



Right to Privacy and Digital World*

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Abstract

The need and relevancy of one's' privacy or personal life always remain questionable for almost everyone in society. With the advent of technology, the applicability of this right has become more questionable. The aim of this article is to verify whether existing legal mechanism provide sufficient and effective protection in the age of gadgets and cyber space. It has been already taken long time to attain the basic rights to human beings. For several years, Human rights assisted and gave their best to provide and strength the fundamental rights that has being provided to humans for their survival. No doubt, many efforts and activities has already being taken to tackle the threat that has been arisen due to the cyberspace, however, these activities are not sufficient to handle the threat. In spite of its dynamic expansion, the scope is still limited and based on the regional and local level. Hence, it is essential to consider that how important it has now become to make laws which not only protect physical protection but also provide protection from the cyber space. As it will help to provide accountability, trust and protection in global market which is prominent for the development of modern society. This paper aims to verify the mechanism which needs exploration and modification to protect the data in this contemporary era.

Keywords : legal mechanism, dynamic expansion, privacy, cyberspace, accountability

Introduction

Right to privacy has plethora of facets. It is existed as natural right. Hobbes, Locke and Rousseau also support the existence of natural right which people enjoyed before social contract. Now, it has not only come under constitutional right also recognised as human and moral right. However, with the digitalisation, the data of each person stored in one gigantic database, known as Aadhar card, which might result threat to many safety issues. Consequently, it pop ups potential cyber threats and other such issues.

Objective

- Try to find the leaps and bounds in context of Privacy and digitalisation
- Try to find out in which aspect of life privacy exist or in which it does not have any reliability.
- Can the habit of gossiping about others personal life have any legal implication on Right to privacy of that person.
- Find out how emergency situation prevail the right to privacy.

Research Methodology

The research methodology adopted to analysis this paper is secondary and descriptive. The secondary sources that has been chosen are journals, books, articles and so on.

Review of Literature

- Edward Keynes, in his book **'Liberty, Property and Privacy : Toward a jurisprudence of Substantive Due Process'**¹, review the evolution of due process jurisprudence in the United States. In this book, he tries to find out the basic philosophy and jurisprudence due to which a constitution gives protection to unenumerated liberty, privacy and property. He criticized the theory which the Supreme Court of America adapted to explore or identify which type of rights should be considered fundamental and how the balance can be maintained against public interest on which government has a duty to articulate and promote.
- Patricia Boling, in her book **"Privacy and Politics of Intimate Life"**², the author tries to examine the implication of privacy for women which has a enormous public impact. She tries to explain her view point by studying the work of Hanna Arendt and from her perspective, she tries to conclude her theory by studying ordinary language. On the other hand, it can be said that she somehow investigates how people think what is private or public for them. Further she tries to elaborate the issue that occurs in contemporary politics but related to personal life of a person, not only this she also tries to find out how upbringing of a child is considered private or personal issue but eventually with the growth, a child automatically becomes the part of political activity. She tries to analyze the application of privacy through prominent cases including *Roe v. Wade*, *Bowers v. Hardwick*.
- Priscilla M. Regan, **'Legislating Privacy, Technology, Social values and Public Policy'**³, In this book, the author showed her worries that emerge on growing with the advent of technology on privacy. She elaborates how the threat to personal privacy has been proliferating rapidly due to technological advancement and the procedure to save the privacy has been reducing. To elaborate this threat, the author investigates or examines congressional policy through three areas that are computerized database, wire tapping and polygraph testing. She also finds out how the more weight and benefits should be given to those who are advocating technology rather than those who work for privacy protection. However, she says that there is a need to secure the privacy in the technological era. Along with that, she says that there is a need to recognize social importance of privacy to maintain the balance.
- Vratika Phogat, in her research paper **"Right to information in Consonance with Right to privacy"**⁴, describes or compares the context of right to privacy in context of right to information. She says that both rights are essential to make the government responsible. Problems can be solved if proper definition, description related laws is provided. Proper institutional structure and public interest test should be taken or created to balance these rights. Only through this way, protection and information work together in harmony.

Privacy and Digitalisation

Privacy is not only a vast term but it is also a controversial term and several debates have been holding in this topic. Privacy has become the fundamental right as it is intrinsic to the right to life. Currently, we are living in a digital era, grounded on the Internet, which establishes instant connections between people and data, whether those people know each other or not. Not only this, it also connects those people who are living far away from each other.

¹ Keynes Edward, *Liberty, Property and Privacy : Toward a Jurisprudence of Substantive Due Process*, Pennsylvania State Press, 1992

² Boling Patricia, *Privacy and Politics of Intimate Life*, Cornell University Press, 1996

³ Regan M. Priscilla, *Legislating Privacy : Technology, Social Values and Public Policy*, University of North Carolina Press, 1995

⁴ Phogat Vratika, *Right to information in Consonance with Right to Privacy*

Meaning of Privacy

The word 'privacy' is itself a word of conflict as none could able to define it properly what it includes or excludes. As for someone privacy may be to hide detail about his personal life such as about the school one went to study or for a girl, it might be to conceal the identity of her loved one. On the other hand, it can be said that it is a vast term which begins under the womb of a mother and remain till the person died.

Era of Digitalisation

From e-commerce to net banking, from buying things to commuting, digitalisation has played prominent role to change the way people used to live earlier. With the easy accessibility of Internet, a new way of communication in the society has taken place. Consequently, the revolution led by the Internet has reached the fundamental rights of human beings, such as reputation, image, and, especially, privacy. After all, as Stefano Rodotà (2013, p.11)⁵ stated, today, the simple fact of 'being in society' can no longer be separated from a continuous flow of information diffused from a person towards countless directions. This allows to interlocutors the possibility of building their own "truths" regarding the data sender.

Therefore, it is important to rethink fundamental rights, contextualizing them in a digital era that keeps changing how social relationships are built. With the current wide spreading of the Internet, there are new outcomes which needs to be considered for physical as well as virtual contexts.

Liability, Assurance and Validation

Certainly, each and every organisation possessed personal data. It is very hard to find any institution who do not have any personal data of individual. So, the question of its liability, assurance and security arise automatically. In the digitalisation world, the personal detail or data of person automatically get stored to unknown sources while surfing in the internet or while using social networking sites. Hence, trust and responsibility are essential conditions to transfer personal data from one source to other, not only in social networking sites but also imperative for business development.

Areas where Right to Privacy prevailed by other factors

Undoubtedly, Right to privacy has become fundamental right which come under Article 21 of the Indian Constitution. Even though, there are various areas where existence or relevance of right to privacy become questionable. These areas have been discussed below.

- ❖ **Criminal Investigation and Right to Privacy:-** It can be noticed in many cases that while solving any criminal case, all information about a person which is under wrap, get disclosed in front of the investigate officer and even all over the world. Then the doubt on existence of right to privacy established in the minds of citizen. It does not end up there. The question of existence of this right become more prevalent when all the information about person's life can easily obtain by those who are hackers and work for the government. Along with that, the scheme of criminal and evidence law mandates interference with the right to physical and bodily privacy in certain circumstances, but the same cannot be used to compel a person "to impart personal knowledge about a relevant fact"⁶
- ❖ **Medical Record and Right to Privacy :-** Medical record issue is such issue which I think almost faced by every person. As from the pregnancy till the death, a person would have some medical history which he tries to hide from everyone. To elaborate this, a person hides when she become pregnant, but after completion of its pregnancy period, the revelation of being pregnant automatically come into notice of everyone. Not only this, even this is being celebrated with great pomp and show. However, the revelation

⁵ Rodota, S. (2013), O direitos a verdade. Civillistica.com. Assessed from <http:// Civillistica.com/

⁶ State of Privacy in India, 26th January, 2019

of gender is even hidden from the parents also in a country like India . In the contrary , in other countries, its being revealed to parents if they want to know. hence, the privacy related to this concept is also different from country to country and person to person. However , due to technological era, now person tend to post their private life in public through social networking sites such as Face book , Twitter and many more. So these events and moments do not remain private . So, here the question of its reliability arises.

- ❖ **Curfew and Right to Privacy:-** It is fact that when any constitution provides right to its citizen than its uses and limitation has also been prescribed at the same time. During emergency the right to privacy totally being overlooked by the authorities. The recent example of it could be witnessed recently when the threat of rampant of corona virus has come and could stake the life of a person. As the government order lock down in the country, which not only bound people within their house but also ask them to maintain social distancing. As a result, all the rights here violated and do not have any kind of significance and relevance. Therefore, to have these kind of rights has no existence.
- ❖ **Personal life of celebrities and Privacy:-** Well, it is a big question and need consideration whether there is any privacy in the life of celebrities. This question is arisen naturally as the life of celebrity is like an open book as from wake up time to what they eat , where they go and how they spend their life and many more things to know about their life always remain the top most priority of media person. Hence , there relevancy of right to privacy cannot existed. How astonishing is that! When it comes to ordinary person life than they do not want to share about their life however everyone wants to know each and everything about their favourite celebrity.
- ❖ **Telephone , Internet and Modern Technology and Right to Privacy:-** These are modern mode of communication which has totally transmitted the life of a person. It has both pros and cons. The cons can be overlooked if it is being used in proper way and by opting appropriate strategies. However, its effect on privacy of person cannot be neglected or overlooked. As it works as the spy because anyone can track others location and even companies also record call and messages of person who use it. The perfect example to illustrate this point is the movie "Hacked" which is directed by Mahesh Butt in which totally proved the concept how with the intelligence and cyberspace , there is no place where a person can hide itself. Hence , it sometimes become difficult for a person to combat such kind of issues.
- ❖ **Nuance of Privacy in the digital world**

In this current digitalised world era, there is a need to reinterpret fundamental rights, contextualizing them in the virtual environment.⁷ Although there are no explicit mentions of the word “privacy,” the text assures constitutional protection to people’s intimacy and private lives. According to Marcel Leonardi ⁸(2012, p.83), this legislative choice aims to prevent that, from the scope of constitutional protection, could conceptual divisions formulated by the doctrine make escaping a fraction or a marked area of people’s lives. Thus, it enables a wider custody, regardless of the distinction between the concepts of intimacy and private life.

To conclude, I would just like to pen down by saying that the this concept and confusion cannot be solved until proper definition and the perceptions about privacy in different field do not get resolved and take shape. Many issues have been tried to mitigate by taking some steps but these seem to be unrealistic in today's world. To channelized the productivity of legal mechanism it is important to form proper definition about privacy and one must know the difference between privacy and personal data. It is necessary to make separate association to

⁷ Abreu Arthur Emanuelleal, Nuances of Privacy in the Digital Era, Analyses of a connected youth: Internet Governance, English Edition, December 2017

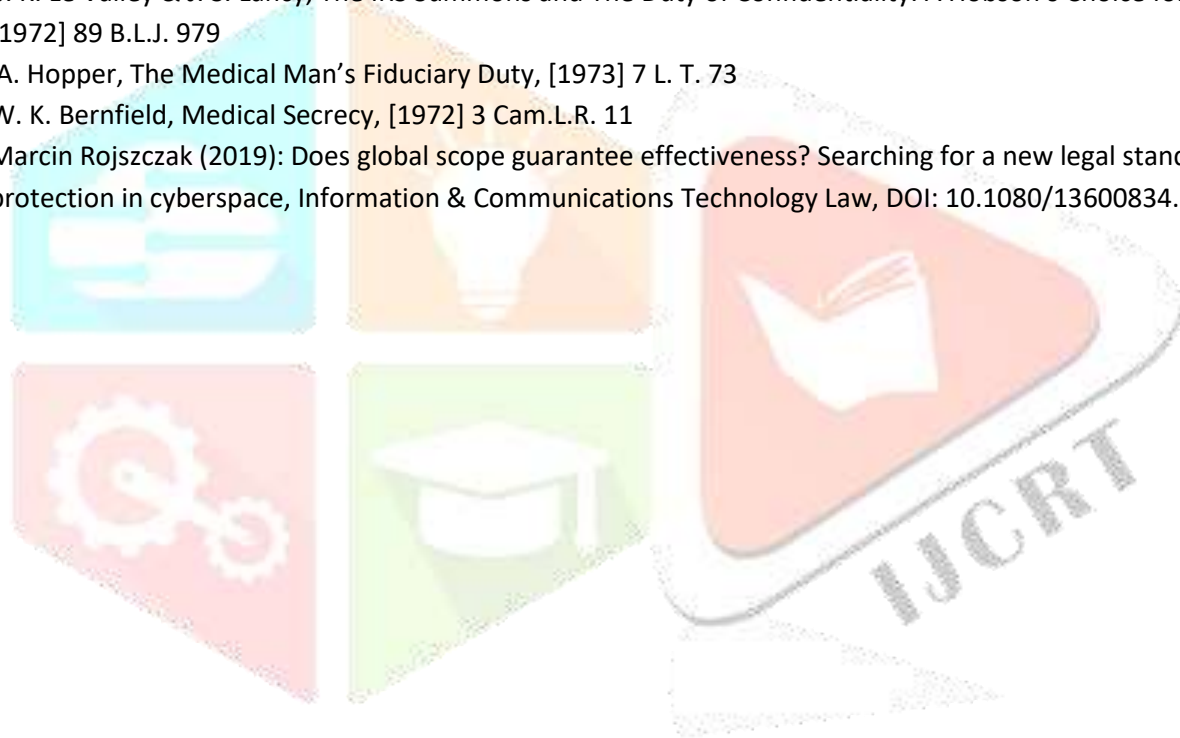
⁸ Leonardi, M. (2012) . Tutela e privacidade na internet. Sao Paulo: Saraiva.

handle the problems that occur due to interference of internet communication and life of an individual. I would like to conclude my essay by the words of Welsey J. Smith, in which he said that

"Recognizing a zone of privacy is an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality."⁹

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⁹Wesley J. Smith, India Court Privacy Ruling Corrodes Societal Glue.