



RIGHT TO PRIVACY VIS-A-VIS RIGHT TO INFORMATION

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1. INTRODUCTION

Right to Privacy has been included in to the Constitution of India by the Hon'ble Supreme Court as a component of two Fundamental Rights - the right to freedom under Article 19 and the right to life and personal liberty under Article 21. The higher judiciary of the country, consumer redressal forums as well as Information Commissions have developed the right to privacy over decades since independence.¹ The much-debated right of privacy so provided is conditional under almost all the laws. The laws that once were restricted to privacy alone now affirm that the information being a valuable asset may be claimed by other individual, corporation, national entity etc. The right to information strives to promote transparency and accountability in the functioning of the Government. After the commencement of Right to Information Act in 2005, various new provisions permitting the right to seek information came into practice.

The clash of individuals with each other or clash of groups or associations with each other or with individuals to achieve wants and desires often may give rise to conflict or competition between interests.² Different statutes governing the privacy rights attempt to create harmony between the right of individuals and social interests.³ The year 2000 has been selected to discuss the provisions before and after the commencement of Information Technology Act,2000. The present paper examines the pattern of carving out the exceptions against the privacy right by the government. It presents out harmony between pro-privacy and anti-privacy legal provisions. The paper is confined to existing provisions under Indian legal system and does not cover proposed Bills. The paper is based on doctrinal research, covering various scattered legislative provisions.

2. PRIVACY OF COMMUNICATIONS UNDER INDIAN LAWS BEFORE 2000

The Indian legislative regime under various areas such as Postal Articles, Medical Information, Public Information relating to Deaths & Births etc. embodies the powers on one hand and restrictions to protect the privacy on the other hand.

¹ Kharak Singh v. The State Of U. P. & Others AIR1963 SC 1295; . M. Malkani v. State Of Maharashtra AIR 1973 SC 157; R. Rajagopal v. State of Tamil Nadu AIR 1995 SC 264; Mr. 'X' v. Hospital 'Z' AIR 1999 SC 495 etc. are some of the landmark decisions of the Apex Court upholding right to privacy .

² See ROSCOE POUND, JURISPRUDENCE Vol. III , 17 (1959).

³ See ROSCOE POUND, JURISPRUDENCE Vol. III , 23-24 (1959) ,W. FRIEDMAN, LEGAL THEORY 336 (2003).



Table 1 - Protection Provided to Postal Articles under Indian Post Office Act, 1898⁴

Power of Interception		
Section	Power	Person Authorised
Section 25 ⁵	Power to open or unfasten, or cause to be opened or unfastened, any newspaper or any book, pattern or sample packet in course of transmission by post to search or cause search of notified goods	Any officer of the Post Office empowered in this behalf by the Central Government
Section 26 ⁶	Power to intercept postal articles on the occurrence of any public emergency, or in the interest of the public safety or tranquility	Central Government or a State Government, or any officer specially authorised in this behalf by the Central or the State Government
Punishment for breach of protection of postal articles		
Section	Offence	Punishment
Section 53 ⁷	Opening, detaining or delaying postal articles by an officer of the Post Office, contrary to his duty	Imprisonment for a term which may extend to two years, or with fine or both
Section 67 ⁸	Detains the mail or any postal article in course of transmission by post, or on any pretence opening a mail bag in course of transmission by post	Fine which may extend to two hundred rupees

Table 1 discusses the protection granted to postal articles in transmission and the punishment for breach of protection of such articles.

⁴ Compiled by the Researchers.

⁵ On the occurrence of any public emergency, or in the interest of the public safety or tranquility, the [Central Government], or a [State Government], or any officer specially authorised in this behalf [by the Central or the [State Government] may, by order in writing, direct that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained, or [shall be disposed of in such manner as the authority issuing the order may direct.

⁶ Any officer of the Post Office empowered in by the [Central Government] may search or cause search to be made, for any such goods (notified under Section 19 of the Sea Customs Act, 1878), in respect of any goods of any specified description in course of transmission by post, and shall deliver [all postal articles reasonably believed or found to contain such goods] to such officer as the [Central Government] may appoint in this behalf and such goods may be disposed of in such manner as the [Central Government] may direct. [In carrying out any such search, such officer of the Post Office may open or unfasten, or cause to be opened or unfastened, any newspaper or any book, pattern or sample packet in course of transmission by post. (Section 19 provides empowers The President of the Union to prohibit or restrict from time to time, by notification in the Gazette, the bringing or taking by sea or by land goods of any specified description into or out of the Union of Burma or any specified part thereof, either generally or from or to any specified country, region, port or place beyond the limits of the Union of Burma.

⁷ Whoever, being an officer of the Post Office, contrary to this duty, opens, or causes or suffers to be opened, any postal article in course of transmission by post, or willfully details or delays, or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine or both.

⁸ Whoever, except under the authority of this Act [or of any other Act for the time being in force] or in obedience to the order in writing of the Central Government or the direction of a competent Court, detains the mail or any postal article in course of transmission by post, or on any pretence opens a mail bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees.



Table: 2 – Protection of Personal Data under Professional Relationships⁹

Professional Relationship	Sr. No.	Legislation	Duty not to disclose	Exceptions
Medical Ethics¹⁰	1.	Epidemic Diseases Act, 1897	-	Section 2(2)(b) ¹¹
	2.	Mental Health Act, 1987	Proviso to Section 13(1) ¹² , Section 81(2) (iii) ¹³	Section 13(3) ¹⁴
	3.	Medical Termination of Pregnancy Regulations, 2003	Regulation 6 ¹⁵	-
Legal Ethics	1.	Indian Evidence Act, 1872	Section 126 ¹⁶ ,	Proviso to Section 126 ¹⁷

⁹ Compiled by the Researchers.

¹⁰ Medical Council of India's Code of Ethics Regulations, 2002- Regulation 2.2 provides that Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the State. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidence as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would wish another to act toward one of his own family in like circumstances. Regulation 7.14 further requires the registered medical practitioner not to disclose the secrets of a patient that have been learnt in the exercise of his / her profession except in a court of law under orders of the Presiding Judge; in circumstances where there is a serious and identified risk to a specific person and / or community; and notifiable diseases.

¹¹ The Government may take measures and prescribe regulations for the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

¹² Any personal records of a patient so inspected shall be kept confidential.

¹³ No letters or other communications sent by or to a mentally ill persons under treatment shall be intercepted, detained or destroyed.

¹⁴ Where the Inspecting Officer is satisfied that any in-patient in a psychiatric hospital or psychiatric nursing home is not receiving proper treatment and care, he may report the matter to the licensing authority and thereupon the licensing authority may issue such direction as it may deem fit to the medical officer-in-charge of the licensee of the psychiatric hospital, or, as the case may be, the psychiatric nursing home and every such medical officer-in-charge or licensee shall be bound to comply with such directions.

¹⁵ Admission Register not to be open to inspection - The Admission Register shall be kept in the safe custody of the head of the hospital or owner of the approved place, or by any person authorized by such head or owner and save as otherwise provided in sub-regulation (5) of regulation 4 shall not be open for inspection by any person except under the authority of law.

¹⁶ Any communication made to barrister, attorney, pleader or vakil in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment shall not be disclosed.

¹⁷ Any such communication made in furtherance of any [illegal] purpose; and any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment shall not be protected from disclosure.



Table 2 discusses the duty upon medical professionals and legal professionals to maintain protection of data exchanged with them.

Table- 3: Protection of Data under Various Legislations Prior to 2000¹⁸

Sr. No.	Legislation	Provision	Nature of Data Provided Protection
1.	The Official Secrets Act, 1923	Section 5 ¹⁹	Communications of secret data with foreign States etc ²⁰
2.	The Census Act, 1948	Sections 15 ²¹ , 11(1) (b) ²²	Information collected for the purpose of Census
3.	Central Civil Services (Conduct) Rules, 1964	Rule 11 ²³	Any official document or part thereof or information
4.	All India Services (Conduct) Rules, 1968	Rule 9 ²⁴	Any official document or part thereof or information
5.	The Registration of Births and Deaths Act, 1969	Proviso to Section 17(1) ²⁵	Particulars regarding cause of death
6.	Public Records Act, 1993	Sections 4 ²⁶ , 8 ²⁷ ,10 ²⁸	Public Records

¹⁸ Compiled by the Researchers.

¹⁹ Wrongful communication. etc., of information- The communication, use, retaining without right or failure to take reasonable care of any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, 13[or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as person who holds or has held a contract made on behalf of Government etc shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. The offence under this Section extends to voluntarily receiving any secret official code or password etc, and communication of any sketch, plan, model, article, note, document or information, which relates to munitions of war, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State.

²⁰ This Act alone amongst the laws discussed protect information concerning the State of India.

²¹ No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such, or any schedule delivered under section 10, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other law for any act or omission which constitutes an offence under this Act.

²² Any census-officer who intentionally puts any offensive or improper question or knowingly makes any false return or, without the previous sanction of the Central Government or the State Government, discloses any information which he has received by means of, or for the purposes of, a census return shall be punishable with fine which may extend to one thousand rupees and shall also be punishable with imprisonment which may extend to three years.

²³ No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.

²⁴ No member of the Service shall except in accordance with any general or special order of the Government or in the performance in good faith of duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.

²⁵ No extract relating to any death, issued to any person, shall disclose the particulars regarding the cause of death as entered in the register.



Table 3 enlists relevant provisions under various legislations which protected privacy of information.

3. ANTI –PRIVACY PROVISIONS IN INDIA

Section 13(1)²⁹ Mental Health Act, 1987; Section 2(2) (b)³⁰ of Epidemic Diseases Act, 1897 are anti-privacy provisions under the laws dealing with the medical profession. Section 12(3)³¹ The Monopolies and Restrictive Trade Practices Act, 1969; Proviso to Section 11(1)³² and Proviso to Section 24(1)³³ The Right to Information Act, 2005 are anti-privacy provisions in transparency related laws. Section 17(1)³⁴ of The Registration of Births and Deaths Act, 1969; and Rules 8³⁵& 9³⁶, Rule 32³⁷ of Registration of Electors Rules, 1960 are provisions contrary to privacy in identity related laws. Sections 91³⁸, 92³⁹, 93⁴⁰ of Cr PC also mandate giving away of privacy rights. Law

- ²⁶ No person shall take or cause to be taken out of India any public records without the prior approval of the Central Government, except for any official purpose.
- ²⁷ No public record shall be destroyed or otherwise disposed of excepts in such manner and subject to such conditions as may be prescribed.
- ²⁸ No public records bearing security classification shall be transferred to the National Archives of India or the Archives of the Union Territory.
- ²⁹ Inspecting Officer is empowered at any time, to enter and inspect any psychiatric hospital or psychiatric nursing home and require the production of any records, which are required to be kept in accordance with the rules made in this behalf, for inspection.
- ³⁰ The inspection of persons traveling by railway or otherwise and the segregation in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting office of being infected with any such disease may be regulated by the State Government by regulations.
- ³¹ The Commission shall have power to require any person- to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act, and to furnish to an officer so specified such information as respects the trade practice as may be required for the Act or such other information as maybe in his possession in relation to the trade carried on by any other person.
- ³² In the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.
- ³³ The information pertaining to the allegations of corruption and human rights violation is covered within the Act, though it does not apply to all other matters of intelligence and security organisations specified in the Second Schedule.
- ³⁴ Any person may cause a search to be made by the Registrar for any entry in a register of births and deaths, and obtain an extract from such register relating to any birth or death.
- ³⁵ Information to be supplied by occupants of dwelling house - The registration officer may, for the purpose of preparing the roll, send letters of request in Form 4 to the occupants of dwelling-houses in the constituency or any part thereof, and every person receiving any such letter shall furnish the information called for therein to the best of his ability.
- ³⁶ For the purpose of preparing any roll or deciding any claim or objection to a roll, any registration officer and any person employed by him shall have access to any register of births and deaths and to the admission register of any educational institution, and it shall be the duty of every person incharge of any such register to give to the said officer or person such information and such extracts from the said register as he may require.
- ³⁷ Preservation of rolls and connected papers until the expiration of one year after the completion of the next intensive revision of that roll
- ³⁸ Summons to produce document or other thing. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
- ³⁹ For the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing



or customary practice and usage among bankers are exceptions which permit financial institutions to divulge information.⁴¹ Disclosure by system provider is permitted under aforesaid circumstances - when same is required under the provisions of this Act or the disclosure is made with the consent of the system participant concerned or where such disclosure is in compliance to the orders passed by a court of competent jurisdiction or a statutory authority in exercise of the powers conferred by a statute.⁴²The Public Records Act, 1993 controls the management, administration and preservation of public records of the Central Government, Union Territory Administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administration.⁴³ Under the provisions of the present law, a restriction has been imposed on taking out the official records (for purposes other than official purpose) except with the prior approval of the Central Government.⁴⁴ The Right to Information Act, 2005 permits right to be informed. The Right to Information Act, 2005 strives to reconcile individuals' interest of non-disclosure i.e. privacy with public interest of disclosure.⁴⁵

Table: 4 -Production/Publication etc. of Data under Certain Circumstances⁴⁶

Nature of Legislation	Legislation	Provision under which Data may be called for, Published etc.
Transparency	The Right to Information Act, 2005 ⁴⁷	Proviso to Section 11(1), Proviso to Section 24(1)
	The Monopolies and Restrictive Trade Practices Act, 1969	Section 12(3) ⁴⁸
	The Prevention of Corruption Act, 1988	Section 18 ⁴⁹

to such person as the Magistrate or Court directs or to cause search to be made for and to detail such document, parcel or thing.

⁴⁰ Conditions under which search Warrant may be issued.

⁴¹ See Public Financial Institutions (Obligation as to Fidelity and Secrecy) Act, 1983, **Section 3** , and The Credit Information Companies (Regulation) Act, 2005, Section 29.

⁴² The Payment and Settlement Systems Act, 2007, Section 22.

⁴³ The Public Records Act, 1993 ,Section2 (e) defines public records" as any document, manuscript and file, any microfilm, microfiche and facsimile copy of a document, any reproduction of image or images embodied in such microfilm (whether enlarged or not), and any other material produced by a computer or by any other device, of any records creating agency.

⁴⁴ For details , see The Public Records Act, 1993, Section 4.

⁴⁵ For details, see The Right to Information Act, 2005, Section 8 (1) (d), 8(1) (e), 8 (1) (j), 8(2), Proviso to Section11 (1) and Provisos to Section 24 (1).

⁴⁶ Compiled by the Researchers.

⁴⁷ The provisions have been discussed in detail later in the Chapter.

⁴⁸ The Commission shall have power to require any person- to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act, and to furnish to an officer so specified such information as respects the trade practice as may be required for the Act or such other information as maybe in his possession in relation to the trade carried on by any other person.

⁴⁹ Power to inspect bankers' books - If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section.



Financial	The Securities and Exchange Board of India Act, 1992	Section 11(2)(ia) ⁵⁰
Identity Related	The Registration of Births and Deaths Act, 1969	Section 17(1) ⁵¹
	Registration of Electors Rules, 1960	Rules 8 ⁵² & 9 ⁵³ , Rule 32 ⁵⁴
Proceedings or Prosecutions before Particular Bodies	Customs Act,1962	Sections 135B ⁵⁵ , 154B ⁵⁶
	Central Excise Act,1944	Section 37E ⁵⁷
	Income Tax Act,1961	Section 287 ⁵⁸
	CrPC,1973	Sections 91 ⁵⁹ ,92 ⁶⁰ ,93 ⁶¹
	Companies Act,1956	615(1) ⁶² ,627 ⁶³

- ⁵⁰ The Board may take measures calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board.
- ⁵¹ Any person may cause a search to be made by the Registrar for any entry in a register of births and deaths, and obtain an extract from such register relating to any birth or death.
- ⁵² Information to be supplied by occupants of dwelling house - The registration officer may, for the purpose of preparing the roll, send letters of request in Form 4 to the occupants of dwelling-houses in the constituency or any part thereof, and every person receiving any such letter shall furnish the information called for therein to the best of his ability.
- ⁵³ For the purpose of preparing any roll or deciding any claim or objection to a roll, any registration officer and any person employed by him shall have access to any register of births and deaths and to the admission register of any educational institution, and it shall be the duty of every person in charge of any such register to give to the said officer or person such information and such extracts from the said register as he may require.
- ⁵⁴ Preservation of rolls and connected papers until the expiration of one year after the completion of the next intensive revision of that roll
- ⁵⁵ Where any person is convicted under this Act for contravention of any of the provisions thereof, it shall be competent for the court convicting the person to cause the name and place of business or residence of such person, nature of the contravention, the fact that the person has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of such person in such newspapers or in such manner as the court may direct.
- ⁵⁶ If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manners as it thinks fit.
- ⁵⁷ If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under this Act in respect of such person, it may cause to be published such names and particulars in such manner as it thinks fit.
- ⁵⁸ If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assesseees and any other particulars relating to any proceedings [or prosecutions] under this Act in respect of such assesseees, it may cause to be published such names and particulars in such manner as it thinks fit.
- ⁵⁹ Summons to produce document or other thing. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
- ⁶⁰ For the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs or to cause search to be made for and to detail such document, parcel or thing.
- ⁶¹ Conditions under which search Warrant may be issued.



Table 4 enumerates various circumstances under various legislations where data or information may be required to be produced or published.

4. ANTI AND PRO-PRIVACY PROVISIONS UNDER CYBER LAWS AFTER 2000

The quantum of fine imposed for breach of privacy under the laws prior to 2000 has been minute or nominal whereas after 2000, the laws have introduced exemplary fines and penalties in case of data breach.⁶⁴ The wide definition of sensitive personal information follows the international accepted defining criteria. The body corporate as defined under Section 43 A excludes government organizations such as Income Tax Department, Consular Passport & Visa division, Regional Transport Offices, etc, being not engaged in commercial or professional activities from the ambit of liability.

Interception or collecting or monitoring or decryption of information is allowed to the Central Government or a State Government or any officer specially authorized in this behalf by the Central Government or a State Government under Section 5(2) Indian Telegraph Act, 1885; and under Section 69 Information Technology Act, 2000 read with Information Technology (Procedure and Safeguard for Interception, Monitoring and Decryption of Information) Rules, 2009. Direction for interception of any message or class of messages under Section 5 (2) of the Indian Telegraph Act, 1885 shall be issued by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in case of Government of India and by the Secretary to the State Government in charge of the Home Department in the case of a State Government.⁶⁵ The Internet Service Provider Licensee is under a responsibility towards the Government to offer necessary facilities to counteract espionage, subversive act, sabotage or any other unlawful activity, monitor data⁶⁶ only upon authorisation by the Union Home Secretary or Home Secretaries of the States/Union Territories and to have appropriate monitoring equipment etc.⁶⁷ Both the statutes expressly mention the circumstances which may be embraced as Social Interests viz. interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence. In addition to the similar provisions of both the laws, Information Technology Act, 2000 also contains Section 69 B read with Rules 3, 4 of Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009. The provisions examined above seek to achieve affinity between both the interests.

⁶² The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

⁶³ Production and inspection of books where offence suspected by order of Judge of a High Court in chambers or Tribunal and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company.

⁶⁴ For position prior to 2000, see Section 53 and Section 76 of Indian Post Office Act, 1898, Section 11 of The Census Act, 1948, Section 9 of Public Records Act, 1993 etc.

⁶⁵ The Telegraph Rules, 1951, Rule 419A. (It may be said that the procedure provided in for interception of messages etc. under Information Technology (Procedure and Safeguard for Interception, Monitoring and Decryption of Information) Rules, 2009 is inspired from this Rule).

⁶⁶ Terms and Conditions to Internet Service Provider License, 2007, (as per ISP guidelines dated 24-08-2007), 34.1.

⁶⁷ For details, see Terms and Conditions 34.1, 34.28(xix), 34.28(xx), 34.4, 34.8, 34.23 and 34.27 to Internet Service Provider License, 2007.



Table - 5 : Punishments Prescribed for Various Data Breaches under Different Legislations⁶⁸

Sr.No	Legislation	Provision	Offence	Punishment Prescribed	
				Imprisonment	Fine
1.	The Indian Telegraph Act, 1885	Section 24	Unlawfully attempting to learn the contents of messages	Imprisonment for a term which may extend to one year	-
		Section 26	Making away with or altering, or unlawfully intercepting or disclosing messages, or divulging purport of signals	Imprisonment for a term which may extend to three years,	Or with fine, or with both
		Section 30	Retaining a message delivered by mistake	Imprisonment for a term which may extend to two years,	Or with fine, or with both
2.	The Census Act, 1948	Section 11 (1) (b)	Discloses of any information which he has received by means of, or for the purposes of, a census return	Imprisonment which may extend to three years	And fine which may extend to one thousand rupees
3.	Information Technology Act, 2000	Section 72	Failure to protect data	Imprisonment for a term which may extend to two years,	Or with fine which may extend to one lakh rupees, or with both
		Section 72 A	Disclosure of Information	Imprisonment for a term which may extend to three years,	Or with a fine which may extend to five lakh rupees, or with both
		Section 66C	Identity Theft	Imprisonment of either description for a term which may extend to three years and	Shall also be liable to fine with may extend to rupees one lakh.
4.	The Credit Information Companies (Regulation)	Section 22(2)	Unauthorised access to credit information	-	• Fine which may extend to one lakh rupees in respect of each

⁶⁸ Compiled by the Researchers.



	Act, 2005				offence • and if he continues to have such unauthorised access, with further fine which may extend to ten thousand rupees for every day on which the default continues
5.	Payment and Settlement Systems Act, 2007	Section 26(4)	Disclosure of any information, the disclosure of which is prohibited under section 22	Imprisonment for a term which may extend to six months,	Or with fine which may extend to five lakh rupees or an amount equal to twice the amount of the damages incurred by the act of such disclosure, whichever is higher or with both

Data breach or sharing the information has been made subject to both criminal and civil liabilities. **Table 5** discusses the criminal liability imposed under various laws, highlighting the imprisonment and fine. It may be noted that under various legislations, the imprisonment which may be awarded in case of data breach extends from six months to three years.

Table 6- Circumstances Prescribed under Various Legislations When Privacy may be Given Up⁶⁹

Sr.No.	Legislation	Provision and the Circumstances	
1.	Indian Telegraph Act, 1885	Section 5(2)	Public emergency, or in the interest of the public safety in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence
2.	Information Technology Act, 2000 and Allied Rules	Sections 69, 69B	Rules 25(2), (6) ⁷⁰

⁶⁹ Compiled by the Researchers.

⁷⁰ Information Technology (Procedure and Safeguard for Interception, Monitoring and Decryption of Information) Rules, 2009.



3.	Right to Information Act, 2005	Section 8(2)	Public interest in disclosure outweighs the harm to the protected interests
		Section 9	Would involve an infringement of copyright subsisting in a person other than the State
		Proviso to Section 11(1)	Public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party
		Proviso to Section 24(1)	Information pertaining to the allegations of corruption and human rights violations, available with the intelligence and security organisations specified in the Second Schedule.

Table 6 reproduces those circumstances where rights of public as a whole take over the right of privacy of individual. India needs time to have a mature law in tune with the social and technological progress.

5. CONCLUSION

The paper began with elaborating the right of privacy before 2000, moved to anti – privacy provisions (pro-information) and then discussed the legislative position in India after the commencement of Information Technology Act, 2000. The right to privacy as recognized by legislative provisions in India is a fusion of both pro-privacy and anti-privacy provisions. The right to be alone is of the subjects and right to be informed under the laws dealing with the use of communication technology is of the State. The right to be informed has been accorded to the State only in the interests of the State and its subjects. The various laws discussed above recognize privacy not as an absolute right. Information may even be required to be in public domain under the circumstances defined by the laws. So, right to privacy granted to individuals has to be surrendered as and when mandated by the legal provisions. The paper is an earnest attempt to present a number of widespread pieces of legislations.

It needs to be asserted that the Indian legal framework on privacy is a reflection of theory of Dean Roscoe Pound of 'Interests' where privacy as an individual interest may be taken over by social interest of information or right to be informed. It is further hoped that in the advanced Indian legal regime, more conformity would be achieved between the right to privacy and the right to information.