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AADHAAR SCHEME –AN INVASION OF DATA PRIVACY AND DATA SECURITY

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ABSTRACT: - Privacy is a sweeping concept that provides people an ability to control all the things that are part of our life including our identity, thought, feelings, body and our secrecy. Privacy is individual's condition of life which is kept safe from the rest of the world. In case, the third party holds his personal information, then he must have lost his privacy. With the increasing use of internet one's privacy can be disturbed. As technology is certainly upgrading worldwide, there is urgent need for proper data protection and privacy laws.

In 2014, Aadhaar Scheme was issued in India. The main issue connected with Aadhaar is right to privacy as Aadhaar card is issued to every citizen after recording and verifying every data of the individual concerned including biometric and demographic data. The Government of India has allocated this job of collecting data to many Government as well as private institutions such as HP India Sales Private Ltd., HCL Info System, Linkwell Tele systems private Ltd. etc. It is just like that the cats had been asked to protect milk. Everything is not strictly black or white, right or wrong. Every law also has two aspects positive as well as negative like a transaction as in a transaction if one is debited then other is credited.

This step of government is an imminent threat to private information of the Indian citizens. Thus, citizens need protection from this unauthorized interception of data. We need to ensure that ample safeguards are provided for data protection and privacy by enacting proper laws. As data is the new gold and the Aadhaar is the tool to get it.

KEY WORDS: -Worldwide, Data Protection, Aadhaar Scheme, Unauthorized, Interception

1. **INTRODUCTION:** - India relied on American laws for the purpose of interpretation of privacy matters in Indian Domain. The Origin of right to privacy can be traced from 19th Century. In 1890, Samuel D. Warren and Louis Brandeis¹ published the 'Right to Privacy' an articles that postulated a general common law right to privacy. Before the publication of this article no American court had expressly recognized such a Legal right. Since the publication of this article, the courts have relied on it in more than hundreds of cases presenting a range of privacy issues.

¹ "The right to privacy does not prohibit any publication of matter which is of public or general interest." Warren and Brandeis elaborate on this exception to the right to privacy by stating: ... The right to privacy ceases upon the publication of the facts by the individual, or with his consent.

A very fascinating development in Indian Constitution is extended Horizon of **Articles 21**² by Apex Court in Maneka era. Hon'ble Supreme Court has recognized Article 21 as heart of the fundamental rights. Privacy Rights are considered as fundamental rights and these rights are protected under our constitution. Right to privacy is protected as an intrinsic part of right to life and personal liberty under article 21 and as a part of freedom guaranteed by part –III of the Indian constitution.

Right to privacy can be considering as umbrella under numerous areas related with different fields are covered. This right to privacy has gained momentum throughout the world and it has been recognized as most Pivotal Fundamental Rights. All the countries such as U.S.A, U.K., Canada and international organizations such as UDHR³, ICCPR⁴, and ECHR⁵ have gained valid recognition to this right to privacy.

2. MEANING OF PRIVACY: - The term 'Privacy' is a very crucial term. The term 'Privacy' is derived from the Latin word 'Privatus' which means freed or released or set apart or separated from the rest. It is a dynamic concept which varies with society and culture. It has its origin in natural law theories. Privacy means a state in which one is not observed or disturbed by the other people. Thus, term privacy means state of being free from Public attention or secret surveillance and to determine whether, when and how and to whom one's personal or organizational information to be revealed. If we have privacy, we are in a situation which allows us to do things without other people seeing or disturbing us. Thus, privacy is the ability of an individual or group to seclude them and thereby express them selectively. The domain of privacy partially overlaps with security, which can include the concept of appropriate use, as well as protection of information.

3. DEFINITION OF AADHAAR: - The term 'Aadhaar' is a Hindi word which means base or foundation. It is a popular name of UID card which stands for Unique Identification Card. It is issued by the Unique Identification Development Authority of India to every individual resident of India. The UIDAI⁶ which functions under the planning commission of India is responsible for managing Aadhaar numbers and Aadhaar Identification card. Aadhaar is a 12 digit Unique Identification number that can be obtained voluntarily by every resident of India based on their biometric and demographic data. The data is collected by UIDAI, a statutory authority established in January, 2009 by Government of India, under the Jurisdiction of Ministry of electronics and information Technology, following the provisions of the Aadhaar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016.

4. FORMAT OF AADHAAR CARD: - The full Aadhaar card is a colour document often printed on glossy paper that is also obtainable electronically online via PDF. It is printed on A4 paper and folded in half in portrait. In Aadhaar card there are two types of information i.e. demographic information and biometric information. Biometric information includes photographs, finger prints, Iris scan and other biological aspects. Whereas Demographic information includes details like name, address, date of birth and other relevant information of on individual. It precludes few specific details such as caste and religion.

² Article 21 of the Constitution of India provides Protection of life and personal liberty and says No person shall be deprived of his life and personal liberty except according to procedure established by Law. Part III of the Indian Constitution contains a list of Fundamental Rights guaranteed to the persons of India

³ UDHR- Universal Declaration of Human Rights

⁴ ICCPR- International Convention on Civil and Political Rights

⁵ ECHR- European Convention on Human Rights

⁶ Unique Identification Development Authority of India was created with the objective to issue Unique Identification numbers (UID), named as "Aadhaar", to all residents of India

5. AADHAAR SCHEME: - In 1999, the idea for issuance of identity card was first introduced by Kargil Review committee⁷ headed by security analyst K. Subramanyam⁸. Various recommendations were made by this committee for issuance of identity card on priority basis in border regions. Later such identity cards should be issued to all people living in Border States. It was different from Aadhaar. Later in 2009, UIDAI was established with a view to provide clear and Unique Identity Number for each resident of India which could be used primarily as the basis for efficient delivery of Welfare scheme and effective monitoring of various programmes and schemes of Government. Main Purpose of this project was to provide unique identification number and to collect biometric and demographic data of residents for their individual identification.

In 2009, the Government of India Constituted the Aadhaar Scheme. It was world's largest biometric identification scheme that provided national identification number for every resident. On 3rd March, 2016, a Bill was introduced in the parliament to give Legislative Backing to Aadhaar. On 11 March, 2016, the Aadhaar (Targeted Delivery of financial and other subsidies, benefits and services) Act 2016 was passed in Lok Sabha. On 26th March, 2016, this Act was notified in the Gazette of India. In June 2013, Home Ministry clarified that Aadhaar is not a valid identification document for Indians travelling to Nepal and Bhutan.

In July, 2014 Aadhaar enabled biometric attendance system which was introduced in Government offices to check Late Arrival and absenteeism of Government employees. In October, 2014, this website was closed to the public but on 24 March, 2016, it is active and open to public access.

On October 2014, the department of electronics and Information Technology said that Aadhaar will be linked to SIM cards⁹. The Digital India Project aims to provide all Government services to citizens electronically and expected to complete it by 2018.

Election Commission also started programme 'National Electoral Roll Purification and authentication programme' that aim to link the elector photo identity card (EPIC) with the Aadhaar number of the registered voter. Its aim was to create an error free voter identification system in India, especially by removing duplication.

6. CONSTITUTIONAL PROVISIONS: -

a. Preamble of Indian Constitution aims to secure social, economic and political justice by securing dignity of the individual.

Accordingly to Hon'ble Justice Chandrachud

"Dignity cannot exist without privacy. Both reside within inalienable values of life, liberty and freedom which Indian constitution has recognized. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self determination".

b. Right to privacy has not been expressly recognized as Fundamental right under part III of the Indian constitution. Right to privacy is protected as an intrinsic part of right to life and personal Liberty under Article 21 and as a part of freedom guaranteed by part III of Indian Constitution.

c. Supreme Court has issued Guidelines for protection of right to privacy in order to overcome its non liquet situation. Under Articles 142 of Indian Constitution ¹⁰Supreme Court has power to do complete justice to frame guidelines in relation to subject matter where there was a legislative vacuum.

d. Also under Article 32 public interest policies affecting individual rights and freedom are amenable to judicial review.

⁷ The Kargil Review Committee (KRC) was set up by the Government of India on 29 July 1999, three days after the end of the Kargil War. The committee was set up "to examine the sequence of events and make recommendations for the future".

⁸ Security analyst K. Subramanyam (19 January 1929 – 2 February 2011) was a prominent international strategic affairs analyst, journalist and former Indian civil servant.

⁹ A SIM card, also known as a subscriber identity module, is a smart card that stores identification information that pinpoints a smart phone to a specific mobile network. ... Without a SIM card, some phones would not be able to make calls, connect to internet services such as 4G LTE or send SMS messages.

¹⁰ Article 142 of Constitution of India deals with enforcement of decrees and orders of the Supreme Court & It states that the Apex Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing "complete justice" in any case pending before it.

e. Supreme Court declares Aadhaar scheme as constitutionally valid. The Apex Court's five judge constitution Bench headed by Chief justice Deepak Mishra said Aadhaar is meant to help benefits reach the marginalized sections of the society and takes into account the dignity of people not only from personal but also from community point of view. Thus, Aadhaar is serving much bigger public interest.

7. **RELEVANT STATUTORY PROVISIONS:-**

International Scenario:-

Right Privacy has gained momentum throughout the world. All the countries like U.K. U.S.A., India, and Canada etc. have gained valid recognition to right to privacy. Right to privacy as a human right has been recognized in many international conventions and treaties such as UDHR (The Universal Declaration of Human Rights), the International covenants on civil and Political Rights, European Convention on Human Rights, etc.

i. **Articles 12 of UDHR, 1948**¹¹:- Define right to Privacy as, "No person shall be subjected to any arbitrary interference with his privacy, family, home or correspondence or to attack upon his honor and reputation. It also provides that every person has a right to protection against such kind of interference or attacks".

It states that everyone has the right to respect for his private and family life, his home and his correspondence. There should not be any interference or hindrance by a public authority except in accordance with law. Such right can be curtailed only in the interest of national security, public safety or economic status of the country or for the protection of rights and freedom of other individuals.

iii. **Articles 17 of International Covenant of Civil and Political Rights**¹²:-

It states that no person can be subjected to any interference or hindrance with his privacy, family or home and he cannot be subject to any unlawful attacks on his honor or reputation. Thus, it provides for the protection of the Right to privacy. India is a party to this covenant.

8. **CONCEPT OF RIGHT TO PRIVACY IN INDIA:** - It is evident that Right to privacy in India is like a penumbra. It is an inherent individual right which is supposed to be protected. Right to privacy in India is a time travel paradox of constitutional law. It has been developed in India through various decisions over last 60 years. Issue of privacy is a pregnant matter in India.

According to Clinton Rossiter¹³:-

"Privacy is a special kind of Independence, which can be understood as an attempt to secure autonomy in at least a few personal and spiritual concerns, if necessary in defiance of all the pressure of modern society. It is an attempt into secure to do more than to maintain a posture of self respecting independence towards other man. It seeks to erect an unbreakable wall of dignity and reserve against the entire world".

9. **PRIVACY VIS-À-VIS AADHAAR SCHEME:** - Right to Privacy allows a person to have authority and supervision of the personal information about them that is held by the Government and private bodies. For example; Bank Details, Aadhaar Card details etc.

Section 33(b) of the national Identification Authority Bill 2010¹⁴:-

It empowers Government to access data in the CIDR (Central identities Data Repository) which constitutes National Population register.

India presently does not have any express legislation governing data protection and privacy. However, relevant laws in India dealing with data protection and privacy are in the Information Technology Act, 2000. The Information Technology Act, 2000 deals with the issues relating to payment

¹¹ Article 12 of the Constitution states that No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation.

¹² No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.

¹³ According to Clinton Rossiter is an unbreakable wall of dignity ... against the entire world." Today, that wall is crumbling.

¹⁴ Section 33(b) of the national Identification Authority Bill 2010 empowers Government to access data in the CIDR (Central identities Data Repository) which constitutes National Population register.

of compensation in case of wrongful disclosure and misuse of personal data, violation of privacy and penalty for breach of confidentiality and privacy.

Under Section 72 A of the information Technology Act¹⁵:-

Disclosure of Information knowingly and intentionally, without the consent of the person concerned and in breach of the lawful contract has been also made punishable with imprisonment for a term extending to 3 years and fine extending to Rs. 5,00,000.

Also **Section 69 of IT Act, 2000**¹⁶ which is an exception to the general rule of maintenance of Privacy and secrecy of the information, provides that where the central government or state Government or any of its officers authorized by Government is satisfied that it is necessary in the interest of

- the sovereignty and integrity of India;
- defence of India;
- security of the State;
- friendly relations with foreign states;
- Or public order;
- Or for preventing incitement to the commission of any cognizable offence relating to above;
- Or For investigation of any offence.

It may be order direct, any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resources.

Thus, where information is of such a nature that it must be divulged in public interest, the Government may require disclosure of such information. Also information relating to antisocial activities which are against national security or statutory duty an fraud may come under this category.

10. JUDICIAL RESPONSE: - The Hon'ble Apex Court is of the opinion that Aadhaar Act truly seeks to secure to the poor and deprived persons an opportunity to live their life and exercise liberty. Aadhaar Scheme did not violate citizen's right to privacy as minimal data was collected in the enrolment process.

The development of right to privacy in India could be traced from earlier decisions of the Hon'ble Apex Court i.e. **M.P. Sharma & Others Vs Satish Chandra & Others¹⁷ (1954)**. But in case of **Govind Vs State of M.P¹⁸** the Hon'ble Apex Court took a different view. Right to Privacy was upheld again in, **Ram Jethmalani VS Union of India.¹⁹**

M.P. Sharma Vs Satish Chandra & others (1954) :-

There was question of existence of right to privacy as a fundamental right. The **Hon'ble Apex Court** held that Privacy was not a fundamental right.

In Kharak Singh Vs. State of U.P. (1962)²⁰:-

The decision invalidated the police regulation that provided for domiciliary visits at night, calling them an unauthorized intrusion into person's home and violation of his right to privacy. In this case a minority opinion recognized the right to privacy as a fundamental right.

In Govind Vs. State of M.P.(1975, S.C.):-

The Hon'ble Apex Court upheld the existence of fundamental right to privacy under Article 21 and Articles 19. However right to privacy was not a absolute right and could be interfered with by a

¹⁵ Section 72 of the Information Technology Act imposes a penalty on "any person" who, having secured access to any electronic record, correspondence, information, document or other material using powers conferred by the Act or rules, discloses such information without the consent of the person concerned.

¹⁶ Section 69A of the IT Act, 2000, allows the Centre to block public access to an intermediary "in the interest of sovereignty and integrity of India, defence of India, and security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence.

¹⁷ AIR 1954 SC 300

¹⁸ 1975 AIR 1378, 1975 SCR (3)

¹⁹ (2011) 9 SCC 751, The Hon'ble Apex Court in this case held that the right to privacy also requires the state not to make public and private information about an individual, which would violate his or her privacy. It is regarded as a Fundamental Right but cannot be called absolute.

²⁰ 1963 AIR 1295, 1964 SCR (1) 332

procedure established by law. It was also held that right to privacy could be restricted if there was an important countervailing interest superior to it.

Right to privacy was further strengthened in the famous gangster case from Bangalore Auto Shankar case. In this case Supreme Court dealt with a conflict between the freedom of press and the right to privacy.

In R. Rajagopal Vs State of T.N.(1994 SC) (Popularly known as Auto Shankar Case)²¹:-

In this case the Hon'ble Apex Court held that right to privacy can be both a tort (actionable claim) as well as a fundamental Right. A Citizen has a right to safeguard the privacy of his own, his family, marriage procreation, motherhood, child bearing and education among other matter and nobody can publish anything concerning the above matters without his consent, whether truthfully or otherwise and whether laudatory or critical. If he does so he would be violating the right of the person concerned and would be liable in an action for damages.

In case of PUCL(People's Union for civil Liberties) Vs. Union of India (1996) SC (Also known as telephone tapping case)²²:-

The Hon'ble Apex Court extended the right to privacy to communications and asked the Government to comply with strict guidelines for tapping telephone conversations (Under Information Technology Act, 2000 and Telephonic Act, 1885).

In case of District Registrar and Collector Hyderabad and another Vs Canara Bank and another (2004 SC):-

The Hon'ble Apex Court held that right to privacy deals with persons and not places and that an intrusion into privacy may be by

- Legislative Provisions
- Administrative or Executive order and
- Judicial orders.

Case of petronet LNG Ltd. Vs Indian Petro Group and Another (2006)²³:-

In this case Delhi High Court held that corporations and companies cannot assert a fundamental Right to privacy. Also, right to privacy is not available against non-state individuals.

Selvi and others Vs. State of Karnataka and others (2010 SC)²⁴:-

In this case the Hon'ble Apex Court acknowledged the distinction between bodily or physical privacy and mental privacy. Held that subjecting a person to techniques such as Nacroanalysis test, Polygraph examination and the brain Electrical activation profile (BEAP) test without his or her consent violates the individual's mental privacy.

11. RECENT STATUS: - Over last 40 years, the scope of privacy as a fundamental right has been extended. Now it has been recognized as constitutionally protected fundamental right.

In a recent case UIDAI (Unique identification Authority of India) & Anr. Vs. CBI (Central Bureau of Investigation) (2014 SC)²⁵:-

In this case, CBI sought access to the database of the UIDAI (Unique identification Authority of India) for the purpose of investigating a criminal offence. However, the Hon'ble Apex Court in an interim order held that the UIDAI should not transfer any biometric information of any person who has been allotted an aadhaar number to any other agency without the express consent of that person.

²¹It is a landmark judgment on the freedom of speech and expression and the right to privacy. The decision made in the case was that the State cannot stop an article from getting published just for the reason that it may cause defamation to the State.

²²Hon'ble Justice Kuldip Singh's landmark 1996 judgment in People's Union for Civil Liberties (PUCL) v. Union of India⁴ ('PUCL') affirmed that telephone tapping infringed the fundamental right to privacy, and created safeguards against arbitrariness in the exercise of the state's surveillance powers.

²³This was before the Delhi HC and it was established that firms cannot assert a fundamental right to privacy.

²⁴It deals with the evidence given by narco-analysis, FMRI and polygraphs to be inadmissible. "

²⁵A constitution bench affirmed the verdict delivered in September 2018 when the top court upheld the country's biometric identity system and also cleared mandatory Aadhaar enrolment of recipients of government welfare benefits.

In case of Justice K .S. Puttuswamy (Retd.) & Another Vs Union of India & others (2015) S.C (Also known as Aadhaar challenge case)²⁶ :-

In this case the issue of privacy was discussed in the light of Aadhaar scheme. In 2012, retired justice Puttuswamy filed a petition in Apex Court challenging the constitutional validity of Aadhaar on the ground of violation of right to privacy. Question before the **Hon'ble Apex Court** was about fundamental status of right to privacy in Indian Constitution. Thus, question before the court was whether such a right is guaranteed under the constitution. Also, there is no express provision for privacy in Indian Law. It was contended that collection of private information of individual citizen is violation of right to privacy. Since, the Government had all personal information including biometric and demographic data of every individual citizen and there was a suspicion about misuse of such information by the Government. Also there was no sufficient protection for the massive amount of data that state had collected as a part of Aadhaar project. It was leaking data all along.

The attorney General of India argued that privacy is not a fundamental right. This case came before three Judge Constitution bench on 11 august, 2015. Later on 18 July, 2017, five Judge Constitution bench ordered the matter to be heard by a nine Judge Constitution bench. The bench was set up not to look into the constitutional validity of Aadhaar, but to consider a much larger question, whether right to privacy is a fundamental right.

According to Justice Chandrachud²⁷:-

“Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the constitution had recognized. Privacy is the ultimate expression of the sanctity of the individual”.

On 24 August 2017, the **Hon'ble Apex Court** in its 547 pages judgment unanimously held that right to privacy is protected as an intrinsic part of right to life and personal liberty under Article 21 and as a part of freedom guaranteed by part III of Indian constitution.

12. POSITIVE ASPECTS OF AADHAAR: - Aadhaar card provides a unique identification number, which can be used for all government programs and services. It provides transparency to the Government in implementation of its schemes. We can use Aadhaar Card as an address proof for a variety of tasks such as

- i. **To verify ITR [income Tax return]:-** By using Aadhaar we can do verification of Income Tax return. It makes our life easier in matters of taxation.
- ii. **Beating the passport blues:-** by linking Aadhaar card, we can get our passport in just 10 days. This will serve as proof of identity and address.
- iii. **Opening bank account in a flash:-** our Aadhaar card is a ample proof of our identity and address in itself. There is no need to collect multiple identity proofs to open a bank account.
- iv. **Get pension money on time:-** Aadhaar card is a blessing for senior citizens pensioners just need to register their Aadhaar number to ensure timely pension pay outs.
- v. **Digital Life Certificate:-** pensioners can get digital Life certificate by registering their Aadhaar card number.
- vi. **Easy Provident Fund disbursement:-** Aadhaar card ensures that PF is disbursed directly to the pensioners account. This saves time and effort.

²⁶ This case is the cornerstone of the 'Right to Privacy' jurisprudence in India. The nine Judge Bench in this case unanimously reaffirmed the right to privacy as a fundamental right under the Constitution of India. The Court held that the right to privacy was integral to freedoms guaranteed across fundamental rights, and was an intrinsic aspect of dignity, autonomy and liberty.

²⁷ Hon'ble Justice Chandrachud , A judge of Supreme Court of India & former Chief Justice of Allahabad High Court and a former judge of Bombay High Court

vii. **LPG and other subsidies:-** we can get out LPG subsidies in our bank account directly by furnishing our Aadhaar Unique identification number.

13. NEGATIVE ASPECTS OF AADHAAR: - Aadhaar scheme provides a 12 digit UID number to every individual resident of India. In order to secure unique identity every UID holder has to provide biometric information such as vision pattern, finger impression etc as well as general information such as name, date of birth and address etc to get them registered in the government records.

Government of India has set cats among pigeons by allocating the job of collecting biometric information to many government and private organizations such as HCL info system, HP India Sales Pvt. Ltd. etc. This step of government is an imminent threat to privacy of the individual so that it can be misused by these organizations. It is the duty of the state as well as individuals to respect and protect each other's privacy.

Hence providing our personal Biometric information to these non-constitutionals bodies for getting unique identity is equivalent to providing keys of our homes to the police, when there has been a theft in some locality.

14. NON-LIQUET SITUATION VS RIGHT TO PRIVACY: - Several socio-economic issues have been raised by several critics. Due to lack of Data protection laws defining the scope of right to privacy there are inadequate legal Safe Guards to control the risk involving data collection and protection. In absence of data protection legislations, the situation relating to right to privacy in India can be treated as non-Liquet. In absence of these Legislations, the tremendous Aadhaar Scheme could pose considerable threat to the privacy of Indian citizens.

The right to privacy will remain a right on paper unless concrete legislations on this subject address ground reality. Thus, need of specific privacy laws is need of hour. Our Hon'ble Apex Court should issue guidelines for protection of right to privacy in order to overcome this non-Liquet situation.

15. CONCLUSION: - We conclude that Aadhaar is a serious invasion into the right to privacy of persons. Once Aadhaar becomes all purpose identification tools, our life will be as transparent to the state as a contact lens. Details of our railway booking, phone call records and financial transactions will be easily accessible to them. The risk that Unique Identification authority poses to an individual's privacy is enormous, as information that is scattered in the public domain by UIDAI could be misused.

India is rapidly becoming a digital economy. Thus problems of ID (Identity) theft, fraud and misrepresentation are real concerns. Recently several national programs and schemes are implemented through information Technology platforms, using computerized data collection form individual citizens. As more and more transaction being done over the internet such information is exposed to theft and misuse.

We have several laws to protect right to privacy in one way or other. But in reality, we have no law to protect complex issue of privacy in today's digital age. Thus, there is need of stringent laws which cover all the aspects of privacy.

Also right to privacy in Indian constitution is not expressly mentioned as fundamental right, but it is an extended version of right to life and personal liberty under article 21. Unless right to privacy is expressly declared as a fundamental right by the process of amendment under Article 368 of Indian constitution, the privacy of an individual will be at stake.