

# **Chapter One**

## **Introduction**

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## 1.1 Introduction

Mankind has witnessed many revolutions in last century. The industrial revolution has brought about its own set of laws regulating business and commercial activity along with governance of the society post revolution. Developing countries could not cope up with the pace of it and so legal systems of these countries were not equipped to meet the challenges of the revolution. Meanwhile Information and Communication Revolution has overtaken the world. It demolished the economic barriers and social constraints.

The virtual world of computers and internet is dynamic and invigorating. Information technology explores and expands new paradigms and reveals new facets every day. Internet has taken the whole world in its tentacles. Society's dependence on technology was evident at the time of "Year 2000 Y2K". Because of internet the legal, social and cultural aspects of the society are also under transformation. The effects of ever-expanding technology are felt more severe when these technological advancement harm, abrogate or vitiate the legal rights vested in humans.

Today the internet and information technology has all pervasive growth which almost abolished the system of law relating to established norms in the society. The legal systems are trying to cope up with the speed and innovation in which it is affecting the settled norms. Experts and lawmakers are taking efforts to abrogate or reduce the effects on the rights. The most affected right of a person is 'right to privacy' because of technology. The 'personal space' of an individual is encroached or invaded by use of technology. This 'right to personal space' is termed as 'right to be let alone' by J. Cooley<sup>1</sup> and explored afterwards by Warren and Brandeis<sup>2</sup>. It is termed as right to be in seclusion. Though this right is associated with the human being from his birth, people were unaware about the right to privacy and rarely demanded it.

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<sup>1</sup> J. Cooley, Thomas, "Treaties on Law of Torts" (1879)

<sup>2</sup> Warren and Brandeis, "Right to Privacy", (1890)Harvard Law Review, Vol. IV, no.5,

For providing protection, difficulty arises with the meaning of the term 'privacy'. The term 'privacy' is fluid. It is so in the sense its meaning does not remain same in all the situations. It is multifaceted concept. Man in early society associated privacy with his obvious possession i.e. with property and any encroachment or disturbance to the enjoyment of property termed as breach of right to privacy. But with the progress in the technology, the meaning has changed encompassing the protection in innovative way for new ways for breach and invasion of privacy.

Different jurists, sociologists, scholars in political science, or even anthropologists tried to define privacy in search of exact definition and which resulted in exploration of various contours of privacy. We can associate privacy with each of the contour explored by each of them. But today the aspect which has gained prime importance is communicational privacy which relates to informational privacy of person because of the communication through information technology.

Communication means activity of exchanging information and meaning across the space and time using various technical or natural means whichever is available or preferred. While using internet as communication medium, personal information is collected by the service providers through cookies. Browsing history can be accessed by the entity, public or private, and can be used for its own benefit. Because of this the rights of the person may be harmed as liberty and freedom of a person to exercise the right to choose i.e. decisional privacy is harmed. As this liberty and freedom is compromised, the autonomy and dignity may be lost. So there is a need to have effective legislations to protect the privacy of person.

In most of the countries courts were the strong protector of this right. As there was no specific recognition under any law, right to privacy was recognised under constitutional provisions. In United States of America, by interpreting the rights provided in Amendments to the Constitution, the courts protected it. In India also the Constitutional provisions relating to fundamental rights are interpreted to prevent breach and invasion on the right to privacy by the court.

Different legal systems tried to protect this right by enacting legislations and by amending existing provisions by enlarging their scope. In United States the evolution of right to privacy was first observed. It was shaped up by courts along with the jurists. In the beginning, courts in United States of America protected privacy in terms of property which slowly shifted towards accessing and disclosure of information unauthorised. Afterwards it has enacted various sector specific legislations for protection of information.

But guiding torch is provided by European Union very concretely. It has issued guide lines for protection of privacy to its member countries by issuing Organisation for Economic Co-operation and Development (OECD) principles. Personal data provided to entities including government can also be accessed by the entities through service providers. To protect this data from illegal processing, the new regulation was issued by the European Union in 1995 i.e. Directive 95/46/EC. This directive is replaced by new regulation General Data Protection Regulation in 2018. It has illuminated the path to many countries in respect of protection of privacy of information.

Computers and information technology is widely used in India in 1990s which is much later than United States of America and European Union. While doing commercial transactions with these countries need was felt by government to formulate Information Technology Act, which was enacted in 2000. But in this Act, provisions relating to protection of privacy was missing. The said legislation was solely enacted to facilitate the computer transactions of business. It was amended in 2008 but informational privacy was not provided under it effectively and sufficiently.

Accessing or intercepting the information illegally is serious threat to privacy right of an individual. The Information Technology Act provides for this but if the information is retrieved by tracking the electronic footprint it is not provided. The scariest part to this is that the information can be retrieved even after it is deleted from the electronic device as computer. The Information Technology Act, 2000 as well as the Bills introduced to protect personal data are silent about this.

India has also drafted legislations for privacy of information. Privacy Bills 2011, and 2014 were drafted. Personal privacy and data privacy was provided under them. But they were not finalised and assented by parliament. The Personal Data (Protection) Bill, 2013, Personal Data Protection Bill, 2018 were also drafted. But it was not assented by Parliament. The government has introduced The Personal Data Protection Bill, 2019. It is pending before joint select committee.

To blossom the personality of an individual, privacy is essential. The core of personality consists freedom and liberty which promotes autonomy. Personality and identity of an individual are founded on these principles. These principles grow and develop with privacy. A law relating to information technology regarding privacy issues should contain almost all threats, violations and encroachment over the rights and interests of the person.

Hence this tile of the research is as follows

## **THE STUDY OF RIGHT TO PRIVACY WITH REFERENCE TO INFORMATION TECHNOLOGY ACT, 2000**

### **1.2 Rationale of Study**

The rationale of the study is summarised under the following points:

1. Lack of provisions for protection of privacy and data privacy in the IT Act, 2000.
2. Protection of bodily privacy is protected but right to live an unobstructed life is not provided for.
3. S. 66A declared unconstitutional by Supreme Court but there is no other provision for protection against ‘annoyance’ or ‘inconvenience’ using communication devices through information technology in IT Act, 2000.
4. S. 43 A protects the handling of the ‘sensitive personal data’ by body corporate, but Government which is handling such data is out of the purview of this section.
5. Definition of ‘sensitive personal data’ other than provided under the rules are decided in consultation with Central Government which is subjective opinion of the government.

6. Use of CCTV surveillance, Biometric systems and data gathered by such uses are not covered under the protection to right to privacy of person.
7. Law is silent on the methods of collection of personal data and information.
8. Consent of the person whose information is collected is not provided for under the law.
9. No check is provided when government itself is gathering information from service providers, intermediaries, data centres and body corporates.
10. Privacy is infringed by tracing or gathering electronic footprints but such provision is not provided in IT Act, 2000 and under any of the personal data privacy bills.
11. S. 69 provides the unlimited power to the government for interception of the communication which is against the freedom guaranteed by art. 19 (1) (a) of the Constitution of India. It should be more restrictive.

### **1.3 Object of the Study**

The main objective of this research is to find out the right to privacy with reference to Information Technology Act, 2000. While finding out this the researcher also conducts the study with following objectives.

1. To analyse the privacy bills and data protection bills towards protecting the right to privacy.
2. To identify the preventive measures of infringement of interests and rights of persons.
3. To identify global issues and challenges particularly in countries like U.S.A., U.K, European Union and also national policy in Cyber Laws.
4. To study the opinion of the stake holders.
5. To examine the role of judiciary in protecting the right to privacy of individuals with reference to IT Act, 2000.

### **1.4 Scope and Delimitation of the study**

1. The Scope of study includes determining the privacy rights of the persons, protection of personal data and sensitive personal information as of technologically developed countries like U.K, U.S.A, and European Union.
2. To analyse the existing Information Technology Act, 2000 and Bills on Privacy and Personal Data Protection.
3. The Researcher has been limiting the research on the privacy rights of the persons in India on the backdrop of general history and existing laws of different technologically developed countries regarding privacy and data protection.

### **1.5 Hypothesis formulated to conduct the research**

The main purpose of this research is to study the right to privacy with reference to Information Technology Act, 2000 in India. The research was conducted on the following hypothesis:

1. Due to lack of sensitivity and political wish for enacting the law for protection of Right to Privacy, it is difficult to achieve justice or prevent failure of justice.
2. In absence of the clear provisions for protection of Right to Privacy, the judiciary cannot deliver justice and prevent infringement of the rights.
3. The lack of awareness among people about the clear provisions of Information Technology Act, 2000, will result in to infringement of Right to Privacy of individuals.
4. As there is an absence of any check on the government or any entity for gathering and dissemination of information of a person, it is not possible to guard rights of person relating to his privacy
5. Due to lack of the provisions regarding responsibility of intermediaries, service providers, there is a possibility that intermediaries, service providers misuse the power.

#### **Research questions:**

1. Is it possible to achieve justice or to prevent failure of justice as there is less sensitivity and political wish to enact law for protection of right to privacy?
2. Can a judiciary deliver justice and prevent infringement of the rights, in absence of clear provisions protecting Right to Privacy?

3. Does lack of awareness among people about the clear provisions of Information Technology Act, 2000, will result in to infringement of Right to Privacy?
4. In absence of the any check on the Government or any other entity for gathering and dissemination of information of a person, is it possible to guard the right of person to his privacy?
5. As there is lack of provisions regarding responsibility of intermediaries, service providers, is there a possibility that intermediaries, service providers misuse the power?

## **1.6 Research Methodology**

The study is based on qualitative research wherein both primary as well as secondary data is used. Secondary data has been library based, collected from the various research, journals, articles, books and publications. The primary data has been collected from semi-structured close ended questionnaire via homogeneous purposive sampling. It would usually be unfeasible to study an entire population, for example when doing a personal interview hence homogeneous purposive sampling method has been used for primary data collection. Persons using computer and internet have been selected for homogeneous purposive sampling and that allowed the researcher to infer information about a population, without having to investigate every such person. Reduced numbers of individuals in the study reduced the cost and workload, and made it easier to obtain high quality information, and that also has balanced against having a large enough sample size with enough power to detect a true association.

## **1.7 Review of the Literature**

Need for protection of privacy of a person in its all possible dimensions growing rapidly with advancement of technology. Surveillance is used through CCTV and Biometric devices to gather the personal information. Development in the existing technology raises new issues regarding violation of the right. Pace of development is much faster than enactment of a legislation. This provides a



serious threat to right to privacy of a person. So to have clear insight of the right to privacy to a person in India, a researcher has gone through sources available like books, reports, journals, research work, and tried to obtain the finding related to topic.

**Daniel Susser (2019)**<sup>3</sup> in his study discussed the concept of notice and obtaining consent of the end users of using their personal information below the privacy policy of any entity. He has shown with the examples of the studies done that obtaining consent does not provide much protection for the individual using such services because choice is either to accept the terms and condition fully or do not avail the services. They are also too technical to understand for a common person about the all consequences of sharing personal information to an entity to disseminate. So this makes privacy choices complicated and personal information is at stake even if the care is taken by the individual.

**Rahul Matthan (2018)**<sup>4</sup> in his study discussed the concept with reference to ‘Aadhar’ regulations. After ‘Aadhar’, other identity papers earlier recognised by the government are now derecognised and now are not considered as an identity documents. But he has raised issue of person’s privacy and privacy of his information as biometric information is also registered with the government. He has discussed the problems regarding breach of privacy, misuse or hacking of personal data, lack of awareness in public and also of authorities, no strict liability of service providers. He also focussed the non- personal data when combined with unique profiles, the identity and privacy of a person is revealed. He has suggested that instead of focussing on awareness of people, the liability shall be imposed on data collectors, data controllers and intermediaries.

**Ginger Zhe Jin (2018)**<sup>5</sup> explored the concept in her paper on ‘Artificial Intelligence and consumer Privacy’. She stressed that consumers are sufferers as their data in public domain is used by commercial organisations, Because of this, consumers lose their freedom to choose with whom to trade, what sites to browse. It was also shown in her paper that these commercial organisations do

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<sup>3</sup> Susser, Daniel (2019), “Notice after Notice-And-Consent: Why Privacy Disclosure are Valuable Even If Consent Framework Are Not”, Journal of Information Policy, Vol. 9. Pp. 37-62.

<sup>4</sup> Matthan Rahul (2018), “Privacy, 3.0 Unlocking Our Data Driven Future”, Harper Collins Publishers, India.

<sup>5</sup> Ginger Zhe Jin, (2018). “Artificial Intelligence and Consumer Privacy”, Available at [www.nber.org/papers/w24253](http://www.nber.org/papers/w24253) (Last visited on October 19, 2016)

not provide true information regarding the use of consumer's personal information currently or in future. They also fail to install the protective technology preventing hacking or data leakage and discussed the ways to combat consumer privacy breaches. But did not cover the individuals who are not consumers but only availing services of some service providers. She stressed framing of the new laws for this.

**Solove Daniel J (2017)**<sup>6</sup> in his article explored the situations when consent is obtained for collection of data for use and disclosure. He termed the rights of notice, access and consent regarding collection, use and disclosure of personal data as bundle of rights of a person. The person can himself decide for themselves about cost, harm, advantages about giving the consent. This regulation about privacy by the person himself is termed as 'privacy self-management'. He compared the data privacy laws of EU and USA. Though USA has accepted gist of privacy principles as per the OECD principles but in EU self- management principles are component but it requires much more stringent and explicit form of consent than USA privacy law. EU law is more restrictive of data collection, use and disclosure, it requires legal base before personal data can be processed. In USA, data can be generally processed 'unless law specifically forbids the activity. In EU restriction may not have connection to the harm. In USA processing is generally allowed unless it is harmful. He suggested that coherent approach to consent is to be developed that accounts for the social science discoveries about how people make decisions about personal data. He also pointed out that it should be recognised that people can engage in privacy self-management only selectively and privacy laws should be adjusted for their timing to focus on downstream uses and more substantive privacy rules should be developed.

**Zezulka, Ond'rej (2016)**<sup>7</sup> evaluated yet another threat to personal information by digital footprints on the backdrop of the regulations issued by European Union. Directive 2016/679 was issued to protect personal data and on free

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<sup>6</sup> Solove, Daniel J, (2017), "Introduction: Privacy, Self-Management and the Consent Dilemma". Harvard Law Review, Vol. 126, No. 7.

<sup>7</sup> Zezulka, Ond'rej, (2016), "The Digital Footprint and Principles of Personality Protection in European Union, Charles University in Prague. Faculty of Law research paper no. 26/11/12.2016/III/02, available on <https://ssrn.com/abstract=2896864> ( Last visited on October 16, 2016)

movement of such data on natural persons. It came in to effect in 2018. Also the directive 2002/58/EC was adopted concerning processing of personal data and protection of privacy in electronic communication sector. Regulations recommending the anonymity and right to be forgotten were also discussed. The real situation regarding obtaining the consent of the user and safety of his personal information in browsing is highlighted and need is emphasized to provide some strong legal remedies.

**Gaurav Goyal, Dr. Ravindra Kumar (2016)**<sup>8</sup> have studied the concept which discussed the evolution of the concept 'Privacy'. It was argued that the concept changes according to the culture, upbringing and economic conditions of the person and this concept is differently treated in India. They pointed out that absence of legislation on privacy in India is the outcome of lack of political wish. They argued that people of certain class enjoy more privacy than others because of their economic conditions. They also stressed that technology changes rapidly and therefore the concept of privacy also changes.

**Desai Prashant S. (2013)**<sup>9</sup> has concentrated his research on the various dimensions of privacy like bodily privacy, medical privacy, genetic privacy, internet privacy etc. He verified the scope of right to privacy in respect of marital privacy, reproduction, family life, sexual reproduction, abortion, information privacy, right to die etc. He has considered that right to privacy is human right. He considered different threats using information technology like phishing, stalking which has criminal aspect of the right. In sending information cloud based technology was explored. Liability and responsibility of intermediaries in different countries like U.S.A, U.K and European Union was studied.

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<sup>8</sup> Goyal Gaurav, Kumar Ravindra, (2016), "The Right to Privacy in India: Concept and Evolution". Partridge Publication.

<sup>9</sup> Desai Prashant S.(2013), "Legal Protection of Right to Privacy in era of Information Technology- a critique. Retrieved from <http://shodhganga.inflibnet.ac.in/handle/10603/98806> (Last visited on October 16, 2016)

**Singh, Lakhwinder (2013)**<sup>10</sup> explored the concept ‘privacy’ thoroughly in various provisions. The privacy provisions in India are compared with the provisions of different countries in detail. He conducted the research and came to the conclusion that there is no awareness among people about the privacy of person.

**Sunil Abraham(2013)**<sup>11</sup> evaluated the concept privacy in the article in respect of the use of CCTV and biometric in surveillance industry for gathering information about the person. He verified the effects of both as surveillance instruments. As many people believe that S. 43A in IT Act is privacy law for India, he strongly denies it. He is of the opinion that it is only data security provision and not comprehensively address data protection. According to him, a privacy legislation should satisfy some conditions like it should protect privacy rights of persons regardless of their citizenship status, it should define privacy principles, office of independent and autonomous privacy commissioner who is sufficiently empowered to investigate and take action against government and private entities should be created. It should have overriding effect on previous legislation that does not comply with all privacy principles. He concluded that industries, banks will welcome this as they are holding some data of foreign nationals and now they do not have to spend twice for maintaining the standard according to European Union.

**Solove Daniel J(2011)**<sup>12</sup> explored the misconceptions about the argument which is always done while in response of the privacy threat by surveillance that ‘I have nothing to hide’. This surveillance is done to protect the state. But he questions that whether this surveillance is necessary on every common citizen.

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<sup>10</sup> Shah Lakhwinder (2013), “Expanding Horizons of Right to Privacy: A Study”. Retrieved from <http://shodhganga.inflibnet.ac.in/handle/10603/87489>. (Last visited on October 16, 2016)

<sup>11</sup> Abraham, Sunil (2013), “Freedom from Monitoring: India Inc Should Push for Privacy Laws”. Available at [www.cis-india.org/internet-governance/blog/forbesindia-article-Aug-21-2013](http://www.cis-india.org/internet-governance/blog/forbesindia-article-Aug-21-2013) (Last visited on October 16, 2016)

<sup>12</sup> Solove Daniel, (2011), “Nothing to Hide: The False Trade-Off between Privacy and Security in New Heaven and London”. Yale University Press.

He conducted study through questionnaires and received responses against it. He argued that it is dangerous as there is possibility that individual interest is harmed in terms of his privacy. He stressed that privacy is threatened not by single act but by slow series of relatively minor acts which gradually begin to add.

**Apar Gupta (2010)**<sup>13</sup> in his article examined the issues of online privacy using two taxonomies. One which is provided by Prosser in terms of four privacy torts and secondly Solove's taxonomy that privacy harms in terms of information gathering, information dissemination or processing, publishing or disclosure of information and invasion. He observed that Indian people are sensitive in gathering of information and not for dissemination. But privacy is important for both of these issues. Publication of information comes after that. He evaluated the s. 69 and 69A of the IT Act, which provides power to government for interception. He advocated that the statute shall provide clear provisions regarding all the three. He stressed that there should be safeguards against such data privacy breach by interception or otherwise. But it is not done so in the Information technology Act.

**Parveen Rehana (2010)**<sup>14</sup> in her research explored the concept privacy protection under various laws prevalent in India. The right to privacy is discussed on backdrop of legal, constitutional laws and judicial decisions on various cases. The primary focus is on right to privacy in respect of wire-tapping, telephone tapping in respect of marital relations and disclosure regarding AIDS patients, women's right to privacy for her body exposure and her dignity etc. Surveillance using CCTV and other electronic devices is also

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<sup>13</sup> Apar Gupta, (2010), "Balancing Online Privacy in India", Indian Journal of Law and Technology, Vol. 6. Available at [www.ssrn.com/abstract=1682465](http://www.ssrn.com/abstract=1682465). (Last visited on October 16, 2016)

<sup>14</sup> Parveen Rehana, (2010), "Protection of Privacy in India: Law and Juridical concerns." Retrieved from <http://shodhganga.inflibnet.ac.in/handle/10603/52364> (Last visited on January 12, 2017)

studied. Publishing the material which is harmful to individual's interest and exposure of the wrongdoer with sting operations are examined in her study.

**Santosh Kumar (2010)**<sup>15</sup> discussed the right to privacy in advent of information technology from the point of data protection as information comprises important aspect of individuality of a person. He explored the subject with reference to information and effects of activities through computer on the information like hacking, cookies, spam mails etc. He also explored the situations when information is secured using cryptography, ie. Encryption and decryption. He discussed the different legislations in various countries like USA, UK regarding data protection and privacy and compared the situation in India. He concluded that India shall maintain balance between provision of universally applied laws and Indian legal system. For this comprehensive policy shall be formulated for overall protection of privacy and finding balance between privacy and other competing interests.

**Daniel Solove (2009)**<sup>16</sup> discussed the concept in comparison with secrecy, confidentiality and tried to conceptualise the term 'privacy'. He also discussed the stages like collection, processing, and dissemination where privacy is to be observed. He studied and verified the notions like cultural differences and privacy in the book. He explained that privacy must be determined on the basis of importance to the society. According to him privacy does not have universal value that is same across all the context. He opined that value of privacy in a particular context depends upon social importance of activities that it facilitates.

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<sup>15</sup> Kumar, Santosh (2010), "Development of Information Technology and its impact on Right to Privacy- a critical Study". Retrieved from <http://shodhganga.inflibnet.ac.in/handle/10603/56320> (Last visited on October 20, 2017)

<sup>16</sup> Solove Daniel, (2009), "Understanding Privacy", Harvard University Press.

**Kiran Chauhan (2007)**<sup>17</sup> in her critical study of right to privacy upheld by judicial decisions discussed the types of privacy like intimacy and privacy, family privacy, community privacy, political/legal privacy, social privacy and professional privacy. Functions of privacy were also discussed that it gives personal autonomy, emotional release, self-evaluation and limited and protected communication. Privacy in Hindu period, Muslim period, British and post British period was also discussed. The legal framework in India under different statutes and constitutional provisions were explored. Judicial response for this right under situations like search and seizure, women's rights, freedom of press, telephone tapping, restitution of conjugal rights, protection of AIDS patients and right to abortion was explained and discussed. Limitations on the right that under certain circumstances this right may be denied are also provided. She has suggested that the right shall be added by separate clause in Art. 19 to provide protection and also disclosure by the government shall be prohibited.

The researcher above had concentrated his efforts for exploration of right provided by the judiciary. For his suggestion that right to privacy shall be added as separate clause under art. 19 is not much useful. Instead researcher in this study shown the circumstances for which the threat to privacy shall be dealt with the strong data protection legislation.

**Solove Daniel (2006)**<sup>18</sup> has supplied the framework for understanding privacy in pluralistic and contextual manner. He concentrated on the privacy problems rather than 'what is privacy', its definition. He pointed out that there should be society for the privacy. Without society there is no need for privacy and privacy is relief from the frictions of society. He explained that the data is handled in four ways and he focussed on the activities which affect data. I) Information collection –includes surveillance/ interrogation, II) Information processing- includes aggregation, identification, insecurity in secondary use, and exclusion

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<sup>17</sup> Chauhan Kiran, (2007), "Right to Privacy- a Critical Study with Special Reference to Judicial Approach in India". Retrieved from <http://shodhganga.inflibnet.ac.in/handle/10603/27846>. (Last visited on October 16, 2016)

<sup>18</sup> Solove Daniel, (2006), "A Taxonomy of Privacy", University of Pennsylvania Law Review.

of data, III) Information dissemination- includes breach of confidentiality, disclosure, exposure, increased accessibility, blackmail, appropriation and distort, IV) Invasion-includes intrusion, decisional interference.

He explained that against the each step there is a possibility of its breach in different ways. Law should provide for redressal of them. He concluded that policymakers struggle with identifying the presence of privacy problem due to conceptual confusion. It requires to attain balance between privacy and other interests.

**Solove (2004)**<sup>19</sup> has described here the definition of digital Person whose complete life is captured in data and stored in digital dossier on electronic network. He described that how the technology takes hold of every individual for the benefit to the commercial organisation.

**Solove (2002)**<sup>20</sup> discussed the definitions of privacy provided by various jurists, philosophers, psychologists. He had shortlisted the six major heads i) right to be alone, ii) limited access to self, iii) secrecy-concealment, iv) control over personal information, v) personhood- protection of one's personality, individuality and dignity, vi)intimacy- control over or limited access to one's intimate relationships or aspect of life. He thinks that word privacy takes meaning according to the circumstances in which the person expects the privacy and in different situations, the expectation of privacy is different. So instead of core value of privacy it should be understood in context. He explored the approaches for understanding the privacy. He contended that it provides guidance in identifying, analysing and ascribing value to set of related dimensions of practices in society. According to him the focus should be on type of disruption than what is included in privacy as we have different types of

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<sup>19</sup> Solove Daniel, (2004), "The Digital Person, Technology and Privacy in Information Age", New York University Press, New York and London.

<sup>20</sup> Solove Daniel, (2002), "Conceptualising Privacy", California Law Review, Vol.90, No.4.



injury to different sets of practices. By different examples he proposes that privacy is not found but constructed. He propounded that privacy should be valued as instrument to achieve certain valuable ends and therefore should be understood in context.

**Jajodia (Mozika) Jyoti (2002)<sup>21</sup>** has explored the right to privacy with broader perspective and verified it under situations like right in terms of home which include marriage, procreation, etc. She has discussed the right of privacy of accused and criminal persons, innocent persons, prostitutes and also remedies available for protection of this right. She discussed privacy of communication and inviolability of person. She has concentrated more on general terms than the threat with computer technology. But exploring and understanding the different situations where the right to privacy can be breached by any tool is important contribution.

## **1.8 Implication of the Reviewed Literature**

On the basis of the review of related literature, the researcher has come to the conclusion that there is need to know whether the existing laws, rules, enactments and regulations dealing with the right to privacy in all its possible contours of a person in India will be effective and well developed to provide remedies to protect it. Therefore, the researcher through present study wants to make an attempt to highlight and bring forth the lacunas in present Act and bills. For the purpose of study the present position of right to privacy, the researcher will analyse the laws, reports, bills, rules, and enactments on it and which shall include the following namely Conventions of European Union Commission in 1981 regarding privacy, 1995 regarding data protection and privacy and 2018 regarding privacy while processing the personal data within and outside European Union, privacy laws and data protection legislations of USA, UK, Information Technology act, 2000, and various bills in India.

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<sup>21</sup> Jajodia (Mozika) Jyoti, (2002), "Emerging Right to Privacy in India".

Retrieved from <http://shodhganga.inflibnet.ac.in/handle/10603/137097>. (Last visited on October 16, 2016)

## **1.9 Chapter Structure**

The growth of Information technology in transactions raised certain issues. One of the important issues is privacy of the person. With the use of information technology and internet, for communication, personal privacy is often violated or encroached. It is crucial to understand privacy in all its aspects which broadly includes physical privacy, decisional privacy and informational privacy. Right to privacy gives strong self-worth to a person. His personality develops and he attains freedom and liberty to decide for himself.

Information about the person i.e. personal data is collected and processed without his consent, also jeopardise the other rights and interests of the person. This impacts decisional and physical privacy. Therefore data protection is also an important aspect of privacy. Though all information is not necessarily private and is to be protected, but it is to be decided by strong, fair and just legislation.

**In the first Chapter on Introduction** the researcher has given an overview of the topic. Also the Object, Hypothesis, scope, significance and utility and the literature review has been discussed here.

### **Chapter Two- Computer Transactions and Right to Privacy: An Overview**

This chapter highlighted the scenario of uses of information technology, computer and internet in different fields and in day to day transactions. The researcher discussed the uses in fields of medicine, armed forces, businesses, airport, railway, and some services like e-wallet, digilocker and some other. The researcher analysed the impact of such use of information technology an internet on the privacy and personal data protection. The researcher analysed the effects of Internet of Things (IoT) and Artificial Intelligence (AI) on the Right to Privacy.

### **Chapter Three - Right to Privacy: International Perspective**

In the beginning of the chapter, the researcher discussed meaning, scope and development of the concept ‘Privacy,’ that helped to understand the concept. The researcher discussed the development of the concept in some of the

technologically developed countries like U.S.A. U.K, European Union that helped to know the gradual development and history of the concept in different periods and in different legal systems and various laws being enacted and adapted by them for protection of privacy and how the same would be helpful in codifying the laws in India. This chapter also discussed these gradual development and history of data protection and to understand its development and to examine the necessity to codify the laws pertaining to it.

#### **Chapter Four - Right to Privacy and IT Act, 2000: An Interface.**

The researcher, in this chapter, studied the IT Act, 2000 with international scenario regarding right to privacy and data protection and studied the various resolutions, conventions of United Nations, regulations and directions of European Union and enactments and provisions involving various laws in technologically developed countries like U.S.A, U.K involving various laws pertaining to privacy and data protection. The researcher has interpreted the codified enactments, provisions, laws and bills on privacy and data protection. The researcher has further analysed whether there is need of new or improved law or present provisions regarding privacy and data protection in the IT Act are sufficient with some of the amendments to be made.

#### **Chapter Five- Judicial Response to Right to privacy**

This chapter dealt with the important case laws highlighting the benefits of a well codified and comprehensive legislation on privacy and personal data protection. Case laws were important to discuss because they showed the actual face and implication of prevailing law. The purpose of this chapter to find out the law in force, but also to find out how different privacy and data protection principles in earlier chapters are balanced with the rights and interests of the individuals and if the current legislation allows some shift in this balance. In this chapter, the researcher studied various judicial pronouncements deciding the case laws regarding privacy.

#### **Chapter Six -Interpretation and Data Analysis**

The chapter dealt with the analysis and interpretation of data collected during the research work based on semi structured questionnaire via homogeneous

purposive sampling of various stake holders in Mumbai, Maharashtra. Tool of face to face conversation was used for interviewing the stakeholders. By that data of stakeholders, using computer, mobile and internet have been collected for homogeneous purposive sampling and that allowed the researcher to infer information about population, without having to investigate every stakeholder.

### **Chapter Seven -Conclusion and Suggestions**

This is the concluding chapter of the Research Work carried out by the researcher. This Chapter has the major findings of the Study and the suggestions of the Researcher to provide a better legal tool to protect privacy in India.