedom in personal relations. Freedom is necessary for everyone, be it a primitive man or a modern civilized man. To understand the idea of increase in scale of life, a comparison is required between a primitive man and a civilized modern man. The primitive man was pressurized by the neighbors and Kinsmen, from whom he could never escape. His position in the society was influenced by sex, age and blood. Therefore, the freedom of a primitive man was limited. On the contrary, a civilized modern man is free from the influences of neighbors, Kinsmen and others. His house is like his castle and thereby he can live aloof in his house. Moreover, he has the freedom of movement to escape from any pressurization. As regards the Right of Privacy, modern man has more Privacy than the primitive man. Due to the inside and outside pressure, a primitive man was not free to live a life according to his wishes and thereby had less Privacy. But, a modern man is free from such pressures and influences, thereby in a position to enjoy greater amount of Privacy. Moreover, in a number of primitive societies, enjoyment of private life was not recognized and everything was public, which was another reason of lack of Privacy therein,

whereas, in every modern society, citizens are having both private and public life. Therefore, a modern man can easily enjoy the Privacy in his private life. Hence, the increase in scale of life from primitive to modern society has been subjected to the increase of freedom in various areas of human life including the increase of Right to Privacy.⁴⁵

This position can again be illustrated with the help of social developments due to industrialization. It has given rise to modern industrial societies, which are subjected to the nuclear family system, urbanization, anonymity of city life, mobility in work and residence as well as the decrease in superstitions and control of individual life by the religious authorities. All these factors are responsible for the growth of physical and psychological privacy in the modern industrial society, which were absent in the primitive society. In spite of these merits of modern society in support of Privacy, there are also various demerits which actually decrease Privacy in the modern society. Those factors are density and crowding of populations, bureaucratic organizational life and insecurity leading towards the desire of creating new relations. Moreover, the invention of new physical, psychological and data surveillance instruments has posed threats of constant surveillance on modern human life, which is another cause of loss of Privacy in the modern life. Above all, the modern state always wants to control the human lives with its military, technological and propaganda capacities. All these factors will go against the enjoyment of citizen's individual Right to Privacy in a modern state. Therefore, every individual tries to acquire Privacy from constant state surveillance in a modern society, which is also necessary for their existence as human beings. Though the achievement of Individual, Family or Group Privacy in a modern state is necessary for the present social structure, but acquisition of Privacy is also obvious for getting freedom from the constant technological surveillance. Hence, Privacy is equated with Freedom in the modern industrialized society.

The study of social transformation reveals that, Right to Privacy is a product of society and hence, it changes with the social change. For this reason, various changes have been found in respect of Privacy in the primitive society and Privacy in the modern society. In the primitive societies, there were more openness among

⁴⁵ John J. Honigmann, *The World of Man*, New York, 1959, p.154.

the group members of different social groups; consequently they used to share information among each other. Man is curious by nature and due to this natural tendency of curiosity; man usually invades privacy of others. Such invasion of privacy is possible to a greater extent in an open society, where everything remains public. Primitive societies were basically open societies and hence, less Privacy was found therein. Maintenance of secrecy was found in primitive societies only in cases of religious fear (Commission of sin) or fear of natural forces; otherwise existence of Privacy was limited or almost impossible.

In the modern societies, this situation has changed gradually. Modern societies are more close and complex in nature and hence, invasion of Privacy, in every case, is not an easy task. In a close society, intimacy among human beings and sharing of information with each other is not a common feature. Due to the complex social structure men are busy with their daily activities and there is no scope for curiosity towards others, in a modern society. Hence, cases of invasion of Privacy are less on this ground. But, the advancement of modern technology has imposed surveillance on human beings, resulting into violation of individual Privacy. This is a typical characteristic of modern society and primitive societies are not subjected to these types of privacy violations.

Accordingly, it can be said that, 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.

2.3.2. The Comparison of Privacy between Primitive and Modern Societies

History of Privacy is characterized by the change in the concept of Privacy from primitive to modern societies. For better understanding of this process as also to understand the nature of change, it is obvious to bring out the comparison between Privacy in the primitive society and Privacy in the modern society.

In this respect, the following discussion may enlighten everyone on this issue by bringing forth the points of difference between Privacy in the Primitive Society and the Modern Society. After comparison, following points may be found:-

- (i) Perceiving the situation a state of Privacy is different in primitive and modern societies.

- (ii) Isolation was not expected and welcomed in primitive society, whereas, it is necessary for spiritual, mental and intellectual development in modern society.
- (iii) Even in physical solitude, people in primitive society did not believe that they were wholly alone. Whereas, in modern society, people needs physical solitude and they believe in its existence.
- (iv) In pre-literate societies, people believed in the presence of various supernatural forces and thought that, they were always under their observation. But, in the modern societies, acceptance of presence and observation of supernatural forces has become lesser.
- (v) In primitive societies, supernatural forces were classified as follows:-
 - (a) Protecting the individual;
 - (b) Threatening or tempting the individual;
 - (c) Watching the individual to judge one's fate for a future purpose, might be after death.⁴⁶

On the contrary, such classification and believing in supernatural forces in that manner, have become absurd in the modern society.

- (vi) In most primitive societies, the need for protection, the identity crisis and spiritual longings were the common factors behind the overdependence on supernatural forces. Whereas, in the modern societies people have become independent and broad minded, thereby their dependency on supernatural forces has been minimized.

The above stated discussion shows the evidences of fear of seclusion and overdependence on supernatural forces for protection in the primitive society, but absence of those situations in the modern society. It proves the absence of Privacy in the primitive society, but the presence of it in the modern society.

Hence, 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 fulfillment of physical and psychological desires of man. The difference between the two societies is that, in the primitive societies, there were fears of supernatural forces and religious sanctions,

⁴⁶ William W. Howels, *The Heathens: Primitive Man, and His Religions*, New York, 1948, Ch.10; Robert H. Lowie, *Primitive Religion*, New York, 1924; E. Vogt and W. Lessa (eds.), *Reader in Comparative Religion*, New York, 1965.

whereas, in the modern societies, those fears have been abolished. Again, in the primitive societies, the need for Privacy was mainly physical, but in the modern societies, psychological Privacy is also needed with the physical Privacy, for the development of intellectual quality of human beings. The evidences milked the communication with the spirits or gods in the primitive societies in the state of solitude, shows the necessity of physical privacy therein. Actually, the primitive people always tried to communicate with their guardian spirits to prevent the evil forces from causing any harm to them. Therefore, the traces of physical privacy were found in the primitive societies in somewhat limited manner. For this reason, it is generally thought that, there was absence of Privacy in the primitive society.

On the contrary, in the modern society, both physical and psychological Privacy are very much present. Though the fear of supernatural forces or evil spirits has been abolished in the contemporary society, but the practice of religious communication is still present herein. For this purpose, meditation is required either in the physical solitude of forest, beach or church, or in the psychological isolation of self-induced processes in the physical presence of others.⁴⁷

Apart from the differences between the two societies, various similarities have also been found among them regarding the need for Privacy. One such similarity is that, man always needs seclusion for religious communication or to communicate with God, and this need for Privacy is universal, it is equally applicable to primitive and modern, both societies. Also, solitude, seclusion or Privacy is needed for concentration or meditation in each and every society, whether primitive or modern. In this respect, it is also pertinent to mention that, the idea of being watched by the supernatural forces and the need to communicate with the guardian spirits for protection is not absolutely abolished from the modern society. These practices are very much present now-a-days among the Judeo-Christian, Muslim, Hindu and Buddhist religions. Simultaneously, the beliefs of primitive people on ancestors, spirits, witches and gods are still existing to-day. Hence, the similarities between the two societies are not single, but many.

Thus the study finds that, Privacy is an important characteristic of each and every society, be it primitive or modern. Privacy is needed by man in every society

⁴⁷ F. E. Williams, *Orokaiva Magic*, London, 1928 , pp.81-82.

to attain physical and psychological freedom only difference is that, in the primitive societies, choice of such freedom was not with the individuals, whereas, in the modern societies, individuals are having the freedom to choose their Right to Privacy as and when needed.

2.3.3. History of Privacy in the Ancient Western Society

The history of Privacy is not only characterized by Privacy in the era of transformation from primitive to modern society, but it includes the beginning and development of Privacy in the modern society also. Rather, without the discussion of historical development of Right to Privacy in the modern society, any study of Privacy would be incomplete. The history of Privacy in the modern society is divided into Privacy in the a western society and Privacy in a Modern Democratic Society.

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. Therefore, the history of Privacy can be traced back since the beginning of Greek and Roman civilizations. Gradually, the history moves towards the starting of American civilization. The study centers round the idea of Privacy conceived by the ancient Greek and Roman civilizations, on the one side and the modern American civilization, on the other side. No prominence was given on Right to Privacy in the ancient civilizations and individuals are not free to act according to their wishes. There were Church and State control found in every sphere of human life. In contrast, modern American society was much more liberal on the issue of Privacy and considered Privacy as an essential aspect of Human Dignity.

In this respect, it is pertinent to mention that, the ancient societies were stricter on the issue of Privacy and they kept human beings under strict surveillance. Hence, surveillance gained prominence over Privacy. But, the modern American society started to give importance on Right to Privacy since its inception by keeping check on surveillance mechanism. As the Americans considered Privacy as an essential attribute of human dignity, they believed that, without guarantee of Privacy, guarantee of human dignity would be incomplete. For that reason, they gave importance to Privacy.

The problem of the modern American society was the advancement of modern science and technology, with the help of which, every sphere of human lives could be kept under surveillance. But, the Americans believed in free society and free life. Hence, they started keeping check on surveillance mechanisms and recognized Privacy as a basic Human Right. Such concern for Privacy in the American society gradually gave birth to a well-advanced law of Privacy therein. On the contrary, different ancient Western societies had not gone so far on the issue of Privacy due to their practice of strict surveillance on human lives.

Thus, the history of Right to Privacy in Western Societies is marked by the development of Right to Privacy in positive direction, in the American society, in comparison to ancient Western Societies. Only exception is that, there were no proper mechanisms for prevention of invasion of Right to Privacy of the celebrities from investigative journalism, which has come later on.

2.3.4. History of Privacy in the Modern Democratic Society

History of Privacy in modern democratic society is characterized by its political system. Political system in each society may differ from the other and along with it, the idea of Privacy varies from society to society. This is so because, political system in every society plays the fundamental role for shaping its balance of privacy and different patterns of privacy disclosure and surveillance are functional necessities of different kinds of political regimes. In this sense, modern democratic society can be classified under two heads:-

- (i) Modern Society in Totalitarian State; and
- (ii) Modern Society in Democratic State.

The discussion and contrast of Privacy in these two societies would give a clear idea of Privacy in the political systems of modern democratic societies.

2.3.4.1. Modern Society in Totalitarian State

The modern totalitarian state relies on secrecy for the regime, but high surveillance and disclosure for all other groups.⁴⁸ Hence, in the modern totalitarian states, especially in the Socialist countries of Soviet Russia and China, Right to Privacy of individual citizens, has been totally discarded. The traditional concept of

⁴⁸ Margaret Mead and Elena Calas, “*Child-training Ideas in a post-revolutionary context: Soviet Russia*”, in Margaret Mead and Martha Wolfenstein (eds.), *Childhood in contemporary Cultures*, Chicago, 1955, pp.179, 190-191; Henry V. Dicks, “*Observations on Contemporary Russian Behavior*” Human Relations, Vol.5, 1952, pp.111, 140, 159, 163-164.

privacy prevalent in the ancient societies has been considered as immoral and antisocial, because these totalitarian states are based on the theory of totalitarianism, which is opposed to the theory of individualism. As the idea of Privacy flows from the individualistic theory, these states have rejected Right to Privacy absolutely. These states believe that, State and Government should always supersede the individual citizens and therefore, individual interests should be suspended in the interests of the State. For this reason, they have considered state interest above all and have imposed strict surveillance on every aspect of the lives of individual citizens. They have kept information regarding every part of their citizens' lives to protect the national security. Hence, the idea of Privacy has lost its significance absolutely in the regime of totalitarian states.

But, with the passage of time and with the emergence of new generations, the totalitarian states have shifted gradually to democratic systems and hence, the strict rules of surveillance are relaxed to some extent, to give the individual citizens, some amount of Privacy in their personal matters. In fact, a degree of Privacy has been provided to families, church, science and arts. At the same time, police terror has been reduced in the totalitarian states. But, the people were already habituated with the old methods; thereby they have continued to follow those systems. Privacy has been a newly emerged right in these states and as such use of Privacy has not always been in the same manner by the people. Moreover, over aggressive use and abuse of Privacy has been made punishable in those states to restore the control over the citizens in the hand of the regime. This situation proves that, though Right to Privacy has been provided to the citizens in some personal matters, but it has always been limited. Not only that, individual interests in these states can never override the state interests and always state interests have been uphold over the individual interests. In this sense, Individual Privacy has been superseded by the Social Privacy and the State has always enjoyed the Right to Privacy and Secrecy in matters of maintenance of Government records as well as secret data. Above all, the most important fact is that, though Right to Privacy of individual citizens' has been recognized in personal matters, like spying, eavesdropping and watching devices including secrecy of Government records are retained and continued by the State.

This old system has been continued for the protection of the regime against oppression and tyranny by the people with the use of absolute Privacy rights.

Thus, the totalitarian states generally give impetus on State interests and due to this, Right to Privacy are more or less neglected in these states.

2.3.4.2. Modern Society in Democratic State

The modern democratic states are based on individualistic theory as opposed to the situation in totalitarian states. In these states, individual citizens gain prominence over the States. State and Government are subjected to criticism by the general public, always, in these states. Hence, Right to individual Privacy is recognized in these states. Democracy is government of the people, for the people and by the people. Therefore, people and people's right are supreme in democracy. In this sense, democratic states are just opposite to totalitarian states. For this reason, Right to Privacy is considered as an important human right in these states.

2.3.4.3. Comparison between Totalitarian State and Modern Democratic State

The situation of Privacy in modern democratic states can be well-understood by a comparison between totalitarian states and modern democratic states. Following points may be emerged from the comparison:-

- (a) The social balance of disclosure and surveillance over Privacy is absolutely necessary in the totalitarian states. Whereas, balancing of individual and group Privacy is the essential element of democratic states.
- (b) Existence of both disclosure and surveillance is prerequisite in totalitarian states. Whereas, imposing limitations on both disclosure and surveillance is prerequisite in liberal democratic states.
- (c) Totalitarian states rely on the secrecy for maintenance of governmental functions. But, the liberal democratic states rely on publicity as a control over government and for smooth running of the governmental functions.
- (d) In totalitarian states, Privacy is provided for personal matters only. On the contrary, in liberal democratic states, Privacy acts as a shield for individual and group lives.

Therefore, the comparison between totalitarian states and modern democratic states shows the strict attitude of totalitarian states towards Privacy on the other side. The reasons for protecting Privacy in the liberal democracies are not always clearly

expressed by the political thinkers, but the reasons are familiar to the citizens of liberal democracies.⁴⁹

2.3.4.4. The Need for Privacy in Modern Democratic State

The liberal democratic states are generally based on the ideology of providing good life towards the citizens. For this purpose, active participation in political life is not enough, participation in sports, arts, literature and other non-political activities are essential. Therefore, educational and intellectual developments of individuals are necessary for having a good life, which is understood by the liberal democracies. Family is acquiring an important role in these countries and the citizens are always having commitments towards the family. Family is considered as a basic autonomous unit dealing with educational, religious and moral aspects of its members. As the family controls the lives of individuals in the society, thereby it is in a position to assert the claims of physical and legal Privacy against the society as well as the state. Hence, family Privacy and Individual Privacy are gaining prominence in these countries over the Social Privacy. Choice of religion is considered as a 'private' matter in these states, on which state control can never be imposed. It gives rise to another type of Privacy, called Religious Privacy. Therefore, it can be said that, liberal democratic states are not imposing control on the life of the citizens; instead these states provide a good amount of freedom towards them. Moreover, liberal democracies strive towards providing physical, psychological, intellectual, moral and religious Privacy to its citizens. If freedom or Privacy is provided in these areas of individual life, then only success and happiness can be possible in the life of the individual citizens.

Apart from that, liberal democracies provide Privacy of membership, intra-group Privacy and Privacy of Associations. Individual Privacy and Organizational Privacy, both are given impetus therein. Intellectual Privacy is having a special status in these countries, consequent to which scholars and scientists usually enjoy freedom from constant government surveillance. Right to vote is recognized therein by the use of secret ballot. In contrast with totalitarian states, liberal democracies

⁴⁹ Hannah Arendt, *The Human Condition*, Anchor (ed.), New York, 1959, pp.23-69; H. M. Roelofs, *The Tension of Citizenship: Private Man and Public Duty*, New York, 1957; H. D. Lasswell, "The Threat to Privacy" in R. M. McIver (ed.), *Conflict of Loyalties*, New York, 1952, pp.121-140; Clinton Rossiter, "The Pattern of Liberty", in M. R. Konvity and Clinton Rossi8ter (eds.), *Aspects of Liberty*, Ithaca, New York, 1958, pp.15-32; Morroe Berger et al., *Freedom and Control in Modern Society*, New York, 1964, p.190.

enjoy protection against improper police conduct, like physical brutality, self-incrimination as well as unreasonable searches and seizures by establishing a proper constitutional, legal and political set up. Another most important right recognized in these states, is the Right to Freedom of Opinion and Expression, which includes Freedom of Media also. The liberal democracies usually need to create a balance between Right to Privacy and Freedom of Expression, in order to run a perfect governmental machinery. Therefore, these states always try to create a balance between the governmental organizational and institutional Privacy on the one side and the Freedom of Media, interest groups and other governmental agencies on the other side, to make the government responsible for its conduct towards the general public. Hence, the Right to Privacy and Freedom of Media for maintaining the public accountability of the government is the basic structure of the liberal democracies.

Therefore, the necessity of Privacy in individual life is well-understood by the modern democratic societies and are given protection to this right over and above the state control, surveillance and disclosure. But, that does not mean that, these societies have considered Privacy as an absolute right. Though these societies are taking liberal view with respect to Privacy, but they also feel that, Right to Privacy should be curtailed by imposing reasonable restrictions on this right, as and when required in the interests of the state.

2.3.4.5. Restrictions on Privacy in the Modern Democratic State

Accordingly, Privacy should be restricted by liberal democratic states on the following grounds:-

- (a) Unlimited exercise of Privacy creates dangers for a democratic society.
- (b) If private-life commitments gain prominence over political and governmental commitments, then citizens may fail to fulfill their public duties.
- (c) In some situations, the right to organizational privacy can give rise to anonymous influences over public life, which can increase the growth of conspiracies, that will threaten the democracy's survival.
- (d) Persons having public life may claim an unjustified right to privacy from their criticism.

- (e) Unlimited growth of privacy protection rules can prevent the protection of the public from crime and disturb the national security.
- (f) Privacy may prevent the public's right to know about administration of government and business.
- (g) Recognition of unlimited Privacy on governmental affairs, may increase manipulation of the public, misuse of office and power by government agencies.

If Privacy is not restricted by imposing reasonable restrictions on it, by the liberal democracies, then it may threaten the survival of democracies due to the above reasons. Hence, the democratic states should try to create a balance between recognition of Privacy and protection of public interest, for the sake of their survival.

2.3.5. History of Privacy in different Western Democratic Societies

History of Privacy in different Western Democratic Societies generally varies from one another. The reason is being that, different historical and political traditions in contemporary democratic societies have created different types of social balances on the aspect of Privacy. This point can be further illustrated with the examples of Britain, West Germany and the United States of America.

2.3.5.1. The History of Privacy in Britain

The pattern of democracy in Britain is called 'deferential democratic balance'. It is a peculiar system based on the English social structure. The basic elements of English democracy are homogenous population, strong family structure, surviving class system, positive public attitude to the government and elite education as well as government service systems. Englishmen are highly disciplined, men of etiquette and personal reserve. As such, they do not share all information with everyone and Privacy plays an important role in their lives. They usually show respect to the Privacy of their family, home, correspondence and private associations. Apart from individual Privacy, Britain also has organizational Privacy and Privacy of government operations. The balancing of Privacy, disclosure and surveillance is the basic characteristic of British democracy. But, due to the strong deference system, disclosure or surveillance of governmental activities are found in

less frequent manner in Britain, in comparison to other democratic countries of weak deference system.⁵⁰

2.3.5.2. The History of Privacy in West Germany

The pattern of democracy in West Germany is called 'authoritarian democratic balance'. In Bonn republic, the practice of democratic self-government came late, only in the post World War-II era. As such, it has no history or long traditions of practice of Privacy rights. The concept of Privacy has also come with the emergence of Bonn Republic after the Second World War. The authoritarian patterns of democracy are based on the German family structure and German social life. Both law and government are based on high public respect for office and experts. Though German system pays homage to high official capacities, but those capacities are also flourished only after the Second World War. The idea of civil liberties to act as guards against governmental violations of human rights, have also been developed in the post World War-II era and there were no provisions for the enforcement of those rights before that era. As soon as the idea of civil liberties has been emerged, the idea of Right to Privacy has come simultaneously. In the democratic state of West Germany, gradually the right to privacy of family, wealth and office has been recognized. Apart from the individual Privacy in these matters, secrecy of governmental activities has also been maintained. Though individual Privacy is a secured right therein, but the Privacy of critics and non-conformists is not protected in West Germany. This situation shows the evidence of limited extent of Privacy in West Germany. Moreover, the instance of mid-night government raid in the office of Spiegel Magazine in 1962 proves the absence of freedom of Press and Media in West Germany, which is the cornerstone of every democratic set up. Therefore, the German democracy cannot be called an ideal democracy protecting the individual freedom absolutely. Above all, the right to respect for Privacy of person, home, office and press is still subjected to governmental surveillance and disclosure in the German political system, which is unexpected in a Western democracy for the sake of good life of the individual citizens.⁵¹

⁵⁰ Edward A. Shils, *The Torment of Secrecy*, Glencoe, III, 1956, pp.47-57; H. H. Hyman, "England and America : Climates of Tolerance and Intolerance", in Daniel Bell (ed.), *The Radical Right*, New York, 1963, Ch.12.

⁵¹ Otto Kirchheimer and Constantine Menges, "A Free Press in a Democratic State : The Spiegel Case", in G. M. Carter and A. F. Westin (eds.), *Politics in Europe*, New York, 1965, pp.87-135.

2.3.5.3. The History of Privacy in America

The pattern of democracy in America is called ‘an egalitarian democratic balance’. The essential elements of this democratic set up are:-

- (a) Privacy – supporting values of individualism.
- (b) Associational life and civil liberties.
- (c) Constant pressure of Privacy-denying tendencies.
- (d) Strive towards achieving social egalitarian, personal activism and political fundamentalism.⁵²

The countries having an egalitarian democratic set up, like America are always in a position to face a constant tussle between the privacy-supporting values and privacy-denying tendencies. It is their job to create a balance between the two for establishing an egalitarian social order. American society is subjected to individualism based on religious, political and legal freedom, which attitude shows the tendency towards individual Privacy. The American individualism is based on the factors, like frontier life, freedom from the feudal heritage, Protestant religious base, private-property system and the English legal heritage. All these factors are responsible for the growth of Right to Privacy in America. This right has been developed in America as a part of their long established culture and to give protection to the individual citizens against government surveillance as well as compulsory public disclosure. In this sense, the idea of civil liberties has come into being to impose limits on governmental activities and to provide freedom of expression to every American citizen. Right to Privacy and Freedom of Expression are two important fundamental rights available in America. Americans have also realized the need for institutionalized mechanisms of independent courts and legal system for the enforcement of these rights.

Though Right to Privacy is guaranteed in America, but due to the egalitarian tendencies of American democracy, the balance of Privacy has always been threatened therein. The egalitarian pattern of democracy always demands disclosure and surveillance of individual information violating the individual Right to Privacy, which is never expected from a libertarian society. Hence, it can be said that, though

⁵² R. M. Williams, Jr., *American Society : A Sociological Interpretation*, New York, 1960, Ch.11; E. E. Morison (ed.), *The American Style*, New York, 1958; Michael McGiffert (ed.), *The Character of Americans*, Homewood, III., 1964.

civil liberties have an important role to play in the American society, but the egalitarian social order always supersedes the libertarian tendencies therein. Owing to this situation, the balance of Privacy has been threatened in America during late 1940s and early 1950s. History shows that, during that period, American society was induced by the fear of cold war, atomic holocaust, internal subversion and fundamentalism, all of which jointly brought the McCarthy era, when Right to Privacy was severely threatened by way of strict surveillance over the individual citizens, in the interest of national security. However, by the late 1950s, the equilibrium in the American society was restored back with the beginning of the anti-communist era and the approach of individualism towards the rights of the citizens.⁵³

2.3.5.4. Comparative Analysis of the History of Privacy in Britain, West Germany and America

The study conducted on the idea of Privacy in different democratic societies, gives a clear picture of state of Privacy in Britain, West Germany and America. If a comparative analysis is made on the idea of Privacy in these democracies, then it is found that, in Britain individual Privacy is given importance over constant surveillance and disclosure and hence, citizens therein, enjoy much more privacy than various other countries. On the other hand, West Germany is having strict state control over the lives of citizens and even midnight police surveillance is allowed there. Though individual citizens are having their Right to Privacy in West Germany, but government enjoys much more secrecy there. Individual Privacy can be curtailed there by strict surveillance, but governmental activities can never be challenged by the general public. From the old period, totalitarian nature of State activities were prevailed there. The idea of individual Privacy is a product of recent origin there, which has gained importance only after the Second World War.

Over and above, American society is much more balanced on the aspect of Privacy and surveillance, in comparison to other two societies. Americans have given impetus to idea of Privacy and have considered it as a valuable human right since the inception of modern democratic state in America. In furtherance of this object, provisions have been incorporated in the U. S. Constitution for prevention of

⁵³ Shils, *op.cit.*

unreasonable searches and seizures strictly. Also strict surveillance on the lives of individual citizens is prohibited, except when the national security is threatened. Therefore, American Society is the most balanced society among these three societies, which always has tried to maintain a balance between privacy and surveillance only exception is that, during the period of cold war, when the national security has been threatened seriously, strict surveillance has been imposed on human lives in the interests of the State.

2.3.6. History of Privacy in different Western Cultures

The idea of Privacy varies from country to country not only due to different political systems or systems of government, but it also varies due to the cultural differences among various countries. Variation in cultural norms may be found among different countries, which are having important impacts on the norms of Privacy in each and every society.

Cultural differences are having important impacts on interpersonal relations among human beings, consequent to which the idea of Privacy varies with the cultural variations. A number of Anthropologists,⁵⁴ psychologists,⁵⁵ and sociologists⁵⁶ have supported this view. Among all these persons, the most extensive study has been conducted by the cultural anthropologist T. Hall. According to him, people in different cultures usually visualize the world from different perspectives in terms of language as well as sensory perceptions.⁵⁷ In this sense, they '*inhabit different sensory worlds*',⁵⁸ which are having effects on every sphere of their lives, ranging from living style to creating the social distance in interpersonal relations. With all these differences, their notions of Privacy are also subjected to important differences.

Edward T. Hall has studied a number of contemporary cultures in order to compare their differences of sensory perceptions measuring the pleasure or displeasure controlling their interpersonal relations. In this context, Hall has examined the cultural differences of American society with the three dominant European cultures of England, France and Germany. Practically, he has made a

⁵⁴ F. L. K. Hsu, *Americans and Chinese*, New York, 1953, pp.68-93.

⁵⁵ Kurt Lewin, *Resolving Social Conflicts*, New York, 1948, pp.18-33.

⁵⁶ Erving Goffman, *The Presentation of Self in Everyday Life*, New York, 1959.

⁵⁷ Edward T. Hall, *The Silent Language*, New York, 1959.

⁵⁸ Edward T. Hall, *Supra* Note 13 at p.2.

comparison between the cultural norms of all these societies, which are discussed hereunder.

2.3.6.1. The Cultural Norms of Privacy in Germany

Germans are having great respect for Privacy and generally they prefer individual and enclosed places to enjoy the sense of Privacy. For this purpose, they usually established closed door rooms at business houses and government offices as well as fenced yards and separate close rooms in the home. They maintain norms of Privacy in matters of sharing information with others. In this respect, they have created strict rules of trespass for regulating interpersonal relations at every sphere of human lives, including social, business and ceremonial relations. They always try to acquire '*private space*' in and around themselves and generally constitute a '*private territory*' for each individual, which system is contrary to the systems prevalent in America or England. In order to protect the individual norms of Privacy, German Law has prohibited photographing strangers at public places without their consent. Hence, it can be said that, Germans have established strict norms of Privacy induced by their cultures.

2.3.6.2. The Cultural Norms of Privacy in America

Americans have established an elaborate edifice of Privacy in their country by incorporating the rules of Privacy protection in the U. S. Constitution. They have guaranteed it as an important human right by making express legislations and have tried to implement it in every sphere of their lives. But, they are not the men of well-manners and etiquette only like the Britishers, so that, they will always confine themselves within the four corners of their personal territory in somewhat inexpressive manner. They are the free mixing race of expressive attitude and do not bother in sharing office rooms or rooms at homes with others. In this sense, they are ready to sacrifice their '*private space*' for the sake of happiness and enjoyment. Their sensory perceptions do not feel violation of Privacy in these cases. In their cultural norms, they are having open door offices, homes without fencing or screening and informal approach in maintaining interpersonal relations with others. They usually enjoy their Privacy rights in maintenance of their records and documents, but not in maintaining personal relations with other people. In case of close contact with other people, they do not feel intrusion of Privacy or trespass in

their personal matters. Hence, the cultural norms of Privacy in America are not induced by the strict compliance with the idea of '*private space*' in comparison to German cultural norms of Privacy.

2.3.6.3. The Cultural Norms of Privacy in France

The French people are deeply influenced by the Mediterranean culture. Mediterranean culture prescribes closeness among the people. Practically, these people enjoy closeness with one another, togetherness and physical contacts in public places and are generally involved with each other in more emotional manner. Their sensitiveness make the bondage of their personal relationships more stronger. As they are culturally more sensitive, their sensory perceptions do not require more '*private space*' for maintaining interpersonal relations among them. Therefore, they do not feel violation of Privacy in these cases. But, inside the home they usually maintain their Privacy. They strongly believe in Family Privacy, they do not allow the outsiders, long standing co-workers or social acquaintances within their family. They prefer to maintain reserveness within their home rather than in maintaining interpersonal relations with others. This is a sort of peculiarity of their culture that, they are having somewhat opposite characteristics in and outside the home. Hence, French cultural norms show more respect towards Family Privacy rather than Individual Privacy.

2.3.6.4. The Cultural Norms of Privacy in England

English people are by nature reserve people and for this reason, their cultural norms of Privacy is based on '*reserveness*'. They do not share every information with everyone, but for this purpose, they usually do not prefer to keep themselves within closed doors like the Germans, but actually they say everything by maintaining silence or reserveness. They prefer shared accommodation instead of solitary quarters for preserving the Privacy of their lives. For instance, their children of middle and upper classes generally do not have separate rooms, but shared nurseries with other brothers and sisters. Later on, they usually go to the dormitories of boarding schools. Therefore, Englishmen generally learn from the very childhood to maintain their Individual Privacy in shared spaces. The instances of maintaining reserveness in front of everybody or in public places are found everywhere in the English culture. In fact, English political leaders and business figures usually do not

have private offices, the members of Parliament do not occupy private rooms and as such, they meet their constituents in the lobbies or terrace of the House of Commons. They do not feel the violation of their Privacy in these cases and usually try to maintain their Privacy in these situations by their body languages.

The English people show their resrveness by the soft spoken attitude and low voice directed to the person or persons only, with whom the conversation is going on. Their eyes are focused on the person talking and they stop talking in case of feeling of violation of Privacy. Their silence is the signal of Privacy and this custom is maintained by everyone, be the family, friends or associates. The English pattern of Privacy is called the '*internalized privacy mechanism*', where the mere physical existence of '*private space*' is not required. An Englishman does not depend on physical '*private space*', rather he acquires his '*private space*' through his attitude and body language, in a shared accommodation, office space or in a public place surrounded by others. Hence, the English cultural norms of Privacy are different from French, German or Americans in the sense that, they believe in Privacy not in the physical sense of the term only, but in psychological terms also.

2.3.6.5. Comparison between the Cultural Norms of Privacy in Germany, America, France and England

The study of *Edward T. Hall* on the idea of Privacy, which varies with the cultural variations gives us an idea of Privacy existent in the cultures of Germany, America, France and England. If a comparative analysis is made on the norms of Privacy in different Western Cultures mentioned above, then a clearer picture will be found.

In fact, German people are closed doors and inexpressive persons. They require Privacy in every aspect of their lives and cannot share themselves with others. As such, they feel intrusion on Privacy as well as trespass in very small matters of their lives. On the contrary, Americans are open hearted and expressive nature of persons. They do not feel violation of Privacy in case of close contact with others. French people are much more conservative and orthodox people than the Americans. But, they show their conservativeness in preserving their Family Privacy and not for maintenance of interpersonal relations. They do not feel shy to have physical contacts with others in public places. They do not treat these cases as

intrusion of Privacy. The French Mediterranean culture is not found in America, England or Germany. On the other hand, the English norms of Privacy are lying between the Americans and Germans. The English people usually maintain reserveness to preserve their Privacy as opposed to German culture of closed doors, walls and trespass rules. While in America, Privacy is observed by going to a closed door private room, in England it can be maintained by keeping silence. In England, silence is the signal of Privacy, whereas, in America silence is the signal of punishment. As the Americans always prefer physical Privacy, English people are happy with psychological Privacy. According to Hall, English pattern of Privacy is called '*internalized privacy mechanism*' in contrast with the '*physical privacy screen*' of the Americans. Americans use Privacy for defining social status, but Englishmen determine social status from the root of their social system and Privacy has no role to play in this respect. Hence, the comparison of all these Western societies gives the idea that, though Privacy is present in all the social systems, but nature of Privacy varies with the cultural variations. What is called the violation of Privacy in one culture, may not amount to same in another culture.

Moreover, different forms of Privacy are found in different sub-cultures within one country also. As for example, the idea of Privacy among the lower-class Negro-Americans, Puerto Ricans and American Indians are different from the idea of Privacy among the middle and upper-class Americans. Hence, Privacy among different Western Cultures produces ample evidences to show that, '*Privacy*' is not a static, rather a dynamic concept, because its variation is always found with the cultural variations. In this sense, it can be said that, what is considered as '*Privacy*' in one culture, may not be considered as the same in another and can be easily intruded.

2.3.7. The Basic Postulates of Individual Privacy in the Western Democracies

According to *Prof. Alan F. Westin*, there are four basic postulates of Individual Privacy, which are common to all Western Democracies. Basically, the idea of Privacy is determined by these basic postulates of Privacy and whatever may be the norms of Privacy in different Western Democracies due to the violation of socio-political or cultural ideologies, these basic postulates of Privacy would always remain the same. Above all, these are considered as basic principles or factors, by

way of which the notion of Privacy is fixed in each Western Democracy. These basic postulates are – Solitude, Intimacy, Anonymity and Reserve.

(i) Solitude

The first basic postulate of Individual Privacy is Solitude. It is a state of affairs, when an individual is separated from the group and enjoys freedom from the observation by other persons. In case of solitude, it is expected that, a person would live alone and enjoy acute freedom from outside interference. But, practically absolute state of Solitude is not possible physically. An individual may be free from the interference from other individuals, but may not be free from the interference by various stimulations, like noise, odours and vibrations. An individual needs solitude for concentration, meditation and intellectual development of mind. But, in case of physical solitude also, one's peace of mind may be disturbed by the physical sensations of heat, cold, itching and pain. Therefore, achievement of acute Solitude is a question of fact. In the state of Solitude, one may become familiar with the mind or conscience. It is a state of Privacy, when an individual shares no information with others. Hence, Solitude is the most complete state of Privacy which individuals can achieve as utmost state of freedom.⁵⁹

(ii) Intimacy

Intimacy is the second basic postulate of Individual Privacy. In case of intimacy, one does not enjoy acute freedom from the outside world, but enjoys the freedom within a group. This is a state of affairs, when small groups or units are formed surrounding a person and that person shares information with the group-members only and not with the individuals outside the group. The relations within the group are called intimate relations and an individual is having intimacy with them only typical examples of intimacy are husband and wife, family, friendship circle, working groups etc. As human beings are social beings, they cannot live in the acute state of Privacy, like Solitude. They need to share certain information with others for the fulfillment of basic needs of human life. As such, they need a few intimate relations, with whom they can share information freely without the fear of violation of Privacy. Consequently, the state of affairs called Intimacy has come into being. Solitude is a state of acute seclusion, where an individual enjoys absolute

⁵⁹ Alan F. Westin, *Op.cit.*, p.31.

Privacy. But, Intimacy is the enjoyment of Privacy within very close relationships. Achievement of Intimacy is far more practical than Solitude and hence, this type of relationship is physically expected to achieve.⁶⁰

(iii) Anonymity

The third basic postulate of Individual Privacy is Anonymity. In case of Anonymity, one does not enjoy acute state of Privacy, like Solitude or small-group Privacy, like Intimacy. Actually, Anonymity is living in front of everybody, surrounded by the general public, but still enjoying Privacy. It is a state of affairs, when an individual stays in public place, performs public acts, but still wants freedom from identification and surveillance by the general public. Practically, Anonymity is achieved, when one succeeds in hiding ones identification from others in public place. In case of Anonymity, an individual may be going through a subway, playing a ball game or walking in the streets among the people, knowing fully about the observation by others, but sure about the non-identification by others. Unless and until, one is a celebrity, the state of Anonymity is possible, which means nobody is going to personally identify the person. An individual seeks Anonymity in public places, because he or she is not interested to share all information with others, but still wants to relax in public arenas or open spaces. In these cases, actually one seeks freedom from observation by others and would like to remain anonymous by merging oneself into the 'situational landscape'. This is a sort of Privacy, which needs no Solitude or Intimacy for its enjoyment. It can be enjoyed being anonymous in the public place and hence, it is called 'Public Privacy'. Practically, Anonymity is more hygienic and possible rather than Solitude and thereby, it goes side by side with Intimacy.

(iv) Reserve

Reserve is the fourth basis postulate of Individual Privacy. It is the most subtle state of Privacy, where an individual creates a psychological barrier surrounding oneself for preventing unwanted intrusion within one's territory. This psychological barrier of withholding information about oneself from others is called Reserve. It is a state of Privacy, when one interacts with others in every spheres of life, but keeps control of sharing information with others. It is a sort of freedom that

⁶⁰ H. S. Sullivan, *The Interpersonal Theory of Psychiatry*, New York, 1953, p.290.

one enjoys by way of limited and protected communication of information about oneself. In fact, the greater parts of individual lives are spent not in the state of Solitude or Anonymity, but in the state of Intimacy or public spheres, where one is known to everybody. Therefore, unlimited and unprotected communication of information is not possible by oneself and some information should always be kept secret due to the personal and sacred nature or shameful and profane nature. Hence, every communication remains incomplete and one cannot express oneself totally. The choice of withholding or disclosure of information about oneself is the essential element of Reserve. Reserve is the dynamic aspect of Privacy for maintaining interpersonal relations. The manner of claiming Reserve and the extent of its acceptance by others is the core element of Privacy in a modern industrial society and obviously it varies from society to society and culture and culture. Last but not the least, Reserve is the most practical state of Privacy, which is expected to achieve by everybody in comparison to Solitude, Intimacy and Anonymity.⁶¹

Hence, the discussion on the four basic postulates of Privacy produces a clear idea regarding the purpose each postulate serves. Solitude is a state of total seclusion by an individual from others, which is needed for meditation, but practically impossible to achieve at all times. Intimacy is sharing of information within a close group or family, but seclusion from others. It can be practically achieved and possible always anonymity is being public without disclosure of the 'self' by remaining anonymous and avoiding surveillance. It is practically possible always for everyone except the celebrities. In case of Reserve one remains in public, shares information with others, but keeps the control of information in one's own hands. Practically, Reserve maintains a balance between Privacy and Disclosure. It is the most expected state of affairs and possible always.

Finally, it is important to mention that, though all the four basis postulates of Privacy are needed by every individual in democratic societies, but Reserve is the most expected state of affairs. An individual, who maintains 'Reserve' in practical sense of the term, is considered as a balanced individual by the theorists of Privacy.

⁶¹ Hall, *The Hidden Dimension, op.cit.*, pp.108-112, 131.

2.4. The Origin of Privacy in India

The idea of Right to Privacy has been originated in the animal world and with the passage of time gradually has been incorporated in the human society. The origin of Right to Privacy in the human society can be traced back from the primitive human society, gradually it passes through the age of transformation of primitive society to modern human society and finally, it has reached the history of Privacy in the modern human society. The process of development of this right from the primitive society to the modern society has been understood, at the first instance, about the Western societies. The main reason behind it is that, Western Scholars have been the first scholars, who have taken initiatives for the reporting of the origin and history of this right in their society not only that, many Western Scholars have performed thorough Research Works on different primitive societies to understand the existence of this right therein. Apart from that, the Human Relations Area Files at Yale University have also collected and maintained good amount of data relating to the origin and history of Right to Privacy in the Western World. Therefore, the western society has been in a position to produce ample evidences of the existence of this right in the primitive society, in the era of transformation of human society and in the times of modern society. Hence, there is no doubt about the existence of this right in the Western societies.

The above discussion, though mentions about the existence of Right to Privacy in the Western Society, but that does not mean that, no existence of this right is found in the eastern parts of the World. Actually, it was present in the primitive human societies in every part of the world, both Western and Eastern. But, the Eastern Scholars have not taken such initiatives at the beginning, like the Western Scholars to find out the origin and history of this right in the Eastern world. Due to this reason, most part of the evidences of origin and history of this right in the Eastern society has been lost. India is not an exception to this general situation. Right to Privacy has been originated in India since the very old period, existed here in the ancient period, lost in the medieval period and revived in the modern period. Therefore, Right to Privacy had been and is very much present in the Indian Society. Next part of the study will concentrate on the origin and history of this right in India.

2.4.1. The Origin of Privacy in Ancient India

Indian sub-continent has always preferred social relations among the people and not seclusion from one another. Traditionally Indians were people religious sentiments. Hence, they were always busy in performing various religious ceremonies, where usually '*homa*' or '*yajnas*' had been organized in gatherings of large number of people. Kings had shown respect to the Sages and a number of great kings were found who were famous for their religious, pious and charitable activities. Moreover, family occupied an important role in ancient India. Head of the family was called '*Karta*' and he was in the decision-making position in a family. Everyone within the family used to obey '*Karta*'. Family bonding was the most important part, which could not be compromised in any manner. For the sake of the family tie, '*Privacy*' within the family and among the family members had always been maintained. As the *Family Privacy* occupied a dominant place in ancient India, therefore, *Individual Privacy* was not recognized therein. Hence, the existence of Privacy was found in ancient India.

Privacy was embedded in the Indian cultural heritage and Indian social structure, as such; it was not alien to India. Various *Indian Scholars, Eminent Writers, Smritikaras, Commentators and the Authors of different Epics* had defined the term '*Privacy*' in their writings.

Accordingly, **Valmiki** defined Privacy as follows:-

*“Na Greehani Na Vastrani Na Prakarastiraskriya,
Ne Dreesha Raja Satkara Vrittamanavaranang Striyah”.*⁶²

(Neither the shelter of a house nor the veil, nor honours such as these are the proper safeguards for a woman's modesty; it is her own conduct that should guard her.)⁶³

The term '*Avarana*' used in the text is the most important term. Actually, inner meaning of the above text provides that, '*Avarana*' gives the same protection like the shelter of a house, the veil, the compound wall or a royal honour. *Prof. Wilson* has defined the term '*Avarana*' to mean '*a shield, covering and to screen*'.⁶⁴ *Shabdakalpadrum*⁶⁵ and *Vachaspatyam*⁶⁶ have also used this term in the

⁶² N.Ragunathan (Translt.), *Srimad Valmiki Ramayanam*, Vol.III, p.344.

⁶³ *Ibid.*

⁶⁴ Prof. Wilson, *Sanskrit-English Dictionary*, p.89.

⁶⁵ Raja Radhakant Deva, *Shabda-Kalpadrum*, Part I, p.192.

⁶⁶ Taranatha Tarkavachaspati (compiled), *Vachaspatyam*, Vol.II, p.87.

same sense. If all the meanings of 'Avarana' are coupled together, then only one idea is found and that is the idea of 'exclusion', which is the basis of Privacy in India. In this sense, it can be said that, 'Avarana' is the Sanskrit equivalent of 'Privacy'. In the light of the term 'exclusion', if the text of Valmiki is interpreted, then ultimately it is found that, Valmiki has tried to identify Privacy with one's conduct and has propounded that, only the pattern of one's behavior can determine the elements of Privacy and in no manner, the house or the veil or the compound wall or the royal honour. Hence, this idea of Privacy propounded by Valmiki has shown the strong basis of 'Privacy' in the ancient India, which is subjected to elasticity and dynamism and not by the orthodox thinking. In this sense, Indian view of Privacy 'embedded in one's own conduct' is much more dynamic than the Western view of Privacy 'embedded in the idea of freedom'. As such, Indianized version of Privacy is far better than the Westernized version of Privacy since the ancient period.

Apart from the term 'Avarana', various other words had been used in the ancient India, which usually denoted Privacy. Those are as follows:-

- (i) **Ekant** – It signifies a lonely or retired or secret place, in a lonely or solitary place, alone, apart, privately.⁶⁷
- (ii) **Raha** – Prof. Wilson has defined the word 'Raha' to mean privacy, solitariness and to be private.⁶⁸
- (iii) **Rahasya** – It means secret, private, Clandestine and Concealed.⁶⁹ Prof. Wilson has also defined it in the same manner.⁷⁰
- (iv) **Tiraskarinee** – 'Tiraskarinee' is a compound word made of 'Tiras' which means 'secret' and 'Karinee' which signifies 'making'. As a whole, it means an outer tent, a wall or screen of cloth surrounding the principal tent, a veil and a curtain.⁷¹
- (v) **Vivikta** – It denotes lonely, solitary, retired, sequestered, single, alone.⁷²
- (vi) **Gupta** – The word 'Gupta' has the following meanings:-

(a) protected, preserved, guarded;

⁶⁷ Sir Monier-Williams, A Sanskrit-English Dictionary, 1970, p.230.

⁶⁸ *Supra Note 64 at p.513.*

⁶⁹ *Supra Note 67 at p.871.*

⁷⁰ *Supra Note 64 at p.797.*

⁷¹ *Id at p.278.*

⁷² V.S.Apte, Sanskrit-English Dictionary, p.872.

- (b) hidden, concealed, kept secret;
- (c) secret, private; and
- (d) invisible, withdrawn from sight.⁷³

(vii) **Avagunthanvatee Naree** – It emphasizes the woman whose eyes are veiled.⁷⁴

The regular use of the above words in Sanskrit texts as well as daily lives in ancient India shows the evidence of existence of Right to Privacy during that period. Though a number of studies are not found in support of the Privacy rules in the ancient Indian society, but the general life-style of the individuals, their interpersonal relationships, construction of houses, family structure and customary rules and regulations are enough to show that, Privacy was not alien to ancient India.

2.4.2. The Origin of Privacy in the Vedas and Upanishads

A famous quoted phrase denoting Right to Privacy in the Western world is, “*Every man’s house is his Castle*”. It means, every man is the controller of his own house and thereby he can do whatever he likes, within his house, without the outside interference. Practically, it signifies the Right to Privacy at home. This situation does not only applicable in the Western World, but applicable in India also. As such it has an Indian counterpart, which says, “*Sarva Swa Swa Grihe Raja*”. This phrase is provided by some ancient Hindu Law giver. It means, every man is the king of his own house. Therefore, it also serves the same meaning along with its Western counterpart. Accordingly, it can be said that, the traces of Privacy at home was found in the ancient Indian society. Apart from that, the ancient Indian Dharmasutras, Dharmashastras, Digests and Commentaries had thrown light on the aspects of Privacy in their social structure. Law was equated with Dharma at that period, which was considered above all and even a king could not override law. In this sense, it was called, “*Law is the King of Kings*”, which meant, Kings were also subjected to law. In fact, in the ancient period, Kings were found to uphold Dharma and to respect the Privacy of the citizens.⁷⁵

In the ancient period, Dharma was considered above all, everything including the Jurisprudence or legal system was embedded in Dharma. The word ‘*Dharma*’ was used to mean justice (*Nyaya*), what is right in a given circumstance,

⁷³ *Ibid.*

⁷⁴ H.H.Wilson, Sanskrit-English Dictionary, p.63.

⁷⁵ E.Jeremy Hutton et.al., *The Right to Privacy in the United States, Great Britain and India*, in Richard P. Clande (ed.), *Comparative Human Rights*, 1976, p.151.

moral, religious, pious or righteous conducts, being helpful to living beings, giving charity or alms, natural qualities or characteristics or properties of living beings and things, duty, law and usage or custom having the force of law and also a valid *Rajashasana* (royal edict).⁷⁶ In this sense, *Dharma* denoted the rights and duties of Kings as well as citizens in ancient Indian society. Therefore, *Dharma* had also propounded the Right to Privacy of the citizens.

The ancient Indian Literatures were based on the concept of *Dharma*. As such, the religious injunctions and rules and regulations of everyday life-style, prescribed by those literatures were also engulfed into the idea of *Dharma*. The most important ancient literatures were *Vedas* and *Upanishads*. *Vedas* were the first scriptures of ancient Indian society, which propounded the religious as well as legal injunctions. *Upanishads* were created for the analysis and interpretation of the *Vedas*. The ancient Indian theory of knowledge was based on the *Upanishads*, the main aim of which is to know the ultimate reality of the Universe. Perception and inference are the two hands of the human mind, through which human brain acquires knowledge. But, when perception and inference both fail, to provide knowledge, *Upanishad* comes into being. *Upanishad* propounds the path, called *Upasana or meditation*. It means to withdraw the aspirants' mind from the external objects and divert it towards eternal aspects, so that one may be free from the earthly objective world and can move towards the eternal world.⁷⁷ Hence, the ultimate motive of *Upanishad* is to attain *moksha or salvation* by way of *Upasana or meditation*.

Upasana or meditation propounded in the *Upanishad* cannot be possible without *concentration*. As *meditation* was prescribed by *Upanishad* in the ancient period, *concentration* was prescribed simultaneously. *Concentration* was not possible in presence of others or in public, thereby prescribing *meditation or concentration*; *Upanishad* actually prescribed the state of '*Privacy*'. The underlying meaning of the basic objective of *Upanishad* was to achieve '*Privacy*' for *concentration*, which ultimately would be fruitful for an individual to gain knowledge required for attaining *salvation*. In this sense, the need for *Privacy* in India was similar with the western view of *Psychological Privacy*, which would be

⁷⁶ Justice M. Rama Joice, *Legal and Constitutional History of India : Ancient Legal, Judicial and Constitutional System*, Universal law Publishing Co.Pvt.Ltd., 2004, p.3.

⁷⁷ S. Radhakrishnan (ed.), *The Cultural Heritage of India*, Vol.1, 1970, pp.349-350.

necessary for emotional and intellectual development of mind. Therefore, Privacy would always be necessary for the development of mind, be it Western world or Eastern world including India.

As a matter of fact, from the beginning of the *Vedic* civilization, disturbing a meditating sage was considered as a sin or wrong of very serious nature in the Indian society, which was, in other words, an acute case of intrusion of Privacy of the meditating sage. It would be clear from the following text of epic **Ramayana** :-

*“Yanman lobhayase Rambhe kama krodh jayaisinam,
Dash varsh sahasrani shailee sthasyasi durbhaga”.*⁷⁸

(In order to win over sex and anger I was meditating, you have disturbed my meditation as punishment for which you turn to be stone for ten thousand years.)⁷⁹

The above-mentioned text of the *Ramayana* has proved clearly the existence of Privacy in the ancient India. Apart from that, there are also other instances. As for example, *Lord Shiva*, while in meditation, was said to have been disturbed by *Kamdeva*, the god of love and sex in the Indian mythology, who was burnt as punishment thereof when *Lord Shiva* opened his third eye.⁸⁰ This case is a clear example of violation of Privacy of *Lord Shiva* by *Kamdeva*, which is found in an ancient Indian text.

Besides *Upanishad* and other religious texts *Vedas* were also concerned with the rules relating to Privacy in ancient India. It was found that, any kind of disturbance or interference was prohibited in matters of religious or spiritual activities. Privacy was always prescribed in these cases. Privacy was also required to be exercised at the time of the study of *Vedas*. In this respect, the necessity and awareness of Privacy in the ancient Indian society was clearly expressed by a text of the *Rig Veda*, which is stated below:-

*“Ya Aaste Yascha Charati Yascha Pashyati No Janah,
Teshang Sang Hanmo Akshani Yathedang Harmyang Tatha”.*⁸¹

⁷⁸ Ramnarayan Dutta Shastri (ed.), *Valmiki Ramayanam*, p.154.

⁷⁹ Ibid.

⁸⁰ Kalidas, *Kumarsambhavam*, 3171.

⁸¹ *Rigveda*, Mandal 7, Sukta 55, Hymn 6; *Maharshi Dayanand Saraswati Rigveda Bhasa Bhasya Sampurna*, 1st. edn.

(One ought to build such house which may sustain and protect the inmates in all seasons and be comfortable. The passers-by may not see the inmates nor the inmates see them.)

Hence, the origin of Privacy was found in India in the same manner as in case of Western societies. The ancient Indian literatures, like the *Dharmasutras*, *Dharmashastras*, *Vedas* and *Upanishads* are the burning examples of it. The necessity of Privacy as shown in the above-mentioned text of *Rig Veda* clearly proves the existence of physical and psychological Privacy at home including the existence of Family privacy in ancient India. It also in other way, justifies the Western view of “*Every man’s house is his castle*” and its Indian counterpart “*Sarva Swa Swa Grihe Raja*”.

2.5. The History of Privacy in India

The idea of Privacy was originated in ancient India. Gradually, it passed through the stages of historical development and finally reached the modern period. There were various stages of development of this right in the historical period in India. The history of this right was actually started in the ancient Hindu period, which could be divided into the periods of *Vedas*, *Upanishads*, *Ramayana*, *Mahabharata*, *Grihya-Sutras*, *the Smriti* period and the period of *Arthashastra*. Next important period in the history of this right was the *Muslim period*. Finally, the *British and post-British* period came which was marked as an important era in the development of this right in India. In fact, Right to Privacy was originated in ancient India from the era of *Vedas and Upanishads*. After its origin, the history of this right was mainly subjected to the *Hindu period and Muslim period*.

2.5.1. The History of Privacy in the Hindu Period

India was originally a Hindu country. Right from the Dravidians or the Aborigines to the Aryans, all were Hindus. The Dravidians, who were the original Indian habitants, were essentially Hindus by way of worshipping a number of Gods and Goddesses, sometimes in the forms of stones or trees, whom they worshipped. Thereby, they were all Hindus including the Tribal people. As such, the history of Right to Privacy in India should be counted from the Hindu period.

The history of Right to Privacy in the ancient India was started in the *Hindu period*, which was divided into the following stages:-

- (i) Privacy in the *Grihya-Sutras*.
- (ii) Privacy in the *Great Epics*.
- (iii) Privacy in the *Manusmriti*.
- (iv) Privacy in the *Kautilya's Arthashastra*.

The actual situation of Privacy during all these stages in India, is discussed hereunder.

2.5.1.1. Privacy in the Grihya-Sutras

After the end of the *Vedic Age*, the period of *Sutras* came into being. There were various types of *Sutras* at that period. *Grihya-Sutra* was the prominent among them, which promulgated the rights and duties of a house holder in the family life. It contained detailed norms relating to construction of houses in the ancient India. These rules prescribed elaborate norms for preserving Privacy at the time of construction of houses in ancient Indian social system. According to *Grihya-Sutras*, generally the houses had been constructed with a *bed-room (Sayaniya)*, a *store room*, a *kitchen (Bhakta-Sarana)*, a *hall or drawing room (Sabha)* and a *compound*.⁸² Supporting the above structure, *Dr. V. M. Apte* has written that, usually the houses contained a bed-room, a drawing room, provision room and a nursery.⁸³ He has further propounded that, the main door of the house would not be constructed facing the door of another house and the houses were built in such manner, so that the house-holder could not be seen by unholy persons during performance of religious rites and dining within the house as well as the valuables of the house could not be seen by the passers-by.⁸⁴ Moreover at the time of selection of the site of dwelling house, avoidance of the sight of the persons or things creating impediments towards the study of the *Vedas* was always preferred.⁸⁵

The basic objectives of the rules and regulations of the *Grihya-Sutras*, were to generate awareness and concern of the society towards exclusion of the rights of the strangers within the house, to preserve the sanctity of the house and to respect the Privacy of performing religious rites, of the study of the *Vedas* as well as the

⁸² Dr. Ram Gopal, *India of Vedic Kalpasutras*, p.151.

⁸³ Dr. V.M.Apte, *Social and Religious Life in the Grihya Sutras*, p.142.

⁸⁴ *Id* at p.141.

⁸⁵ *Id* at p.180.

dining.⁸⁶ Above all, the system of separate bed-room and nursery showed the need for Privacy in the residential houses in the ancient period, which also reflected the modern psychiatric thoughts regarding the necessity of Privacy in a house.⁸⁷ Hence, the *Grihya-Sutras* were so advanced that, those can be called the forefather of the modern systems of Privacy in the everyday life of human beings.

According to the ancient theorists, the most important areas, where Privacy was usually maintained by following the rules of *Grihya-Sutras*, were the study of Vedas, dining and performing religious rituals. But, apart from that, there were other areas stated in the *Grihya-Sutras*, where Privacy was maintained. As for example, a *Snataka* was prohibited to look at a naked woman, even if she was his wife, except during sexual intercourse. He was also prohibited to take meal together with his wife.⁸⁸ In this respect, it is pertinent to mention that, *Dr. V. M. Apte* remarked that, no *purdah* (veil) system was prevalent in the social and religious lives of the *Sutra* period.⁸⁹

But, *Prof. Govind Mishra* has raised the following objections against the contention of *Dr. Apte* and in support of the existence of 'purdah' system⁹⁰:-

“ 1. The absence of *purdah* system in those days is deduced solely from a single incident of life i.e. the marriage ceremony. He has not substantiated it either by pre or post marital situations.

2. The ritual of taking the bride out of the house to pay homage to the polar or other stars was and is limited to a small section of Brahmins called 'Chahandogya' only. Moreover, during the night visibility being poor, there would be less chance of the bride being seen by strangers.

3. He maintains that the fact that the people were invited to have a look at the auspicious bride signifies the absence of

⁸⁶ The members of the denomination known as “Ramanuj Sampradaya” do not eat and drink in presence of any one else. This practice is still prevalent in the Southern India. *G.Mishra, Right to Privacy in India*, Preeti Publications, New Delhi, 1994, p.49.

⁸⁷ Privacy in the bed-room is a necessity for both children and parents and faulty sleeping arrangements represent a subtle form of sexual abuse, observes psychiatrist Gabriel V. Lawry of the State University of New York. “Such arrangements are generally made by well meaning parents who are unaware that their child has become an individual with his own personality, his own sexuality and with a right to modesty and Privacy”. “Privacy begins with birth”, advised *Dr.Sugar*: Keep an infant in a bed-room separate from yours. Many parents keep infants in their bed-room as a convenience for night time feeding or in case the baby wakes up at night. Not a wise arrangement, warns psychiatrist *Stuart Finch* of the University of Arizona Medical School. ... *R.Howard* and *E.Lewis Martha*, “Bedrooms”, *Sexology Today*, Sept.1980, pp.41-42; *G.Mishra, op.cit.*, pp.49-50; *Kiran Deshta, op.cit.*, pp.85-86.

⁸⁸ *Dr.V.M.Apte, op.cit.*, pp.86-87.

⁸⁹ *Id at p.42.*

⁹⁰ *G.Mishra, op.cit.*, pp.50-51.

pardah system. The fact that the people needed invitation to have a look at the bride might signify just the contrary to what he maintains. It may be inferred that but for such invitation a look at the auspicious bride was not permissible. He has not clarified the position whether or not it was open to all to have a look at the bride even to have such invitation.

4. To maintain that there was no telephone in the Vedic society purports to inform nothing about the Vedic society. To apply contemporary standards to judge the primitive society may lead to misleading conclusions. The anxious efforts of Dr. Apte to establish that there was no pardah system in those days is neither warranted nor well substantiated by facts, for he is trying to give the impression that was seeing India of Grihya Sutras through the "Indian glass of nineteen thirties".

Hence, the rules contained in the *Grihya-Sutras* give an extensive allocation of the presence of Right to Privacy in various aspects of human lives in ancient India. The ultimate analysis of the rules and the contentions of various theorists show that, '*pardah*' system was found, to some extent, in the Hindu period. Though all the theorists are not unanimous on the point of presence or absence of '*pardah*' system during that period, but nobody can speak in favour of absolute absence of this system, which would, in other way, prove its existence. Over and above, it should be remembered that, as per the norms of *Grihya-Sutras*, Privacy would always be maintained in the construction of houses in the ancient Hindu period.

2.5.1.2. Privacy in the Great Epics

Apart from the *Grihya-Sutras*, elaborate rules regulating Privacy in the *Hindu period* were found in the two *Great Epics of India*, the *Ramayana* and the *Mahabharata*. *Ramayana* and *Mahabharata* were not only the holy religious books of the *Hindus*, but those books were the total reflection of the *Hindu* social and family system of the then period. Those books portrayed the *Hindu* social structure, rules of *Dharma*, *Rajashasana* or *royal edict*, norms relating to Council of Ministers, administration of justice, family structure and family customs as well as the norms of religious ceremony and religious rites. Therefore, a complete code of conduct of the then period can be found from those books. As such, it is obvious that, rules relating to Privacy should be found from these two books. Next part of the study will highlight these areas.

2.5.1.2.1. Existence of Privacy in the Ramayana

Hindu religious heads believe that, *Lord Vishnu* was born in the '*treta yug*' as a human being in *Ayodhya*, named '*Rama*' and '*Ramayana*' was the story of

'Rama', originally written by *Valmiki*. As *Ramayana* was the story of an ideal human being, called 'Rama' (projected as 'Avatar' of Lord Vishnu), therefore, ideal lifestyle of human beings was described in the *Ramayana*, from which ancient social structure of the then period was found. It elaborated every aspect of human lives, including Right to Privacy.

The following rules have been found in the *Ramayana* relating to Privacy:-

Rule – 1

The rule that a woman should not be seen by a male stranger was well established in the society as propounded by the *Ramayana*. The exceptions to the rule were provided in the following text, which would otherwise prove the rule:-

*“Vyasanesu na krichheshu na Yudhsheshu swayangbare,
Na kratton no vivahe va darshanang dushyate striyah”*.⁹¹

(At the time of calamity, during physical and mental ailment, during war, in Swayambar, during performance of religious rites, during marriage ceremony, if a woman is seen by strangers, no wrong is said to have been committed.)⁹²

Rule – 2

The rule describing the situation when a woman was accompanied by her husband, was propounded by the dialogue of *Lord Rama*, which is stated below:-

*“Saishang vipadgatachaiba krichhena cha Samanwita,
Darshanang nasty doshotsya matsamipe visheshatah”*.⁹³

(Sita is in distress and not well composed mentally and specially audience is with me she may give audience to all. And it may not amount to any wrong.)⁹⁴

Rule – 3

The limitation on the observance of a woman by a man was found from the following dialogue between *Lakshman* and *Sita*, where *Lakshman* said:-

*“Drishta purbang naterupang padou drishton tabaghane,
Kathamatra hi pashyami Ramena rahita vane”*.⁹⁵

(I have never seen your whole body before. I have seen your feet only. How can I see you here in the forest, specially in the absence of Ram.)⁹⁶

⁹¹ Ramnarayan Dutta Shastri Ram (trnsld.), *Valmiki Ramayanam, Yuddha Kand*, p.1412.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid, Uttar Kand, p.1576.*

Rule – 4

Though limitation was imposed on the observance of a woman, but a mere glance of a woman was permitted. The practice was found among the women, of putting veil on the face, while going out of the house. The evidence of this rule was found, when the demon *King Ravana* was killed in the battlefield and his wife *Mandodari* came out of the palace without putting any veil and without using any conveyance. The following texts show the evidence, where she was addressing her deceased husband:-

*“Drishtawa na khalbavikruddho mamihanabagunthitam,
Nirgata nagara dwarat padvyamebagatang prabho”.*⁹⁷

(Why don't you get angry seeing me coming all the way from the city-gate as pedestrian and without veil?)⁹⁸

*“Pashyeshadara darangste vrashtalajjabagunthanan,
Bahirnishpatitan Sarbankathang drishtawa na kupyasi”.*⁹⁹

(Discarding their veils and thereby disregarding shame, all your wives have come out. Seeing all these why don't you get angry?)¹⁰⁰

Rule – 5

Another rule of the society prohibited the seeing of a sleeping woman, except one's wife. The evidence of this rule was found, when *Hanuman* reached *Lanka* and started inspecting the inner section of the palace for searching *Sita*. The following texts show the evidences of the doubts in the mind of Hanuman regarding the sanctity of his action:-

*“Nireekshamanashcha tatastah striyah sa mahakapih,
Jagam mahating Shangka dharmasadhvasashangkitah”.*¹⁰¹

(Hanuman, having inspected the inner apartment of the Palace and having seen several sleeping women, entertained a great doubt regarding the propriety of his action.)¹⁰²

“Paradaravarodhasya prasupatasya nireekshanam,

⁹⁶ *Ibid.*

⁹⁷ *Ibid, Yuddha Kand, p.1401.*

⁹⁸ *Ibid.*

⁹⁹ *Id at p.1402.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid, Sundar Kand, p.891.*

¹⁰² *Ibid.*

Idang khalu mamatyarthang dharmalopang karishyati".¹⁰³

(To behold other women while sleeping causes evil consequences and diminishes one's acquired merit.)¹⁰⁴

Rule – 6

An important rule was found in the *Ramayana* stating that, not only to see other women, but to touch them was prohibited as a wrong. Also it was expressed that, one should not touch voluntarily the body of other man, except her husband. The following texts show the evidences of these rules:-

*"Parasparshat tu vaidehya na dukkhataramastime,
Piturbinashat soumitre swarajya haranat tatha*".¹⁰⁵

(The fact that same one else may touch my wife is a matter of greatest unhappiness for me. Even my father's death or losing my Kingdom would not give me that sorrow what I am subjected to by the above fact.)¹⁰⁶

*"Etat te devi Sadrishang patnyastasya mahatmanah,
Kahyanya twamrite devi buyadvachanameedrisham*".¹⁰⁷

(One ought not to touch voluntarily the body of other man except her husband is justified and proper reason for you not to go with me.)¹⁰⁸

Rule – 7

Another rule was found, according to which, disturb one's meditation was considered a punishable wrong. Following text speaks in support of that rule:-

*"Deshasya remaneeyatwal Pulastyo Yatra sa dwijah,
Gayanto vadyantyashcha lasyantyastathaiva cha,
Munestapaswinastasya vidhwang chakrura nindritah*".¹⁰⁹

(The natural scenario of the place where Pulastya, a sage, was living, was so attractive that girls used to sing, dance and play there. This used to disturb the sage's meditation. He, therefore, cursed that any girl found within his sight would be pregnant.)¹¹⁰

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid, Aranya Kand, p.496.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid, Sundar Kand, p.963.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid, Yuddha Kand, p.1456.*

¹¹⁰ *Ibid.*

Rule – 8

Rules were also found relating to construction of houses. Accordingly, in the description of palaces and other houses, secret apartments for ladies, bedrooms and drawing rooms had been suggested. The following text shows the example of that rule:-

*“Prasadai ratnavikritaih parvatairiva shovitam,
Kuta garaishcha Sampurnamindrasyemaravateem”*.¹¹¹

(Studded with precious stones the palaces resembled the high mountains. With several secret apartments for ladies in the palaces, the whole city of Ayodhya looked like Amaravati of Indra, the king of gods.)¹¹²

Rule -9

A rule was found in support of the use of curtain in the house. The following text describes the rule:-

*“Shayaneeyang narendrasya tadasadya vyatishthata,
Sottyasadya tu tadveshma tiraskaranimantarah”*.¹¹³

(Having gone very near to the sleeping room where there was a curtain only, the ministers started blessing the King.)¹¹⁴

Rule – 10

The next rule prescribed that, an attempt to see or over hear any confidential deliberation between two persons was prohibited as a wrong and capital punishment was awarded therefor. The following text proves that rule:-

*“Yah Shrinoti nireekshedra Savdhyo vavitataba,
Vabeda vai muni mukhyasya vachanang yadyavekshase”*.¹¹⁵

(Regard being had to the words of the sage, let others know that anybody who will over hear our conversations or see us talking shall be killed.)¹¹⁶

In this respect, it is also pertinent to mention that, this rule had received a prominent place in the period of Ramayana. It had universal application without any discrimination. As for example, *Lakshman*, the younger brother of *Rama*, had violated the order for certain obvious reasons. In consequence, he was awarded the

¹¹¹ *Ibid*, Bal Kand, p.40.

¹¹² *Ibid*.

¹¹³ *Ibid*, Ayodhya Kand, p.229.

¹¹⁴ *Ibid*.

¹¹⁵ *Ibid*, Uttar Kand, p.1666.

¹¹⁶ *Ibid*.

punishment by the royal committee headed by the sage *Vasistha*. However, the capital punishment was commuted to his banishment.

In a complete analysis of the rules of Privacy in the *Ramayana*, the following points may be emerged:-

- (1) There were elaborate rules of Privacy contained in the *Ramayana*.
- (2) Privacy was maintained in matters of male exposure by the women.
- (3) The place of women was usually inside the house, except in exceptional circumstances.
- (4) In certain cases, the rules of Privacy were relaxed and a woman could visit the outside places accompanied by her husband.
- (5) To some extent, limitation was imposed on the observance of women by men.
- (6) '*Purdah*' or *veil* system was prevalent among the women for protection of their Privacy.
- (7) Watching a sleeping woman was prohibited, except one's wife.
- (8) Apart from watching, touching of females by males or vice-versa was prohibited in the society for the sake of the protection of individual Privacy.
- (9) Disturbing a meditating sage was considered a punishable wrong on account of violation of Privacy.
- (10) Rules of Privacy were maintained at the time of construction of houses and secret apartments were available for the ladies.
- (11) Use of curtains was practiced in the houses for the protection of Privacy of the inmates.
- (12) Privacy was maintained in case of confidential deliberations. Overhearing such discussion was prohibited as a wrong for which capital punishment was awarded.

Hence, it can be said that, at the period of *Ramayana*, Privacy was prevalent in India and a complete code of conduct was prescribed by the *Ramayana* for the protection of the Privacy.

2.5.1.2.2. Existence of Privacy in the Mahabharata

Mahabharata was the second great epic of India, which came into being after the *Ramayana*. *Hindus* believe that, *Lord Vishnu* was again born after *Ramayana*, in the '*dwapar yug*' as the prince '*Krishna*' at Mathura and later on, became the *King of Dwarka*. But, the story of *Mahabharata* was not only the story

of *Sri Krishna*, but actually the story of the two sets of cousin brothers, called ‘*Pandava*’ and ‘*Kaurava*’. The story revolved around the complex relationships and enmity between *Pandava* and *Kaurava*. In practical sense of the term, it was not the story of two sets of cousin brothers, but also a reflection of the complex social structure. The social structure reflected in the *Mahabharata* was so complex and dynamic that, it was not ended therein, rather it is applicable in the present society as well as would be applicable in the future society also due to its dynamic nature. It contained rules and regulations of every nature relating to human lives and as such, there was a number of rules regarding the Right to Privacy of human beings.

The following rules have been found in the *Mahabharata* relating to Privacy:-

Rule – 1

Draupadi was the common wife of all the five *Pandavas*. Hence, a special rule of Privacy was created for co-habitation with *Draupadi*. That rule was created for preventing embarrassment of *Draupadi*, which was also accepted by all the five brothers. The rule runs as follows:-

“*Draupadya nah sahaseenamanyotnyang yotvidarshayet,
Sa no dwadasha varshami brahmacharee vane vaset*”.¹¹⁷

(If any one of us happen to see *Draupadi* while she is in company of one of us, he will have to undergo the punishment of banishment for twelve years in the forest as

Bramhachari.)¹¹⁸

In fact, once *Draupadi* was with *Yudhisthir* in a room, wherein *Arjun* was forced to go, under the urgent need of collecting the weapon kept therein. As *Arjun* had violated the rule by intruding upon their Privacy, he had to observe the above-mentioned punishment of twelve years banishment.

Rule – 2

Killing of a person while he or she was sleeping was prohibited by a rule contained in the *Mahabharata*.¹¹⁹

Rule – 3

¹¹⁷ Shreepad Damodar Satavalekar (ed.), *Mahabharata, Adi Parva*, p.1000.

¹¹⁸ *Ibid.*

¹¹⁹ *Id at pp.34 and 424.*

Feeling of shame was peculiar to human nature, which distinguishes human sex from animal sex. *Mahabharata* prescribed the rule of enjoyment of sex at a lonely place in support of the feeling of shame of human beings. The following texts show the evidence of this rule:-

“*Ahang hi Kingdamonan tapasa pratimo munih,*

Vyapatra parmanushyanang mrigyang maithuna macharam”.¹²⁰

(I am a sage named *Kindam*. To avoid the feeling of shame I became a deer and was enjoying sex with a she-deer.)

In the instant case, *King Pandu* killed a he-deer at the time of enjoying sex with a she-deer. The deer was a transmigrated sage named *Kindam*, who made the above dying declaration. This example shows the observance of Privacy during the enjoyment of sex in the period of *Mahabharata*.

“*Sabraveetpashya vagavanpara vare reesheeninsthatan,*

Aawaryodrishya torevih kathang tusyatsamagamah”.¹²¹

(Don't you see many sages standing on both sides of the river! How can I have sexual intercourse with you within the reach of their sight.)¹²²

In the instant case, the sage named *Parasara* desired to have sexual intercourse with a girl, named *Matsyagandha* expressed his desire to her. It was happened near a river on both sides of which several *rishis* were bathing. Hence, *Matsyagandha* replied in the above-stated manner. Therefore, the sage produced mist using his supernatural power and enjoyed sex with the girl. This example again shows the practice of Privacy at the time of sexual enjoyment during the period of *Mahabharata*.

Rule – 4

The meeting of a woman and a man in a lonely place was prohibited by a rule described in the *Mahabharata*. The following texts express the rule:-

“*Madang pramadang purusheshu hitya sangyachhavabang pratigrihya mounam,*

Pradyumna Sambavapite kumaron nopasitabyon rahite kadachit”.¹²³

(With care and modesty, do not express your desire to another man. Although *Praduman* and *Samba* are your sons yet never sit with them in a lonely place.)¹²⁴

¹²⁰ *Id at p.595.*

¹²¹ *Id at p.301.*

¹²² *Ibid.*

¹²³ *Ibid, Aranyak Parva, p.1197.*

“*Tathaiva paradaranye kamabrittanra ho gatam,
Manasapi na hingranti te narah swargagaminah*”.¹²⁵

(Those who do not even think to have sex with other women in lonely place, go to heaven.)¹²⁶

Rule – 5

Another rule of *Mahabharata* expressly prohibited seeing of a naked woman. The following text expresses the rule:-

“*Na nagnameekshate nareeng na vidyanpurushanapi,
Maithunang satatang guptamaharanmg cha samacharet*”.¹²⁷

(A naked woman ought not to be seen and the learned ones ought to avoid seeing a naked man as well. Sex and food are to be enjoyed in a lonely place alone.)¹²⁸

Rule – 6

A rule of *Mahabharata* prohibited disturbing a meditating sage as a punishable wrong. The following text exemplifies the rule:-

“*Tapovighnakaree chaiba panchachuda susangmata,
Ramvanamapsarah shapadyasya shailatvyavagata*”.¹²⁹

(*Rambha*, a nymph, was turned into stone as the punishment for disturbing the meditating sage.)¹³⁰

Rule – 7

According to as rule of *Mahabharata*, confidentiality would be maintained within the relationship of husband and wife. The following text proves the existence of that rule:-

“*Tvatsyangnidhon yatkaretpatiste yadyapyaguhyang parirakshitavyam,
Kachitsa patnee taba Vasudevang pratyadishettena Vabedviragah*”.¹³¹

(Even a casual conversation with your husband ought to be kept confidential. Otherwise your co-wife may complain to *Krishna* who may entertain adverse opinion for you.)¹³²

¹²⁴ *Ibid.*

¹²⁵ *Ibid*, *Anushasan Parva*, p.850.

¹²⁶ *Ibid.*

¹²⁷ *Id at p.954.*

¹²⁸ *Ibid.*

¹²⁹ *Id at p.29.*

¹³⁰ *Ibid.*

¹³¹ *Ibid*, *Aranyak Parva*, p.1197.

¹³² *Ibid.*

Rule – 8

Strangers were prohibited to enter into one's house at odd hours by a rule of *the Mahabharata*. The following text shows the existence of that rule:-

“*Na vishravasajjata parasyagehang gachhennarashcheta yano vikale,
Na chatvare nishi tishthe nnigurho na rajanyang yoshitang prarthayeeta*”.¹³³

(One should not visit other's house at odd hours, one should not sit near a cross-road in the night and one should not try to make the King's wife his own.)¹³⁴

Rule – 9

Another rule contained in the *Mahabharata* expressed that, secret affairs of the sages should be kept confidential and should not be divulged anywhere. The following text clearly explains the rule:-

“*Amangalyani chaitani tatha krosho mahatmanam,
Mahatmanang cha guhyami na vaktavyani karhichit*”.¹³⁵

(The secret affairs of the sages must not be divulged any where...)¹³⁶

In a complete analysis of the rules of Privacy in the *Mahabharata*, the following points may be emerged:-

- (1) There were explicit rules of Privacy contained in the *Mahabharata*, like the *Ramayana*.
- (2) A number of exclusive rules of Privacy were prescribed for *Draupadi*, being the common wife of *Pancha Pandavas*.
- (3) Rules of Privacy were maintained at the times of meditating, sleeping and studying.
- (4) Privacy was also recommended for enjoyment of sex, having food and at the call of nature. All these activities were performed in secluded places, being not observed by others.
- (5) Privacy of prisoners and slaves had been guaranteed during their daily activities of sleeping, eating, sitting and exercising.
- (6) Privacy of women was an important right and watching, touching or meeting a woman in a lonely place was prohibited for men.

¹³³ *Ibid*, Udyog Parva, p.207.

¹³⁴ *Ibid*.

¹³⁵ *Ibid*, Anushasan Parva, p.688.

¹³⁶ *Ibid*.

- (7) Privacy of home was protected and visitors were not allowed in one's house without the consent of the owner during odd hours and at night.
- (8) Veil system was prevalent among the women for protection of their Privacy.
- (9) Privacy of meditating sage was an important aspect and intrusion of it was punishable.
- (10) Divulgence of confidential information was prevented. As such, Privacy of Information was recognized.

Over and above, the existence of Privacy could be evidenced from various incidents of *Mahabharata*. As for example, the incident of '*Vastraharana of Draupadi*', wherein she was forcibly brought to the '*Sabhagriha*' violating her Privacy with the intention of being unclothed and molested in front of everybody. At that time, *Sri Krishna* supplied her additional clothes and protected her from nakedness and shame in the public. Protecting her from denudation was actually the protection of her Privacy. Therefore, preventing the denudation of *Draupadi* was a remarkable event of upholding the Privacy of women during the period of *Mahabharata*. Hence, Privacy was found to be existent in *Mahabharata* by way of prescribing rules and regulations in this respect.

The study of the two epics of *Ramayana and Mahabharata*, gives us the examples of rules and regulations of Privacy existed therein. More or less the rules and regulations of Privacy were similar in *Ramayana and Mahabharata*. But, there were slight differences in case of veil system of women, because women of *Mahabharata* were far more advanced than *Ramayana* and even they had participated with men at the war. Also in the question of banishment of Privacy violated women, *Mahabharata* was much more liberal than *Ramayana* as evidenced from the banishment of *Sita* during *Uttarkand*, but no banishment of *Draupadi* at any time. Hence, after comparing the rules of Privacy contained in the two epics, it is found that, *Mahabharata* was far more liberal and advanced than *Ramayana*.

2.5.1.3. Privacy in the Manusmriti

Manusmriti or the code of *Manu* was considered as a landmark in the ancient Indian legal history. It was compiled approximately at 200 B.C. The subject matter of *Manusmriti* was divided into 12 chapters and 2694 verses. Eminent *Hindu* jurists viewed that, *Manusmriti* was a great reservoir of concepts of law, legal rules and

institutions. Even in the present era, it gives a vivid idea of the customs of the then society and social and religious observances of the then Indian people.¹³⁷ As *Manusmriti* was considered as a total code of conduct of the ancient Indian social and legal system, it contained elaborate rules relating to every aspect of human lives during that period. In this sense, it also contained a number of rules relating to Right to Privacy in ancient India.

The following rules are found in the *Manusmriti* relating to Privacy:-

Rule – 1

Rules had been prescribed for meditation alone in a lonely place, so that Privacy would be maintained. The following text gives the example of this rule:-

*“Ekakee chintayennityang vivikte hitamatmanah,
Ekakee chintayano hi parang shreyotdhigachhati”*.¹³⁸

(One should meditate alone in a lonely place for only by meditating alone one attains salvation.)

Rule – 2

Rules regulating Privacy were prescribed at the time of taking food and eating with certain persons was prohibited. The following text explains that rule:-

*“Chandalashcha varahashcha kukkudah shrva tathaiva cha,
Rajaswala cha shandashcha neksherannashnato dwijan”*.¹³⁹

(The twice-born should avoid eating within the reach of sight of the followings, viz. the persons who execute human beings, persons who are impotent, a woman during her menses, pigs, dogs and cocks.)

Rule – 3

Eating with a woman was prohibited and at the same time Privacy of women was recognized by rules. The following text describes that rule:-

*“Nashneeyadvaryaya sardhang nainameeksheta chashnateem
Kshuvateeng jremvamanang van a chaseemnanng yatha sukham”*.¹⁴⁰

(One should not take his meal with woman in one plate and one should not see a woman taking her meal, sneezing, yawning and while sitting at her leisure.)

¹³⁷ Dr.Paras Diwan, *Modern Hindu Law*, Allahabad Law Agency Publications, Haryana, 18th Edn., 2007, p.33.

¹³⁸ Hargovind Shastri (ed.), *Manusmriti*, p.276; G.Mishra, *op.cit.*, p.64.

¹³⁹ *Id at p.159.*

¹⁴⁰ *Id at p.187.*

Rule – 4

Seeing a naked woman was prohibited by rules and as such Privacy of women was upheld. The following text elaborates that rule:-

*“Upetya snatako vidwannekshennagnang parastriyam,
Sa rahasyang cha sangbada para streeshu vivarjayet”.*¹⁴¹

(A learned and wise person should not see a naked woman. He should avoid talking to a woman other than his family member in a lonely place.)

Rule – 5

Talking and meeting with a woman at a lonely place was prohibited as a punishable wrong. It also amounted to violation of Privacy of a woman. The following text explains the rule:-

*“Parastriyang yotvibadaitteerthetranye vanetpi na,
Nadeenang vatpi sangvede sa sangrahanamapnuyat”.*¹⁴²

(A person, not ill-famed for adulterous act, is said to commit the crime of ‘*Strisangrahana*’ if he talks to another woman at the bank of a river, in a forest and in a lonely place and shall be fined one thousand *panas*.)

Rule – 6

Living with a woman of any relation at a lonely place was prohibited by rules as an intrusion on her Privacy. The following text exemplifies that rule:-

*“Matra Swasra duhitra van a vivikta sano vabet,
Balavamindriya gramo vidwangsamapi kashati”.*¹⁴³

(One should avoid living even with his grown up mother, sister and daughter in a lonely place, for even a wise person may be over-powered by passion.)

Rule – 7

Rules had been prescribed for protection of Privacy of certain persons. Killing of a sleeping person was prohibited. The following text clearly explains the rule:-

“Na suptang na visannahang na nagnang na nirayudham,

¹⁴¹ *Id at p.188.*

¹⁴² *Id at p.463.*

¹⁴³ *Id at p.88.*

Nayuddhamanang pashyantang nap arena samagatam".¹⁴⁴

(One who is sleeping, one who is deprived of his shield, one who is naked, one who is without arms, one who does not participate in the battle and one who is busy fighting with another, should not be killed.)

Rule – 8

Privacy of sleeping persons was protected and their disturbance was prohibited by rules. The following text shows the evidence of that rule:-

"Shreyasang na pravodhayet".¹⁴⁵

(The elders should not be disturbed while sleeping.)

Rule – 9

Privacy was practiced at the time of attending the call of nature and rules had been prescribed therefor. The following text gives the instance of that rule:-

*"Tiraskrityochretkashtha loshtha patra trina dina,
Niyamya prayato vachang sangveetandagotvagunthitah"*.¹⁴⁶

After analyzing the rules of Privacy in *the Manusmriti*, the following points may be emerged:-

- (1) *Manusmriti* contained elaborate rules relating to Right to Privacy in ancient India.
- (2) There were various similarities regarding the rules of Privacy in *Ramayana-Mahabharata* and in the *Manusmriti*.
- (3) Privacy was prescribed for a meditating sage in a lonely place for attaining salvation.
- (4) Rules of Privacy were found for taking food, sleeping, enjoying sex and for other personal matters. Therefore, individual Privacy was recognized.
- (5) Right to Privacy of a woman got a prominent place in the *Manusmriti*.
- (6) Watching a naked woman was prohibited as well as women should not be seen or disturbed at their private moments. As such, liberty of women was recognized in the *Manusmriti*.
- (7) Taking a woman to a lonely place or living with a woman in such a place was prohibited by express rules.

¹⁴⁴ *Id at p.339.*

¹⁴⁵ *Ibid.*

¹⁴⁶ *Id at p.189.*

(8) Killing of a sleeping, naked or unguarded person was prohibited and thereby their Privacy was recognized.

(9) A sleeping person would not be disturbed, this rule declared the Privacy of a person while sleeping.

(10) Openly attending the call of nature was prohibited and certain amount of coverage was prescribed, which means, Privacy of a person attending the call of nature was recognized.

The above stated analysis clearly shows the existence of Privacy during the period of *Manusmriti*. As the *Manusmriti* prescribed norms covering every aspect of human lives, Privacy was not neglected therein. Privacy is an essential element of a civilized society. Indians described in the *Manusmriti* were civilized people of ancient Indian society. Hence, they could not overlook Privacy in their daily lives and as such, *Manusmriti* prescribed elaborate norms of Privacy therein.

2.5.1.4. Privacy in the Kautilya's Arthashastra

Kautilya's Arthashastra was the most important and masterly treatise on statecraft of ancient India. The Prime Minister of the *Maghadha Empire* during the reign of *Chandragupta Maurya*, *Chanakya* or *Vishnugupta* was the author of this great work.¹⁴⁷ It was called an *encyclopaedia* of statecraft and legal system of the ancient India. This famous work was created sometimes between 322 and 300 B.C.¹⁴⁸ It had propounded elaborate rules relating to duties of King and procedures of administration of justice in ancient India. The necessity of Council of Ministers to assist the King in the administration of justice was also highlighted therein. It reflected the social system of ancient India during the reign of *Chandragupta Maurya*. As it highlighted every aspect of human lives of the then Indian society, Right to Privacy was not overlooked by it. In fact, *Kautilya* realized the necessity of Privacy in various spheres of human lives as well as in the administration of justice in the society. Therefore, he had prescribed various norms of Privacy in the *Arthashastra*.

Various norms of Privacy had been found in the *Arthashastra*. Most important among them are as follows:-

¹⁴⁷ *Ancient India*, p.104.

¹⁴⁸ *Supra Note 76* at pp.37-38.

(1) Privacy and Confidentiality was maintained at the time of consultation of ministers.¹⁴⁹

The main purpose of prescribing Privacy during the consultation of ministers was to prevent the leakage or divulgence of the State Policies, based on which the *Indian Official Secrets Act, 1923* was enacted. Therefore, the importance of secrecy in official procedure could be easily understood. In this sense, *Kautilya's Arthashastra* was the father of Indian statecraft. According to *Arthashastra*, citizens' Privacy was protected, which could be violated by the Kings only in the interest of national security and for this purpose, though spying was allowed, but eavesdropping was prevented. *Kautilya* prescribed the urge or loyal spies of the King to infiltrate congregations of people in groups and to start a debate on the affairs of the state. In this way, people were encouraged to join the debate on state affairs to provide their views publicly.¹⁵⁰ This system was the most scientific system, by which a King could be criticized with the most scientific system, by which a King could be criticized with the most unbiased attitude. Hence, these rules and regulations propounded by *Kautilya* clearly emphasized the need and awareness of Privacy in the ancient India.

(2) *Kautilya's Arthashastra* had also prescribed elaborate rules regulating the construction of houses like the *Grihya-Sutras*. Norms of Privacy were also prescribed therein. Those rules are as follows:-

"The owners of houses may construct their houses in any other way they collectively like, but they shall avoid whatever is injurious. With a view to ward off the evil consequences of rain, the top of the roof shall be covered over with a broad mat, not blowable by the wind. Neither shall the roof to be such as will easily bend or break. Violation of this rule shall be punished with the first amercement. The same punishment shall be meted out for causing annoyance by constructing doors or windows facing those of others' houses, except when these houses are separated by the King's road or the high road..."¹⁵¹

With the exception of private rooms and parlours (angina) all other open parts of houses as well as apartments where fire is ever kindled for worship or a mortar is situated shall be thrown open for common use".¹⁵²

¹⁴⁹ R.Sharma Shastri (trnsld.), *Kautilya's Arthashastra*, 1961, p.19; Kiran Deshta, *op.cit.*, p.95.

¹⁵⁰ E.Jeremy Hutton et.al., "*The Right to Privacy in the United States, Great Britain and India*", in Richard P.Clande (ed.), *Comparative Human Rights*, 1976, p.151.

¹⁵¹ R.Sharma Shastri, *op.cit.*, pp.189-190.

¹⁵² *Id* at p.190; G.Mishra, *op.cit.*, pp.67-68.

The above-stated extracts from the texts of *R. Sharma Shastri* clearly show that, the houses were divided into two parts – **(a)** private rooms and parlours constructed exclusively for the use of the ladies, and **(b)** the rest of the house was open for common use of the family members alone. Hence, the entry of outsiders was restricted. Moreover, the sanctity of the family house was considered above all. For this purpose, entry of outsiders was prohibited without the consent of the owner during the day and night, both, violation of which was punishable with amercement.¹⁵³ Even, constructing doors and windows facing others houses were prohibited on account of creating annoyance to the neighbours, which was punishable wrong also. The main reason behind such provision was that, in those cases the private rooms and parlours meant exclusively for ladies would be seen by male strangers from their houses, which should not be allowed. This provision was similar with the contemporary *wrong of Nuisance under the Law of Torts*, where construction of a house obstructing the air or light of others' houses would be prohibited as actionable Nuisance. Moreover, the impact of this prescription of *Arthashastra* was not ended therein, it has been accepted by the British Indian Courts as the contemporary customary right to Privacy, which has later been codified as an *Easement Right under Section 18 of the Indian Easements Act, 1882*.¹⁵⁴

(3) Privacy of women was recognized and as such, the women working from home usually worked through the maid servants. Alongside, Superintendents were prohibited to look at the faces of the women visiting the work place, it was punishable with first amercement.¹⁵⁵

(4) Human Rights of Slaves were recognized including their Right to Privacy and human dignity. More specifically protection was provided to female slaves. They could not be forced to attend their master, when bathing naked, hurting or abusing them or violating their chastity was also prohibited. In all these cases, forfeiture of the value paid for the slave was prescribed as punishment.¹⁵⁶

¹⁵³ *Id at p.261.*

¹⁵⁴ Govind Mishra, *Privacy and the Indian Legal System*, Delhi Law Review, Vol.12, 1990, pp.46-83 at p.62.

¹⁵⁵ R.Sharma Shastri, *op.cit.*, p.126.

¹⁵⁶ *Id at p.206.*

(5) Unreasonable teaching, striking or hurting was punishable as assault as well as violation of one's Privacy.¹⁵⁷

(6) Human Rights including the Right to Privacy and human dignity of the Prisoners were recognized. Hence, obstructing their Privacy during sleeping, sitting, eating, and exercising was punishable.¹⁵⁸

(7) Abusing the habits of other persons was punishable as intrusion on Privacy.¹⁵⁹

(8) As the Privacy of the women was recognized, sexual intercourse with a woman without the consent and against the will was prohibited.¹⁶⁰

(9) Even the Privacy of a Prostitute was recognized and forcing connection with a Prostitute was punishable.¹⁶¹

(10) Other instances were also called violation of Privacy, like spreading false rumours, insulting the elders and violating the sanctity of kitchen, all of which were punishable.¹⁶²

(11) Privacy of Information was protected and the persons inquisitive to gather information about the woman and property of others were suspected as criminals.¹⁶³

(12) Though Individual Privacy was considered as an important human right under the *Kautilya's Arthashastra* and was protected therein, but provisions were also found where those rights could be curtailed in the interests of society and national security. As for example, moving in disguise at night was forbidden as punishable and secret agreements inside the house, at night or in the forest were declared as void. All those are instances of Social Privacy.¹⁶⁴

Apart from the above-mentioned provisions, *Kautilya's Arthashastra* had also prescribed Privacy of Information in different aspects of human lives. The following Sanskrit texts will provide the instances of such aspects of Privacy:-

Rule – 1

*“Susiddha moushadhang dharmang grihachhidrangcha maithunam,
Kuvuktang kushrutang chaiba matimanna prakashayet”.*¹⁶⁵

¹⁵⁷ *Id at p.219.*

¹⁵⁸ *Id at p.253.*

¹⁵⁹ *Id at p.218.*

¹⁶⁰ *Id at p.258.*

¹⁶¹ *Id at p.264.*

¹⁶² *Id at p.256-257.*

¹⁶³ *Id at p.245.*

¹⁶⁴ *Id at pp.164,167.*

¹⁶⁵ R.Pande (trnsld.), *Chanakyaniti Darpan*, p.103; G.Mishra, *op.cit.*, pp.76-77.

(The medicine, effectiveness of which has been tested and proved, acts pertaining to religion, defects of one's family, sexual matters, eating prohibited food and hearing insulting words ought not to be made public.)

Rule – 2

*“Aayurvitanḡ grihachhidrang mantramouśhadha maithune,
Danang manapamanocha naba goupyani karyet”.*¹⁶⁶

(Informations pertaining to the following nine subjects, viz. (a) age, (b) wealth, (c) defects of one's family, (d) mantra, (e) tested and effective medicine, (f) sexual matters, (g) honour, (h) insult and (i) gifts, ought to be kept secret.)

Rule – 3

*“Arthanashang manastapang grihineecharitani cha,
Neexha vakyang chapmanang matimanna prakashayet”.*¹⁶⁷

(A prudent man should not disclose the destruction of his wealth, mental agony, wife's character and insulting words spoken to him.)

Rule – 4

*“Na viswasetku mitre cha mitrechapi na vishyasat,
Kadachitakupitang mitrang sarvang gerhya prakashayet”.*¹⁶⁸

(One should never believe bad friends and also good friends entirely. For, in case, the friend turns out to be hostile, there is every possibility that all the secret and confidential matters may be divulged.)

The above mentioned study of *Kautilya's Arthashastra* produces ample evidences of existence of Privacy therein. Privacy was not only prescribed in the construction of houses or during consultation of ministers, but in every aspect of human lives. Therefore, it can be proved that, Privacy was prescribed as a code of human conduct in the then Indian society for upholding their human dignity. It was not an isolated affair, but it was the result of a constructive and well-built thought of statecraft, which was necessary to establish a great human civilization. Moreover, when control was prescribed on the withhold and disclosure of information, the ultimate goal of Privacy would be completed. The ultimate goal of Privacy is to

¹⁶⁶ *Ibid.*

¹⁶⁷ *Id at p.44.*

¹⁶⁸ *Id at p.8.*

maintain a balance between Individual and Social aspects of Privacy for the peaceful co-existence of a civilized society, which was found extensively in the rule making system of the *Arthashastra* as well as in the then Indian society. Hence, the *Arthashastra* was proved to be a fruitful work on Privacy.

Along with the discussion of *Kautilya's Arthashastra*, the history of Privacy in the *Hindu* period will become complete. The most important works on Privacy during this period are the *Grihya-Sutras*, *Ramayana*, *Mahabharata*, *Manusmriti* and the *Kautilya's Arthashastra*. All these works have projected over extensive rules of Privacy in the Hindu period. But, apart from these works, there were few other works, which also had dealt with the idea of Privacy in the Hindu period. In this respect, the following rules of **Panchatantra** in the Sanskrit texts can be mentioned:-

Rule – 1

*“Na vittang darshayetpraggah kasyachittaswalpampyaho,
Munarepi yatastasya darshanachchalate manah”.*¹⁶⁹

(A prudent man ought not to show whatever little wealth he has, to others. For the very sight of such wealth is said to be alluring to the sages.)

Rule – 2

*“Dareshu kinchit swajaveshu kinchit gopyang vayasyeshu suteshu kinchit,
Yuktang na ba yuktamidang vichintya vadeddhipashchanma hatoutnurodhat”.*¹⁷⁰

(One ought to keep secret something from his wife, something from his relatives, something from his friends and something from his son. When asked by the elders, he should reply after having taken into consideration whether such disclosure of confidential matter is proper.)

The above mentioned texts of *Panchatantra* clearly prove the existence of Information Privacy in various aspects of human lives in the Hindu period in ancient India. Control of information is necessary in every society for the protection of Privacy which ultimately becomes fruitful for upholding the human dignity. Hence, the discussion of all the works on Privacy in the *Hindu* period reflects the existence of Privacy as a value of human relations in ancient India.

¹⁶⁹ R.Jha (ed.), *Panchatantra*, p.180; G.Mishra, *op.cit.*, p.77.

¹⁷⁰ *Id* at p.32.

2.5.2. The History of Privacy in the Muslim Period

The ancient period in India was actually the *Hindu period*, after the end of which the *Muslim period* was started. The *Muslim period* was called the *medieval period* in the Indian history, which was started in 1206 A.D. with the establishment of *Slave Dynasty* in India by *Kutabuddin Ibak*. It continued for long, including the *Mughal Dynasty* and ended at the beginning of *British regime* in India. The *Muslim period* or *the medieval period* was called the '*Period of Darkness*' in the Indian history, because much legal developments did not take place during that period. Moreover, with the advent of *Muslims* in India, the rich heritage of ancient Indian culture of the *Hindu period* was destroyed to a great extent. Due to that destruction, various evidences of ancient Indian society were lost. But, later on, *Muslims* had also created their literatures and work of arts, by way of which Indian society was again enriched.

The *Muslim* social structure and their culture were based on the idea of '*Islam*' and '*Prophet Mohammed*'. '*Islam*' means peace and in other words, it moves towards the submission to the will of *God or Allah*. One who follows *Islam*, is called a *Muslim*. *Prophet Mohammed* is the representative of *Allah*, who is also the founder of the *Muslim religion*. As such, *Muslims* are the followers of *Prophet Mohammed* and believe in *Islam*. *Quran* is the *holy book of Islam*, which is also considered as the first source of *Muslim law*. Though the advent of *Muslims* in India was started in 1206 A.D., but it was originated in *Mecca* and in the *Arab countries*, long before that. Hence, the *Islam principles of law* were very old and applicable among the *Muslims* in every country, including India. The rules and regulations of *Islam* were ordained in the *Quran*. The *Muslim Personal Law* was called *Shariat*. Apart from that, there were *other sources of Muslim Law*, like *Hadith*, *Ijma* and *Qiyas*. All these sources coupled together formulated the principles of *Muslim Law*.

Muslim principles of Law covered every aspect of human lives and *Prophet Mohammed* prescribed a code of conduct for the *Muslim people* which were found clearly from the verses of *Quran*. Along with the other rules and regulations, Privacy and Human Dignity occupied a prominent place in the *Muslim Personal Law*. The '*Purdah*' or veil system was very much prevalent in the Muslim society, which showed the existence of Privacy as a deep rooted custom in the Muslim

society. Various rules and regulations of Privacy were found among the Muslims, which are discussed below.

The norms of Privacy existed in the *Islamic principles of Law* followed in India during the *Medieval or Muslim period* are as follows:-

(1) There were express rules relating to Privacy of home in Islamic Law. As the home was the basis of family, thereby for the protection of Family Privacy, Privacy of Home was recognized in Islam.

In this sense, Islamic idea of Privacy of Home was similar with the Western view of Privacy of Family and Home, as expressed in the famous maxim “*a man’s home is his castle*”.¹⁷¹ A similar view was found in the verses of *Quran*, which stated as under:-

*“O ye who believe, enter not houses other than your own without first announcing your presence and invoking peace upon the people therein. That is better for you, that you will be heedful... and if you find no one therein, still enter not until permission hath been given, and if it to said unto; go away, for it is purer for you, Allah knoweth what you do”.*¹⁷²

Hence, it was found that, the verses of *Quran* explicitly guaranteed Privacy of Home like the Western view and in both the cases, the underlying meaning of the maxim or the verses was that, Right to Privacy of every individual would be protected in one’s home and unwarranted intrusion with the Privacy would be prevented thereby.

(2) The right of individuals for protection against unreasonable intrusions upon their Privacy was declared as a rule by *Prophet Mohammed*. The rule was as follows:-

*“If a person looks at you, (referring here to a man’s home where he expects privacy) without your permission and you pelt with a stone and put out his eye, no guilt will be on you”.*¹⁷³

(3) The morality of Islam was based on the idea of ‘*Haya*’ or ‘*Shyness*’, which was built to create strong moral deterrence against the evil inclinations of human beings. The feeling of shyness would prevent a man from committing obscene or indecent

¹⁷¹ I.P.Massey “*Constitutionalization of the Right to Privacy in India*”, in B.P.S.Sehgal (ed.), *Human Rights in India*, 1995, P.311; Kiran Deshta, *op.cit.*, p.98.

¹⁷² *Quran* xxiv:27,28, quoted in Medani Abdel Rahman Tageldin, “*Right to Privacy And Abortion:Jurisprudence*”, *Aligarh Law Journal*, vol.12, 1997, p.141

¹⁷³ *Sahih Muslim* (authenticated traditions of the Prophet reported by Muslims), 1930; Kiran Deshta, *op.cit.*, p.99.

acts, for which he or she would be answerable to God and conscience. In this respect, the Holy Prophet gave the following rule:-

*“When you do not have Haya,
You may do whatever you please”.*¹⁷⁴

(4) Another important rule of Privacy enjoined by Islam was to clothe one’s body and to conceal the shameful parts of the body. The sense of modesty as a part of human nature was also prescribed by this rule.¹⁷⁵

(5) A rule prescribed by *Quran* prohibited looking at other women and imposed a duty to cover shameful parts of the body. The rule was as follows:-

*“(O Prophet), tell the believing men to restrain their eyes (from looking at other women) and guard their shameful parts; this is a pure way for them; surely, Allah knows full well what they do. And (O Prophet), tell the believing women to restrain their eyes (from looking at the other men) and guard their shameful parts (24:30-31)”.*¹⁷⁶

Therefore, the clothing of one’s body and prohibition of looking at other men or women in unreasonable manner were prescribed as the rules of Privacy in Islam.

(6) There were other norms of Privacy prescribed by *Prophet Mohammed*, which were as follows:-

“(a) When one of you goes to his wife, he should mind his shameful parts. They should not strip their clothes off their bodies and become naked like donkeys (Ibn Majah)

(b) Accused is one who casts a look at the shameful parts of his brother (Ahkam-al-Quran by Jassas).

(c) No man should look at a naked man and no woman should look at a naked woman (Muslim).

*(d) Beware, never strip yourself of clothes, for with you is the one who never leaves you alone, except at the time when you attend the call of nature or have intercourse (Al-Tirmizi)”.*¹⁷⁷

(7) Muslims were very much Privacy conscious and hence they imposed restrictions forbidding male members from entering the house without alerting the female members, so that their Privacy would be protected.

¹⁷⁴ S.Abul A’la Mandudi, *Purdah and the Status of women in Islam*, in *Al Ash’ari* (tr. and ed.), 4th edn., 1979, p.162; G.Mishra, *op.cit.*, p.70.

¹⁷⁵ *Id at pp.1,162.*

¹⁷⁶ *Id at p.163.*

¹⁷⁷ *Id at p.172; G.Mishra, op.cit., p.72.*

(8) For the maintenance of Privacy, entering into other's house without permission was prohibited. The rule in this regard was as under:-

"O Believers, do not enter houses other than your own until you have taken permission; and when you enter a house, greet the people therein with salutation... (24:27)".¹⁷⁸

(9) Peeping into the houses of other people was strictly prohibited as amounting to violation of Privacy. In this respect, *Prophet Mohammed* announced the following rule:-

"If a person peeps into somebody else's house without permission, the people of the house will be justified if they injure his eye (Muslim)".¹⁷⁹

(10) The prohibition to meet a woman in a lonely place was also recommended for the protection of the Privacy of a woman. According to *Uqbah bin Amir*, the following rule was provided by *Prophet Mohammed* in this respect:-

"Beware that you do not call on women in privacy... (Al-Tirmizi, Al-Bukhari and Muslim)".¹⁸⁰

(11) Privacy of a woman acquired a prominent place in Islam and in this respect , touching the body of a woman was prohibited . The following text prescribed by *Prophet Mohammed* evidences the rule:-

"The one who touches the hand of a woman without having a lawful relation with her, will have an ember placed on his palm on the day of judgment (Takmilah, Faith-al-Qadir)".¹⁸¹

Exceptions of this rule were also found. As such, touching of a woman was permissible only in exceptional circumstances, like an ailing woman, a woman produced as a witness or a party in a court, a burning or drowning woman or a woman whose life or honour would be in danger in any manner etc.¹⁸²

(12) Alongwith the Right to Privacy, Right to live with human dignity, Right to Self-respect and Honour were also protected in Islam. In this respect, insulting each other, sarcasm, libel, defamation and back-biting were prohibited in Islam. The rule was found in *Quran* as follows:-

¹⁷⁸ *Id at p.175.*

¹⁷⁹ *Id at p.176.*

¹⁸⁰ *Id at p.177.*

¹⁸¹ *Ibid.*

¹⁸² *Id at p.178.*

“O ye who believe. Let not some men among you laugh at others, nor defame or be sarcastic to each other, nor speak ill of each other behind their backs (49:11-12)”.¹⁸³

(13) Privacy of correspondence was also recognized in Islam. In this respect, *Prophet Mohammed* prescribed in a *Hadith* as follows:-

“People would be prohibited from reading letters of others and warned that even if a man casts side long glances in order to see a letter of another person, his conduct becomes reprehensible”.¹⁸⁴

(14) Individual Privacy got a prominent place in Islam and as such, Privacy of the citizens was upheld. On the contrary, a ruler was prohibited to intervene in the private affairs of the citizens. The rule was prescribed by *Prophet Mohammed* as follows:-

“When a ruler begins to search for wrongs among his people he wrongs them”.¹⁸⁵

(15) Privacy of Information was protected in Islam. In this respect, the holy *Quran* enjoined the following rule:-

“... And spy not each other”.¹⁸⁶

Hence, spying was prevented in Islam, which as a general rule would always be prevented in every society for the protection of Privacy. The modern theorists also consider spying as an instrument for intrusion on Privacy and thereby recommend its prohibition. In this sense, this rule of Islam law could be considered as the fore-runner of the Modern rules of Privacy Law.

(16) Last but not the least, prevalence of ‘*Purdah*’ or veil system was an essential attribute of Privacy among the Muslims. Muslim women were always covered with ‘*purdah*’ or veil and the Privacy of a ‘*Purdahnasheen Lady*’ could never be violated.

A detailed study of the norms of Privacy in Islamic Law shows the existence of elaborate rules of Privacy in Muslim India. Muslims were very much concerned about their Privacy and as such, they did not speak everything in public. The custom of confidentiality of information was also found among them. Moreover, the Muslims were habituated with a distinction between Public life and Private life. As

¹⁸³ Tahir Mahmood, *Human Rights in Islam*, pp.10-11.

¹⁸⁴ Abul A’la Mandudi, *Human Rights in Islam*, p.27.

¹⁸⁵ Sheikh Showkat Hussain, “*Right to Privacy*”, *Journal of Islamic and Comparative Law Quarterly*, Vol.III(2), June 1983, p.107.

¹⁸⁶ *Ibid.*

such, they always kept personal matters private and could never bring into the public. This instance shows the acceptance of Privacy as a human value in Muslim society.

With the discussion of Muslim rules and regulations of Privacy in India, the history of Privacy in India would become more or less complete. In this respect, it is pertinent to mention that, Right to Privacy was originated in India during the ancient *Hindu period*. Therefore, the study of Hindu literatures would give us the idea of Privacy at the first instance in ancient India. The *Vedas, Upanishads, Grihya-Sutras, Ramayana, Mahabharata, Manusmriti and Kautilya's Arthashastra* were the authoritative works of ancient India which could produce ample evidences of existence of Privacy in ancient India. The next period of Indian history on Privacy was the *Muslim period or Medieval period*. Ample evidences of Privacy would also be found from the opinions of *Prophet Mohammed* and the injunctions of the holy *Quran*. Hence, it can be said that, Privacy was never an alien in India, rather it was embedded in the deep rooted custom of the rich cultural heritage of India.

2.6. Privacy : The Development in U.S.A. and U.K.

Right to Privacy was originated in the animal world and later on absorbed in the primitive human society from the animal society. Therefore, the process of development of Right to Privacy was marked as a dynamic process, which started with the beginning of the human civilization and had grown simultaneously with the growth of the human civilization. As the society was transformed from primitive to ancient society, Right to Privacy was also transformed in the positive direction to cope with the changing needs of the society. The process of social transformation continued and the ancient societies were gradually converted into the modern societies. Along with such transformation, Right to Privacy was also reached the modern period from the historical period, where the need of Privacy was understood much more seriously, because due to the scientific development, new tools for invasion of Privacy was invented and the human right to Privacy was severely threatened. Hence, the process of development of Right to Privacy can be categorized under the heads of origin of Privacy in the primitive society, transformation of it in ancient human society and development of this right in the

modern human society. The most important part is the development of Right to Privacy in the modern society, which is discussed hereunder.

The eminent theorists of Privacy have told that, the modern claim to Privacy has been based on “Science, the secularization of Government, and political democracy.”¹⁸⁷ While explaining this contention, it is noteworthy to mention that, there are both positive and negative side effects of scientific development, on the one side, has made Privacy possible by making ‘a man’s house as his castle’ by way of creating private rooms, private offices and privacy in various spheres of the life of modern man. But, on the other side, it has made privacy impossible by way of invention of various scientific tools for invasion of Privacy, like wiretapping, eavesdropping and other methods of surveillance of human activities. The electronic devices invented to overhear and record human voice, lie detector, CCTV and spy hidden cameras are the examples of scientific tools for invasion of Privacy. As such, the modern scientific developments have not always been a boon for Human Right to Privacy, rather sometimes has become a bane also. Though in the modern period, human lives have been freed from the Church and State control, but absolute Privacy still has not been possible due to the encroachment of scientific devices on human lives. In fact, Individual Privacy is much more threatened during these days than was threatened in the olden days, consequent to the evil effects of scientific developments. Hence, the protection of Privacy has become the urgent need of the hour in the modern period.

The threats on Right to Privacy and the consequent needs for its protection is not an isolated event. It is a common phenomenon in all existing modern societies, be it a western society or an eastern society, be it developed, developing or an underdeveloped society. As such, the necessity for development of Right to Privacy in the modern period is culminated into every society in the countries around the world. The two most important Common Law countries, where extensive considerations of Right to Privacy have been found, are U.S.A. and U.K. The development of Right to Privacy in these two countries is discussed below.

¹⁸⁷ S. K. Sharma, *Privacy Law – A Comparative Study*, Atlantic Publishers and Distributors, New Delhi, 1994, p.333.

2.6.1. The Development of Right to Privacy in U.S.A.

The traces of Right to Privacy have been found in U.S.A. since the very old days during the modern period in the history of human civilization. Though this right has been flourished in U.S.A. extensively in comparison to various other European or Asian countries, but legislative developments of this right has not been found to a large scale therein, rather it is based mainly on judicial developments. In fact, the Common Law has never recognised any Right to Privacy. As the American Legal System was based on the Common Law System, therefore, this right was neglected therein at the very beginning for any legislative enactment. Furthermore, the courts of U.S.A. have also not considered this right for protection due to this reason until the dawn of 20th century. At the beginning of the 20th century only, it has become an important issue in U.S.A., because since that time innumerable cases have come to the U.S. courts for consideration of Right to Privacy as a legal right and to determine its nature, extent as well as to suggest measures for its protection.

More specifically, the concern for Privacy has been understood in U.S.A., in the modern period, with the publication of the famous Article titled “*The Right to Privacy*” by *Samuel Warren and Louis Brandeis*, in the *Harvard Law Review*, in *December, 1890*.¹⁸⁸ It is called the origin of Privacy in the modern period, because it has specified the extreme urgency of Right to Privacy in the modern period and has highlighted a serious technique of invasion of Privacy in the modern period, called ‘Investigative Journalism.’ It has prescribed that, whatever may be the reason, but in no manner the ‘inviolate human personality’ or the ultimate personality of human beings coupled with the Right to live with human dignity, can never be violated, the protection of which means, the protection of Right to Individual Privacy.

The issues of Privacy raised by Warren and Brandeis have been well accepted in U.S.A. and gradually the judges have started to refer this article in cases relating to Privacy. In this way, a new era has been started in U.S.A. for the development of Right to Privacy. In this respect, it is pertinent to mention here that, though the Right to Privacy has not been expressly mentioned or the term ‘Privacy’ is not defined in the U.S. Constitution, but it is impliedly protected in the provisions of First Amendment, Fourth Amendment and in the provisions of the Bill of Rights.

¹⁸⁸ 4 Harvard Law Review, 1890, p.193.

Due to the non-mentioning of this right expressly in the U.S. Constitution, giving decisions for protection of this right by the U.S. Supreme Court was a problematic matter. Publication of Warren-Brandeis' article has become a solution of this problem and thereby, the judges have started referring this article in their judgments, since then.

The first reference of the Warren-Brandeis article has been found in the *Schuyler vs. Curtis, 15 N.Y. supp. 787 (1891)* case. In this case, the Supreme Court of New York has considered the issue of violation of Privacy, which was never raised in U.S.A. before this case. In this case, whether the private citizens would have a right to erect a statue of a locally prominent woman without the consent of her family and whether that would be a case of violation of Privacy, has been the matter of controversy. With reference to the Warren-Brandeis article and famous old English case of *Prince Albert vs. Strange, 1848*, it has been held by the court that, it would be a matter of violation of Privacy without the permission of the family of the woman.

The next important case in U.S.A. based in the light of the Warren-Brandeis' article, has been the *Roberson vs. Rochester Folding Box Co., 171 N.Y. 538 (1902)* case. It has been a New York Appellate case, where the violation of Right to Privacy has been the question of law. Chief Justice Parker has recognised Right to Privacy in this case by mentioning the assertion of this right for the first time in the Warren-Brandeis' article.

The next case has come three years later, which has been decided by the Georgia Court, titled *Pavesich vs. New England Life Insurance, 122 Ga. 190, 194 (1905)*. In this case, the question has been raised regarding the existence of Right to Privacy. In this case, Judge Cobb has tried to find out the source of the development of Right to Privacy and has decided that, this right has been derived from natural law. Accordingly, Natural Law has been determined as the source of Right to Privacy in this case.

In this way, the process of development of Right to Privacy in U.S.A. has been continued. The next important landmark case which has helped to speed up the process, has been the *Olmstead vs. United States (1928) 277 U.S. 438*. The judgment of this case has been enriched with the views of Justice Brandeis again, nearly 40

years after the publication of the Warren-Brandeis' article. In this case, the issue has been raised regarding the admissibility of the evidence obtained by eavesdropping, especially by way of Telephone tapping, against a person charged with crime. It has been held by Justice Brandeis that, such evidence would be inadmissible on the ground of violation of Privacy of the person concerned. In this judgment, Justice Brandeis has discussed about the demerits of strict government surveillance on citizens' life by means of advanced scientific technologies. Finally, he has held that, discovery of such information technology, which can keep every sphere of human life under surveillance is unexpected on the ground of violation of Right to Privacy of U.S. citizens and as a protection against strict government surveillance, he has prescribed Right to Privacy or Right to be let alone, which should be provided to all Americans. Justice Brandeis's view in *Olmstead* case has become the well accepted law in U.S.A. with the passage of time, which has created a new dimension in the process of development of Right to Privacy in U.S.A. Though various other cases before the *Olmstead* case have recognised Right to Privacy, but actually it is the first case which has firmly established Right to Privacy in U.S.A. In this sense, it is marked as an important landmark in the era of development of Privacy in U.S.A. It is also significant due to the re-acceptance of own view by Justice Brandeis 40 years later.

Next important development in U.S.A. has come in the *Osborn vs. United States (1966) 385 U.S. 323* case. In this case, Justice Douglas has expressed his views in line with Justice Brandeis in *Olmstead* case. As such, Justice Douglas has raised the fears and concerns regarding the violation of Right to Privacy in the era of extensive development of Information and Communication Technology, where no part of human lives would be free from government surveillance. In this age, rampant government surveillance would be possible by way of eavesdropping, bugging and wiretapping without any effective judicial or legislative control. Consequently, even the bedrooms of individuals might be under the observations of CCTV and any data would be available in a mouse-click, thereby a society would be created, where government intrusion would be possible into all the secret regions of individual life. If such a situation occurs, then that would definitely be a case of acute violation of Individual Privacy. Hence, the concept of Totalitarian State will

again emerge, which should never be expected in the modern times and therefore, the guarantee of Right to Privacy is the need of the hour. Thus, Justice Douglas has supported the existence of Individual Right to Privacy to act as a check on uncontrolled government surveillance in the modern U.S. life.

The process of development of Right to Privacy in U.S.A. gradually has been enriched with the four important enactments, like *the Omnibus Crime Control and Safe Streets Act, 1968, the Fair Credit Reporting Act, 1970, the Crime Control Act, 1973 and the Privacy Act, 1974*. All these legislations are the important instances of recognition of Privacy by law in U.S.A. Among all these, the most important piece of legislation is *the Privacy Act, 1974*, which has given formal protection to Privacy by express legislative provisions. These legislations have also been added by a debate on May 23, 1968 by Senator Edward V. Long of Missouri by a proposed amendment to a bill for recognizing Right to Privacy, campaigning against police surveillance on private lives by establishing activist groups, like Los Angeles Citizens' Commission of Police Repression, the Program on Government Surveillance and Citizens' Rights, the Coalition Against Government Spying of Philadelphia and the National Organizing Conference of the Campaign to stop Government Spying. In this respect, special government bodies have also been established for prevention of privacy violations by excessive police surveillance, e.g. the Advisory Committee on Automated Data Systems, established by the Department of Health, Education and Welfare. All these initiatives have ultimately been resulted into the amendment of the U.S. Constitution for express guarantee of Right to Privacy therein, started in 1979 and ended in 1987. Another important development has been the concern raised by the American Bar Association Journal since 1973 to 1976. The most important area of development has been the protection of the life of U.S. citizens' from unreasonable search and seizure. Hence, the development of Privacy in U.S.A. has always moved towards a positive direction for creation of a paradigm shift from no Privacy to Positive Right of Individual Privacy.

2.6.2. The Development of Right to Privacy in U.K.

The Common Law has never accepted 'Privacy' as a general right. As the English Legal System has always been based on the Common Law principles, therefore, non-recognition of Right to Privacy has always been found in U.K. In the

absence of express legislations, the rules of Common Law have been made generally on the basis of English Customs. Due to these reasons, English Courts also have given their decisions based on English Customary rules and regulations or the English Common Law. In that situation of total dependence on Common Law, the non-acceptance of Privacy Rights in the Common Law System has been the main reason for non-formulation of principles of 'Privacy' in the English Legal System. As such, the rules of Privacy are non-existent in the Legal System of U.K.

The above reasons portray the absence of Privacy in U.K. But, the traces of Privacy were found in England in the ancient period, where the English society was based on the recognition of Privacy in their social structure. Even they had accepted the Westinian principle of 'Reserve' for maintenance of Privacy in their everyday conducts. But, the history shows that, there was absence of Physical Privacy in England, rather the English people mainly relied on Psychological Privacy. There was absence of private rooms, private offices, private cabins for members of Parliament and so on. Instead, they were habituated with maintenance of Privacy in their conduct and body language. Usually, they used to suppress their emotions in front of everybody and by means of that attitude, they maintained their Privacy in the public life. Hence, there was absence of Physical Privacy and presence of Psychological Privacy in U.K. since the ancient period.

The modern period in U.K. is not an exception to the ancient period and the behaviour and attitude of English people have been continued in the modern period along with the attitude of Common Law towards Privacy. This situation has been a great obstacle in the way of development of Privacy in U.K. in the modern period. In fact, due to these reasons, since the very beginning of the modern period, there has been no concept of Right to Privacy in U.K. and usually remedy has been given on the ground of breach of confidence in cases of privacy violations. The idea of Psychological Privacy of the ancient period has not been turned into fruitful legislations in the early modern period and only the later modern period has witnessed a few developments in the area of Privacy by way of enacting a number of statutes.

The origin of Privacy has been found in U.K. in the modern period from the old English case of *Prince Albert vs. Strange, 1848*, which has been considered as

an elaborate edifice of Privacy in England, because since the decision of this case, everyone has started thinking on the aspect of violation of Privacy and has tried to develop a well-advanced law on Privacy in U.K. In that case, Right to Privacy of Queen Victoria and her husband Prince Albert has been violated by a photographer Strange by way of unauthorised publication of personal photographs of Queen Victoria and Prince Albert without their consent. When the case has been brought into the Court, decision has been given on the ground of breach of confidence, because there has been no law on Privacy in U.K. at that period. This case has been the landmark case in U.K. in the era of development of Privacy laws, which has turned the direction of law-makers towards the making of positive laws on Privacy.

The next important development in the field of Privacy in U.K. has been the *Article 8 of the European Convention for Protection of Human Rights and Fundamental Freedoms, 1950*, which has not given protection to Privacy, but has protected everyone's 'right to respect for his private and family life'. Both are not the same thing and as such, it is an obstacle for development of Privacy law in U.K. Again, another impediment has been *Section 12 of the Human Rights Act, 1998*, which has accorded special protection to right to freedom of expression. In fact, there has been a long term controversy in U.K. among these two rights, which ultimately has become a major impediment for development of law on Privacy in U.K. This controversy has been continued for long and has been resolved to some extent only with the decision in *Douglas vs. Hello!, 2001* case, where it has been held by Sedley LJ that, "Everything will ultimately depend on the proper balance between privacy and publicity in the situation facing the court". This decision has improved the situation to some extent. It has been identified as a remarkable development in the field of Privacy in U.K.

The above-mentioned instances show the evidence of slower process of development of Privacy in U.K. In fact, there has been a long gap between the judgment in *Prince Albert vs. Strange case, 1848* and the *Article 8 of the European Convention for Protection of Human Rights and Fundamental Freedoms, 1950*. It shows that, the first enactment on Privacy has been made in 1950, which has taken a long time after the first judgment in 1848. Hence, legislative conversion of activism has never been prompt and active. In this respect, it is also pertinent to mention that,

Article 8 has been the only legal provision relating to Privacy in U.K. since 1950, though it does not directly deal with Right to Privacy. Again, the long time controversy between the Right to Privacy and freedom of expression has ceased only in 2001 by way of *Douglas vs. Hello!* case. It shows that, the positive development of Right to Privacy has been started in U.K. only in the recent period.

In the meantime, a few legislative developments have taken place in U.K. As for example, *the Private Members' Bills on Privacy, 1960, Lord Mancroft's Right to Privacy Bill, 1961 and the Mr. Walden's Bill, 1969*, have been introduced in the U.K. Parliament during this time. The series of *Private Members' Bills* have been introduced in the U.K. Parliament during the 1960's, which have discussed the privacy issues. *Lord Mancroft's Bill* has been concerned with privacy in the context of media. Other Bills have defined the Right to Privacy in very broad and general terms, a few of which have listed specific diverse areas of breaches of Privacy including industrial espionage, electronic surveillance and data banks.¹⁸⁹ Though various bills have been introduced in the U.K. Parliament, but none of them has become fruitful by way of converting into an enactment. In this sense, Lord Denning has stated that, as the Common Law of England has never supported the law of Privacy, thereby recognition of general Right to Privacy in U.K. during 1960-1970s would be a very doubtful issue.¹⁹⁰

The Lord Mancroft's Right to Privacy Bill, 1961 has tried to give protection to an individual from unauthorized publication in the mass media of the words relating to one's personal affairs or conduct causing distress or embarrassment to the individual. The other bills introduced in U.K. during 1960s have been dealt with various privacy matters including the Family Privacy. The most important bill has been the *Walden's Bill, 1969*, which has been supported by the Report and Proposals of the Committee of Justice, the U.K. section of the international Commission of Jurists. Consequent to this, the *Walden's Bill* has led the U.K. Government to appoint the *Younger Committee in 1970*, which has given a *Report on Privacy in 1972*.¹⁹¹ The constitution of the *Younger Committee to Report on Privacy* has been the remarkable event in the process of development of Privacy Rights in U.K. It has

¹⁸⁹ *Supra Note 187 at pp.11-12.*

¹⁹⁰ *Id at p.11.*

¹⁹¹ *Ibid.*

created a new dimension on Right to Privacy in U.K. The Committee has observed that, though Privacy is widely recognized as a legally enforceable right in U.S.A., but it is not recognised as an established legal principle and has not contributed largely towards the Respect for Privacy in daily lives, more specifically by the mass publicity media. It has also agreed on the issue of non-recognition of Privacy Rights by the English Common Law.

The Younger Committee has been constituted to consider the necessity of making a comprehensive legislation to give protection to the individual citizens as well as commercial and industrial interests against intrusions on Privacy by private individuals, organizations or companies, but not by the public authorities. The Committee has discussed about the growing menace of investigative journalism in U.K. and the problems associated with it, including the role of media in violating the individual Privacy. The Committee has also noted that, the growing pressures of modern industrial society are creating privacy violations in the home and daily life, which are supplemented by the urban housing structure and observation by the neighbours. Finally, the Committee has suggested that, enactment of a comprehensive legislation on Privacy in U.K. is the need of the hour.

The Younger Committee has also accepted the truth of absence of express legislations on Privacy and the presence of the equitable remedy for breach of confidence as the only effective remedy in U.K. This situation has taken a long time to change. Only in 1984, with the passing of *Data Protection Act*, one positive development has been made on the issue of Privacy. But, the Act has dealt with data privacy and not the individual privacy. However, the Act has been concerned with personal information automatically processed, without any distinction between the public and private sectors, but neither any information about legal persons, such as companies, nor information in manual files can be processed. National security has been in the category of exemption. Due to the various lacuna in the *Data Protection Act, 1984*, a new *Data Protection Act* has been passed in 1998 and the old Act has been replaced by the new one. The new Act has tried to improve the situation by covering a larger area.

These are the significant developments in U.K. on the issue of Privacy. Hence, the process of development of Privacy in U.K. is characterised by

transformation of the law of breach of confidence into the enactment of *Data Protection Act, 1998*, which is marked as a paradigm shift in the era of development of Privacy law in U.K. In the contemporary social scenario, data theft is no doubt an important issue, which is covered by the *Data Protection Act, 1998*, but U.K. is still awaiting a comprehensive legislation on Privacy like the *Privacy Act, 1974* of U.S.A.

2.7. Privacy : The Development in India

India is lagging far behind both U.S.A. and U.K. in respect of the process of development of Privacy herein. Absence of active judicial enforcement, express legislative enactments and lack of public discussion on the subject have led to growth and development of Right to Privacy in negative direction in India. But, surprisingly, India 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 Muslim women to prevent public exposure of their faces. The Quranic injunctions had also prescribed for the rules of Privacy for men and women both. Hence, it was only in the modern period, that the development of this right has suffered somewhat degradation and underdevelopment.

Unlike U.S.A. and U.K., the Privacy Laws in India were not based on Law of Confidence, rather it was considered as a Customary Right since the very old period. 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. 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 was available in India since olden days.

The development of Privacy in India in the modern period, though has suffered from certain amount of degradation, but that does not mean that, there has been no Privacy laws in India. In fact, it has been considered as a customary right and an easement right during this period. Moreover, various legislations of British India have contained express legal provisions relating to Privacy. The Courts of British India have also given various judgments in favour of protection of Privacy on the ground of either a customary right or an easement right. Over and above, after independence, Indian Judiciary has taken active initiatives for development of Privacy as a constitutional right as well as recognition of it as a fundamental right. Therefore, the process of development of Privacy in India during the modern period, though slows, but has never become stagnant. However, the process of development of Privacy in modern India can be divided into the following two periods :-

- (i) Pre-independence Period, and
- (ii) Post-independence Period.

2.7.1. The Development of Privacy in the Pre-Independence Period

In the pre-independence period or in British India, the social structure has been modernized by way of urbanization and industrialization. Also the spreading of education has increased the awareness of Indians towards Privacy and technological advancements have created new threats to Privacy. All these instances coupled together have made the British government to take steps for protection of Privacy by way of legislative and judicial initiatives. Hence, the process of development of Privacy has been started in India.

In this respect, it is pertinent to mention that, the following legislations of 19th and 20th centuries have dealt with Right to Privacy in India :-

- (i) *Section 509 of the Indian Penal Code, 1860* provides for protection of Right to Privacy.
- (ii) *Sections 26, 164(3) and 165 of the Code of Criminal Procedure, 1898* deal with the protection of privacy interest.
- (iii) *Section 122 of the Indian Evidence Act, 1872* protects marital privacy, *Section 130* of the said Act protects privacy of a witness regarding the financial details, *Sections 126 and 129* protect the privacy of confidential communications between lawyer and client.

(iv) *The Banker's Book Evidence Act, 1891* protects a customer from dissemination of the transaction details, only exception of which is *Section 6*, where an inspection is allowed under the order of the court.

(v) *Section 18 of the Indian Easements Act, 1882* prohibits construction one one's land within the neighbourhood intruding the privacy of the female apartments of the house. This provision is made to protect the Privacy of women within the house, the origin of which can be traced back in the Grihya-Sutras of ancient Hindu period and Quranic injunctions of the medieval Muslim period.

(vi) *Section 137 of the Income Tax Act, 1961* protects the financial interests of an assessee.

(vii) *Section 15 of the Census Act, 1948* protects the personal details of the citizens in the hands of the Government from public disclosure.¹⁹²

All the above-mentioned legislative provisions of 19th and 20th centuries have given express protection to the Right to Privacy in India in respect of various subject-matters. But, these provisions generally have guaranteed right to privacy to some limited extent and as such, these are not absolute. However, these can be considered as important initiatives in the process of development of Privacy in India.

Apart from the above-mentioned provisions, there are certain laws in India which speak against the protection of Privacy and by these laws, Individual Privacy can be curtailed either in the public interest or for the protection of Right to Freedom of Information. As for example, *Section 26 of the Indian Post Act, 1898* empowers the Central and State Governments to intercept postal articles during public emergencies and for the protection of public safety or tranquility, but only by a written order and not otherwise. Also various provisions of the *Telegraph Act, 1885 and the Post Office Act, 1898* cause violation of Individual Privacy by way of telephone tapping and postal censorship. Hence, amendments are required to change said laws.¹⁹³

The following recommendations have also been made for the protection of Privacy in India :-

(i) The Law Commission of India has recommended that, a new section should be inserted in the *Indian Penal Code* to declare any unauthorized photography,

¹⁹² Kiran Deshta, *op.cit.*, pp.102-103.

¹⁹³ A. G. Noorani, "Parliament and Privacy," *Economic and Political Weekly*, Feb. 1984, p.239.

use of artificial listening or recording apparatus and publishing such information as punishable offences.¹⁹⁴

(ii) The Second Press Commission has recommended an amendment to the *Press Council Act, 1978* to uphold the Right to Privacy by introducing it as a function of the Press Council.¹⁹⁵

Hence, the pre-independence period in India is subjected to various legislative developments on Right to Privacy, which shows that, Indian law makers have always tried to uphold Privacy rights.

2.7.2. The Development of Privacy in the Post-Independence Period

The post-independence period in India has been marked as an era of significant development in the sphere of Right to Privacy. But, at the very beginning, the independent India has not started thinking about the Right to Privacy. Also, at the time of making the Indian Constitution in 1950, no initiatives have been taken for the protection of Privacy. In fact, the need for protection of this right has been emerged later on. After 1950, the traces of Privacy have been found in various Indian legislations, as for example, the provisions of *In Camera proceedings* in different matrimonial statutes, like the *Hindu Marriage Act, 1955* and the *Special Marriage Act, 1954*. These are the significant developments in the area of Privacy in India.

Though the Indian Constitution has not spoken expressly about the protection of Privacy in India, but few instances are found in the Constituent Assembly Debates, where discussion on Privacy have been made. As for example, in the Constituent Assembly, Mr. Karimuddin has proposed an addition to a clause to the draft Article 14,¹⁹⁶ which has been similar to the protection of Right to Privacy against search and seizure as expressed in the 4th Amendment of the U.S. Constitution. Dr. B. R. Ambedkar has also supported this view at the time of making of the Indian Constitution, but ultimately it has not become a fruitful effort due to the disagreement of the other Constituent Assembly members. In fact, the Constitution makers have not realized the necessity of incorporation of Right to

¹⁹⁴ Law Commission of India, 42nd Report on Indian Penal Code, 1971, pp.339-340.

¹⁹⁵ Report of the Second Press Commission (1982) as quoted in E. S. Venkataramiah, *Freedom of Press : Some Recent Trends*, 1987, p.117.

¹⁹⁶ Now Article 20.

Privacy as a fundamental right in the Indian Constitution. The legislative history of the Constitution shows that specifically.¹⁹⁷

At the time of the adoption of Indian Constitution in 1950, the Right to Privacy has not been declared as a fundamental right or other constitutional right, due to the influence of British legal system more than the American legal system. Moreover, the Indian legal system is based on the English Common Law, consequent to which, the Indian Judiciary has, at the very beginning, not recognized Right to Privacy. But, gradually Indian Judiciary has become liberal and with the expansion of *Article 21 of the Indian Constitution*, in the *Maneka Gandhi's Case in 1978*, Right to Life and Personal Liberty has got a new dimension. When the idea of 'Personal Liberty' has expanded so much to include within it various other rights, Right to Privacy has been included within it. In this way, a new era of judicial development of Right to Privacy has been started in the light of the *Article 21 of the Indian Constitution*. The first case for protection of Privacy in this era has been the *Kharak Singh vs. State of U.P., AIR 1963 S.C. 1295* case. Since then, Right to Privacy has been developed in India by way of case by case development and still it is developing to incorporate various new areas of Privacy.

Hence, the process of development of Right to Privacy in India has been enriched with the initiatives of the Indian Judiciary. But, simultaneously certain legislations have been developed which are detrimental to the privacy interests of the individual citizens, like *the Right to Information Act, 2005* and *the Information Technology Act, 2000*. In the modern period, these are the two controversial legislations which pose serious threat to Individual Right to Privacy. In this situation, the only ray of hope is the *Right to Privacy Bill, 2011* now known as *Privacy Bill, 2011* which can create significant developments in the field of Privacy in India.

2.8. Sum-Up

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

¹⁹⁷ Constituent Assembly Debates (1948-49), Vol. VII, p.794.

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.

In the absence of express legislative enactments, the law of Privacy has been gradually developed by judicial pronouncements since the very old past in the countries of U.S.A., U.K. and India. In U.K. and U.S.A., it was based on the Law of Confidence, whereas, in India, it was considered as a Customary Right. However, in the International arena, Right to Privacy has become a matter of discussion since the adoption of Universal Declaration of Human Rights, 1948.

With the advancement of modern science and technology, the scope and ambit of Right to Privacy has been expanded to a considerable extent. Though the right has got many new dimensions in the modern age, but it is not a right of recent origin, rather it has a great historical background and has been originated in the very old past.

Thus, the origin, history and development of Privacy can be summed-up as follows :-

- 1) 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.
- 2) 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.
- 3) 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.
- 4) In fact, the idea of Privacy was originated in the animal society and gradually it has been incorporated into the human society.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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 fulfillment of physical and psychological desires of man.

11) 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.

12) 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.

13) The comparative analysis of Privacy in different Western societies and cultures show that, Privacy is not a static, rather a dynamic concept.

14) 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.

15) 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'.

16) 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.

17) Privacy was never an alien in India, rather it was embedded in the deep rooted custom of the rich cultural heritage of India.

18) The development of Right to Privacy in U.S.A. in the modern period has been bases 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.

19) 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.

20) 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.