

EMERGING CHALLENGES TO THE RIGHT TO PRIVACY OF WOMEN

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*The soul selects her own
Then shuts the door;
On her divine majority
Obtrude no more*

Emily Dickenson

I. Introduction

The world has witnessed vast changes in diverse fields over the past few decades. In particular, the culmination of the First World War led the thrust on labour rights being followed with renewed vigour and redoubled efforts by the International Labour Organisation. Due to concerted efforts under the aegis of the League of Nations the rights of the working class came to be recognised and the issue of privacy came to be acknowledged. Thereafter, consequent upon industrialization along with the thrust on the right of the working class, the right to privacy came to be recognised. However, the World War II, and the polarization of countries into different blocks resulted in devastating consequences of unmitigated dimensions, leading the axis powers, along with China and the Soviet Union deliberate on the establishment of the United Nations over seventy years ago.

Alarmed at the devastation heaped upon humanity at large, the member states that comprised fifty odd countries² got together to provide for a better world for humanity, with a mission and vision for peaceful co existence in the shape of the Charter of the United Nations.

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² Poland Signed the Charter on October, 15, 1945 becoming the 51st member.

Some articles³ in the charter, devoted to the cause of human rights and it was left to the six principal organs⁴ of the United Nations, primarily the United Nations General Assembly, to develop and give shape to the fundamental ideals of the United Nations.

Seven decades thereafter, the world has witnessed much progress and development along with accompanying stresses and strains, thereby calling for renewed efforts on the world body to perform the mandated task. The exercise at stock taking has made the world body assess the challenges that lie ahead in the present day unipolar world as well as the need to avoid dogmatism on several counts. An effort of the world body has been to promote human right concerns through concerted efforts to confront the affronts and build a better place for humanity.

II. Human Rights Discourse

The cause of liberty through dignity and justice has been at the focal point of the human rights movement. The rights discourse has gained in momentum, relegating to the background, the concept of duties so dearly espoused in the orient. Although this may not be considered a paradigm shift, correctional measures in the shape of the duty to respect, protect and fulfil has now come to be increasingly realized in great measure in respect of economic, social and cultural rights.

The human rights movement, from being largely a mandate on the states in the backdrop of individuals, also began to be recognised as a right of the peoples' in the shape of collectives. Added thereto, though not appended, the dimension of corporate legal entities in the shape of Multinational Corporations has come to emerge. Their influence has very much impacted upon the human rights movement. This can be

³ Article 1, 55, 56, 62, 68, 73, 76

⁴The General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.

gauged from the fact that some of these multibillion dollar giants have budgets that far exceeding the Gross Domestic Products of many nations. There are also instances of the budgets of such countries being influenced by these corporations having a cascading affect on issues of human rights, including those centering on women's issues, in particular their right to privacy.

Globalisation, the impact of World Trade Organisation, both a boon and bane as seen by some, along with Environmental concerns, have many an occasions defied consensus measures at effective resolution, and come to be realised as providing for dangerous portents for the future of humanity. Of late, these have been sought to be countered in the shape of corporate social responsibility. In many cases, their contribution have come to be recognised in increasing measure. These have however, contributed much to the issue of Corporate Social Responsibility emerging as an obligation. In some jurisdictions, this has been recognised in the shape of a legal mandate cast upon them through legislation.

III. The Development Debate and Privacy

Progress and development has not been without pitfalls; some assuming serious concerns. Some may be whipped up or countered as fallacies, but others have provoked serious thought and action in the development debate. One among the many is the debate on privacy, it being a value guaranteeing individual moral autonomy. The debate extends to issues of privacy vis-à-vis publicity, openness and the right to information; but discussion on the same will be refrained from, despite bearings on the privacy rights of women.

The moot point for consideration is that of invasion of privacy and confidentiality bordering upon public interest. This has become all the

more noteworthy. Many an issue that would have been considered or taken for granted in the ambit of privacy, now seem to be invaded. They are being subjected to strains and onslaught, particularly on aspects of women's right to privacy that finds varied connotations and manifestations in virgin areas like same sex marriages, reproduction rights and bodily integrity.⁵

The world body and other agencies at the international and regional levels have adopted instruments bearing upon the right to privacy, albeit indirectly. At the international level mention may be made of the International Bill of Human Rights. Different aspects of human rights, as will be observed, too have a profound impact and bearing on the right to privacy. Despite human rights being considered as universal and interdependent, issues of cultural specificity have revealed the recognition of the generational divide as well as those of cultural specificities that have much to do with that of privacy, leading UNESCO to adopt certain measures in this context. The primacy of the issue can be gauged from the fact that engagement has been witnessed at various forums to promote development honouring the right to privacy. Tehran to Vienna and Nairobi to Beijing, among others, received focused attention on the right to privacy in the context of the liberty and dignity debate.

The challenge to the right to privacy has assumed much significance in the information age. Privacy has suffered for being exposed to unscrupulous elements in the face of commercial exploitation, sans any effective domestic legal regime, or for that matter an acceptable international legal order, either under the aegis of the United Nations, or its subsidiary agencies, inter governmental organizations as well as

⁵Kaul, A.K in foreword to JyotiMozika, (2013) *Law and Protection of Right to Privacy*, R Cambray and Co, p X.

regional and sub regional entities. So too, apprehensions have been raised on the impact on privacy during discussions on bilateral treaties, agreements or arrangements beside those partaking the shape under the shade of multi lateral agencies which are yet to address these vital concerns

IV. Challenges faced by women

The bane or lack of effective measures to address issues of privacy has been felt by womenfolk much more severely. Consequently, almost every sphere of their activity, from the bedroom to the board room or other public space has come to be severely invaded. Hence, a sincere effort is being made by the investigator to depict and analyse the issue. The primary effort in the main, would be to address the issue in general, its recognition as a legal right and then to conscientiously branch out to certain pertinent issues within the domain of the domestic legal regime. In doing so, the international thread of the mandate under soft law and cooperation and response from the states under the Convention on the Elimination of Discrimination Against Women is proposed to be looked at in a limited manner. The issues relating to the Optional Protocol and reflections by the Special Rapporteurs, though not specifically addresses the issue at hand, bears relevance. Thus these are also proposed to be taken up for brief discussion.

V. Privacy

The term 'privacy' has received recognition across the global spread. Better understood than defined for lack of consensus, it has posed certain concerns. Privacy is prompted by the desire to have at least a bare minimal personal space away from public gaze, in the shape against intrusion by the state and other entities This essentially is the quintessence of 'privacy', more so a fear of intrusion, wherein

individualism begins to accommodate state obligations, leading to a threat perception, owing to the growing complexity of society.

It's idea can be said to be associated with history of mankind, though the concept remained vague. Irrespective of the era of civilization, this has had a bearing upon individuals from the cradle to the grave. Beginning from the clan to the society and the outer environs, people while partaking in the social good have very zealously been guarding their privacy. After infancy, particularly during childhood and adolescence, parents, guardians and elders have taken much pains to inculcate moral and ethical values in the young ones, that include respecting the privacy of others.

The world is replete with anecdotes, fables and other incidents , documented as well, handed down by word of mouth through generations over the centuries. 'Privacy' has to be prompted by the desire of non interference in certain personal matters. In fact, from the days of yore, the society sought to inculcate respect for others. The ancients system of *Gurukul* in India, where the pupils were under the direct tutelage of their Gurus, can be considered an apt illustration. Therein, aspects of privacy through inculcation of much regarded and prized value based education were imparted, till such time they were considered prepared for future life after the *dikshantsamaroh*, the shape of modern day convocation.

During those times, privacy was regarded to be part of positive morality, rather than positive law. Worship, sex, family matters⁶were considered as matters purely within the private domain. So too, privacy of women, family, procreation, communication and those related to

⁶Hitopadesh I:123

personal privacy were protected by the society under the *Dharmashastras*⁷.

Gradually, from being associated with the law of private property, it was propounded to be regarded as an inviolate personality by Warren and Brandeis⁸. The latter went on to become a judge of the Federal Supreme Court in the United States. In view of their singular contribution in shaping the concept of privacy for years to come, the relevant portion of the article is quoted in extenso: They observed that

[T]he rights so protected, whatever their exact nature, are not rights arising from contract or from special trust, but are rights, as against the world; and, as stated above, the principle which has been applied to protect these rights is in reality not the principle of private property, unless that word be used in an extended and unusual sense. The principle which protects personal writings and any other productions of the intellect or of the emotions is the right to privacy and the law has no new principle to formulate when it extends this

⁷ *Supra*, n 4, p 16.

⁸ Warren Charles and Brandeis, Louis D The Right to Privacy, 4 *Harvard Law Review* 1890, 193, p205

Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that “what is whispered in the closet shall be proclaimed from the housetops.” . . . The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle.

protection to the personal appearance, sayings, acts, to personal relation, domestic or otherwise.⁹

The debate has grown over the years, since people have been sensitive to aspects of 'privacy' and the need to ensure the same. It is, therefore, considered paradoxical that judicial decisions have furthered it, even in the absence of any constitutional recognition or specific legal emanation. The latter concept owes its origin to modern times of quasiquintennial vintage. This has brought about the concept of a legal regime in the sphere of privacy to emerge from the conceptual paradigm.

It is noteworthy that while expecting self respect, the duties cast upon one not to invade the privacy of others have been much substantiated. This is very much in evidence in the lessons imparted through formal and non formal education. Yet, much concern has been witnessed and evidenced with respect to the issue of 'privacy'.

Delving into the constitutional and legal nuances of the right to privacy with appurtenant ramifications as reflected through in their implementation and the gloss through judicial renderings, being pertinent would be undertaken in the present investigation. However, an endeavour will be made in relating it to the specified issues that women folk have been confronted with. The precursor to its being considered in the shape of a legal regime requires an apposite enquiry into the purpose and meaning of privacy.

Reflecting upon the jurisprudential¹⁰ spectrum in the light of judicial renderings in India, wherein the aspect of fundamental normative right being considered in the light of propositions laid down under the first

⁹ Ibid, 103.

¹⁰ *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295

ten¹¹ amendments of the US Constitution,¹² provide early light on the trend of judicial rendering on the penumbral issues. The Supreme Court had before it the dissentient view of Justice Brandeis in *Olmstead v United States*¹³ (that later went on to become the law) wherein he stated that the government has far more effective means that stretching upon the rack to obtain disclosure in court of what is whispered in the closet....¹⁴ Though the instant case related to surveillance, and not directly linked to women's issues, the principle laid down has much significance.

Yet, before embarking upon such an enquiry, it would be appropriate to attempt to deal with the nuances prior in point of time .Nevertheless, the parameters relating to the privacy rights of women in contemporary context is proposed to be the focal point of the brief investigation. This naturally leads one to the definitional aspects of the term.

Privacy is very intricately linked with the protection and inviolability of the individual from unreasonable or outrageous individual inviolability in any form whatsoever. Privacy is expected to place an individual on a pedestal of sanctimonious inviolability, in the shape of an unbreakable wall of human dignity¹⁵ derived from the law, customs and traditions.

Metaphorically, seclusion and solitude, if one may equate with privacy, provides for a space for inviolability where an individual acts as a sentinel against any form of intrusion or interference. Herein, the urge to keep things considered private from the gaze of public domain,

¹¹ First, fourth and seventh constitutional amendments

¹² Preceded by the American Declaration of Independence, 1776.

¹³ 277 US 438 (1928)

¹⁴ Ibid p 474

¹⁵ Supra, n 1, p1, Clinton Rossiter, *The Free Man in The Free Society*,

within set parameters is very much in evidence; the breach of which results in violation of the sanctimonious duty . Aspects of closed chamber treatment if violated, leads to a severe threat to one's individuality. It invariably has the propensity to encroach upon the personal liberty¹⁶ and dignity of an individual; hence considered a right to be left alone.¹⁷ Privacy has been increasingly challenged by the purported plea of public interest. For instance, mass surveillance of an entire population, either by the state in the interest of the populace, from subversive elements or use of satellite imagery by the state or corporate entities, operating for commercial or strategic interests, often times results in breach of privacy. Nonetheless, being outside the purview of the present analysis, other than a brief mention by way of passing reference, the same is consciously proposed to be kept out of the pale of the present analysis. So too, appurtenant issues bordering on the digital age and terrorism would be to be left out of the focal theme.

VI. Meaning and Definition

Privacy has been considered to amount to control over information by Charles Fried¹⁸ in the following words: “ Privacy is not simply an absence of information about us in the minds of others; rather it is the control we have over information about ourselves, the person who enjoys privacy is able to grant or deny access to others....” The aforesaid description precisely conveys to stress control over knowledge about oneself. It is considered to be an elusive concept because it is easier to enumerate than define.

¹⁶ Supra, n 1 preface XII.

¹⁷ *R Rajagopal Vs State of TamilNadu*, AIR 1995, SC 264.

¹⁸ Goyal.Gaurav and KumarRavinder , *The Right to Privacy in India: Concept and Evolution*, <http://www.gauravgoyalbooks.com/book/> retrieved on 6th August, 2016 at 12.07 am.

Privacy implies the right to control one's destiny on one's own terms. In other words, it may be considered as 'claims of individuals, groups or institutions to determine when, how and to what extent information about them is communicated to others'. However, in current parlance, this seem to be easier said than done, due to pervasive intrusion upon privacy. The term is easier to understand than being interpreted, for it fails to convey any concrete meaning since lawyers, legal academics, philosophers, anthropologists and sociologists have varied understandings on it.

"It is understood as a right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned"¹⁹. It may be said to imply, rather be regarded as the right of an individual to exercise control over personal information. Beyond being regarded to be within the domain of the law of torts, progressively it has come to robe in physical, spiritual and intellectual aspects within its scope. Gradually it came to be associated with the ability of an individual or group to seclusion and to express them selectively.

The wish for non interference, autonomy and to be let alone definitely calls for privacy, so as to enable one to be at liberty and being protected from invasion of one's privacy in the face of multi dimensional modes at invasion of privacy. According to Bates, it reflects a person's feelings that others should be excluded from something that is of concern to him, and also recognition that others have a right to do so.²⁰ Similarly, it has been regarded by Sidney M.

¹⁹ Quoted in Black's Law Dictionary cited by DD Basu, *Introduction to the Constitution of India*, 13th ed p 86

²⁰ A. Bates, Privacy- A Useful concept? 42, *Social Forces*, 432 (1964)

Jourard²¹ as an outcome of a person's wish to withhold from others certain knowledge as to one's experience, action as well as future intentions; which he terms as 'an enigma to others or to control others' perceptions and beliefs about the self. However, Frederick Davis²² adopts an extreme position in regarding the concept of privacy as having utility only in a psychological sense, without the need for independent legal recognition.

Between the widely accepted classification of privacy torts of Prosser²³ and that of Davis who was against privacy being regarded as a legal right, it being regarded as a derivative of other individual rights, Bloustein²⁴ developed a general theory of individual privacy. Love, trust and friendship, respect and self respect were considered by Charles Fried as being rational for such significant ends. According to him,

Privacy is not simply an absence of information about us in the mind of others; rather it is the control we have over information about ourselves.... The person who enjoys privacy is able to grant or deny access to others.... Privacy thus is control over knowledge about oneself. But it is not simply control over the quantity of information abroad; there are modulations in the quality of knowledge as well.²⁵

²¹ Some Psychological Aspects of Privacy, 31 *Law and Contemporary Problems*, 307 (1966)

²² Frederick Davis, What do we mean by 'Right to Privacy'? 4 *South Dakota Law Review* 1, at 4,5 and 20 (1959)

²³ William Prosser, Privacy, 48 *California Law Review*, 383, at 392 (1960)

²⁴ Edward Bloustein, Privacy as an Aspect of Human Dignity: An answer to Dean Prosser, 39 *New York University Law Review* 962, 1003 (1964)

²⁵ O'Brien, David M. Privacy, *Law and Public Policy*, (1979) p 13

Definitions have been advanced by Alan F Westin²⁶, Richard B.Parker²⁷, Gaiety²⁸ and Clinton Rossiter²⁹ indicating control over personal information, though no single definition has gained universal recognition due in part to logical fallacies. Although bereft of a universal definition, it undoubtedly has evolved over the years, posing a much greater challenge in present days.

The constitutional vicissitudes of privacy therefore merits a discussion. Bereft of any legal or constitutional recognition, it is susceptible to diverse interpretations of varying magnitude. Despite seminal write-ups, there remains considerable confusion as to its ultimate objective³⁰ as reflected from the critics of the Brandeis theory. In fact, Dean Prosser is far from being comfortable in it being regarded as an independent value since he considers it to be a composite of interest in reputation, emotional tranquility and intangible property³¹.

The constitutional niceties apart, the concept of privacy, a little over the past twelve decades or so since Brandeis, have received judicial recognition though various decisional laws when called upon to decide on various aspects of privacy being impinged upon. In fact, the judicial renderings has helped provide sufficient gloss as the following paragraphs would reveal. Concurrently, there have been developments in the legislative arena as well. This helps one to drive home the fact that the legal regime includes statutory as well as judge made law.

²⁶ Privacy and Freedom, New York, *Atheneum*, 1970, p 7-8 who considered as the claim of individual, groups or institutions

²⁷ A Definition of Privacy, 27 *Rutgers Law Review*, 275, 280-81 (1974) who associated the concept of privacy with the control over a person who can sense

²⁸ Redefining Privacy, 12 *HCR-CLR* 233 where he identified with an autonomy or control over the intimacies of personal identity.

²⁹ KK Mathew, The Right to Be Let Alone, (1979) 4 *SCC 1 (Journal)*, p 2 ho regarded it as an unbreakable wall of dignity and rescue against the entire world.

³⁰ *Supra*, n 4, p 23

³¹ *Supra*, n 28.

Moreover, the issue has assumed significance for women from the human rights front as well and the same is proposed to be dwelt with through various parameters in succeeding paragraphs.

VII. Right to Privacy

It has been recognised that an individual has a right to the protection of one's privacy. Privacy has gained recognition as a right only recently, if one may say so. However, countries have been slow in effecting holistic legislative enactments, though some provisions are to be found in a number of statutes to offer protection to privacy in some form or the other. It is accepted that there should be no interference by a public authority, except in accordance with law in the domain of privacy. Hence, a delineation has been sought to be drawn³² between privacy and the right to privacy. Hyman Gross³³ opines that a legal right of privacy exists to the extent that such legal interest may be accorded protection by legal procedures. However, the right to privacy does not add itself to easy logical definitions.

An attempt is being made in the following paragraphs to identify the comprehensive developments on the right to privacy that brings within its ambit the various legal dimensions. Apart from providing legal protection to the family, the matrimonial home in the power of the argument of basic human rights and beyond, manifold aspects, in the context of womenfolk in particular, are now very much regarded to have been a matter of such right.

The recognition of privacy has been regarded³⁴ by Fredrick Davis as tantamount to legitimizing a right to privacy. The right to be let alone, one of the most prized rights constituting privacy, enunciated by

³²Supra, n 24, p VII Foreword of Pritchett

³³ The Concept of Privacy 42 *New York University Law Review*, 34, 53 (1967)

³⁴ Supra, n24, p 7

Warren and Brandeis in their article³⁵ in the year 1890 received constitutional recognition 75 years later in the year 1965 in *Griswold V Connecticut*³⁶. Justice Douglas, in a classic case of judicial activism, found a right to privacy in the “penumbras of the first, third, fourth, fifth and ninth Amendments of the American Constitution, while two of his colleagues located it more simply in the due process clause of the fourteenth Amendment³⁷. The threat to privacy in the instant case³⁸ was criminal prosecution for use of contraceptives. However, now a days there are other contemporaneous invocations of the right to privacy, particularly against collection of personal information in computers and databanks, that make complete life histories available to anyone with access to a computer terminal.

One of the most valued right by man, it was pronounced and recognised in *Olmstead V United States*³⁹ in the year 1928, but not in the shape of a constitutional right. Four decades on, in the year 1969, a Bill was introduced in the House of Commons, United Kingdom, to establish a right to privacy. Prior to it, reflecting on Privacy, a few years earlier, Lord Denning⁴⁰ opined that the English law should recognise a right to privacy, infringement of which should be visited with a cause of action for damages or injunction.

That the right is comparatively of recent origin can be gauged from the observation of Chief Justice Latham of the Australian High Court. In

³⁵ Flaherty, DVID, *Privacy in Colonial New England*, Charlottesville: Univ Press of Virginia, 1972 Did not so much received in the power of their argument byt in the social status it gaveto tort.

³⁶ 381, US 479 (1965)

³⁷ Supra, n 24, p VII, Foreword by Pritchett.

³⁸ id

³⁹ Supra n 12, 438

⁴⁰ *What Next in The Law?* Butterworth's , Aditya Books Pvt, Ltd, New Delhi, 1993 ,p 267

Victoria Park Racing Company vs. Taylor,⁴¹ he indicated the absence of any authority on the general right of privacy.

The US Supreme Court in *Griswold vs. Connecticut*⁴² recognised the right to privacy on a constitutional basis. However, prior to it in the year 1960, *Poe vs. Ulman*⁴³ did not uphold the right to privacy. It subsequently held the right to privacy as “ a fundamental personal right emanating from the totality of the constitutional scheme under which we live.”⁴⁴ However the legal right was not enunciated at one go in the United States as one understands today, but emerged as a product of incremental judicial decision making.⁴⁵ For instance, justification of the right to abortion was defended in the famous case of *Roe vs. Wade*⁴⁶. In this case very strong and emotional issues were raised in which both married and unmarried women were said to be protected by abortion. It was held that a mother has a right to terminate her pregnancy without interference by the state, by considering the right to abortion to amount to a right to privacy. Similar cases too came up before the Supreme Court of India very recently.

It has been observed by Edward Bloustein,⁴⁷ that there has been an endeavour to reconcile the constitutional law on privacy with those of Torts- that is, privacy cases like those on contraception and abortion with those dealing with the privacy of possession of pornography , and unreasonable intrusion and disclosure of private engagements. While the former deals with the sanctity of a man’s home and privacy of

⁴¹ (1937) ,58 CLR 479

⁴² Supra, n 31

⁴³ (1960) 367 US 497 at 521

⁴⁴ Supra, n34

⁴⁵ Supra, n 24 p 4.

⁴⁶ 410 US 113.

⁴⁷ Supra, n 24, p6

life⁴⁸, torts protection extends to the interests in economic security, reputation and mental stability.

Legal recognition in the shape of a statute in the United States can be traced to the Federal Privacy Act⁴⁹ of 1974. Similarly, Australia has a charter on Privacy that regarded it to be a key value underpinning human dignity, apart from freedom of speech and expression. The preamble to the Australian Privacy Charter provides as follows:

A free and democratic society requires respect for the autonomy of individuals and limits on the power of both state and private organizations to intrude on that autonomy. Privacy is a key value which underpins human dignity and other key values such as freedom of association and freedom of speech. Privacy is basic human right and the reasonable expectation of every person.

Even though the Constitution does not specifically provide for the same, the Apex Court has “denominated the right to privacy as a fundamentally personal right emanating from the totality of constitutional scheme under which we live.”

In India, the Supreme Court recognised the right to privacy for the first time in *Kharak Singh vs State of UP*,⁵⁰. This was done in the case of surveillance and later came to reflect upon various issues in the domain of women. However, twelve years later, in the year 1975 delivering its judgment in *Govind vs State of M,P*,⁵¹ it recognised the right to privacy as a fundamental right under Article 21 of the

⁴⁸*Boyd Vs US*, 116 US 616 (1886)

⁴⁹“ All people are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining safety, and happiness and privacy”.

⁵⁰Supra, n 9.

⁵¹ AIR, 1975 Sc 1378

Constitution of India ⁵² It would be instructive to quote Justice Mathew in Govind Singh's case⁵³ wherein he opined that "any right to privacy must encompass and protect the personal intimacies of the home, the family , marriage, motherhood, procreation and childrearing....

Judicial renderings have enunciated the right to privacy as part of fundamental rights. Justice Krishna Iyar regarded the right to privacy to be a part of the right to human dignity.

Worldwide, the law relating to the right to privacy is evolving , having to cope with newer challenges in the information, scientific and technological era, where intrusions upon personal privacy at times surface much after the occurrence of an event, as if through concealment. Admittedly, it is of recent origin as a positive right and vying for space in the domestic legal systems.

Women are having to bear the brunt of the violations relating to various aspects of the right to privacy. Therefore, at times their privacy is seen to be imperiled and the challenge immense .The rights language in this arena calls for further development. This is being sought to be surmounted through the existing legal regime in the face of ever increasing intrusion into the domain of privacy.

The right to privacy protects against unnecessary intrusion into personal lives and can be restricted or limited by law for reasons ranging from public safety to national security and so on, but such limitation has to be proportionate. Legal protection of privacy, therefore to a great extent, depends upon the kinds of privacy interests that individuals litigate or promote through legislation.

⁵²*The Right to Know is Fundamental in Salvaging Democracy*, Delhi (1990) p 119

⁵³ *ibid*

The claims enforced on judicial interpretation or through legislative enactments do create much impact on the development of the right to privacy. For instance, an automobile dealer to whom a woman owed money, called her doctor while the woman was recovering from a heart attack to ask if he thought it would be all right to go ahead with the collection, but was advised not to do so. The woman sued the dealer contending her privacy to have been violated by a disclosure of a debt to her doctor, which the court found it to be a perfectly proper course of conduct under the circumstances, and denied recovery.⁵⁴

Several issues bordering on invasion of the right to privacy have emerged involving women. These include polygraph tests,, Female Genital Mutilation, issues of marital rape or incest, prostitution and trafficking , traditional birth practices, sexual slavery, sexual orientation, LGBT, health laws, ART, surrogacy and the like. Though there are significant ramifications on the right to privacy of women, the constraints of time and the need of focused analysis poses a limitation in the present study to lay emphasis on the primary human rights aspects of a few of the challenges and concerns that need to be addressed through prioritization on the basis of perceptions, based on the focal theme of the study

VIII. Women and the Right to Privacy

Women's Rights are Human Rights. This has been universally recognised and accepted across the world. However, human rights would have no meaning if one half of the world populace were to be left out from their assertion or enjoyment. The unpleasant reality or truth has been that womenfolk have been struggling to assert their rights in a world that is professedly striving to translate equality and

⁵⁴ Gross Heyman, *Privacy- its Legal Protection*Ocenia Publications, New York, p 22.

non discrimination into meaningful action. Though a lot has been achieved, much remains to be realized due to economic incapacity and social divide. Besides these handicaps and certain other shortcomings, an universal propensity has been observed of the right to privacy having been violated, though not partaking the character of a trend to violate the private space of women.

To counter the challenges posed in the shape of a serious concern to humanity, the world community has been propelled through the comity of nations to directly undertake effective measures. At times specialized agencies under the aegis of the United Nations or regional forums and sub regional entities have come forward to address this vital issue. The magnanimity of the issue being recognised in itself brings to the fore the gravity of the problem and countervailing challenges.

Respect for the inviolability of the human personality is of prime significance, particularly with regard to women. Three areas that vitally concern women's right to privacy involve the family, the community and the State; these having been considered in the preliminary reports submitted to the Secretary General by Radhika Coomarswamy,⁵⁵ the Special Rapporteur of the United Nations . In the said report, the issue of Female Genital Mutilation⁵⁶, marital rape or incest⁵⁷ and forced prostitution⁵⁸ figured. Others issues that found mention, include sex tourism, mail order brides and pornography, which very much involve the violation of the right to privacy of women that may affect same sex sexual activity as well.

Various dimensions have been addressed by CEDAW. Even the issue of traditional practices affecting the health of women and that of sexual

⁵⁵ Mishra ,Jyotsna (ed), *Women and Human Rights*, Kalpaz 2000, p 4

⁵⁶ Ibid, p8

⁵⁷ Ibid, p 10

⁵⁸ id

slavery impinge upon the right to privacy of women. Similarly female circumcision, traditional birth practices and preferential treatment of male children are areas where the privacy of women has suffered much. As stated earlier, the issue of abortion remain on the radar of privacy as do the landscape of health law that extend to wrongful conception and hospital detention, that may result in unjustified injury to privacy.

Ruling out public scrutiny in respect of the privacy of women would negate the very concept and nullify the right to privacy of women which in itself constitutes a fundamental value. This is precisely due to the fact that violations have been marked to have percolated along with the proliferation of the rights of women. Hence, remedial measures and corrective action calls for being undertaken to safeguard these rights, so very precious not only to women but humankind in general.

IX. Significance of the Study

Women are said to comprise half the world population, have a sex ratio of 101 males to 100 females⁵⁹, with seventy percent among them being poor. Among the countries, India accounts for 1.10 males per female, having 943 females per 1000 males.⁶⁰ Considering such large percentage of women, it is quite natural to expect women to partake equally with men in the all round development within a country or of the human race in general. However, it is common knowledge that women lag behind in the socio economic field. Not only much of their work go unaccounted for, but they stand discriminated and at times alleged to stand deprived. Their right to be left alone has not been recognised. Social conditions impose limitations and impinge upon their privacy. The invasion on their privacy stand as a serious affront to

⁵⁹ "CIA Fact Book". The Central Intelligence Agency of the United States as on 30th November, 2013. The world facebook, 12.8.2016 at 10 am.

⁶⁰ 2011 Census Data as released by the Government of India.

their leading a dignified life. Much of these are witnessed, despite being recognised as fundamental to their progress and development, and therefore constitute grave violation of their human rights.

The feminist movements term them as human rights. This has generally been accepted so. This follows the phrase coined by Hillary Rodham Clinton, then US first lady and Presidential candidate of 2016 US elections, during the United Nations Fourth World Conference on Women in Beijing in the year 1995⁶¹.

The grim reality has been that women are struggling to assert their rights at par with menfolk, which is quite natural and legitimate. Therefore, hard and soft law equates them at the international and regional levels; in addition some women specific laws have been framed on statute books. Efforts at positive discrimination have found place in various Constitutions to facilitate effective equality, pursuant to which such legislations have been framed or are on the anvil. But what one realizes is that the process of implementation and enforcement thus far has failed to bring about effective equality to the desired extent.

Their economic and social status has been much talked about. Many of their contributions have not been accounted for, and compared to men, their lack of exposure to formal and non formal education has compounded the situation. Issues are varied, despite ameliorative measures, the contrasts at economic prosperity, customs, dogmatism and other traits have contributed to such a divide. However, all these, except by way of mention, cannot be addressed within a few pages of a brief analysis.

⁶¹<http://www.americanrhetoric.com/speeches/hillaryclintonbeijingspeech.htm>
12/8/2016 at 11.13 am

X. Conclusion

In the specific context of the right to privacy of women it has been realised that unless their privacy is honoured and protected, it would be wishful thinking that women would be able to assert their entire spectrum of rights unhindered, within and beyond the family, the society and the state.

The right to privacy has gained in significance in the modern era. The digital age has seen the application of information technology in varied aspects. These are dramatically impacting upon real time communication and information sharing, fostering democratic participation. The flip side of these have simultaneously emerged, like that of vulnerability to electronic surveillance and interception undertaken surreptitiously through coveted means, with chilling efficiency⁶². Some are farfetched from individuals, specifically women, but others have the propensity of directly affecting their privacy, inhibiting the free functioning of a vibrant society⁶³. Much of the private and even privileged information may be gathered by others for undesirable purposes through use of data banks, explicit or implicit, thereby putting them at peril. Besides being unethical, such privileged and confidential information may gravely impinge upon their person, intellectual and spiritual privacy in various ways.

These issues have surfaced as a challenge before the international community. Hacking and other forms of criminal activities too, can imperil the lives of womenfolk. There are other fundamental issues that may jeopardize women, be it within the family, the society and the state. Some such issues, along with those of abortion, ART,

⁶² A/C.3?69/L.26? Rev.1 UN General Assembly Resolution on right to Privacy in the Digital Age, 69 Session, 12.8. 2016 at 11 am

⁶³ www.ohchr.org., Your human Rights, Retrieved, 12 August, 2016.

trafficking, to mention but a few have been vitally affecting the privacy of women. Hence, the newly emerging challenges too calls for being addressed.