Second Ch. Sheo Narain Singh Memorial

National Essay Writing Competition

Theme: Constitutional Law

Sub-theme: Privacy in post-Puttaswamy Jurisprudence

Title: **Right to Privacy post- Puttaswamy Jurisprudence: An analysis of evolution of scope of privacy and its impacts**

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TABLE OF CONTENT

1. Introduction

1.a Meaning of Privacy

"Privacy is not something that I am entitled to, it's an absolute prerequisite." -Marlon Brand

Private liberty is not just a term or a right provided by the constitution to the individuals in its esteemed territory, but it's a lifestyle, which provides a very wide scope which includes various facets of an individual's life. Hence in order to explain the above matter, this paper gives a holistic purview of privacy and how it is so intertwined into each individual's life. Aspect of privacy, as mentioned, has a very wide scope, varying from KS PUTTASWAMY VERDICT for Aadhar regulations to SUCHITA SRIVASTAVA V. CHANDIGARH ADMINISTRATION, regarding reproductive rights of a woman; thus, this essay provides a concise and crisp explanation of all dimensions of privacy.

Well, this concept of private liberty is open to interpretation, thus various thinkers and philosophers have their own opinion on it, like Alan Westin has indicated that privacy is closely related to the concept of personal autonomy that is the instinctive urge of all human beings. J. Miller has interpreted that privacy is just right to prevent available, freely given non inmate information from being called. Well, this concept of private liberty is open to interpretation, thus various thinkers and philosophers have their own opinion on it, like Alan Westin has indicated that privacy is closely related to the concept of personal autonomy that is the instinctive urge of all human beings. J. Miller has interpreted that privacy is just **right to prevent available, freely given non inmate information from being collected and stored at one placated and stored at one place.**

In many cases in India as well as worldwide privacy has been considered as one of the most important rights of all. In reference to the above statement, CURRENT CHIEF JUSTICE OF INDIA HONOURABLE D.Y. CHANDRACHUD, highlighted in KS PUTTASWAMY V. UNION OF INDIA

itself, "privacy attached to the person since an essential part of the dignity of human existence. Furthermore, happiness derives from the right to **decide for oneself and dignity, which are both essential attributes of privacy.** Hence with the above statement it is evident that dignity and privacy are coupled. Since, these concepts are inseparably intertwined, each being a facilitative tool to achieve the other**. Dignity cannot exist without privacy**. Both reside within the inalienable value of life, liberty and freedom which the constitution has recognised. Privacy is an ultimate expression of the fundamentals of an individual, since it gives them a space where they can express themselves freely without any intrusions and judgements by the society. In the KATZ V. USA, it's interpreted that privacy as a constitutionally protected right in terms of one's reasonable expectations, because privacy is considered as a common law which is also a part of natural law that proves its existence before civilizations took place worldwide.

As time passes on year-by-year scope of privacy becomes broader, like it is evident, in COCHIN INSTITUTE OF SCIENCE AND TECHNOLOGY v. STATE OF KERALA, Privacy enables the individual to retain the autonomy of their body and mind. This right to privacy gives a sense of autonomy to make decisions on the matter concerning they're not only major but minor parts of life. Private liberty lies across the spectrum of protected freedom. According to Article 21**, liberty enables the individual to have a choice of preference on various facets of life** including what and how one will eat, the way one will dress, the faith one will espouse and myriad other matters on which autonomy and self-determination requires a choice to be made within the privacy of mind.

In RAM JETHMALANI V. UNION OF INDIA, it is clearly evident how much important this single line article of 21 holds, since Justice Subha Rao opined that liberty in article 21 even though not explicitly declared but still the right to privacy is a constitutionally protected fundamental right, because it is an essential part of personal liberty. Hence, we can consider that implicitly the right to privacy is inculcated into the definitions of right to life and personal liberty as guaranteed under article 21 of Indian constitution.

1.b Privacy in International Context

As mentioned in the above paragraphs of this paper privacy has been an important ground for fundamental rights no matter nationally or internationally. In the outer world privacy has been evolving through numerous interpretations done by scholars, thinkers, and various other philosophers. This led to a semi-concrete, definition of privacy, it is semi-concrete because it is still at present open to interpretations. Hence below are mentioned some international conventions and ideologies to portray that privacy is a pivotal part of one's life.

Article – 12 of the UDHR (Universal Declaration of Human Rights):

This article prohibits any arbitrary interference in anyone's privacy, family, home or correspondence nor should there be an attack upon the reputation and dignity of any individual. Privacy is foundational to who we are as human beings, and every day, it helps us define our relationships with the outside world as it projects the boundary from where intervention cannot be accepted. In a way this article prevents or simply draws the boundary to the forms of mass surveillance used today by governments which directly threaten the very core of our right to privacy.

Article – 17 of ICCPR (International Covenant on Civil and Political Rights):

This article protects from arbitrary or unlawful interference in anybody's privacy, family or home or correspondence, nor to unlawful attack on his honour and reputation, and the second clause mentions everyone has right to the protection of the law against such interference or attack. This portrays Privacy as a power that enables us enjoyment of other rights, and any type interference with our privacy often provides the gateway to the violation of the rest of our rights.

Article – 8 of the European Convention on Human Rights:

The article 8 of the above convention is that Every **individual has a right to respect their private and family life.** This clearly conveys that, one's **private and family life is their arena of practicing liberty** and also **no matter** who the individual is, weather it is man, woman, a person belonging to LGBTQ+ community, all of them have practice their right to seclusion. Apart from other conventions few scholars and thinkers have expressed their notion on privacy, varying from old to new persuasion.

ARISTOTLE distinguished between the public sphere of politics and political activity, the *polis*, and the private or domestic sphere of the family, the *oikos*, as two distinct spheres of life, is a classic reference to a private domain. This shows the pivotal role played by the **boundaries** between **personal and public arena,** how important it is to set limits between them so that there's no infringement or compromise to anyone's right in the society. As mentioned in the above few paragraphs **Alan Westin (1967)** has been very much concerned about the personal autonomy provided to us, here he mentions that according to survey studies of animals demonstrate that the desire for privacy is not restricted to humans.

Samuel Warren and Louis Brandeis titled "**THE RIGHT TO PRIVACY**" (1890). Citing through every dimension namely- political, social, and economic recognise the right to privacy as right to be let alone", also they argued that existing law afforded a way to protect the privacy of the individual. They mentioned a variety of existing cases could be protected under a more general right to privacy which would protect the extent to which one's thoughts, sentiments, and emotions could be shared with others. They said the right to privacy was based on a principle of "**Inviolate personality**" which was part of a general right of immunity of the person, "**the right to one's personality**".

William Prosser who wrote in 1960 nevertheless described the four "**rather definite**" privacy rights as follows: 1. Intrusion upon a **person's seclusion** or solitude, or into his private affairs. 2. Public **disclosure of embarrassing private facts** about an individual. 3. Publicity placing one in a **false light in the public eye.** 4. Appropriation of **one's likeness** for the **advantage of another.**

Thomas Nagel (2002) gives a more contemporary discussion of privacy, concealment, publicity and exposure.

Justice William O. Douglas in Griswold v. Connecticut where right to privacy was first announced as **protecting** a **zone of privacy covering the social institution of marriage** and the sexual relations of married persons. **Edward Jerome Bloustein (January 20, 1925 – December 9, 1989)** He was the 17th President of Rutgers University serving from 1971 to 1989, who in his book **PRIVACY AS AN ASPECT OF HUMAN DIGNITY: AN ANSWER TO DEAN PROSSER**, defends privacy as a **broader concept required for human dignity.**

Robert S. Gerstein, a practicing lawyer in California. In his journal articles **INTIMACY AND PRIVACY,** he considered privacy crucial for intimacy, which means relaxed atmosphere.

Ferdinand David Schoeman a writer, in journal article **PRIVACY: PHILOSOPHICAL DIMENSIONS PRIVACY** conveys that Privacy sets **norms** that are necessary **not only to control** access but also to **enhance personal expression and choice.** However, what is termed private, in these above paragraphs don't have vast variations hence we can at last confer that, Privacy refers to a sphere **separate from government**, a domain **inappropriate for governmental interference**, forbidden views and knowledge, solitude, or restricted access, to list just a few.

2. Puttaswamy Judgement

Case Name: Justice K.S Puttaswamy (Retd) vs. Union of India

Crux: Justice K.S Puttaswamy questioned Aadhar's constitutional validity as it violates the 'Right to Privacy' by collecting confidential data from citizens which is a fundamental right. The respondents (State) relied on previous judgements of *M.P Sharma* and *Kharak Singh* respectively to argue that 'Right to Privacy' was not expressly protected by constitution as a fundamental right. A nine-judge constitutional bench in its judgement stated that 'Right to Privacy' is a fundamental right under Art.21 in Part III of Indian Constitution which became a landmark judgement for further issues relating to domain of 'Privacy' in India.

Facts:

Aadhaar project was launched by UPA government in 2009**. The purpose** of the project was to streamline the process of proving benefits of government schemes directly to eligible citizens not false beneficiaries. In 2010, UIDAI (Unique Identification Authority of India) leading the project started enrolling citizens in database by issuing a 12-digit unique identification number. Aadhaar collected basic information of **name, date of birth, address and confidential data** such as **fingerprints** and **iris scan**. In 2012, Retired judge of Karnataka High Court Justice K.S Puttaswamy filed a writ petition (civil) in Hon. Supreme Court of India that Aadhaar violates 'Right to Privacy' by collecting confidential data from citizens.

In 2015, norms and compilation of biometric confidential data under Aadhar were challenged before a three-judge bench of Supreme Court. While the writ petition was pending before Supreme Court, in 2016 Aadhar Act was passed; mandating linking of mobile number, bank account and school admissions with Aadhar. Again, the Aadhar Act was challenged by filing another petition in Hon. Supreme Court challenging the same provisions mentioned above. The Attorney General argued against the existence of 'Right to privacy' based on judgements of *M.P Sharma* and *Kharak Singh.*

The three-judge bench took note of subsequent judgements that affirmed 'right to privacy' as a fundamental right but these were rendered by benches of lower strength than that of *M.P Sharma* and *Kharak Singh.*

The case was referred to a constitutional bench to scrutinize the precedents and correctness of previous judgements. **On 18 July, 2017** the constitutional bench considered it appropriate, given the precedential value of judgements and far-reaching importance of 'Right to privacy' that the case be resolved by a bench of nine judges.

Legal Issues:

1.Whether Right to Privacy is a **fundamental right** under Article 21 in Part III of Indian constitution?

2.Does Aadhar Act violates 'Right to privacy' and should be declared unconstitutional?

3.Should certain provisions of Aadhar Act mandating the linking of mobile number, bank account and school admissions with Aadhar be struck down?

Arguments: The respondents relied upon judgements of *M.P Sharma* and *Kharak Singh* that puts a doubt on the existence of right to privacy. These judgements were rendered by an eight-judge bench and six-judge bench respectively. So, they will be binding upon judgements of smaller benches given subsequently.

The counter arguments given by petitioners were that the judgements of *M.P Sharma* and *Kharak Singh* were based on the principles given in the judgment of *A.K Gopalan V.S State of Madras* which construed the meaning of fundamental rights in distinctive manner. Also, it was found to be not a good law by an eleven-judge bench in *Rustom Cavasji Cooper vs. Union of India.* Thus, the above two judgements were argued to be invalid.

Also, it was submitted by petitioners that in *Menaka Gandhi vs. UOI* (1978) that the minority judgment of Justice Subba Rao in *Kharak Singh* was specifically approved while the decision of majority was overruled.

The scope of privacy was another matter in which petitioners argued that privacy should be viewed as multi-dimensional and should be understood in accordance with the preamble. On the other hand, respondents argued that privacy can only be materialized by statutory and common law right and its repository is to be the constitution and Parliament can be the sole power to modify the same.

Decision:

The nine-judge constitutional bench that was set up included Justice Sanjay Kishan Kaul, Justice DY Chandrachud, Justice RK Agarwal, Justice Jagdish Singh Kheher, Justice S.A Bopde, Justice S. Abdul Nazeer, Justice Chelameshwar, Justice A.S Sapre and Justice Rohinton Fali Nariman respectively.

The Supreme Court through six different opinions declared 'Privacy' as a separate and independent fundamental right under Article 21, part III of Indian Constitution. 'Right to privacy' is not to be understood in narrow contexts of physical invasion or derivative right under article 21, but one that relates to personal aspects of life in terms of mind and body such as choices, freedoms and data protection.

The Judgement of *M.P Sharma and Kharak Singh* were overruled by Supreme Court to the extent that it did not consider 'Right to privacy' as a fundamental right. The Court held that the judgement was valid in maintaining that the Indian Constitution did not provide for any limits in search and seizure analogous to Fourth Amendment in American Constitution. However, such absence of similar protection did not mean that right to privacy was inherently absent in Indian Constitution. Thus, The Judgement of *M.P Sharma vs. UOI* were overruled.

The judgement of *Kharak Singh*, according to Supreme Court suffered from internal contradiction as its basis to strike down domiciliary visits and police surveillance was not on legal ground but privacy. Justice D.Y Chandrachud referred to the 'silos' approach borrowed from A.K Gopalan. In Menaka Gandhi's case which was a bench learned by seven learned judges, it was held by Bhagwati's judgement that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute personal liberty of man and some of them have been raised under distinct fundamental rights under Article 19. Such watertight interpretation of fundamental rights was already done away with in *Menaka Gandhi* case. The subsequent judgements to *Kharak Singh,* were to be read subject to principles laid down in judgement.

The Supreme Court stated that Aadhar is meant for welfare of citizens and is thus for legitimate purpose for governance and direct benefit transfer. However, the Bench said that Government should take every possible action to protect Privacy. The Government struck down provisions of Aadhar mandating linking of confidential data as state actors and non-state actors can misuse data.

Fundamental Right to Life and Personal Liberty reads, “No person shall be deprived of his life or personal liberties except according to procedure established by law”. Supreme Court said that Right to Privacy is not an ‘elitist construct. The argument by Attorney General that privacy can be forsaken for welfare for rejected by Supreme Court. However, it also stated that ‘Right to privacy’ not an absolute right.

The Judgment also provided for an overview of standard of judicial review to be applied in case of breach of privacy of an individual by state. Three tests were laid down by Hon.Supreme Court of India, which if passed, the state will be justified in breaching the privacy of some individuals (to some limited extent):

1. Legality, which postulates the existence of law
2. Need, defined in terms of legitimate state aim
3. Proportionality, ensuring a rational nexus between needs and methods adopted. The breaching of privacy should be proportional i.e., it should be with done after every measure and to the extent necessary for fulfilment of the purpose (mentioned in above point).

Justice S.K Kaul added a fourth pillar to the test that mandates ‘procedural guarantees against abuse of such interference’. Also, Justice Chelameshwar held ‘standard of compelling state interest’ only to be used in privacy claims deserving **strict scrutiny** while other claims may be dealt with just, fair and reasonable standards given under Art.21. The use of ‘standard of compelling state interest’ would depend upon the context of individual case.

The scope of privacy was also expanded by the judgement which included sexual orientation as part of privacy and respective protection of the same.

How this judgement became precedent to later cases and how different aspects of privacy and different interpretation of privacy was done by different courts is the subject matter of this essay.

3.How scope of Right to privacy got widened?

According to HARVARD LAW REVIEW earlier the right to life served only to prevent the subject from battery in various forms; liberty meant freedom from actual restraint and right to property secured to the individual, his land and his cattle. Later, there came the recognition of man's spiritual nature of his feelings and his intellect. Gradually the scope of these legal rights was abandoned; and now the right to life has come to mean the right to enjoy life the right to be let alone; the right to liberty to secure the exercise of extensive civil privilege. The wide scope of privacy would be evident though the case laws mentioned. These verdicts would make it clear that just two lines of article 21 have so many hidden facets of privacy.

3.a Menaka Gandhi Case

UNREASONABLE DEMANDS BY THE GOVERNMENT: MANEKA GANDHI V. UOI (1978)

CRUX: Menka Gandhi the petitioner in this case issued a passport in June, 1976, after one year she received a letter from regional passport officer Delhi intimating to her that it was decided by the government of India to impound her passport under section **10(3)(c) of PASSPORT ACT** OF 1967 in the name of "public interest". She sent the letter to the same institution to know the reason behind the impounding of her passport, but no reason was received. Hence, she filed a writ petition challenging action of the government and not being reasonable for doing so.

JUDGMENT: Here comes art. 21 in the picture with reference to SAWANT SINGH SAWHNEY CASE. This clearly mentions that "personal liberty" in the article takes in the right of locomotion and travel abroad. And under art. 21 No person shall be deprived of his right to go abroad except according to the procedure established by the law, but in the passport act no such procedure for impounding or revoking the passport. Hence in the judgment it was mentioned that, "even if some procedure is traced in the said act, it is unreasonable and arbitrary in as much as it does not provide for giving an opportunity to the holder of the passport to be heard against the making of the order"

This was how MANEKA GANDHI V. UOI, gave birth to a new scope of privacy to fight against the unreasonable restrictions by the government.

PRIVACY AS LAW GRANTED BY NATURE:

Movement is one's important right which is granted as a private right and with automatically makes it a natural right. Natural rights have a great significance as opined in the BLACKSTONE'S THEORY OF NATURAL RIGHTS, which elaborates that, rights granted by nature has been applied since the creation of the world till today towards the higher civilization and in a more enlightened era we cannot lag behind what at any rate, was the meaning given to 'personal liberty' long ago by Blackstone. Both the rights of personal security and personal liberty recognised by what Blackstone termed 'natural law' are embodied in article 21 of the Indian constitution. This judgment in the context of K.S PUTTASWAMY, shows that an individual's right to move freely should not be subject to any restrictions. In order to understand how privacy is related to locomotion, ancient history of the world could be a perfect example, like nomads used to move in the search of food, shelter and various other resources, thus it is a natural right that was granted millennia ago, which can't be infringed in a democratic society

3.b. Right to make Reproductive choices

RIGHT TO PRIVACY OF A WOMAN TO MAKE REPRODUCTIVE CHOICE: SUCHITA SRIVASTAVA V. CHANDIGARH ADMINISTRATION (2010)

CRUX: A division bench of the High court of Punjab and Haryana, ruled that it was in the best interest of mentally disordered women to undergo an abortion. The said woman was a rape victim who became pregnant as a result of an alleged rape that took place while she was an inmate at a government run welfare institution located in Chandigarh. After discovering about her pregnancy, the Chandigarh administration, which is respondent in this case, approached the high court seeking approval for termination of her pregnancy.

Now, the high court employed an expert body for termination of pregnancy in spite of which they found that the victim had expressed her willingness to bear her child.

JUDGMENT: Thereby, high court granted a stay on termination of the pregnancy. The rationale behind this decision was: whether it was correct on part of the high court to direct termination of pregnancy without having her consent.

ABORTION IS SUBJECTED TO PRIVATE LIBERTY:

One's body is their own space of practicing private liberty, no matter whether a person is able to use their cognition or disabled to do the same. Being disabled doesn't take away an individual's right to secure their privacy, if any such external organization like here, Chandigarh administration, tries to intercede and influence one’s private space, it should be viewed as a complete infringement of privacy. In reference to the verdict of K.S. PUTTASWAMY it is a person's right to make reproductive choice which is the dimension of personal liberty as understood under article 21. It's important to recognise the reproductive choices that can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that it is a woman's right to privacy, dignity and bodily integrity which ought to be respected.

3.c Power to make choices without constraint

POWER TO MAKE VITAL CHOICES WITHOUT ANY CONSTRAINT: COCHIN INSTITUTE OF SCIENCE v. STATE OF KERALA (2019)

BACKGROUND: Here comes another issue from state of Kerala where the writ petitioners are the students who were not granted inter college transfer by the principal of their current college i.e., COCHIN INSTITUTE OF SCIENCE AND TECHNOLOGY, to another self-financing college affiliated by the same University. According to the students, the amenities and infrastructure in their present college were inadequate. Here the cochin institute of science and

technology took a stand that students have no right to seek transfer into any other college, just in the name of inadequate infrastructure.

CCTV INSTALLATION IN SPA IS HARM TO ONE'S BODILY AUTONOMY: *PAYEL BISWAS V. UOI (2022)*

BACKGROUND: The petitioner herein runs a spa in the name and style of QUEEN AYURVEDIC CROSS SPA CENTER. Originally there was no law regulating the said business and no license was required from any government authority. Since vid gazette notification No. 252 dated 16.07.2018, mentioned requirement of the license has been mandated, the petitioner applied for the same. No actions were taken from the government's side, he filed a writ petition for directing the police authority to issue "no objection certificate". He also wanted a bench to restrain the police from interfering with running of the spa. The learned government counsel made the mention that another learned judge of this court that is, His Lordship the HON'BLE Mr. JUSTICE S.M SABRAMANIAM, while dealing with the similar matter, had issued the following directions vide order dated 20.12.2021 of C.P. GIRIJA V. THE SUPERINTENDENT OF POLICE, Villupuram district and two other:

> 1. The respondents are directed to issue appropriate order to all the spa and massage centres, therapy centres etc., Across the State of Tamil Nadu to install CCTV cameras which must be functional in all circumstances.
> 2. Appropriate directions are to ensure that these spas, massage centres, therapy centres etc., Are conducting their business activities in transparent manner and avoid secluded or closed rooms paving way for illegal activities.

VERDICT: The decision was made with reference to K.S. PUTTASWAMY v. UOI (2017), that claimed article 21 of the constitution guarantees to all persons the fundamental right to privacy. With this verdict there was emphasis on the terms like right to life and personal liberty guaranteed in article 21. As mentioned since the beginning of this paper and also as the court held that privacy takes several different forms that includes - bodily autonomy, right to informational Privacy, right to privacy of choice and many more. J. Bobde held that the C.P. GIRIJA v. SUPERINTENDENT OF POLICE verdict directs that installation of CCTV cameras not in public space but in intimate and private spaces. Since Spa is a place where people come to relax which makes it more comforting and like a private space where we can enjoy the service provided by the service, if installation of cameras would take place, then it would lead to infringement of their basic fundamental rights. Also it should be relevant to the

threefold tests as mentioned in K.S. PUTTASWAMY JUDGEMENT the installation of the cctv is not complied with second fold of the test that is , legislature hasn't mandated the installation of CCTV by law ought to be installed by certain space to do so would violate article. Therefore, the installation of CCTV equipment inside the premises such as a spa would unquestionably infract upon a person's bodily autonomy.

People hold their right to privacy even if in public space:

The bench held that, "while the legitimate expectation of the privacy may vary from intimate zone to private zone and from the private zone to public arena, it is important to underscore that privacy is not lost or surrendered merely because the individual is in public place." These lines hold a lot of importance in explaining that even though a spa is not an intimate area like a bedroom or bathroom, a person still holds personal liberty anywhere other than the above private sphere.

3.d. Right to sexual orientation

The judgement of Puttaswamy was significant and played an important role in the judgement of Navtej Singh Johar v. Union of India (2018). The judgement in Puttaswamy case also called for equality and condemn discrimination. It also stated that the protection of sexual orientation lies at core of fundamental rights and the rights of LGBTQ community are real and founded on constitutional doctrine.

In Navtej Singh Johar v. UOI, the court laid down that section 377 is unconstitutional and is thus struck down to the extent that it criminalised consensual sexual conduct between adults of same sex. Thus, the struggle of homosexual people who had to fight for changing the law that stopped them from following their natural sexual orientation and even criminalized it finally came to an end.

This judgement opened doors for homosexual, transgender and LGBTQ+ community to not only live their life with privacy and dignity without the fear that their consensual relationship being criminalized but also to be legally recognized as a community.

The way forward for this community carries hope. The work to make their society a better place for them is already in progress to realise the principle ideas of our constitution. For example, SMILE scheme or Support for Marginalised Individuals for Livelihood and Enterprise was launched by Ministry of Social Justice and Empowerment for transgender community and people engaged in begging. It includes much steps that will be taken by the government. For example, scholarships for transgender students in classes nineth and tenth, transgender protection cell in each state, national portal and helpline number and so on.

There are now special toilets being made for transgender people in many states. In West Bengal, the state government passed West Bengal Transgender Persons (Protection of rights) Rules that offers protection from discrimination. It also updates the rules for joining the police forces of the state to allow transgender people to apply for state police force.

Thus, this **domino effect** that started from Puttaswamy judgement is now going forward to bring down more dominos or barriers of stigma and discrimination against homosexual people and helping them live a life where they enjoy their right to choose and autonomy to follow their sexual orientation and living life with dignity in our society.

4. Data Privacy

4.a Digital Personal Data Protection Act 2023

The legislative aspects were left to parliament to make laws for protection of 'Right to Privacy'. Currently, personal data comes under regulation of section 69 of Information Technology Act 2000. In 2017, the central government constituted a committee chaired by Justice B.N Srikrishna to examine issues relating to data protection. The committee submitted its report in July 2018. On the basis of its recommendations, Personal Data Protection Bill was introduced in Lok Sabha in December 2019. However, it was withdrawn and after public consultation a new bill **Digital Personal Data Protection Bill** was introduced and passed by Lok Sabha and Rajya Sabha and also received President's assent in August 2023.

Personal Data is defined as any data about an individual who is identifiable by or in relation to such data. **Data Principal** is the term used for this individual.

Salient features:

1. **Applicability:** The Bill applies to the processing of digital personal data within India where such data is (a) collected online or (b) collected offline and digitized.
2. **Rights and duties:** An individual whose data is being processed may have rights to: (a) obtain information about processing (b)seek correction and erasure of personal data (c) nominate another person in event of death or incapacity (d) grievance redressal. Data principals have duties not to file (a)false/frivolous complaints (b) furnish false particulars or impersonate any other person. Violation of duties is punishable with a penalty of up to Rs.10,000.

3. **Consent:** Personal data may be processed only for lawful purposes after taking consent. A notice must be given containing details of personal data being collected and purpose of processing. Consent may be **withdrawn.**

However, consent may not be required for (a) specified purpose for which data has been provided by individual (b) provision of benefit/service by government, (c)medical emergency (d) employment.

4. **Obligations of Data Fiduciaries:** Data Fiduciaries (the entities determining means and purpose of processing data) must: (a) make efforts to ensure reasonableness and completeness of data (b) build reasonable safeguards to prevent data breach (c) inform Data Protection Board of India and affected persons in case of breach (d) erase personal data as soon as purpose is met and retention for legal purpose is not necessary (storage limitation).

5. **Setting up of Data Protection Board of India:** A board with a chairperson with tenure of two years will be established with scope of re-appointment. Major objectives of the board include: (a) monitoring compliance and imposing penalties (b) directing data fiduciaries to take necessary measures in case of breach of data privacy and most importantly (c) hearing grievances by affected persons. The central government will provide number of members of board and selection process. Appeals against the board will lie with **Telecom Disputes Settlement and Appellate Tribunal (TDSAT)**.

6. **Penalties:** In case of nonfulfillment of obligations of provisions for children Rs.200 crores and for failure to take safety-measures which results in breach of privacy by data fiduciaries a penalty up to Rs.250 crores will be imposed.

7. **Transfer of personal data outside India:** The Act allows transfer of personal data outside India except to certain countries which may be certified by the government.

Key problems of Bill:

1. **Exemptions:**

Rights of data principal and obligations of data fiduciaries may not apply in certain cases. These are: (a) prevention and investigation of offences (b) enforcement and legal rights or claims. Certain activities such as processing by government entities in the interest of security of state and public order and research activities etc. may be exempted from the Bill as per government notifications.

It is important to consider here that Article 12 of the Constitution, the **State** consists of (a) central government (b) state government (c) local bodies (d) authorities and government set up by the government.

In the interest of aims such as security of state and maintenance of public order, the central may exempt processing by government agencies. One of the tests given under *Puttaswamy* Judgement was of **proportionality.**

Exemptions given to State may lead to data processing, storing and retention beyond what is necessary. The government agencies can also use personal data collected by other government agencies. These raises serious doubts on ground of proportionality test.

The Srikrishna Committee had recommended that in case of processing on grounds such as national security and prevention and prosecution of offences, obligations other than fair and processing and reasonable security safeguards may not apply. Obligations such as purpose specification and storage limitation may be regulated through a separate law. However, no such legal framework present in India.

For example, **United Kingdom** where the data protection law was enacted in 2018, provides similar exemptions. However, actions such as bulk processing of personal datasets and government agencies for intelligence and law and enforcement activities are regulated under the Investigatory Powers Act of 2016.

2. **Right to be forgotten not provided:**

Right to be forgotten refers to the right to limit the disclosure of one's personal data on internet. The Bill does not provide for right to be forgotten. The Srikrishna committee observed that it is an 'idea that attempts to instil limitations of memory in an otherwise limitless digital sphere. However, this right needs to be balanced with other conflicting rights such as those of rights to free speech and expression

and to receive information. The committee had suggested to balance the two based on certain factors such as (a) sensitivity of data to be restricted (b) relevance of the data to public and (c)role of data principal in public life. Also, the Bill does not mandate the State to erase personal data collected once the purpose has been met.

3. **The Bill does not regulate 'harms' from processing of personal data**

   Srikrishna committee had observed that harms can be a possible consequence arising from processing of personal data. The Personal Data Protection Bill of 2019, defined harm as:

   (a)mental injury (b)identity theft (c)financial loss (d) reputational loss (e)discriminatory treatment and (f) observation or surveillance not expected by data principal. The 2019 Bill had mandated data fiduciaries to take measures to prevent, minimize and mitigate harms. It involved undertaking evaluation of impact assessments and audits. It also granted the right to seek compensation to data principal from data fiduciary or processor where the harm is caused. GDPR (General Data Protection Regulation) of European Union also provides for similar rights.

   However, such provisions are absent in 2023 Bill.

4. **Protection of data in case of transfer outside India:**
   Although, the Act provides that transfer of data to certain nations that will be notified by central government will not be allowed, it still puts a question on the level of security that will be provided to the personal data of citizens. In case of absence of robust data protection laws in another country, the data may be subjected to breaches or unauthorized sharing with foreign entities or governments. No explicit restrictions are mentioned in case of transfer of data nor it is mentioned that how countries may be excluded under the **'black-list'** approach taken in the Act.

Privacy of Children in Focus

The 2023 Bill has privacy of children as major concern and has provisions for the same.

Consent through a legal guardian:

Although a debatable issue, the age to be specified as a 'child' is kept below 18 years. It is in consonance with other laws such as The Indian Contract Act that states in order to do a contract a person has to be of 18 years.

Chapter 2 9. (1) reads," The **Data Fiduciary shall, before processing any personal data of a child or a person with disability who has a lawful guardian obtain verifiable consent of the parent of such child or the lawful guardian, as the case may be, in such manner as may be prescribed**."

However, the manner in which it can be verified that the consent is given by guardian or not is not given. Considerably, in order to undertake actual consent of the parent or legal guardian, their data needs to be collected as well. This can also provide data fiduciaries with personal data that may again be subject to misuse.

Some other provisions also states that data fiduciary must not take any processing of personal data that may be **detrimental to well-being** of the child. However, what can be considered detrimental is not defined in the Bill.

Data fiduciary must also not undertake tracking or behavioural monitoring of children or direct advertising at them.

The provisions may not apply for certain class of data fiduciaries or certain purposes as may be notified by the government.

4.b. Safety from providing unnecessary information to institutions

SAFETY FROM PROVIDING UNNECESSARY INFORMATION TO INSTITUTIONS: RAJU SEBASTIEN V. UOI (2018)

A writ petition was filed challenging the circular issued by the oil companies seeking details including **income-tax returns, sales-tax returns and bank statements of the petitioner.** The details of income tax returns, sales tax and bank details are **completely unnecessary** for continuation of dispensing pump and selling license agreement entered into by the petitioner with public sector oil companies. Cherry on the top, an **ultimatum was issued by the respondents,** stating that they **will stop supplying petroleum products to the petitioners, if required documents are not submitted.**

Thus, relying upon the *KS PUTTASWAMY V. UOI,* it was contended that **tax returns and bank statements are private information in respect of the petitioners,** and compulsory disclosure of the same would amount to **violation of the fundamental right of privacy guaranteed to the petitioner.** Secondly, the concern was **data being leaked from the database** of the companies with was the **serious concern to** right to privacy of the petitioner.

TELEPHONE TAPPING SABOTAGES ONE'S RIGHT TO PRIVACY: PEOPLE'S UNION FOR CIVIL LIBERTIES v. UNION OF INDIA (1996)

BACKGROUND:
The case had been brought as a challenge to government rules which required a presiding officer to take a note whenever a voter decided not to vote for any of the candidates. The People's Union for Civil Liberties challenged the constitutionality of this practice.

VERDICT:
Bench of Kuldip Singh J, observed that Telephone - Tapping is a serious invasion of an individual's privacy, as the heading mentions "Telephone-Tapping" which means connecting a device to another's phone so that the conversation can be

listened to secretly. Focusing on this term listening to someone's conversation is obviously an invasion of someone's right to privacy. This writ petition was filed in the wake of the report on "Tapping of politicians phones" by the Central Bureau of Investigation (CBI). Copy of the report as published in the "Mainstream" volume XXIX dated March 26.1991 has been placed on record along with the rejoinder filed by the petitioners. In the judgment *KHARAK SINGH V. STATE OF U.P. (1962)* and *FIELD, J. IN MUNN VS ILLINOIS (1877)* it was referred to convey the word 'life' does no merely means the right to the continuance of a person's animal existence, but a right to the possession of each of his organs, if any of the action of police involved a trespass to property, that could give rise to infringement of right to life. Frankfurter, J. observed in Wolf v. Colorado (1949) U.S "The security of one's privacy against arbitrary intrusion by the police is basic to a free society. It is therefore implicit in the concept of ordered party and as such enforceable against the States through the Due Process Clause. Hence, this widened up the scope of privacy even more that - a private telephonic conversation or conversation through any medium if subjected to intrusions by third party, this would be considered as absolute infringement of one's privacy.

CONVERSATION THROUGH ANY MEDIUM CAN NOT BE SUBJECTED TO PUBLIC INTEREST: With the growth of highly sophisticated communication technology, the right to hold telephone conversation, in the privacy of one's home or office without interference, is increasingly susceptible to abuse. It is no doubt correct that every Government, however democratic, exercises some degree of secret operation as a part of its intelligence out-fit but at the same time citizen's right to privacy has to be protected from being abused by the authorities of the day.

With reference to *K.S. PUTTASWAMY VERDICT of 2017*, it is unlawful for any authority to have access to people's private phone call. As mentioned, several times in the above-mentioned judgement that an individual have their own demarcated space where they can practice their liberty of seclusion, if such arena is also intruded then people will not be left with any option, and will also portray the bad condition of democracy with in the respective nation.

4.c. Protection of Privacy in Virtual World:

The virtual world or the virtual space that is provided by certain platforms such as Meta is one of the emerging areas of technology that is both exciting for future and is much unexplored. It is a space that is actually a computer simulated environment that does not exist in physicality. It may allow its users to create their own avatars or virtual characters and interact with each other. They may also buy a space as we buy a property in a physical world. However, the problem lies in the fact that this virtual space is not regulated by any laws. The jurisdiction of no particular country applies to it. Moreover, since one is virtually present in it leaving behind their digital footprints and various interactions the chances of one's right to privacy being violated and persons being subjected to abuse of their liberty becomes seriously high.

Many such unfortunate incidents of sexual harassment of women in **Metaverse,** the virtual world provided by Meta has been recorded. (We are taking the example of metaverse because it is currently one of the most popular ones being used at this time). Since a person has to connect to virtual space through headsets and devices containing sensors, every physical interaction i.e., an avatar touching another avatar can be felt by the person through those sensors. While many safety features are provided where you can block certain people or report them, but with lack of proper regulation it loses its effectiveness. Imagine coming to a virtual world to connect and enjoy virtually with your friends and becoming a victim of sexual harassment. The trauma and emotional disgust can also be felt as if it was done in the real world because the line of difference between actual and virtual experience is blurring fast.

Since this is a whole new dimension, many countries are working to prepare laws that suits their interests and protects their citizens in every possible manner. India has the opportunity to take a lead and frame laws that will govern the virtual space. How the issue of privacy will be given importance and will be protected should be at the core of any law that governs privacy so that an cheerful experience does not turn into a horrifying nightmare for the users of this virtual space.

5. Right to Privacy v. Right to Information

Right to privacy can be at times in contradiction to other fundamental rights such as right to free speech and expression under fundamental right of Right to freedom or right to be forgotten can be in conflict with right to receive information (as discussed in Digital Personal Data Protection Bill). Thus, we can observe that exercising one's right to privacy can be at times in contradiction to other fundamental rights of other individuals. We need to consider a few case laws to elaborate our point.

Right to information is provided as a fundamental right under Article 19 of Freedom of speech and expression. It has also been incorporated in legislation under Right to Information Act 2005. It mandates timely response to citizens' request for government information. The basic objective of this right is to empower citizens and promote transparency and accountability in the functioning of the government, curtail corruption and make democracy work for people in real sense. An informed citizen is better equipped to keep a check on government.

Prima facie, the right to privacy and right to information seems to be contradictory. While one seems to protect exposure to keep the dignity of a person intact for a better life, the other promotes exposure as a means to be equipped with information of instruments of government which in turn promotes accountability.

The domain of Privacy seems to be in conflict with the domain of right to information when the information of citizens with the government may be made the subject matter to be asked for under right to information. From income tax-returns, banking and medical records to other confidential data, government holds such data of citizens that constitutes the very essence of individuality of a person as discussed in Puttaswamy case and Digital Personal Data Protection Act. Subjecting the same data to exposure can be seen as a clear violation of one's right to privacy.

On the other hand, one's right to privacy cannot be a façade to protect one's data which can be mandated under RTI.

The solution to the above paradox can be seen in the purpose of both rights itself. As already stated in Puttaswamy case, one's right to privacy is not absolute. It can be subjected to certain restrictions on the grounds of public importance. RTI is meant for the purpose of keeping the government accountable by proving information that is important for public importance. This factor of public relevance may vary from case to case, but essentially strikes a balance between weightage and domains of both of these fundamental rights.

Thus, in case of dispute whether the data needs to be protected under Section 8 (1) (j) or not, the applicant exercising RTI, needs to convince the Public Information Officer that the information being asked for is for greater public good and is thus of relevance to public and its exposure will benefit public as a whole. If the officer is satisfied, the information can be granted. The general interest is given more weightage than right of privacy of individual.

6.Cases where Privacy have been or can be curtailed

6.a The peculiar case of R Annal v. State of Tamil Nadu

CRUX: The petitioner, a government school teacher was asked to get Aadhar for attendance which she argued was a violation of her right to privacy. Here, the High Court of Madras gave the judgement in favour of state and purposefully did not follow the precedent set by Puttaswamy judgement.

Facts: On 18th October 2018, there has been a system of Aadhar enabled attendance namely Aadhar enabled Biometric Attendance System **(AEBES)** for teaching and non-teaching staff in Government and government aided high schools or senior secondary high schools enforced in the state of Tamil Nadu. The petitioner, a government teacher questioned this form of attendance using Aadhar as she was not enrolled under Aadhar scheme as it was not mandatory and filed a petition against the said implementation.

Arguments: The petitioner challenged the implementation of Aadhar enabled attendance system by citing section 7 of Aadhar Act which states that Aadhar number can merely be used to provide a unique identification to an individual so that he/she may be identified as a beneficiary of the government schemes where expenditure may be incurred from Consolidated Fund of India. Thus, the use of Aadhar for other purpose is deprivation of jurisdictional authority and thus the State Government' orders are arbitrary and contrary to Aadhar Act which makes it liable to be quashed.

The Respondents on the other hand justified the implementation by arguing that the state of educational institutions and output can be improved by enabling Aadhar for attendance. The purpose of the said implementation was to reduce the expenditure on maintain the attendance. More importantly, this also helps

achieve the fulfilment of duties of imparting quality education under Article 51-A as the teachers otherwise, have failed to do so. Furthermore, the State of Tamil Nadu being an employer has power to introduce such system to improve administration. The collection of particulars in case of government servants it was argued, does not constitute violation of right to privacy as the employee has voluntarily agreed to the terms and conditions of the service and is thus bound by the same.

Judgement: The Single-judge bench of Madras High Court gave the judgement in favour of implementation of AEBES in government and government aided institutions. The Court went on to describe that the government has to resort to such stringent measures due to sorry state of educational institutions and as teachers were not playing their roles properly.

The Court in its judgement

The Court explained that the public employment in Government is of contractual in nature. Thus, when the public servants accepted the offer of appointment, they made a declaration to abide by the service rules set by the state in order to improve the efficiency of administration. Thus, the state government is justified in bringing such implementation.

The High Court gave the petitioner two options. Either to accept the said implementation and get enrolled under Aadhar or simply quit the job.

Analysis: The judgement of the Single-judge Bench of Madras High Court was criticized on many grounds. Firstly, it turned a blind eye towards the arguments of the petitioner. The matter of connection between Aadhar enabled attendance was discussed in the judgment but **the subject matter of the case whether Aadhar enabled attendance violated petitioner's right to privacy was only touched upon** only to be rejected on grounds that can be questioned.

Secondly, the judgement clearly went against one's right to privacy. Moreover, the right to live with dignity, the autonomy to choose **and right to life and personal liberty under Article 21** as a whole was ignored to give way for service rules and administration.

Thirdly, **the test of 'proportionality'** set by Puttaswamy judgement which is to be applied in case of breach of privacy by state was **also not passed** in the present case. The court seems to be satisfied with the arguments of respondents that there is a nexus between attendance and output and efficiency of teachers.

The attendance of teachers is not linked with their salary and thus, there is no incentive for teachers. Also, other factor that may actually undermine the efficiency of teachers is the factor that they may not be fully qualified according to provisions of RTE (Right to Education). Thus, the proportionality test which states that the measures taken should be according to the purpose to be served as well as should be the last resort seems to be imbalanced in the present verdict.

In addition to right to privacy and right to life, right to profession under Article 19 (6) (g) also stands violated since petitioner was given two choices either to get enrolled in Aadhar or quit the job. Thus, those unwilling to do so have to surrender to the arbitrariness of the administration that is strengthened by the verdict.

The Puttaswamy case was said to be non-applicable to the present case as the petitioner being a public servant had willingly accepted the Service rules and is bound to follow the same. This raises another important question whether a public servant loses his right to privacy or fundamental rights as a whole simply because of the fact that they can be and will be bound by the service rules.

Thus, on one hand, we see that Puttaswamy case has set a precedent for cases on privacy. But some cases (like the above-mentioned case) also show that judges may take a 180-degree turn to give contrary opinions. In some instances, leaving the Puttaswamy judgement out of picture and in doing so **providing instances, situations and cases where the administration may be justified in curtailing rights to privacy.**

6.b Criminal Procedure Identification Rules 2022

The Criminal Procedure Identification Rules 2022 replaces the Identification of Prisoners Act 1920. **The expert committee on reforms of criminal justice system** chaired by Dr. V.S Malimath had **recommended to amend the 1920**

Act to enable magistrate to authorize collection of data such as blood samples for DNA, hair, saliva and semen. The Criminal Procedure Identification Bill empowers police officers or prison officers to collect certain identifiable information from convicts or those who have been arrested for an offence. The act aims to widen the scope of persons whose measurements can be taken than the existing and limited scope of the previous Act. It will help investigating agencies to collect legally admissible evidence with more precision and will boost the conviction rates. Now that technology has become a major part in our everyday lives, the laws should also update in order to make full use of technology. This is one of the core ideas behind the Criminal Procedure Identification Rules, 2022.

We need to discuss the key features of rules and the associated various issues at a closer level.

1. **Taking measurements and information:**

   All convicts, arrested persons or in some cases persons arrested under preventive detention to give their measurements and information. It includes **finger prints, footprints, palm impressions, photographs, iris scan and retina scan, biological samples and their analysis and behavioral attributes such as signatures or handwriting** or any other section referred to in Section 53 or Section 53-A of Code of Criminal Procedure,1973. However, for certain cases there are certain exemptions where measurements will not be taken unless they have been charged with any other offence. It includes those violating Section 144 or Section 145 of CrPC or under 151 (preventive detention under IPC). Under Section 53 of the Code of Criminal Procedure,1973 the collection of biological samples may be done only in cases where, **there are reasonable grounds for believing that such examination will afford evidence as to the commission of an offence".** Also, due to emerging technologies that are helping majorly to crack down on crime the Act also intends to utilize the same. For example, DNA analysis and sampling is one of the features that can be used for criminal investigation. The DNA Technology (Regulation and Application) Bill 2022 seeks to provide a framework for the same purpose. **In case of biological samples, the person can refuse** to give the measurements in case he/she is not arrested under (1) an offence against woman or child or (2) an offence that carries minimum seven years of imprisonment.

It is thus, clear that Rules are restricting grounds on which Privacy may be curtailed. This certainly goes beyond the scope of which the Act was originally intended for. Moreover, the Act also seems to go **against Equality of law.** For example, a person who may commit theft. If he/she steals it from a man they may be allowed to refuse to give biological samples but if the same offence is committed against a woman the person loses the right to refuse to give biological data.

2. Persons authorized to take measurements:

The measurements will be collected by either a prison officer (not below rank of Head Warden) or a police officer (in charge of police station or at least at the rank of Head Constable). An authorized person may take measurements which is defined by the Act as '**police officer or prison officer who has been authorized by NCRB to take measurements**.' A Magistrate is also empowered to direct law enforcement agencies to take measurements for certain convicted and non-convicted persons (as already discussed).

3. Storage and sharing of measurement records:

The Rules specify that National Crime Records Bureau (NCRB) will issue Standard of Procedures (SOP)s for taking measurements. The SOPs will contain (1) specifications and format of measurements, (2) specifications for devices to be used for measurements. The SOPs also provides for (1) digital format to which each measurement should be converted before uploading on database. The NCRB will be the repository of biological samples, physical and biological samples and signatures and handwriting and the same will be **preserved for seventy-five years** from the date of collection of records of measurements.

This raises two important questions. One is that the empowerment of NCRB leads to excessive delegation as it is being empowered to provide SOPs for itself. The Supreme Court too in a judgement in 2014 laid down that," Subordinate legislation which is generally in the realm of rules and regulations dealing with procedures on implementation of plenary legislation is generally a task entrusted to specific authority. That agency cannot entrust such task to its subordinates. It would be a breach of confidence reposed on the delegate.

4. Destruction of records:

This is one of the provisions that gives a protection to the accused in terms of privacy and dignity. However, it comes with certain issues. NCRB is

authorized to store, preserve and destroy the records as prescribed by the Act. The conditions under which records can be destroyed are (1) The person is acquitted after all appeals or released without trial (2) have not been previously acquitted or released without trial. SOPs will provide the procedure and disposal of records.

However, the issue that makes this part problematic is that the onus of destruction of records lies on the person whose data was collected. That person has to make a request to nodal officer nominated by the state or central government or administration of Union Territories. The nodal officer will verify the records as to whether or not it linked to any other criminal cases. Then, the nodal officer will recommend the destruction of records to NCRB.

The issue of onus is prima facie, troublesome for the person whose records of measurements lies with the administration. Primarily because if the person fails to make a request to the nodal officer their data will lay with the NCRB, thus creating a virtual model of the person which includes his or her personal information both biological and psychological which can be misused by the administration. The Nine-Judge Bench of Supreme Court in Puttaswamy case also stated in its judgement that personal data (including biological data) can be subject to misuse by state or non-state actors. Thus, it is responsibility of state to protect the privacy and personal data of citizens that it is being collected by the state.

In direct violation to right to privacy:

The Act as mentioned above goes beyond its originally intended scope to widen:

(1) **the measurements** in terms of biological data from fingerprints, footprints iris and retina scans to the extremes of blood sampling, hair, semen and DNA sampling (not operationalized yet). This is certainly problematic due to the fact that this creates a virtual model of a citizen. Now this person whose measurements are taken and stored with government are absolutely exposed to the whims of the government. The measurements can be easily misused or has a reasonable scope of being leaked. In a democratic government, it is also argued that the state should not have such personal data of citizens. It also fails the ‘test of proportionality’. The aim of the Act is to provide the investigative agencies a robust mechanism and authority to take measurements for

better collection of evidences for speedy investigations. However, the collection of biological samples such as DNA for the petty offence of theft against woman does not serve the purpose and clearly violates the privacy of an individual by the administration beyond the purpose for which it is being done. It is one of the areas that need further scrutiny.

(2) **People whose measurements can be taken.** Earlier, according to Prisoners Identification Act, 1920 persons convicted of offences punishable with rigorous imprisonment for one year or more / persons ordered to give security for good behaviour or maintaining peace or Magistrate may order in other cases in collection of samples from any person to aid criminal investigation. However, under the present rules, a person convicted or arrested for any offence (with certain exemptions that are already mentioned) and under the order of Magistrate any person (not just the person arrested) can be asked to give measurements. The data collected need not have a relationship with evidence required for the case.

Moreover, the right to be forgotten which was considered as a part of right to privacy under the Puttaswamy judgement also stands violated due to the provision that the records will be maintained for seventy-five years by NCRB.

However, it may be argued that the right to be forgotten comes in the context of limited or no exposure of personal information to the wide jungle of Internet. The data (biological samples that is converted to digital form) that resides with NCRB may be said to be protected to a certain extent from being exposed to the internet. Still, the aspect of misuse by state and non-state actors still lurks over the personal data that is crucial to one's right to live with dignity and exercise the right to privacy.

The addition of general terms such as biological and physical samples have its own issues. The terms may be interpreted to widen its scope to include **narco-analysis and mind mapping**. This in turn constitutes violation of another fundamental right **under Article 20 (3) of constitution** which states that no person accused of a crime may be forced to testify against himself/herself.

The right to refuse to give measurements also constitutes violation of **Right to Equality under Article 14** for reasons of being treated differently the same act (the offence of theft for example as discussed above).

Thus, we can see that the government while providing a framework under which one's right to privacy can be restricted under the act being discussed, it fails to elaborate on various provisions by using general terms (a problem we also observed during the discussion of Digital Personal Data Protection Act 2023). However, it is worth noting that post-Puttaswamy Jurisprudence the existing laws are being amended to provide protection and reasonable restrictions to the right to privacy.

6.c Barter of Bail with Privacy

The Paradox:
A Supreme Court Bench headed by Justice Aniruddha Bose in a order dated 28 June 2023, directed activists Vernon Gonsalves and Arun Ferreira that they should pair their mobile phones with National Investigation Agency as a condition for granting bail in Bhima Koregaon violence case. This certainly draws criticism that the right of bail of an accused comes with giving up the right to privacy.

The judgement came a week before another judgement of a Supreme Court Bench headed by Justice A.S Oka which was regarding the examination of bail conditions imposed by Delhi High Court on Raman Bhurarua, an accused in a money laundering case related to Shakti Bhog Foods Bank fraud. The High Court required the accused to drop a pin on the google map to ensure that their location is available to investigating officer.

Relation with right to Privacy:
Prima facie, it appears to be a case of violation of right to privacy as one has to share his/ her location all the time which makes it a **virtual detention**. According to Data protection activist Anjali Bhardwaj, mobile phones are an extension of one's self. The Supreme Court itself took a bold stand against imposition of such onerous conditions on bail in 2021 and termed them as **'tantamount to denial of bail'.**

The reason to start:
This practice of sharing location as a candidate for furnishing bail started in 2020 when the pandemic was at its peak and some prisoners were

being granted bail on the condition that they will keep sharing their location with court to avoid the spread of virus in prisons.

The Court is reasonable to some extent:
The right to privacy in this case stands violated due to the fact that the accused out on bail is under constant surveillance and is thus unable to enjoy his/her right to privacy. However, it can also be argued that bail conditions are not restricting only right to privacy. As one of the conditions of bail, the accused must not travel to any other area that may be out of jurisdictional boundaries and must come to courts as and when called by the same. Is this not a restriction of one's right to move freely within any part of India under Article 19 of the Constitution of India? The Fundamental Rights are not absolute and certain restrictions can be imposed on them. This also includes 'right to privacy'. Thus, reasonable restrictions that are felt necessary by courts for smooth investigation or if investigative agencies find it important for accused persons out on bail to share their live location for investigative purpose or so that accused may not in any manner attempt to affect the investigation, certain restrictions can be applied. It may be argued to pass the 'test of proportionality' given that the purpose and the extent to which privacy is breached appears to be in balance.

However, the Supreme Court is already thinking upon doing away with such bail conditions as this condition is in fact violative of right to privacy.

7.Conclusion

Privacy is nothing but a form of dignity, which itself is a subset of liberty. Thus, from the one great tree, there are branches, and from these branches there are sub-branches and leaves. Every one of these leaves are rights, all tracing back to the tree of justice. - Justice Sanjay Kishan Kaul.

Privacy has been mentioned as fundamental right in various verdicts, as cited above, and PUTTASWAMY VERDICT is the origin of it, which has played an instrumental role in shaping India's understanding and protection of privacy as fundamental right. In many case laws it's been accepted as a right, while others perform three stage tests of a matter to be considered as a matter of one's privacy which again was another boon of AADHAR VERDICT. Stepping into the era of post-Puttaswamy jurisprudence, it has given new grounds for exercising our rights as common citizens, in order to live a normative life. An ideal living condition is preferably free of any constant and irrelevant supervision by some authority, or imposition of restrictions on our day-to-day actions important for living, just because one is in a public arena their privacy shouldn't be breached is another important aspect of leading a normative life. All such living conditions lead to expectations to have constraints free life are fulfilled with the help of recognition of the right to privacy. All though in spite of the fulfilling character of this right, there are various grey areas, which haven't been in light for a long duration. Private information is not as such defined in legal terms and has a vague approach, but dealing with such a sensitive issue of life, that will affect not just an individual but the nation can't be left in ambiguity. Privacy as a right is so deeply interwoven in our fundamental rights that it will be used in most cases where an individual's freedom is at risk. As lately was evident in the **Karnataka hijab ban case**, in which religious autonomy was claimed to be considered as the right to privacy. Also, the **caste survey** was questioned on the grounds that it violated one’s right to privacy.

On this note it can be concluded, that privacy is an utmost priority, that varies through the lens of jurists, scholars, theorist etc., Which shows that facets and scope of privacy cannot be rigidly defined. Hence it can be stated that, the right to privacy is like a Kaleidoscope of arguments and its scopes are a rather polychromatic image.

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