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A tempestuous odyssey of the right to privacy: From textualism to constitutional contextualism

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Abstract---The struggle to include *privacy* as an independent fundamental right by reading it into Article 21 of the Indian Constitution reflects an *odyssey* of constitutional tug of war. The challenges encountered on its way to recognition as a fundamental right were marked by the theoretical and abnegated reading of the constitutional provisions. The constitutional courts have adopted a topsy-turvy approach in determining a case for privacy until its categorical affirmation in 2017. There have been many cases wherein the dichotomy described above has been dealt with by courts at repeated intervals and, much to the author's surprise, in different tones altogether. The court benches have spoken in disparate styles during this journey due to their adherence to constitutional textualism instead of constitutional liberalism. Due to the divergent reasoning, even the Court fell disturbingly short in solving the crisis and presenting a finer *adjudication* upon its constitutional existentialism. After a long hiatus marked with distressing unease, the SC finally affirmed its Constitutional existentialism and removed any doubt over its legitimate birth in a rarely seen unanimity between five judges. *Recognizing* the right to privacy as a fundamental right shore-up the efficacy of other fundamental rights. The paper will genuinely showcase the *vicissitudes* of the right to privacy from the soup to nuts. From the linguistics adopted by the judges at the nascent stages to paving the way for its timely affirmation, the courts have finally seen the privacy light at the end of the constitutional tunnel to comprehend the inexorable march of ever-changing and all-pervasive constitutional dimensions.

Keywords---Privacy, Odyssey, Recognition, Vicissitudes & Adjudication.

1. Introduction

The framework of the monumental document of the COI, 1950, is well-founded and well-calibrated and pushes all the right buttons to buttress the ideals of individual choices and autonomy so beautifully weaved in its fabric thereof. To enforce the same, a well-laid process is envisaged whereby the State is made accountable to ensure its preservation and protection. (Basu, 2015) Part III of the COI, 1950 incorporates a series of rights like fundamental rights, which embodies human beings' essential and innate requirements for their salubrious survival. The SC is the final arbiter given the constitutional checks and balances system and rules upon any issue in case of contrasting contestations between rival parties. The law declared by SC is enforceable as the law of the land by Article 141 of the COI, 1950. Understanding what makes a right to be pedestalized as a fundamental right becomes critical. Fundamental rights, as opposed to legal or statutory rights, are omnipotent and omnipresent (Jain, 2012) but with a caveat that their breach is to be protected against in any case and by any means. The *citizenry* (Jain, 2012), in toto and *any person* (Jain, 2012), in few cases, are authorized to register a petition before the constitutional courts in case of transgression of fundamental rights, whereupon the courts are empowered to issue writs, orders, and directions (Bakshi, 2017) that appear cogent, perfect, and pointed on the consideration of facts of the case. At the same time, the statutorily conferred rights are agitated by way or petitions before the courts and do not pose any negative duty on the State to be on the right side of it. (Shukla, 2017) In short, fundamental rights cannot be treated subserviently to ordinary rights as these are grist to the mill in carving out a life of dignity and respect for the people on the street.

2. Fundamental Rights Are Not Stand-Alone Rights

To answer the elephant in the room, not every version of rights is mentioned in Part III of the COI, 1950. The chapter on fundamental rights is not complete in itself and by no means an autonomous part. (Maneka Gandhi v. UOI) More so, the COI, 1950 is not a parchment of paper but a product of political osmosis guided by people's revolution. (ADM Jabalpur v. Shivkant Shukla) The provisions under it interact, merge and intermingle to foster constitutional affinity. Given the same, numerous rights have been read into the provisions of various fundamental rights to provide the necessary relief and assistance in allowing the stakeholders to enjoy their life and liberty to the maximum extent possible. Fundamental rights, by no means, stop the State from regulating acts, but it imposes an additional duty on the State to carry out its actions reasonably and in a way that its results enable the enforcement of rights and not shrivel its efficacy. The golden approach (M. Nagraj v. UOI) allows a harmonious reading of the seemingly opposite provisions rather than treating them as contraries. (Basu, 2015) The preambular features contain the infinite spirit and sketch a charter of ideals require to set the stage for the nation's development. (Maneka Gandhi v. UOI) The twin features of Liberty and Dignity carry the soul of privacy and make it clear in no uncertain terms that human development and enforcement of equality cannot take place unless the twin features are protected. Privacy is rooted in liberty and dignity. The preamble is the part of the Constitution that makes it all the more important to enforce its spirit in actions. To obfuscate its enforcement would be a red herring.

3. Privacy: the first guarantee of true liberty

Privacy, in its various forms and manifestations, has always been an essential cog in the wheel of an individual's development. All the critical instruments of liberty that have ever seen the light of day talked highly of privacy in its varied forms. Bodily Privacy, functional Privacy, and Privacy in property have always been the associated components of any laws. *Magna Carta* (Carta, 2018), the first instrument to protect human liberty, contained provisions for protection against arbitrary arrest. *English bill of rights* (Rights, 2022) and *Declaration of Rights* (Citizen, 2022) included provisions for bodily Privacy and functional Privacy. The *American Constitution* (States, 2022) has been amended by the insertion of the due-process clause, which has become essential to securing an individual's privacy. In this day and age, where information stored in papers has transformed into online databases and where her body is determining an individual's identity in the form of biometrics, the clamor for informational privacy and consequential data security law has grown. Thus, it is essential to protect privacy in all its forms.

4. Privacy: a tenebrous right

The heightened debates on the crucial issue of the right to privacy are well-grounded and well-formed, especially in today's day and age, where the speed with which technology is prodigiously changing requires authoritative adjudication. The issue in this debate is whether the Right to Privacy, which is nowhere expressly mentioned in the COI, 1950, can be read into the ambit of Article 21 and thus can be elevated to the position of a fundamental right. If that is to be answered in yes, then the consequences of ordinary infringement of Part III would entail breaching of Right to Privacy too. In this quest to answer the issue, the entire jurisprudence on the Right to Privacy is developed. The very meaning of privacy is *allowing, underpinning, and fostering* an individual to enjoy her choices within the ambit of their individuality. It imposes a negative obligation upon the State to stop meddling in an individual's personal affairs, which are carried out within the confines of one's autonomy and intimacy. In brief, the State is incarnated as a protector of rights, not the eavesdropper. (Goyal, 2016) Privacy as a concept is *nebulous and foggy* (Snowden, 2022), rooted in germane understanding rather than abstract manifestation. To determine the range of individuality and, more so, to specify the matters there under is an enormous job by itself and demands a sedulous response. To the author's mind, privacy doesn't follow any mathematical formulae or established yardstick and is designed to be determined case-to-case basis. (Snowden, 2022) There are multifarious manifestations of privacy that are sought to be taken beyond the pale of infarction by the Legislature and the Executive.

5. Change in judicial approach

Because of the incomplete nature of rights engrafted in Part III of the COI, 1950 courts have time and again taken upon themselves, significantly post the period of turbulence in the 1970s, to read many facets of rights in one provision or the other to reiterate and reinforce its vigor and energy to achieve individual enablement. These rights have been read constructively and conjunctively by

employing a reading of a group of articles to create a new set of rights which is a welcome departure from the earlier approach of reading constitutional provisions in isolation. The earlier practice was based on rights being self-sufficient and didn't require hyphenating with other rights. The Court has fittingly put this approach out to pasture. It has encouraged itself to undertake a progressive course because of its experiences during the troubled times of constitutional functionalism in the shape of a right-dearth polity. This experience became a tipping point for the SC, leading to the reading of new rights in existing constitutional provisions. The reading of constitutional provisions is based on the rigid belief that fundamental rights are incomplete. Certain facets of rights intimately connected with fundamental rights must be protected in the modern age. (Pt. Parmanand Katara vs Union of India & Ors) This validity to those concomitant rights can be granted if and only if their protection is secured at the hands of the courts. (Jain, 2012) Meaning thereby, the Legislature and the Executive are told sternly not to consider these appended rights as pervious to interference on account of their whims and fancies.

Hundreds of rights have been read and collated in consequence of the synergy of tri-partite provisions of Articles 14, 19, and 21 of the COI, 1950, which are made judicially enforceable at the hands of the courts over its declaration as important indexes to achieve the letter and spirit of fundamental rights. This reading made the task of the constitutional courts easier even for the enforcement of those *associated, unspecified, non-mentioned, and short of articulation* rights, which though very brooded over studiously by the constitutional makers to no ends but fell marginally short of finding a place in the pristine text of the COI, 1950. The struggle to include privacy as an independent fundamental right by reading it into Article 21 of the COI, 1950 is a valid case in point. The development of the Right to Privacy is marked by similar challenges and struggles for it to be recognized as a full-fledged fundamental right. The challenges thrown on its way to recognition as a fundamental right are sensational and pernicious. The constitutional courts have adopted a very nonchalant and inconsistent approach in determining a case for privacy until its affirmation in 2017. (Justice KS. Puttaswamy v UOI) There have been many cases wherein the dichotomy described above has been dealt with by courts at repeated intervals and, much to the author's surprise, in different tones altogether. Due to the divergent reasoning, even the Court fell disturbingly short in solving the crisis and presenting a finer adjudication upon its constitutional existentialism. After a long hiatus marked with distressing unease, the SC finally affirmed its Constitutional existentialism and removed any doubt over its legitimate birth in a rarely seen unanimity between five judges. Regarding the aforesaid, it is a dedicated attempt on the author's part to study, analyze and examine the approach undertaken by SC at various time intervals. For an acute understanding, the author has sought to launch a strategy that will take readers from a journey of debate upon its inclusion into the Constitution at the hands of the constituent assembly to the scattered approaches taken by the Judiciary over a while. Amid this debate, an attempt shall also be taken to bring forth the confrontation between the Legislature and the Executive versus the Judiciary over its inclusion under Part III of the Constitution. Finally, the future roadmap will consider how privacy as a fundamental right can become crucial in setting the tunes of present-day politics.

5.1. Judicial Pronouncements concerning Privacy

Earlier, the Right to Privacy was not recognized, and the SC refused to acknowledge the Right to Privacy separately. The SC in *M. P. Sharma* (*M. P. Sharma v. Satish Chandra*) rejected the contention that a right to privacy exists under Article 20(3) of the Indian Constitution due to the absence of any provision after the Fourth Amendment of the US Constitution. The question of a constitutional right to Privacy under Part III of the Constitution was first raised in the decision of *Kharak Singh* (*Kharak Singh v. The State of UP*), wherein the petitioner was subjected to continuous surveillance under Regulation 236 of the UP Police Regulations. The majority opined that the Constitution does not confer any right to privacy. Still, Justice Subba Rao, while pronouncing the minority opinion, observed that it is true that the Constitution does not expressly declare a right to privacy as a fundamental right. Still, the said right is an essential ingredient of personal liberty.

Although the Supreme Court began to accept specific points of the minority view (*State of West Bengal v. Ashok Dey*) the Right to Privacy was still waiting for its place in Indian constitutional jurisprudence. (Jain M. , 2015) Later, the SC began recognizing the Right to Privacy as implicit in personal life and liberty. However, the smaller benches gave all the subsequent decisions as opposed to the strength of the bench in the previous cases of *Kharak Singh* (*Kharak Singh v. The State of UP*) and *MP Sharma*. (*M. P. Sharma v. Satish Chandra*) The SC in *Gobind* (*Gobind v. State of Madhya Pradesh*) held that a *limited* right to privacy was implied within the ambit of Part III of the Constitution, which originates from Articles 19(a), 19(d), and 21. However, it was remarked that the said right is not absolute but comes with reasonable restrictions arising out of countervailing public interest. Considering the US jurisprudence, Justice Mathew observed that the Right to Privacy exists within the penumbral zones of the Fundamental rights explicitly guaranteed under Part III of the Constitution. The Supreme Court, in *Sunil Batra* (*Sunil Batra v. Delhi Admn*) observed that minimal infringement of prisoners' privacy is inescapable as the officers must keep a watch and ensure that their other human rights are being duly observed. On the contrary, the Court in *Malak Singh* (*Malak Singh v. the State of P&H*) held that *surveillance* is a direct encroachment upon an individual's Right to Privacy. The Supreme Court, in *R. Rajagopal* (*R. Rajagopal v. State of Tamil Nadu*), asserted that the Right to Privacy is an implicit right under Art. 21 of the Constitution and has acquired constitutional status. The SC noted that the right includes *the right to be let alone and the right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing, and education.* “

In *State of Maharashtra* (*State of Maharashtra v. Madhukar Narayan Mardikar*) , on a similar note as the *Rajagopalan* case, the Supreme Court held that a woman of easy virtue is also entitled to privacy and nobody has the authority to invade her privacy at their sweet will. (*Indian Drugs and Pharmaceuticals Ltd v. Workmen*) The Supreme Court, in *People's Union for Civil Liberties* (*People's Union for Civil Liberties v. Union of India*), held that telephonic conversations are private, making telephone tapping unconstitutional unless conducted by a procedure established by law under Article 21 of the Constitution. The Supreme Court, in *S.P. Gupta* (*S.P. Gupta v. President of India*), held that a *balance* must

be struck between the right to information and the Right to Privacy. The Court held that the right to privacy is not absolute and can be infringed to serve a *serious public concern*. The Right to Privacy needs to be examined on the foothills of societal interest, and there should be a balance between individual and societal interests. In the case of *Mr. 'X' (Mr. 'X' v. Hospital 'Z')*, the SC held that moral considerations could not be kept at bay and public morality constitutes *compelling State interest* warranting a legal infringement of the Right to Privacy. The Right to Privacy began to gain recognition, and the Courts undertook an approach of safeguarding the right following varying restrictions. The Delhi High Court in 2002 held that a person suffering from the dreadful disease of AIDS cannot claim the Right to Privacy and cannot maintain the right of secrecy against his prospective bride and the laboratory which tested his blood. (*X' v. 'Z'*) Subsequently, a year later, after the judgment above, the same opinion was upheld by the SC in *Mr. 'X' v. Hospital 'Z'*, wherein it was echoed that the bride has an absolute right to have complete knowledge about her prospective husband's health and the hospital or the doctor concerned has the lawful authority to carry out the same. The Courts have developed divergent views on the issue of *mandatory medical tests* violating an individual's Right to Privacy.

Though, it has been propounded that ordering or allowing medical examination of a woman to establish her virginity of the woman would amount to a gross violation of her Right to Privacy. (*Surjit Singh Thind v. Kanwaljit Kaur*) Moreover, the Matrimonial Courts also have the authority to order a spouse to undergo a medical test (*Sharda v. Dharmapal*). However, the Courts should exercise such power with utmost care and only after due examination of the case on a *prima facie* basis. The Delhi High Court had a contrary opinion, wherein it was held that a party to a proceeding could not be forced to undergo any scientific or medical test against his will, which violates the person's Right to Privacy. Furthermore, the High Court also concluded that the Right to Privacy should only come to the fore when any party to a proceeding is directed to undergo any scientific or medical test for collecting evidence against their will. In the case of *Bhabani Prasad Jena* (*Bhabani Prasad Jena v. Orissa State for Commission of Women*), the SC held that DNA tests having the characteristic of being extremely sensitive and a delicate issue should only be carried out with the greatest caution and care, as a crude direction might amount to being prejudicial to the parties and thereby violating their Right to Privacy. The SC in *Ram Jethmalani* (*Ram Jethmalani v. Union of India*) has conclusively held that the Right to Privacy is an integral part of life. This is a cherished *constitutional value*, and human beings must be allowed privacy and be free of public scrutiny unless they act unlawfully. The SC also held in *Avishek Goenka* (*Avishek Goenka v. UOI*) that the Right to Privacy is subject to public safety. The SC had also opined that unlawful intrusion into a person's privacy is not permitted as the Right to Privacy is implicit in the right to life and liberty guaranteed under our Constitution. However, the Right to Privacy is not absolute, and in exceptional circumstances like when authorized by a statutory provision, the right may be infringed. (*Ramlila Maidan Incident v. Home Secretary, UOI*)

In the landmark judgment of *Supreme Court Advocates* (*Supreme Court Advocates on Record Association and Ors. v. UOI*), the SC laid down the NJAC as unconstitutional and weighed the *right to know* against the *right to information*.

During the disclosure, the SC observed that NJAC violated the right to know as mere voluntary supplication of information by the candidates in the public sphere who do not waive their Right to Privacy. It was further opined that the balance between the rights must be maintained adequately and that the NJAC fails to achieve the balance. The Supreme Court in *Justice K.S. Puttaswamy* (Justice K.S. Puttaswamy v. Union of India), famously known as the *Aadhaar Card* decision, paved the way for debate on whether privacy can be considered a fundamental right. The nine-judge bench of the SC, on 24th August 2017, delivered its verdict by unanimously affirming the Right to Privacy is a fundamental right under the Indian Constitution. (Bhatia, 2022) The judgment can undoubtedly be seen as a historic and landmark verdict of all times, and it can be regarded as one of the prime civil rights judgments delivered by the SC in history. The SC, however, elucidated that, like most other fundamental rights, the Right to Privacy is also not absolute. *Justice Chandrachud*, in the judgment, holds that the Right to Privacy is not independent of the other freedoms guaranteed by Part III of the Constitution, and it forms an intrinsic part of human liberty and dignity. Justice Chandrachud focuses on the *informational* aspect of privacy, its connection with human dignity and autonomy, and rejects the argument that privacy is an *elitist construct*. The opinion of Justice Chandrachud remarks on the importance of informational privacy, thereby making observations on privacy in the digital economy, dangers of data mining, positive obligations on the State, and the need for a data protection law which is still in the loophole and still needs to be seen in the daylight.

6. Effects of Right to Privacy as a Recognized Fundamental Right

The privacy judgment needs to be applauded for not just reaffirming the Right to Privacy as a fundamental right. Still, one cannot overlook the impact that the judgment has left and what impact it should have on our legal and constitutional landscape for many years to come. The verdict, though, left the question of Aadhaar unanswered, which is now still being heard by the Supreme Court; however, the verdict provides the constitutional framework within which the cases that might involve a perspective of privacy would be debated and decided when the cases would be brought to the courts for determination.

6.1. Effect of Determination of Privacy as a Fundamental Right

Under the establishment of the Right to Privacy as a fundamental right, the Court's view in many cases has differed from what it might have been, and the impact of the privacy judgment is already seen in recent judgments passed by the SC. For an individual's autonomy, the freedom of a woman's rights to choose her spouse and religion by the privacy judgment, the Hadiya case (Ashokan, n.d.), the SC set aside the Kerala High Court judgment annulling the marriage between Hadiya and Shafin Jahan. The privacy judgment played an important role here as never in Indian legal history was a marriage annulled on a habeas corpus petition. In a landmark case, the SC passed the dictum that the right to die with dignity is a fundamental right; the SC passed an order allowing passive euthanasia in the country. The judgment on euthanasia also considered the privacy judgment and remarked that the protective cloak of privacy covers certain decisions that fundamentally affect the human life cycle. By privacy, personal and

intimate decisions of individuals that affect their life and development are also protected. (Correspondent, 2018) Therefore, choices and decisions on intimate issues like procreation, contraception, and marriage have been held to be protected. Since death is inevitable in the trajectory of the cycle of human life of individuals, people are often faced with choices and decisions relating to death. The Right to Privacy resides in the right to liberty and respect for autonomy. The Right to Privacy protects autonomy in decisions related to the intimate domain of death and bodily integrity.

6.2. Cases wherein the Right to Privacy as a Fundamental Right can play a crucial role

Legally recognizing the Right to Privacy as a fundamental right will likely challenge how personal laws function in the country, mainly concerning infringing on an individual's freedom of choice and expression. (Ghoshal, 2022) A prime example of such an instance is the law that criminalizes sexual minorities for choosing alternative gender and sexual orientations. The SC decided to review the draconian Section 377 IPC, made possible because of the apex court's August 2017 decision on the Right to Privacy. The SC agreed to reconsider its 2013 decision (*Naz Foundation v Government of NCT*) to criminalize homosexuality. In the 2013 decision, the SC propounded that 'the privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity' Justice R.F. Nariman identified three aspects of privacy in the Indian context in the judgment; Privacy that involves the person, informational Privacy, and the Privacy of choice.

It was fundamentally the privacy of choice aspect that the SC delved on the most in the judgment, making the autonomy/dignity strand of privacy pertinent and delved upon the link between privacy and the right to decide one's sexual orientation and gender identity (Narain, 2017). Justice Chandrachud's privacy judgment makes it clear that in a democracy, the rights of minorities, especially discrete and insular ones, are as sacred as those conferred on other citizens to protect their freedoms and liberties. (Narain, 2017) The judgment takes the extracts from the *Naz Foundation* judgment (*Naz Foundation v Government of NCT*) and remarks that the sexual orientation of an individual is an essential aspect of privacy and that discrimination based on sexual orientation is offensive to the dignity and self-worth of an individual. The judges observed that equality requires that the sexual orientation of an individual should be protected on an even platform and remarked that the protection of sexual orientation lies at the core of the fundamental rights guaranteed by Arts 14, 15, and 21. While the Court, in the privacy judgment, could not change the law developed in the *Kaushal* case, the matter is still pending in the SC though it seems to suggest that if it had the chance, it would have declared the decision terrible in law. Apart from the civil rights and acknowledgment of the Right to Privacy as a fundamental right, the same can also trickle down to the famous case of *Whatsapp- Facebook*, which is still pending in the SC. The Indian government herein in the *Whatsapp* case ironically invoked Article 21 of COI, by which privacy becomes a fundamental right; the bench of the SC in the *WhatsApp* case to justify its stand that the Right to Privacy is guaranteed through the right to life and personal liberty. Still, the Centre overlooked its observation in the *Privacy Judgment*. One

of the major issues left unanswered in the privacy judgment was about Aadhaar. Aadhaar is the 12-digit unique identity number that the UIDAI issues because of the individuals parting with their biometric and iris scan, though now a proposal for facial features recognition has also come up. The Aadhaar Act (The Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016) was haphazardly passed in the year 2016 within a span of a few days only. Since the inception of the Aadhaar card, the issue of privacy was brought to light because of the expansion of the Aadhaar card and making it mandatory for not only the social schemes mentioned earlier in the notifications but also for different services, be it private or even public. The decision propounded by the SC in the privacy judgment conclusively decided the issue of privacy, but the constitutional validity of the Aadhaar scheme is still left to be determined.

The imminent threat related to sharing sensitive personal data with other government agencies and waiving the fundamental Right to Privacy to access benefits of government policies is an unconstitutional condition put up by the government for the so-called voluntary consent of the public under Aadhaar. In reality, this scheme leaves the public with no option but to register for the Aadhaar card to avail of the benefits of government schemes. (Tripathi, 2022) The Aadhaar Scheme, projected as a panacea of all ills by the government, is a matter of enormous concern for the civil liberties of the residents in the country. In a democratic country, citizens have an equal right to public resources of the country and a right to be left alone. However, the designs of the Aadhaar scheme have the potential to transform India into an Orwellian state giving massive power to the government to marshal technology to control the lives of its citizens. Senior Advocate Mr. Kapil Sibbal even remarked the Aadhaar decision to be of the same importance as the Emergency decision (*Additional District Magistrate v. S. S. Shukla*), and Senior Advocate Shyam Diwan commented during the initial hearings that eminent domain if the government does not extend to the individual sphere.

In the *Binoy Viswam* case (*Binoy Visman v. Union Of India*) and *Lokniti Foundation* case (*Lokniti Foundation v. Union Of India*), the Aadhaar linkage was made mandatory for connection with the PAN and mobile numbers, though on account of the interim order passed on the 10th December 2017, extended the dates to 31st march, which has now been extended indefinitely till the judgment in respect of the Aadhaar case is delivered. There have been instances of data leakage from the Aadhaar database recently, making it mandatory for the government first to develop a data protection law, which has also been highlighted in the privacy judgment. The SC suggested a balance should be struck between data regulation and personal privacy as there are legitimate state concerns on the one hand and individual interests in protecting privacy on the other. The Central Government constituted a committee chaired by *Justice B N Srikrishna*, former Judge of the Supreme Court of India, to review data protection norms in the country and make its recommendations. To formulate data privacy law, a *White Paper of the Committee of Experts on Data Protection Framework for India* (Technology, 2018) was released to solicit comments from the public. The Committee bearing in mind that individual privacy is a fundamental right limited by reasonable restrictions, recommended a nuanced approach toward data protection in India. Recently, widespread hacking and compromising user

accounts across social media platforms have raised fears that the most prominent internet giants, social networks, maybe mine user information and sell them to third-party entities to generate revenue and promulgate targeted advertising. Similarly, the third-party agencies who are shared the sensitive information contained in Aadhaar cannot be allowed to function without proper law, and that law shall be passed in the face of the Data Protection Law.

7. Conclusion

The stress and strain forming the template of the Right to Privacy, as reflected herein before by a study of landmark judgments and aptly sketched throughout the entire paper, make it axiomatic that the development of this right has undergone a considerable judicial churning. Constitutional challenges mark the odyssey of privacy as a fundamental right, change in judicial stripes, considered thinking, and meticulous re-thinks. The right is fundamental, making it all-important to preserve and guarantee an individual's civil liberties. The aftereffects are plethora and far-reaching. The significance becomes monumental. The direct, proximate, and immediate connection that any enactments intend to establish has to satisfy the ground rule of interactional synthesis approved by the privacy framework. Privacy has overwhelming constitutional importance in an individual's life in every possible way one sees it. From birth to death, human actions are replete and connected with intrinsically private activities that are now seen and judged on the touchstone of privacy. Privacy by itself isn't self-explanatory, and as an author has consistently maintained, it is easier to describe than to define. Its contours can't be confined to words, especially in this thick and fast world of technology.

Privacy has now become grounded in our constitutional texture. The immediate effects can be starkly seen in endless ways. From the marriage of two consenting adult companions was restored by the SC in the case of a girl being suspected of having undergone a religious conversion to allowing advance medical directive by laying out an elaborate procedure thereof by proclaiming the essence of the right to die with dignity so profoundly wedded to liberty and dignity which are direct concomitants of privacy to asking exam conducting bodies to use any documents for verification purposes and not compulsorily stress upon Aadhaar number to indefinitely extending the dates for Aadhaar linkage up until the delivery of judgment; it's befitting to say the consequences are endless. Few other issues which may have to undergo a paradigm shift given the overpowering presence of privacy are striking down Section 377 of IPC, which is the marker of a socially anachronistic law, data protection machinery, religious laws, service distribution schemes, etc. The importance of this right is exceptionally overwhelming. Still, the author would like to strike a note of caution that the usability and desirability of judicial intervention in cases of privacy ought to be well-considered and weighed. Any foolhardy overtures may pose a danger like other fundamental rights, and even privacy is subject to the greater good of the society, which the Parliament shall determine. This right should be used to remove any mischief and not to put a bar on making laws that may incidentally and remotely breach privacy. National security cases would automatically supersede an individual's privacy for the greater interest. But the bedrock for that differential treatment has to be founded on the coherence of equality and reasonableness. Constitutional satisfaction has

become the basic norm. Nevertheless, the affirmation of the said right is a welcoming change for a court that has carried the torch for the same for years. The SC has set itself up as the prime mover in embracing a component that shall go a long way in setting up an ideal and more equitable life for the citizenry in conformity with the hallmark ideals of a matured collaborative democracy where the badge of WE THE PEOPLE runs supreme and lies on top of the ladder.

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