

A STUDY ON IMPACT OF INFORMATION TECHNOLOGY ON HUMAN RIGHTS IN REFERENCE TO PRIVACY ISSUES

AUTHORS – MS. SWATI RAI & MS. SANMATI RATHORE, ASSISTANT PROFESSORS AT DEPARTMENT OF LAW,
PIMR, INDORE

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ABSTRACT

Technology is rapidly growing at a good pace and thereby contributing to the world's development. Technology has made our life a lot better, easier and comfortable. What we shut our eyes to, is to the daunting figures associated with human rights abuse with respect to the technological advancements pertaining to privacy and cybercrimes. The interplay of the development and human rights especially in the domain of privacy has become a focal point of societal discourse. This study emphasizes the multifaceted influence on right to privacy by IT. The article shall elucidate both boons and associated challenges in the contemporary world arising due to the high tech world. The advancements have undeniably enhanced the global connectivity and reach, which has brought revolution in other areas like education, healthcare, business etc. However, the threats with respect to personal data privacy have escalated with proliferation of these IT driven platforms. This research study details the importance of privacy in light of technological advancement. Further, this article delves into the legislative and judicial journey of India towards stringency of privacy laws and the new legislations enacted towards securing the said right. The study further throws light on the various international human rights instruments that focuses on upholding the right of privacy as one of the distinguished human right.

Key Words- Artificial Intelligence; Human Rights; Information Technology; Internet; Privacy

INTRODUCTION- RIGHT TO PRIVACY

"ARGUING THAT YOU DO NOT CARE ABOUT THE RIGHT TO PRIVACY BECAUSE YOU HAVE NOTHING TO HIDE IS NO DIFFERENT THAN SAYING YOU DON'T CARE ABOUT FREE SPEECH BECAUSE YOU HAVE NOTHING TO SAY"

Privacy is not just an ordinary right rather a fundamental and essential human right that is indeed vital for human autonomy. The right has been recognized and acknowledged by various international Human Rights Instruments such as "Universal Declaration of Human Rights", "International Covenant on Civil and Political Rights" including certain other international and regional treaties. Privacy rights are so pivotal that it embodies the human dignity and signifies substantial values like that of freedom

of association, freedom of speech, freedom of conscience etc., serving as the very foundation on which varied human rights are based or built upon. In the historic times, not much heed was paid to the recognition of this right. However with the growing technology and development in Information technology sector, there is direct threat on Privacy of individuals, companies and nation's confidential information since now access to data is certainly unrestricted. Growing cyber bullying, online harassment, secret surveillance etc. are some of those evils of Technological advancement. This article details with the importance of privacy in light of technological developments and advancements. The research article also undertakes the instances where right to privacy has been recognized not only in India but also

by other nations. The fact that majority of the countries have provisions related to privacy is evident enough to prove the importance of this right. Right to privacy is that right which creates barrier and protects an individual from unwarranted interference by creating a wall or a boundary around one's personal space. Therefore, privacy is crucial for all of us, whether an individual or the society, when we seek to protect ourselves against arbitrary and unjust access and power. The unwarranted proliferation into the space that we rather call as our personal space is in the current times a serious concern for all of us. The significance of right to privacy or protection of one's personal space has evolved and assumed wider meaning in the current times considering the legal developments along with the technological advancements.

I. CONCEPT OF TECHNOLOGY AND TECHNOLOGICAL ADVANCEMENT

Technology has become a very basic terminology and almost everyone is acquainted of the same. There has been a gradual technological development over the years and industrial revolution had much role to play in such developmental process. In development of the technology, western region had a major impact and contribution. In layman's language, simplest meaning of the technology, can be seen as the technology is *"The whole collection of ways in which the members of a society provide themselves with the material tools and goods of their society- the collection of artefacts and concepts used to create an advanced socio-political-economic structure"*⁴⁴³

In an industrial society this term refers especially to *"artificial things, and more particularly to modern machines"*

While considering the more precise definition of technology, *"Technology as a term which refers to man activities in connection with the utilisation of artefacts, moreover technology*

*implies the knowledge requisite to use these technical things. "Technology things are meaningless without the knowhow to use them, repair them, design them and make them. As such this know-how can, partly at least... be systematized and taught, as in the various disciplines of engineering"*⁴⁴⁴

"Technology" may refer to a body of knowledge that is necessary to generate new rules for the design, construction, and application of technical possibilities of different types of problems.

II. IMPACT OF INFORMATION TECHNOLOGY ON PRIVACY

Privacy is valued by each and every individual and all attempts are made to ensure and preserve such privacy. Every individual has all the right to be controller of, what information personal to him, flows outside and what not. However, the recent developments in the IT sector is posing a draconian threat on the right to privacy and that is why debates and concerns with regard to privacy revolves around the technology. The examples of new technologies involves, brain imaging, drones, dextrous robots, internet, smart phones, wearable sensors, sensor networks, direct marketing, secret surveillance, search engines so on and so forth.

Information Technology means and refers 'automated systems for storing, processing, and distributing information. Technically, it undertakes the use of networks and computer systems'. The amount and type of information that can be processed and stored is depended upon the fact that which kind of technology is being used and applied.

Following are few examples of technology and their impact on privacy

a) Internet

Internet was developed in 1980s for the purpose of exchanging information in smoother manner⁴⁴⁵. But the misuse of it was unforeseen.

⁴⁴³ Technological impacts on human rights: Models of development, science and technology, and human rights.

⁴⁴⁴ Technological impacts on human rights: Models of development, science and technology, and human rights.

⁴⁴⁵ Michener, J., 1999, "System insecurity on the Internet age"

The growing social networking, wherein initially it was presumed that the information will be confined to the closed knit however the privacy related issues pops up with the network expanded further largely. Now the developers of different network have to deal with privacy concern as much as on the design.

One big concern that revolves around internet is that of cookies that store the computers or smartphone's data for personalization. Consonantly, the features embedded in social network sites (Eg- 'Like' button) enable the developer to identify the sites and pages visited.⁴⁴⁶ Similarly the cloud computing is also a threat on the privacy.⁴⁴⁷

Other facets of Internet privacy includes-

❖ Social Media- users are invited and tempted to put information to their social media accounts to eventually increase the value of their site. Mostly when the service they provide is free, it's the data, that they are procuring in form of payment.

❖ Big Data- there is lot of data generated by users while online, which provides user behaviour statistics to the data collectors. This data mining is used to extract the pattern of the user's activities and then subsequently distributed among various data buyers. This big data is not only collected through internet surfing but also through various other activities like shopping, surveillance through public and private spaces, or usage of smartcards.

❖ Mobile devices- widespread accessibility and availability of smart phones are collecting more and more data and subsequently sending them to the service providers. These devices include various ranges of data- generating sensors which includes GPS, location tracers, etc which transfers and transmits the data through Internet.

b) E- Government

The government functioning has been changed to a great extent in past years. The place of piles of files is substituted by computer generated

systematized data. It poses security threats for confidential information of the nation. However looking at the positive side of it can be deduced that with the help of technology secret ballot for voting could be created which eliminates the votes due to coercion and fraud.

c) **Artificial Intelligence**- The ways in which artificial intelligence is evolving, it's magnifying the ability of storing and using personal information in ways that can intrude and interfere into the privacy or private interest by collective analysis of the information which is supposed to be personal to whole new level.

III. HUMAN RIGHTS ON PRIVACY

Privacy is a well-accepted Human right and the articulation of provision in all the major human rights instruments are evident of the same.

Following are the provisions related to Privacy affirming it more as Human Rights-

a) "Universal Declaration Of Human Rights, 1948" : It has been stated that "*No one shall be subject to arbitrary interference with his privacy, family home or correspondence, nor to attacks upon his honour and reputation of the law against such interference or attacks*"⁴⁴⁸

b) "International Covenant on Civil and Political Right, 1966": Article 17 states "1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.*"⁴⁴⁹

c) "International Convention on the protection of the Rights of All Migrant Workers and members of Their Families, 1990": Article 14 states, "*No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall*

⁴⁴⁶ Krishnamurthy and Wills, 2009. On the leakage of personally identifiable information via online social networks"

⁴⁴⁷ Ruitter and Warnier 2011, " Privacy Regulations for Cloud Computing: Compliance and Implementation in Theory and Practice"

⁴⁴⁸ UDHR Article 12

⁴⁴⁹ ICCPR. Article 17

have the right to the protection of the law against such interference or attacks.”⁴⁵⁰

d) “United Nation Convention On the rights of the Child, 1990”: Article 16, “No Child shall be Subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation”⁴⁵¹

e) “African Charter on the Rights and Welfare of the Child”: Article 10 of this charter gives explicit right of privacy to the children

f) “American Convention on Human Rights, 1969”: Article 11 states “1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.”⁴⁵²

g) “American declaration of the Rights and Duties of Man”: Article 5 states, “Every person has the right to protection of honour, personal the protection of the law against abusive reputation, and private and family life.”⁴⁵³

h) “ASEAN Human Rights Declaration”: Article 21 guarantees and reaffirms the right to privacy and opposes arbitrary interference into the privacy of the individuals.

i) “European Convention on the Human Rights”: Article 8 states that everyone has got right for respect of his private and family life, be it his home or correspondence.

j) “Resolution 68/167”: In this resolution, general assembly requested the United Nations High Commissioner for Human Rights for submitting a report concerning the protection and promotion of the right to privacy.

Other International and regional instruments stipulating rights that are more specific to the protection of personal data are as follows-

a) the “OECD’s Guidelines on the Protection of Privacy and Trans border Flows of Personal Data”

b) the “Council of Europe Convention 108 for the Protection of Individuals with Regard to the Automatic Processing of Personal Data”

c) a number of European Union Directives and its pending Regulation, and the “European Union Charter of Fundamental Rights”

d) The “Asia-Pacific Economic Cooperation (APEC) Privacy Framework 2004”, and

e) The Economic Community of West African States since 2010 has a Supplementary Act for the purpose of protecting data.

More than 130 nations, in their constitutional mandate include provisions affirming the right of privacy and around 100 nations have the specific laws for protection of such rights establishes the very fact that every nation is progressing towards attainment and guaranteeing the rights of privacy.

IV. INDIAN JOURNEY TOWARDS SECURING PRIVACY

Privacy is one such elements that is duly recognised in Indian laws, but there is still no separate law for this regime. Following are the laws, statutes an cases dealing with privacy issues in India.

a) **Constitution of India-**

Indian constitution per se does not have Rights to privacy as a fundamental right. However, through various reads and interpretation by courts in plethora of judgements, it has been read as an inherent part of the fundamental right under Article 21 the Right to life and personal liberty. Also it has been established that the essence of right to privacy is an essential of the right to freedom of speech and expression under Article 19(1)(a) with certain reasonable restriction of Article 19(2).

b) **IT Act 2000.**

In absence of any specific law to deal with Data protection and privacy issues this act has certain provisions accomplishing the role. IT act has provisions that creates and establishes civil and criminal liability for breach or wrong

⁴⁵⁰ United Nations Convention on Rights of Migrants. Article 14

⁴⁵¹ UNCRC. Art 16

⁴⁵² American Convention On the Human Rights, 1969, Art.11

⁴⁵³ American declaration of the Rights and Duties of Man. Art.5

disclosure of the data that is supposed to be confidential and misuse of the data.

SECTION	PROVISION
43A	Compensation for failure to protect data
66	Computer related offences
66A	Punishment for offences messages
66 B	Punishment for dishonestly receiving stolen computer resources
66 C	Punishment for identity theft
66D	Punishment for cheating by impersonation by using computer resources
66E	Punishment for cyber terrorism
67A	Punishment for publishing or transmitting of material containing sexually explicit act etc. in electronic form
67B	Punishment for publishing or transmitting of material depicting children in sexually explicit act etc. in electronic form
72A	Punishment for disclosure of information in breach of lawful contract

c) **Justice KS Puttaswamy and anr Vs Union Of India and ors-**

This was a landmark case of 2018 where in Justice K S Puttaswamy took suo-moto cognizance of the matter of the issues arising out of the Aadhar policy. Aadhar is one such big platform that has gigantic restoration of the data pertaining to citizens of the nation, and threat on such data is threat on every individual's privacy. In such a view the Honourable Apex Court upheld that right to privacy is the fundamental right inherent in Right to life and personal liberty.

d) **Personal Data Protection Bill, 2019-**

In 2017, Shrikrishna Committee was formed by the Ministry of Electronics and Information technology to address the issue of privacy and the committee submitted its report as Personal Data Protection Bill that aims at safeguarding personal data. Personal information has been segregated as sensitive personal data and critical personal data. Sensitive personal data includes financial data, sexual life or orientation, health related data, and biometric data etc. and critical personal data shall include all those

notified by the central government. This bill was majorly influenced by the European Union GSP Regulation. This bill established high obligation as well as compliances on the data fiduciaries. The bill mandated requirement of consent from the user before collecting the data. The bill provided for establishing data protection Authority of India that would protect and prevent the misuse of data. This authority would also work towards promotion of awareness about data protection methods. This bill has been one of the momentous step taken by legislature towards securing the right of privacy in the digital age.

e) **The Digital Personal Data Protection Act 2023**

Finally, in the year 2023, the Digital Personal Data Protection Act was enacted by the Indian legislature to institutionalise the legal framework on protection of personal data and privacy of individuals and organisations.

The legislation is a comprehensive legal framework dealing with the various aspects of the Privacy and data security. The Digital Personal Data Protection Act of 2023

demonstrates a thorough collection of provisions outlining the unalienable rights of people and the associated duties of data fiduciaries.

Key elements and goals of the Digital Personal Data Protection Act, 2023:

i. *Clarity based on Data Processing:* The Act demonstrates unambiguous justifications for the authorised use of personal data and requires data fiduciaries to provide clear, legal, and unambiguous goals for data usage. This genuine protection makes sure that personal data is protected from improper use or covert processing without informed consent.

ii. *Consent and Lawful Use:* The Act emphasises the fundamental importance of obtaining express and informed consent from data principals before beginning the processing of their sacred information. At the same time, it elaborates on the range of legal data uses, giving data fiduciaries the ability to effectively extract value from data while defending individuals' inalienable rights.

iii. *Rights of Data Principals:* The Act grants data principals a plethora of magnificent rights, including the sacred right to access their personal data, request the rectification and eradication of errors, and seek grievance resolution with remarkable promptness. Additionally, the Act gives data principals the power to choose proxies who will aggressively defend and protect their data rights.

iv. *Data Protection Board of India:* The Act bestows the Data Protection Board of India with unquestionable authority in a noble effort to monitor and defend the directives of this landmark law. This illustrious organisation, which consists of a Chairperson and eminent members chosen by the Central Government, takes on the responsibility of protecting data privacy in the digital sphere.

v. *Penalties and Dispute Resolution:* The Act authorises the Data Protection Board to impose judicious financial penalties upon data fiduciaries found to have violated the Act's rules, demonstrating its unwavering commitment to the cause of compliance. The Act also

establishes other dispute methods to settle data-related disputes quickly and intelligently. In addition to the above-mentioned salient features, the Digital Personal Data Protection Act has limitless potential to benefit a wide range of stakeholders with its elaborate scheme aiming at safeguarding the security of personal data. Few of such measures are as follows:

i. *Enhancing Data Privacy:* People are strengthened with unrestricted sovereignty over their personal data by the DPDP legislation, which also encourages transparency and accountability among data fiduciaries. Users develop unwavering trust in this newfound data privacy, creating an impenetrable digital environment.

ii. *Magnetism for Investments:* India develops as a luring centre for international investments and business ventures, symbolising a paradigm shift in data protection. The unwavering commitment of India to data protection inspires confidence in multinational companies looking to establish operations.

iii. *Impetus to the Digital Economy:* An unbeatable data protection framework gives businesses the ability to use personal data sensibly to fuel innovation and growth, which is a driving force behind the digital economy. The resulting environment sets up the digital economy for glorious growth and fulfilment.

iv. *Fortified Tech Demeanour:* With data privacy firmly established as part of its foundation, India strengthens its technological stature and shines a bright light on its position as a responsible torchbearer in the global digital sphere.

Despite the intelligibly enacted comprehensive legislation, it also reflects a few limitations and shortcomings, that can be summarised as:

i. *Onus of Compliance and Ambiguities:* Some Act provisions, according to critics, emanate an aura of vagueness, potentially posing compliance challenges for businesses. Smaller businesses may become bogged down by the requirements of complying with the Act, which would stifle their unrestrained expansion.

ii. *Data Localization Lamentations:* Some stakeholders have concerns about clauses relating to the processing of personal data outside of India. Such data localization requirements have raised concerns about delayed cross-border data flows and hindered global corporate endeavours.

iii. *Striking Balance between Data Privacy and Catalysing Innovation:* Finding a balance between Data Privacy and Catalysing Innovation appears as a perplexing enigma. Critics worry that too strict data privacy regulations will slow the advancing tide of innovative technology and limit digital skill.

iv. *Allocating Resources with Style:* The thorough execution of the Act requires significant resource allocation, including financial infusion and the hiring of knowledgeable individuals for the Data Protection Board's effective operation. Effortless enforcement and adherence requires resource allocation reasonably.

CONCLUSION AND RECOMMENDATION

Technology is one such phenomenon contemplating many privacy issues however, it would not be wrong to say that without technological development our lives would become a standstill. We cannot imagine a day without our smartphones, internet, and the big network. It is evident that elimination of technology is not an option but enhancing privacy laws is something that can be undertaken with utmost sincerity not only on national level but internationally as well and every nation should strive to enact privacy specific laws and have stringent laws and sanction policy for the violators of the same. The significant interplay of human rights and information technology, with regard to right to privacy, requires careful consideration and proactive measures. Whereon one hand the technological advancements bring about unprecedented conveniences and opportunities, the risks related to the misuse of such power of technology in the nature of unwarranted surveillance, exploitation of data, and breaches of privacy are appalling.

There are still some answered questions and worries which needs to be addressed in the recent time that even though the privacy settings can be made more strict in the social media networks which solves the issue of data segregation among other data collector, however this still does not limit the access of the service providers over the information. Consonantly, the information is always accessible by the government authorities for the security reasons but the question is that how safe is that data. In the recent years, there would be need of specialists handling the privacy concern for the sake of national security and for safeguarding human dignity and subsequently human rights.

The current study emphasises on the need of a sturdy legal frameworks, technological safeguards, and ethical considerations to safeguard the individuals and their personal data in this digital age. It is important for the legislators, technology developers and society as a whole, to cooperate in drawing alternatives to balance the conflicting rights of the data owners and that of data users. Balancing privacy rights with the technological advancements and innovations is imperative for sustaining a digital ecosystem nevertheless to say it is fundamental legal, ethical and even social requirement.

Eventually it can be concluded that no amount of legislative or executive measures for balancing the right to privacy with the innovations alone would be futile in absence of awareness and sensitization among the people about the nuances of data security and data preservation. The data theft can lead to a numerous issues pertaining to violations of the Human rights in addition to all kinds of economic and commercial losses. Therefore it is pertinent to focus on promoting collective awareness among the masses on a warfooting to ensure and guarantee that the advancements of IT respects and complies with fundamental human rights, protecting people's autonomy and dignity in an increasingly

interconnected and extensively linked society through Information Technology.

Lastly, in conclusion it can be asserted that we have a shared obligation in the rapidly developing field of information technology: to harness innovation without sacrificing the fundamental qualities that make us human. As we traverse the digital frontier, let us keep in mind that protecting privacy is not just required by law; it also demonstrates our dedication to upholding the individual liberties that make each of us unique. Our common future depends on having the discernment to go cautiously, the bravery to adjust, and the tenacity to defend the freedoms that define what it is to be human in the fine dance between progress and privacy.

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