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Revisiting the Right to Privacy: A Conceptual Study within the Human Rights Framework

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Revisiting the Right to Privacy: A Conceptual Study within the Human Rights Framework

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Introduction

The notion of right to privacy is not a new phenomenon; it has prevailed all through the ages in various forms and substances as well. Milton R. Konvitz¹ quoted that 'privacy has been marked off, hinted at, or grouped for in some of our oldest legal codes and in the most influential philosophical writings and traditions.' A intellectual and constitutional underpinning for privacy was in place long before the United States formed, according to Milton's words. The need for privacy has existed since the dawn of human history, yet it was not adequately understood back then. Customs and customary usages were used to maintain privacy in early cultures. The idea of personal privacy as a fundamental human right was developed in the contemporary era. General tort law has already recognized an individual's right to privacy many years before the United States Constitution ever existed. Protecting a person's home and animals was a primary goal of the Indian Constitution's Right to Property, which dates back to ancient India. The right to life was considered as being embodied in this. At some point in common law's development, it became clear that not just bodily safety but also the preservation of an individual's spiritual self was important. The right to be alone has been added to the scope of the right to life. For this reason, the term "property" has evolved to embrace both ethereal and tangible kinds of ownership. It has been the Supreme Court's practice to read Article 21 in combination with international human rights accords in order to make inferences concerning specific rights. It is protected by Article 21 of the Universal Declaration of Human Rights, which is derived from Article 12 of the Universal Declaration and 17 of the 1966 International Covenant on Civil and Political Rights (ICCPR). People's private liberties are protected by both of these international conventions, which are clearly stated.

A basic right to privacy does not exist in India. Article 19 brought the Supreme Court's attention back to the problem of privacy in 1975. European Convention on Human Rights Articles 19(1)(d) and 21 are at risk of being violated since they prohibit excessive monitoring and invasion of privacy. For the objective of preventing crime and utilizing information from the history sheet, surveillance must be conducted. Anti-terrorism legislation found that private rights must be put aside for the sake of national security, and that withholding information necessary for criminal prosecution cannot be justified on the basis of privacy rights. All human beings have an insatiable craving for seclusion. As a matter of fact, an individual's inherent urge is to build personal boundaries that are virtually completely segregated from others. When one's private letters to a friend are published without the express or implicit agreement of the recipient, the privacy of the recipient is infringed. Another example of an invasion of privacy is if a neighbor looks into your house from the street. As a result, privacy is defined as a condition of isolation and separation from others.

¹ Jones, Mervyn. (1971). Privacy. at p 11 cited in supra note 1 Chapter I, p 12

The idea of privacy implies defining what privacy is and assigning a monetary value to it. When it comes to protecting one's privacy, it's important to consider how (and should be legally protected). Privacy is not defined by legislation, but rather by the circumstances in which it is protected. It is possible to characterize one's right to secrecy as the freedom from having one's private matters eavesdropped on. The concept is based on the fundamental human right to privacy. A person's right to privacy can act as a basis for other rights as well.

Academics working in the field of privacy often consider that privacy is a cultural issue, and that it would be seen differently in different nations. This was true before the digital age, but the development of new social spheres and life experiences made available by a plethora of current technology has transformed the situation considerably. There is a new "living environment" or "life structure" emerging due to the widespread use of the Internet, portable devices, smart phones, location-based services, smart homes, and CCTV, and the associated exploitation of big data collected from such devices. Personal data has become extremely valuable in a market economy and critical for individual development.

In most democratic countries, privacy is a basic right. Freedom and self-determination cannot exist without the right to privacy. As a result, privacy and human dignity are closely interwoven. Recognizing someone's right to freedom and their role as a responsible human being is the first step in preserving their right to privacy.

A person's privacy is also a primary obligation to respect. However, this is not an absolute obligation that does not allow for exceptions. Here are two realworld instances that illustrate my point. To begin with, the police have the authority to invade the privacy of a suspect by eavesdropping on them or confiscating their personal belongings. In order to maintain social order and peace, governments have the legal authority to collect private and personal information from their inhabitants. Privacy as a manifestation of individual freedom, however, is constrained by social accountability.²

In this digital age, new threats to privacy are posed by technological technology. For democratic countries, the preservation of individual privacy has become a need in the modern day. Cultures have different ideas on what constitutes privacy, and this varies greatly from country to country. In certain countries, listening in on others' conversations in private or public locations is considered a violation of privacy, while in others, it is permitted. As a result, the concept of "private" is riddled with inconsistencies. Personal data and information are protected by the concept of "privacy" when we talk about the rights of individuals. Although "privacy" is difficult to define and describe because of its ambiguous nature, understanding its nature and extent is essential to fully appreciate its value. Maintaining one's right to privacy protects an individual's spiritual, psychological, and bodily well-being. The legal definition of privacy is the ability to keep one's personal matters secret. The right to privacy, a basic principle of democracy, protects the private of citizens. It's still possible to breach this principle in the modern world, when private sector dangers to personal privacy are many. As a result, not only governments but even the private sector can infringe on a wide variety of individuals' rights to privacy.

² UN Special Reporter on Right to Privacy, *available at*: <https://www.coe.int/en/web/data-protection/-/un-special-rapporteur-on-the-right-to-privacy-calls-on-countries-to-accede-to-convention-108> (Last visited on: Sep 17, 2024)

Definition of Right to Privacy

An example of the higher judiciary's ability to interpret and a right that emerged as a result of a wider process of enlarging the scope of explicitly stated basic rights. Oxford English Dictionary describes privacy as "the lack or avoidance of notoriety; the condition or position of being secluded from other people, or from the public's attention; isolation," According to the Black's Law Dictionary, privacy is "the right of a person to be free from undue publicity and a right to exist without unwarranted intrusion by the public in topics with which the public is not necessarily interested". The right to privacy can be defined in a variety of ways, but it will always be a personal one.

When it comes to your personal habits, way of life, and line of work, you have the legal right to have your private concerns kept private and to prevent the public from seeing your resemblance. Humans have the right to privacy, and several legal systems see this as a fundamental right that may be used to restrict government and private party intrusions into people's personal lives.

While celebrities and participants in high-profile events have the right to privacy, individuals who aren't entitled to the same protections. Lawsuits can be filed if someone's right to privacy is violated, and damages can be sought from those responsible. The Supreme Court has construed many amendments to include the right to privacy even if it is not expressly stated in the Constitution. According to the constitution, it is prohibited to search us or our property without "probable cause." Our bodies and private lives are protected by other reforms, allowing us to make our own decisions without intervention from the government. Due process typically protects family, marriage, motherhood, reproduction, and child-rearing activities. In other words, the right to keep one's private affairs private is a definition of privacy. It's about not having to worry about the government intervening in your personal life.³

A "right to privacy" has been defined just a few times in the past century. This right to privacy "shouldn't even be defined as a legal one," according to students of the Haif Center for Law and Technology in 2005. According to their argument, existing privacy regulations should suffice. There have been attempts by other specialists, including Dean Prosser, in vain to discover a "common ground" among the most prevalent types of privacy matters in the court system, or at the very least to develop a description. The "right to privacy should be considered as an autonomous right that merits legal protection in itself," says an Israeli law school thesis on "privacy in the digital world." An interim "right to privacy" definition has been offered as a result:

We have a right to privacy because we have a domain around ourselves that includes our bodily and financial resources as well as our thoughts feelings, and secrets. With the right to privacy, we are able to decide which aspects of our domain others can access as well as when, how, and how much of that information they can utilize.

Aim and Scope of Privacy

Privacy has evolved in today's digital era as people have become technologically enhanced beings, especially since cyber and virtual crimes have increased in scope. Because new technology equipment may be exploited for additional potential privacy breaches, these innovations have both beneficial and bad effects on individual privacy. Individual liberties and rights, particularly the right to privacy, are under attack in the twenty-first century, and the

³ *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1

right to life itself is under threat. To protect one's personal privacy, people have the freedom to choose whether or not to divulge certain details about themselves. Each and every one of us has the right to determine for ourselves if, when, and how we share our personal information with others. Modern society's concern for individual privacy has grown significantly as a result of the proliferation of new technological surveillance instruments, such as computers, the internet, and GPS devices.⁴

Evolution Of Right to Privacy in Different Countries

Private life is a fundamental human right. Privacy may be traced back to ancient times to Western culture. Despite the lack of legal protection, several initiatives have been taken to preserve privacy. Although the notion of privacy as a fundamental human right was not completely acknowledged in Western countries until the dawn of civilization, it has always been a fundamental human right. When it comes to privacy, we've never been in a better position.⁵

In England, the Justices of Peace Act of 1361 laid the groundwork for the right to privacy as a safeguard. The Justices of Peace Act focuses on torts, such as slander, libel, false imprisonment, and malicious prosecution, as well as damages to personal property. Furthermore, the Act mandated the arrest of anybody who peeps or eavesdrops. Acting as police officers, judges of the peace pursued and apprehended offenders. For many people, a Justice of the Peace is their first and maybe only encounter with the legal system.

This was followed by a comment made by Parliamentarian William Pitt in the House of Commons in 1763 during a dispute “the poorest man may in his cottage bid defiance to all the force of the crown. It may be frail, its roof may shake; the wind may blow through it; the storm may enter-but the King of England cannot enter; all his force dare not cross the threshold of the ruined tenement”. It was discussed whether or not to levy a tax on the manufacture of cider, as proposed by then-Prime Minister Lord Bute. Any establishment suspected of selling untaxed cider might be searched by the Crown's agents. Private residences where a farmer or cider merchant may keep part of their products were allowed to be searched under the Cider Act, often known as the Excise Bill. Contrary to Common Law, the King's representative might access a man's property without the owner's permission under this law. It might be claimed that William Pitt's quote is an unsettling appeal for the preservation of private rights in contemporary countries.⁶

There was a committee set up later on by the British government and headed by Sir Kenneth Younger to look into whether legislation was needed to protect citizens and businesses from private individuals, organizations, or corporations invading their privacy. The committee was tasked with making recommendations. As a basic human right in the US, privacy was found to be undervalued in the UK and to have had no impact on British citizens' everyday practice of safeguarding their personal space. Despite this, the Human Rights Act of 1998, based on the European Convention on Human Rights, was recently ratified by the United Kingdom. The Data Protection Act of 1998 and the Regulation of Investigatory Powers Act of 2000 were enacted by Parliament to address emerging privacy issues.⁷

⁴ Torts, 2nd edition, 1888

⁵ Indian Penal Code, 1860

⁶ The Divorce Act, 1869

⁷ Prof. H. D. Pithawalla, The Divorce Act, 1869 – A Critical Commentary, C. Jamnadas & Co., Educational Law Publishers, Mumbai, Revised and Edited 5th Edn., 2007, p.37.

The "Access to Public Records Act, 1776" was passed as a result by the Swedish Parliament. For the first time in Swedish history, the public now has access to government records thanks to this piece of law. The Act, on the other hand, stipulates that information stored by the government may only be utilized for lawful purposes. In Queensland, Australia, legislation was enacted in 1971 to address a variety of privacy concerns, including credit reporting and data banks.⁸

Luise Dembitz Brandeis and Samuel D. Warren, two American lawyers, wrote an essay in the "Harvard Law Review" titled "The Right to Privacy" in the later part of 1890, which aroused interest in privacy protection. The right to privacy was recognized as a fundamental human right by these two American attorneys, who introduced a new chapter in the law. Their paper was notable because it advocates for the recognition by courts of a specific legal right to privacy.⁹

Since the founding of the United States, Americans have taken a keen interest in maintaining their personal privacy. In the early 1800s, the common law recognized four major types of privacy concerns that were protected by various court rulings –

- (1) The home's inviolability
- (2) Personhood is inviolable.
- (3) Confidentiality of communications
- (4) Personal information is sacred.

Warren and Brandeis contend that privacy is a mix of reputational, emotional, and intangible property interests, rather than a value in and of itself.

Prosser viewed that privacy is a composite of four distinct torts and each tort involves four different interests, namely,

1. Unnecessary intrusion into the privacy of another person: This type of tort protects interests in freedom from mental distress.
2. Appropriation of the others' name or likeness: Protects proprietary interests in the exclusive use of the plaintiff's name and likeness.
3. Unreasonable publicity given to the others private life: Ensures that the plaintiff's humiliating private information is not made public.
4. Unreasonable public relations efforts aimed at painting a misleading picture of the order: Protects interests in reputation and mental distress.

The Fourth and Fifth Amendments acknowledge that the framers of the Constitution acknowledged the existence of a constitutionally protected right to privacy. As a result of Supreme Court decisions from the twentieth century, the First Amendment, the Third Amendment, and the Ninth Amendment have all lost their private protections. The Courts in the USA acknowledged the legality of privacy right in numerous important judgments considering issues like, homosexuality, reproductive autonomy, and telephone tapping, etc. Global countries thus realized the importance of protection of privacy interests on every occasion and such necessity has been grown up with much technological advancement and the increasing tendency of governmental intrusion.¹⁰

⁸ The Indian Contract Act, 1872

⁹ Saurabh Awasthi, "Privacy Laws in India – Big Brother is Watching You", Company Law Journal, Vol.3, 2002, pp.15-23 at p.20.

¹⁰ The Indian Evidence Act, 1872

Development of Modern Concept of Privacy Right

The modern benchmark of the right to privacy can be derived from some of the significant international conventions. These International Conventions are very much successful in bringing about respect and awareness among the countries as well as people towards the protection of their rights of privacy. Now-a-days, several countries come forward to enact privacy legislation to implement the principles laid down by several International Conventions from time to time.¹¹

Since its founding, the United Nations Organization has placed a high priority on fostering mutual respect for human dignity and fundamental human rights. No of their color, gender, ethnicity, nationality, or religion, all people are guaranteed equal protection under the law under Article 1 of the United Nations Charter. When it came to promoting respect for privacy, the Universal Declaration of Human Rights was a first step towards achieving this goal for everyone and everyone in society. An essential right under the Universal Declaration of Human Rights is the right to privacy, as outlined in Article 12.

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attack upon his honour and reputation. Everyone has the right to the protection of the law against such interference and attacks.”¹²

Under Article 19 of the Universal Declaration of Human Rights, media freedom is guaranteed. "The right to privacy will be safeguarded against unjustified intervention by the media." The following is stated in Article 19 of the aforementioned Declaration:

“Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinion without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers.”

As a result of the horrific abuses of human rights that occurred during World War II, the European Convention on Human Rights was established in 1950. In drafting this document, it was necessary to draw inspiration from the Universal Declaration of Human Rights.

Article 8 of the Convention guarantees this right to privacy:-

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedom of others.”

In 1966, the United Nations General Assembly ratified the International Covenant on Civil and Political Rights after sixteen years of debate. The International Covenant on Civil and Political Rights (ICCPR) was created to accomplish this goal. Under the terms of the Covenant, all governments were bound to promote and protect human rights and freedoms.

A fundamental right recognized in the International Covenant on Civil and Political Rights (ICCPR) is the right to privacy.

1. Anyone's privacy, family, home, or communication should not be invaded arbitrarily or unlawfully; nor shall anyone's honor or reputation be unlawfully attacked.
2. Every person is entitled by law to protection from any intrusion or attacks on their privacy.

¹¹ **Batuk Lal**, *The Law of Evidence*, 15th ed. (Allahabad: Central Law Agency, 2001) 285.

¹² *Supra Note* 35.

It was only a few years following the adoption of the International Covenant on Civil and Political Rights (ICCPR) that two new treaties were developed to ensure that children's privacy rights and those of migrant workers' families were both adequately safeguarded.

An international convention on children's rights ultimately became legislation in 1989 after nearly a decade of negotiations at UN General Assembly level. By virtue of this international accord, children have been recognized as persons with basic human rights rather than as commodities. A reference to the United Nations and other relevant human rights treaties is made in the Convention to emphasize the importance of special care and protection for vulnerable children. Under Article 16 of this Convention while securing children's right affirms the protection of privacy of children that of the same language as Article 12 of UDHR.¹³

An international convention aimed at protecting the rights of workers employed in countries other than their own and providing additional protection to migrant workers and their families went into effect in 1990, after taking into account the principles and standards established by several relevant United Nations instruments.

Regional human rights treaties have also emphasized the need of privacy as a human right, as well as the need for legal protection. The American Convention on Human Rights particularly mentions privacy. In line with Article 11 of the applicable agreement, private life shall be respected.¹⁴

1. Each and every one of us has the right to be recognized and acknowledged for our honor and dignity.
2. No illegal assault on a person's honor or reputation, or arbitrary or abusive interference with a person's private life or correspondence, shall be permitted.
3. Everyone is entitled to the protection of their personal liberty and privacy under the law.

To comprehend human rights legislation, it is essential to have knowledge of the right to privacy and to develop a framework that protects private. Resolution 28/16 was adopted by the Human Rights Council in 2015, which directed the UN Special Rapporteurs on the Right to Privacy to promote and protect the right to privacy.¹⁵

Evolution of Right to Privacy in India

In Indian mythology, the idea of personal space and confidentiality was commonplace a long time ago before it got prominent status in any other country. There was a vital connection of privacy with the creation of Lord Ganesha. As per the ancient text, Lord Ganesha was created by Mata Parvati from the clay of her body as a truthful companion who would be in her side whenever she needed and who can protect her against any kind of unwanted interference to her life.¹⁶

Indian mythology also envisaged that privacy was an important concern for meditating sages, disturbing their peace was deemed to be the biggest sin. The great Indian epic Mahabharata also portrayed some sense of privacy concern with respect to the marital life of Draupadi and her five Pandava husbands. In Mahabharata, Draupadi was the common wife of Pandavas and hence, to ensure the right to personal life and avoid any sorts of embarrassment to Draupadi, Yudhishtira made a rule that all will have exclusive rights to her chamber for one year, whenever any one of the five brothers was with Draupadi, none can invade their private life and if anyone sees the Draupadi during such company, the later would have to undergo the

¹³ The Indian Easements Act, 1882

¹⁴ The Indian Telegraph Act, 1885

¹⁵ The Indian Post Office Act, 1898

¹⁶ The Emblems and Names (Prevention of Improper Use) Act, 1950

punishment of banishment for twelve years in the forest. Women's privacy, family, reproduction, communication, and other aspects connected to personal privacy were explicitly safeguarded by society and the state under the Dharmashastras, according to ancient Indian literature. All religious texts incorporated the idea of noninterference by others, including the King, unless it was essential in the public good or for the prevention of crime. It seems that people during the Vedic period also had great respect for each other's privacy.¹⁷

Furthermore, in his 'Arthashastra,' Kautilya, the famed Indian politician of the Mauryan Empire, called for the establishment of a clear mechanism for consulting ministers in order to avoid the risk of official policies being leaked into statecraft. Although Kautilya did not mention individual privacy, he did provide the groundwork for the state to maintain secrecy, which gave rise to the notion of individual privacy through time as a result of the state's intrusion into the person's life.¹⁸

Under ancient Hindu society, the right to privacy was prevalent in customary practices among the people rather than judicial pronouncement. Custom being highly recognized and the most ancient source of any law were always regarded as a matter of authority in every society. Privacy may not be explicitly recognized, but there were customary a practice promotes the secrecy and confidentiality of family affairs, autonomy of individuals.¹⁹

In *Gokul Prasad v. Radho*,²⁰ an appeal, the Allahabad High Court questioned whether or not the right to privacy exists in substance and to what degree it may be enjoyed by any individual. In this case, the plaintiff claimed that the defendant's house was built incorrectly and that it invaded the personal space of the plaintiff's female relatives. According to Chief Justice Sir John Edge's judgement for the division bench, where a person's right to privacy is breached in a serious degree, they may have a genuine claim for damages. A breach of one's privacy may lead to feelings of shame, as this instance shows. It seems that the idea of privacy being tied to a person's way of life is a fluid one that changes depending on who you ask. Accordingly, the Bombay High Court in *Manishankar Hargovan v. Trikam Narsi*,²¹ affirmed the Indian customary practice of a right to privacy. However, there has been a trivial change in the popular practice of the right to privacy in due course of time.²²

In Indian tort law, the idea of privacy as a distinct thing was first put out. US Tort law has recognized a new right of action for damages in the case of an unauthorized invasion of privacy.

The right to privacy is a double-edged sword.

- (i) Losses caused by an illegal intrusion into one's private can be sought under the general legislation on privacy, which provides a tort action for damages, and
- (ii) The right to privacy is recognized by the Constitution as a fundamental freedom that must be guarded against intrusion by the government.

Privacy protection was formerly handled by tort law prior to its constitutional status as a personal right. During the time, generally, privacy protection extends when there was an unwarranted interference in the enjoyment of the property and that is under the law of torts, such as, trespass and nuisance similar to the other countries. Moreover, injury to the private premises or personal heritage was also remedied under Indian Easement Law.²³

¹⁷ **Michael Henry** (ed.), *International Privacy, Publicity and Personality Laws* (London: Butterworths Publication, 2001) 237.

¹⁸ The Special Marriage Act, 1954

¹⁹ The Hindu Marriage Act, 1955

²⁰ ILR 10 All. (1888) 358

²¹ Bom. H.C.R. (1876) ACJ42

²² **H. K. Saharay**, *Laws of Marriage & Divorce*, 5th ed. (Kolkata: Eastern Law House, 2007) 232.

²³ The Children Act, 1960

Since its inception in 1791, the right to privacy has undergone major changes. A constitutional right to privacy has been established in India despite the constitution's failure to mention it directly. According to the Supreme Court, Article 19 (1) (a) provides the right to freedom of speech and expression, whereas Article 21 assures the right to life and liberty.

A better analogy would be to consider freedom of expression and privacy to be the same thing. However, one's right to privacy gives one the power to select how much information one's private life may be shared with the outside world. As a result, it is critical to preserve one's ability to freely communicate information for the benefit of the wider population. According to *R. Rajagopal v. State of Tamil Nadu*,²⁴ a Supreme Court decision, the right to privacy is inherent in the right to life, liberty, and freedom. The right to privacy and the right to free speech go hand in hand. Until it can be shown that the conflicting interests of the State outweigh the value of privacy and dignity for human pleasure, the court must not dismiss privacy dignity arguments.

As the Supreme Court ruled in *Peoples' Union for Civil Liberties v. Union of India*,²⁵ "the right to privacy" includes the ability to make a phone call in the privacy of one's home or business without interruption. As a human being, you have the right to utilize telephonic communication to express yourself. Unless there was a public emergency or the public interest demanded it, the State should not have recorded the conversation.

You have a fundamental right to a meaningful and peaceful existence free of harm as a human being. Many people believe that the importance of Article 21's basic right to privacy underpins its sanctity as the Constitution's fundamental right. A majority of the Indian Supreme Court's judges ruled in *Kharak Singh v. State of Uttar Pradesh*,²⁶ that the right to privacy isn't well-protected under Indian law. It is a significant aspect of individual liberties, even if it isn't stated directly as a fundamental right in the Constitution. Nevertheless, the Court's minority judgment acknowledges this. According to *Govind v. State of MP*,²⁷ the right to privacy and human dignity are essential components of a person's constitutionally guaranteed freedom, reaffirming a substantial minority stance taken in *Kharak Singh*.

Many countries' courts play a significant role in preserving and maintaining the privacy rights of its inhabitants. The court has established this right case by case. A basic human right, privacy, has been consistently affirmed by the courts.²⁸

Indian privacy laws may be dated back to colonial times. The Colonial Government created the Official Secrets Act in 1923 to guard against the leakage of official secrets. History shows that privacy has been an important part of morals and law since the beginning of time, with a rise in its importance in the British period. India has yet to enact full-fledged legislation on privacy as a consequence of the lack of interest in the notion in modern culture. Privacy is not specifically protected by the civil code, criminal code, criminal process law, or the evidence act, although the Evidence Act does protect rights that are analogous. Depending on the specifics of the offense, there are several ways to deal with it.²⁹

Consequently, the right to privacy has through many stages of evolution. Recognizing the right to privacy is a relatively recent development. Increasing civilization has resulted in a more individualistic approach. There has been a transitional shifting from socialistic to an individualistic pattern of society in the present day and this change is further afforded in the maturity of right to privacy. However, one cannot deny that it has been the goal of a liberal society to achieve political civility in which there is enough privacy to nourish individual

²⁴ AIR 1995 SC 264

²⁵ AIR 1997 SC 568

²⁶ AIR 1963 SC 1295

²⁷ AIR 1975 SC 1378

²⁸ The Code of Criminal Procedure, 1973

²⁹ The Press Council Act, 1978

creativity and group expression; enough information about government activities to let the people form their own judgment in political matters; and a space of secrecy for the government to preserve the secrecy of certain information and policy-making processes.³⁰

An intrinsic value of private space and information has been acknowledged as fundamental to human contact and relationship even in the absence of unusual circumstances of intrusion. Even while the concept of privacy as separate right dates back to the late 1800s; it has seen significant growth in the recent several decades. Besides, the judiciary is prominent machinery in extending the scope of the right. Throughout the world, the judiciary is the sole guarantor of privacy rights for a long time. It is only through judicial endeavor; protection of the right of privacy which was confined only against physical interference has broken down.³¹

The growth of privacy concerns was the consequence of a wide spectrum of human endeavors, many of which came from different cultures. According to historical evidence, the right to privacy was influenced by a variety of legal systems, including those of Mesopotamia, ancient India, paranoid Egypt, Greece, and Romania. Globally, the right to privacy is becoming more and more accepted as a principle that has been acknowledged in several international and regional accords, declarations, and treaties, including the International Declaration of Human Rights.

Privacy in the Modern Sphere

The concept of privacy is not amenable to precise definition. In public law, traditionally ‘privacy’ means freedom from official intrusion. However, today with the development of science and technology and other pressures, the term privacy has received extended meaning.

Privacy and Data Protection

In terms of how we view privacy in modern terms, ‘data protection’ appeared. Europe as an answer to the dangers of electronic data processing, which were becoming widespread via the time of the so-called electronic revolution, which began in the 1970s. This resulted in the first generation of data protection laws, developed in response to computer systems and the ability to create mass databases from which it was possible to collate and match data through the use of indexing and search engines performed on the basis of keyword searches. At the same time, the appearance of international computer networks opened the road for globalization of data processing as well. The content of the legal protection provided by it has changed significantly since its appearance several times, and is still changing presently as technological advances become increasingly sophisticated.

In the modern age while following on from early definitions, data protection is a tool of privacy protection, and as such is aimed necessarily at the individual; the object of data security is data itself. This may be interpreted as the protection of the integrity and confidentiality of data, irrespective of the information content qualification of data.³²

Interrelation with Data security

Data security is served by technical and organizational measures, which may be stipulated both by legal and extra-legal norms. Data security regulations are applied by several legal norms, including the legal formulation of data security regulations concerning qualified data (secrets of State and intelligence). The interrelationship between data protection and data security is complex, although there are certain key features that assist with understanding the nature of the connectivity of security and privacy. Throughout the development of data protection laws,

³⁰ The Family Courts Act, 1984

³¹ The Indecent Representation of Women (Prohibition) Act, 1986

³² 6 Laura Scaife, “*Handbook of Social Media and the Law* 240 (Informa Law from Routledge, New York, 2015).

post 1970, although to a variable extent, legislation has usually contained data security rules serving data protection (which give specifications of the technical, organizational or other measures that are to be followed by the addressee of the norm when treating personal data). Such measures indicate that with regard to personal data, data security is of the objectives of data protection regulation.³³

A new development among the tools of privacy protection is the increasing role of data security technologies; this has been especially marked over the past few years, which has seen increased focus on users' sophistication with the development of computer technology.³⁴

Privacy and Surveillance

In modern society, privacy is inherently linked to surveillance. Based on Foucault's notions of surveillance as disciplinary power, one can define surveillance as a specific kind of information gathering, storage, processing, assessment and use that involves potential or actual harm, coercion, violence, asymmetric power relations, control, manipulation,³⁵ domination or disciplinary power. Surveillance is instrumental and a means for trying to derive and accumulate benefits for certain groups or individuals at the expense of other groups or individuals. Surveillance is based on the logic of competition. It tries to bring about or prevent certain behaviours of groups or individuals by gathering, storing, processing, diffusing, assessing and using data about humans so that potential or actual physical, ideological or structural violence can be directed against humans in order to influence their behaviour. This influence is brought about by coercive means and brings benefits to certain groups at the expense of others.³⁶

Social Networking Sites like Facebook, Google, and many others are violating privacy of users through economic surveillance. Economic surveillance on corporate social media is surveillance of prosumers, who keeps on creating and sharing usergenerated content, browse profiles and data, interact with others, join, create and build communities and co-create information. The corporate web platform operators and their third-party advertising clients continuously monitor and record personal data and online activities. The collected data is stored, merged, and analysed. This enables the development of comprehensive user profiles, providing insights into users' personal interests and online behaviours. Platforms utilising targeted advertising commodify prosumers for the benefit of advertising clients. There exists a transaction involving funds in exchange for access to user information, facilitating economic surveillance of users.³⁷

Google, much like Facebook, participates in user monitoring aimed at maximising capital growth. The monitoring conducted by Google mainly serves as a means of economic oversight. Google employs a highly sophisticated search algorithm. The specifics of the PageRank algorithm are confidential. Essentially, small automated programs known as web spiders navigate the World Wide Web. The algorithm evaluates all discovered pages, tallies the number of links to each page, identifies relevant keywords, and determines their significance through a ranking system. The PageRank algorithm functions as a method of observation that explores, evaluates, and organises the World Wide Web.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Ashley Packard, *Digital Media Law* 260 (John Wiley & Sons, Inc UK, 2013).

³⁶ Neil M. Richards & Daniel J. Solove, *Prosser's Privacy Law: A Mixed Legacy*, 98 Calif. L. Rev. 1887, 1893-94 (2011).

³⁷ *Ibid.*

Privacy by Design

Privacy by Design is a methodology that advocates for the integration of privacy considerations into the technology design and engineering process from the outset. The framework encompasses seven foundational principles regarding privacy and security. There are many facets to privacy by design, including software and systems engineering as well as administrative elements (e.g. legal, policy, procedural), other organizational controls, and operating contexts. “Privacy by design evolved from early efforts to express fair information practice principles directly into the design and operation of information and communications technologies”.³⁸

One of the most significant and evolving practical domains of data protection is the notion of DPbD as outlined in the GDPR. Initially created as an extension of the data protection legal framework, it is now gaining broader acknowledgement and is explicitly referenced and recognised in primary legislation. The principles of DPbD/PbD and the emphasis on data protection by default hold significant importance for organisations, serving not only as a legal requirement but also as a means to gain a competitive edge in the market.³⁹

The concept of PbD is complementary to data protection law and regulation. The idea is acknowledged to have started with Dr Ann Cavokian, the Information and Privacy Commissioner for Ontario, Canada. She states that:

*‘the increasing complexity and interconnectedness of information technologies [requires] building privacy right into system design ...the concept of Privacy by Design (PbD), ...describe[s] the philosophy of embedding privacy proactively into technology itself – making it the default’.*⁴⁰

SNS companies are, by and large, private, for-profit corporations with a global reach and international profiles. They engage in actively shaping the debate on privacy on digital media through the ways in which they design the technologies of privacy on their sites and the options that they make available to users — the ways in which they revise and revisit these policies often causing strong reactions from users — and through their public discourses around privacy issues.

Intellectual Privacy in the Digital Age

American Scholar Neil Richards defines intellectual privacy as “it’s is a zone of protection that guards our ability to make up our mind freely. More formally, intellectual privacy is the protection from surveillance or unwanted interference by others when we are engaged in the processes of generating ideas and forming beliefs when we are thinking, reading, and speaking with confidants before our ideas are ready for public consumption”.⁴¹

Richards argues that Intellectual Privacy, a special kind of privacy is necessary in a democracy because it allows us to develop our political beliefs free from the skewing effects of being watched, monitored, and judged.¹³⁶ Intellectual privacy secures the intellectual freedom to figure out what we believe about the world and our place in it. Intellectual privacy is essential to the development of our identities, but it is not the only kind of privacy that matters to our identities.

³⁸ 2 Ann Cavokian, Privacy by Design: Origins, Meaning, and Prospects for Assuring Privacy and Trust in the Information *available at:*

https://www.researchgate.net/publication/289769458_Privacy_by_Design_Origins_Meaning_and_Prospects_for_Assuring_Privacy_and_Trust_in_the_Information_Era (last visited on Sep 15, 2024).

³⁹ Dr. Paul Lambert, *A User’s Guide to Data Protection* 313 (Bloomsbury Professional, RH161BJ, 2016).

⁴⁰ www.privacybydesign.ca/about/ (last visited on Sep 15, 2024).

⁴¹ *Supra Note.* 35

Criticism of Privacy

Etzioni stresses that it is a typical American liberal belief that strengthening privacy can cause harm. He stresses that privacy can undermine common goods (public safety, public health). Countries like Switzerland, Liechtenstein, Monaco, and Austria have a tradition of the relative anonymity of bank accounts and transactions. One sees money and private property as aspects of privacy about which the public should have no information. In Switzerland, the Federal Banking Act defines the bank secret. The Swiss Bankers' Association sees bank anonymity as a form of "financial privacy"⁴² that needs to be protected and speaks of "privacy in relation to financial income and assets".⁴³ Most countries treat information about the income and profits of companies (except for public companies) as a secret, a form of financial privacy. The privacy-as-secrecy conception is typically part of the limited access concept of privacy.⁴⁴

Control theories and limited access/control theories of privacy, in contrast, do not stress absolute secrecy of personal information as desirable, but rather highlight the importance of self-determination in keeping or sharing personal information and the different contexts in which keeping information to oneself or sharing it is considered important. In this vein, Helen Nissenbaum argues that the "right to privacy is neither a right to secrecy nor a right to control but a right to appropriate flow of personal information. In all of these versions of privacy theories, secrecy of information plays a certain role, although the exact role and desirability of secrecy is differently assessed."⁴⁵

Effects of Right to Privacy

Privacy as a basic human right touches upon fundamental needs and values associated with man's gregarious nature. Today, all democratic societies have come to realize that privacy is at the heart of all human rights. Certainly, the level of technological and economic development creates pressures to protect these privacy values through legal enforcement techniques. But even in the absence of such development, the value of and the basic human right to privacy may prevail irrespective of legal recognition. On the other hand, active claims for legal enforcement of the right seem to have a very direct relationship to the degree of threat posed to its survival. Certainly, this relationship holds at the level of legal development, and it supports the thesis that human rights such as privacy, although recognized by laws, are enforced only when the danger to underlying values is perceived. The values, themselves, may also be shared and implied in cultural norms, but often they are not articulated as legal norms until threatened.

The right to privacy is basic to every individual. Eclipse of privacy means eclipse of human dignity also. Justice Mathew rightly stated that "there can perhaps be no objection in regarding intrusion upon our privacy as a dignity tort. The harm caused by this intrusion is incapable of being repaired and the loss suffered in dignity is not susceptible of being made good of damages.

India has essentially been a gregarious society wherein cooperation and not competition, society and not solitude have been the dominant themes of its culture and civilization. Therefore, sometimes it is doubted whether privacy is a value of human relations in India. Certainly, it is wrong to suppose that the concept of privacy is alien to Indian culture. A man's house is his castle is a supreme and valid truth that is valued in all cultures and civilizations and India is no exception to it. The right to privacy in India had been recognized as a fundamental right of the citizen under Article 21 of the Indian Constitution in Puttaswamy case.

⁴² Neil Richards, *Why Privacy Matters* 6-7 (Oxford University Press, New York, 2022).

⁴³ 7 Daxton R. Stewart, (ed.) *Social Media and the Law A Guidebook for communications Students and Professionals* 56 (Routledge, New York, 2017).

⁴⁴ Vide his Article, The Right to be Let Alone, 4 SCC Journal Section 3(1979).

⁴⁵ *Ibid.*

Conclusion

It may thus be summed up that the long search for a definition of 'privacy' has produced a continuing debate that is often sterile and ultimately futile for, in those legal systems recognize a common law right to privacy (or its equivalent), privacy is entrenched in the vocabulary of courts, where it is accorded statutory protection then privacy is simply what the legislature says it is. It is revealed that the entire description is predicated upon a civilized social life. Professor Westin has not deliberated over the role of privacy in the transformation of a natural society to a civilized one. It is abundantly clear from the foregoing study that the conceptual basis of privacy is an original sovereignty over oneself. Privacy is the recognition of individual autonomy and inviolate personality. It seeks protection of human dignity in a clear tune. Reputation and integrity of a person can be preserved out of the conceptual basis of privacy. It gives place for genuine human emotions. It does not allow commercial exploitation of an individual's personality. Finally, it encircles a person's inner zone with a view to restore his status at art of his fellow member of society. Further, the contours of right to privacy remained undefined and an attempt has been made to analyze the scope, extent and effects of this right.

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