

TECNOLOGY'S PESSIMISTIC EFFECT ON PRIVACY

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Abstract : Privacy is a state of a person, to be left undisturbed or unobserved by the public. Privacy has been mentioned in various National and International frameworks. Right to privacy has gained its importance because, privacy is considered to be a part of human life. In India, Privacy has been given the status of a Right recently and is enshrined under Art.21 of the Indian Constitution. Technology has sucked us into its sphere, whereby every human activity depends upon computerised skills. Violation of privacy has taken a gigantic figure after the emergence of technology. Some of the areas where privacy gets affected by technology involves electronic monitoring of people, intercepting emails, cyber hacking, cyber stalking, cyber pornography, cyber phishing, telephone tapping etc., Most of the cyber crimes that take place, involve the misuse of private details of individuals. This paper comprises the importance of privacy, growth of technology, different frameworks on Privacy and the ways in which technology affects privacy.

Key words: Technology, Cyber crimes, Legislative frame work, Digital privacy, Sensitive personal information.

INTRODUCTION

Human beings tend to conceal certain facts and happenings of their life, the reason for not disclosing it may be insecurity, medical issues or may be he/she feels that it is unnecessary to disclose it to somebody else. Individuals demand certain private space for themselves and they wish to be excluded from the public interference at times. The state of being free or secluded is known as privacy.

The importance of privacy is that it secures the control over one's life because he/she has autonomy over the thoughts and acts performed. It is independent and it is upon the wish of each individual to decide upon unveiling certain information relating to him/her.

Overhearing ones conversation with another person is considered to be unethical and also violates their privacy. Initially communication was through speech in-person, and then it was through telephones, telegrams,

posts, messages and emails. Violation of privacy in communication was primarily done through manual eavesdropping, or reading the postal letters and courier. But violation of privacy in communication also took several forms along with advancement in technology. Telephone tapping, bugging and reading of emails are the ways in which communication is overheard at present. Technology has upgraded the way in which privacy in communication can be violated.

Similarly having an overview on someone's behaviour or activities tends to interfere in their privacy. With the advent of technology an artificial eye called surveillance camera was invented for security purpose. These cameras are installed in several shops, markets, malls, hospitals and other public places. Being monitored by these cameras makes us feel that every move of ours is being recorded which proves the unhealthy status of privacy in our day-to-day life.

We stand in an era, where we are ought to depend on technology, everything is digitalized and the data management is also in the hands of software. We handle various accounts for internet banking, online shopping, data backup etc., and these accounts obtain personal information from us for security purposes. But this information which form a part of our privacy are tend to misused which again leads to violation of privacy.

Thus the researcher of this paper has made an effort to bring out the importance of privacy, the space given to technology, ways in which technology affects privacy and the legislative measures taken.

OBJECTIVE

The paper aims at drawing out the streams through which technology disturbs the privacy of individual.

SCOPE AND LIMITATION

This paper mainly focuses on the importance of privacy and the disturbances caused by technology over it. The researcher has not taken the efforts to give a detailed comparison on the measures taken by different countries all over the world to minimise technology's negative effect on privacy.

SOURCES OF STUDY

The sources utilised are secondary sources which includes books, journals, articles and internet sources.

PRIVACY AND ITS IMPORTANCE

Privacy is the right of each individual to take personal decisions with respect to the intimate matters of their life. None has the right to question such decision unless it affects them. Even the Governing bodies of the State do not have control over the personal decisions of people unless and until it is against the Law. Neither

does the individual have the obligation to justify or explain regarding such personal moves. People have the right to seclude themselves from public limelight.

Nineteenth century has witnessed the origin of Right to Privacy. In the year 1890, Sameul D.Warren and LouisD.Brandeis had published a thought provoking article in the name “The Right to Privacy”. After which privacy gained its respectable status. Privacy was viewed as part of life itself.

Privacy provides individuality. People tend to behave differently when they are monitored. They suppress their individuality when being watched and tend to behave as how the surrounding wants them to behave or tend to follow the crowd.

Theorist Westin says, “Privacy is not simply an absence of information about what is in the minds of others; rather it is the control we have over information about ourselves”.¹ Privacy provides autonomy over oneself. People wish to have control over their personal information and exercise autonomy over it. Invasion into privacy may lead to revealing of private facts into public forums. Personal data might be used to affect our reputations, to influence our decisions or shape our behaviour. It can also be used as a tool to exercise control over us. And in the wrong hands, personal data can even cause us great harm.² The feel of someone constantly watching us may curtail us from having different ideas. Thus, privacy gives us the freedom to explore various thoughts.

TECHNOLOGY IN HUMAN LIFE

The world is swift and dynamic and the technological inventions are the sturdy pillars of the swift world. We grow along with the needs and demands of the society. We have evolved from the snail-pace post (that travel all along to reach the receiver consuming time and energy during its travel) to the rapid emails. The drawn road maps are replaced by GPS (Global Positioning System) whereby we get the routes in just a click. Online Shopping has become viral minimising the effort of consumers to travel to and fro to the showrooms. Above all this, the way in which we deal with money has undergone a drastic change. Transactions are done through the internet. The amount we credit, debit are all managed through software.

The technological advancement of hearing what one talks to another person to another through phone is possible through wiretapping and bugging. Having a watch over each and every move of any individual is also possible through the surveillance camera.

¹ Daniel J.Solove & Paul M.Schwartz, PRIVACY, INFORMATION, AND TECHNOLOGY,44(2nd ed. 2007)

² Daniel Solove, *10 Reasons why privacy matters*, TEACHPRIVACY, <https://www.teachprivacy.com/10-reasons-privacy-matters/>

The technological advancement has no doubt made our life easier and less time consuming but on other hand they have also brought about insecurity to our privacy. The mails we believe to be between e sender and those addressed can be read by another person. The GPS provides the possibility to sense the place where we are and where we move. The sensitive personal data which we give for the online banking or money transaction services are at risk of being leaked out.

TECHNOLOGY'S INFLUENCE OVER PRIVACY

Telephone tapping means secretly hearing a conversation that takes place through phone to get the information that is conveyed. The Government of India and the State Governments of India have the right to tap phone conversations with a suspicious note, only after getting the due permission from the Home Ministry. Permission for such an activity will be granted only if the need for tapping the phone is valid. But what tends to affect the privacy is that, the illegal phone tapping (by private individuals or organisations) which is done by those who use technology for a cruel purpose.

Bugging is concealing a small sized microphone in a room which is mainly done to eavesdrop or record conversation without the knowledge of the person who is communicating. Technology has provided the means to create the miniature microphone that can be fixed in any small space available to secretly hear over the conversation.

The Video Surveillance in Public places done through CCTV (Closed Circuit Television) is almost found all around today. It has its own pros such as, it ensures public safety, brings down the crime rate, it helps in providing strong evidence. The main negative issue about video surveillance is that it affects privacy i.e., there is always a watch over what people do and where they move. With the affordable cost of the CCTVs the private organisations have also installed such cameras in their official areas and when questioned about the relating privacy issue, they take the defence of safety and consider it as a means to have a check over the employees.

Taking into consideration, the internet (one of the significant invention among various technological inventions) and the online activities that involve installing of several apps where we provide our personal information, certain apps require the access to our photos, certain apps require the GPS to be switched-on and the social media where we share our emotions, ideas and views. The above mentioned activities involve the risk of privacy violation.

E-mails are being stored at various locations- the sender's electronic device, ISP (internet Service Provider) and on the receiver's electronic device. Access to the e-mail by a third person is considered to be

easier than collecting phone records. Because, a mail has multiple copies and can be stored for a longer time as it is in the digital form.

The growing technology insists us to use the online services which in-turn leads to providing of personal information. Even the Governmental activities have become digital for the reason that it is easy and quick to access and manage data. The information we give are collected, stored, utilised and are ought to be deleted after the required purpose is completed.

We feed-in all the required information (personal and sensitive) into websites with the trust that our information is secured and is confidential. But the pity part is that, several cyber crimes revolve around the core point of improper data management or misuse of information. Cyber hacking is done through computer in order to gain unauthorised access to data in a system. Cyber phishing is a form of a scam whereby, criminals gain the personal information by pretending to be a reputed person in the electronic correspondence. Cyber Stalking is an online activity of harassing individual or groups by means of gathering information from unsecured websites.

According to a report done for the FTC (Federal Trade Commission), Determining the link between data breaches and identity theft is challenging, primarily because identity theft victims often do not know how their personal information was obtained and identity theft is not always detectable by the individual victims.³ Accenture has made an analysis regarding Medical and Personal Information theft, where the study predicts that in 2019, 7 million patients will have their medical information stolen among them 1.75 million patients will become medical identity theft victims and 1.14 million will pay out-of-pocket costs to medical identity theft.

The data that is fed in are at the risk of being misused when data is transferred for the purpose of aggregating, dissemination or for storage of data, leading to the above mentioned crimes.

LEGISLATIVE FRAMEWORKS

In India

A separate statute with regard to privacy has not been framed. But since 2010, the need for privacy legislation can be traced. In 2011 a draft of the Privacy Bill was released by the Department of Personnel and Training that included rules regarding data protection and surveillance. The above mentioned department is also aiding the Government in framing the Privacy Bill.

³ Dr Manish Kumar Chaubey, CYBER CRIMES & LEGAL MEASURES, 90(1st ed. 2013).

The Information Technology Act, 2000 has been dealing with the Internet privacy issues. The Act mainly focuses on penalizing the wrong doers of crimes including child pornography, hacking and fraud. The Act has defined the necessary data protection standards for body corporate.

The Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules of 2011 provides certain rights to the individual towards the body corporate. The Rules state that any corporate body must publish an online privacy policy, provide individual with the right to access and correct their information, obtain consent before disclosing sensitive personal information, except in the case of law enforcement, provide individuals the ability to withdraw consent, establish a grievance officer, require companies to ensure equivalent levels of protection when transferring information and put in place reasonable security practices.⁴ Information Technology Act, 2000 has also given power to the government to determine the means or techniques that can be used by individuals to protect their privacy.

Provisions in IT Act 2000, that aims at safeguarding privacy

- Sec 43A

Compensation for failure to protect data- Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person so affected.⁵

- Sec 66C

Punishment for Identity theft- Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with 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.⁶

- Sec 66E

Punishment for violation of Privacy- Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.⁷

⁴ Information Technology Rules 2011

⁵ ibid

⁶ Information Technology Act, 2000

⁷ ibid

- Sec 72

Penalty for breach of confidentiality and privacy- Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.⁸

International Framework

The United Nations General Assembly has adopted resolution 68/167 that puts forth the concern on the effect of surveillance and telephone tapping would have on human rights.

The International Covenant on Civil and Political Rights ratified by nearly 167 States, (Art.17) states that none can be subject to the unlawful interference of privacy and each one is entitled with the right to protect against such interference. Article 12 of the Universal Declaration of Human Rights also includes similar provision.

In the year 2013, the International Principles on the Application of Human Rights to the Surveillance of Communications drafting took place. The principles aimed at ensuring that the surveillance is in conformity with the International Human Rights Laws. It states that there should be legality, a legal aim, transparency, integrity and protection against illegal access when the country's government undertakes any surveillance.

SUGGESTIONS AND CONCLUSION

The drastic technological advancement has pulled us into its sphere, as every activity of human life involves technology. Not to deny the positive side of technology, that includes the rapid and laid-back way of fulfilling our needs. Technology also has its own dark side such as degradation of natural resources and increase in the unhealthy conditions of the human beings. One such dark side of technology is the privacy violation. Privacy is considered to be part of our life and we have lost control over privacy with the invasion of technology.

The online service providers, for their part of integrity must make sure that the information which they get from the customer is wisely managed and stored safely. We the public who feed in information also have the duty to take time and read through the terms and conditions listed by the service provider. We should also take due care in ensuring the website's integrity which would in-turn reflect on the confidentiality of our

⁸ Information Technology Act, 2000

information. Telephone tapping and camera surveillance were and are used for the purpose of extracting evidence and to prove crimes which is legal when done by appropriate authority but it leads to violation only when the same technology gets into the hands of corrupted minds. Thus, such criminals are ought to be penalized severely.

In India, privacy’s significance can be traced in the Constitution under Art.21 (Right to Life and Personal Liberty) but a separate law for privacy has not been framed. This is the main drawback for the increasing crimes that affect the privacy in India. Thus, the need for a separate legislation for privacy is at its peak and the need has to be fulfilled soon. It is also the duty of the users of technology to avoid feeding-in unnecessary information in the online websites, account or social media.

Personal information build up our identity in the society, when that is being misused then it will surely affect our identity either directly or indirectly. Thus, it is clear and evident that technology has brought in several equipments and software to reduce crime and on the other hand, it has also upgraded the means by which privacy can be violated.

