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A Standard Policy Framework for Protecting Human Rights in Technological Era - A Legal Analysis

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"We will not enjoy security without development, we will not enjoy development without security, and we will not enjoy either without respect for human rights."

—UN Secretary-General Kofi Annan

Introduction:

Since the adoption of the Universal Declaration of Human Rights in 1948, the international community has sought-after perpetually to elaborate and refine the normative framework inside that human rights¹ ought to be revered.

Upon the pedestal of Human rights; the basic aim of this work on "Legal Dimensions of Human Rights in the Technological realm" in the light of the UN's initiative to develop "A magna Carta for the Digital Age"; is to encompass the diverse techno legal outlook of human rights and to ensure international and domestic human rights standards and principles that may guide legal and policy frameworks in responding to the fast advance of digital technology.²

The universal Declaration of Human Right, which was adopted by the

U N General Assembly on 10th December, 1948 has been proclaimed "as a common slandered of achievement for all peoples and all nations".

"The digital age is a historic period beginning in the 20th century and characterized by the rapid shift from traditional industry that the industrial revolution brought through industrialization to an economy primarily based upon information technology"³ "The use of computer within the society has led to modernized information and communication process becoming the driving force of social evolution".⁴

The police investigation and assortment of non-public data and "meta" information, of such information mistreatment new analytical techniques, has major implications for our right to privacy and our right to be free from discrimination. The impact of digital technology on to privacy is of explicit significance.

Privacy is central to our enjoyment dignity and autonomy. It permits the expression of individuality, facilitates, trust, relationship and intimacy, empowers the individual against the state and for securing to freedom of expression and, to information, is enhanced. Nonetheless, it must be recognized that advances in innovation that bear the cost of more noteworthy access to data likewise allow governments, ideological groups, and different officials significantly more tightly control of that data. Besides, the relative simplicity with which data would now be able to be imparted momentarily to wide crowd's uplifts presented by the spread of broken or twisted data, for example disinformation.⁶

Headways in science and innovation have tried a blended gift in with the assurance of human rights, for instance, less expensive correspondence that have advanced in the course of the last twenty to thirty years have served the stream crosswise over fringes of various sorts: geological, political, modern, and social. along these lines the privilege to opportunity of articulation and, most importantly, to information, is expanded.⁷

As social orders develop, so too do the conditions under which human rights in some random society can most successfully be figured it out. Those conditions normally change and, now and again, extend or turn out to be progressively perplexing.

The International human rights standards identified with science and innovation offer a corpus of writings which can be investigated as far as the hidden originations of man and society that win in the universal network at a specific minute. In as much as logical and innovative advancement meddles with life and demise, with various kinds of social orders and networks, just as with nature and the earth, human rights issues which emerge from this procedure are various and assorted. Changed exchanges have grown universally on such issues as the privilege to security, the start and end of life, control of the

brain, and so forth.⁸

In spite of the extraordinary measure of discourse on the effect of science and innovation on human rights, the regularizing reaction coming about because of it is generally pitiful. This investigation will follow the development of the standardizing instruments which have been explained to adapt to human rights issues looked with logical and innovative advancement.

International Law As A Means of Protection Against The Abuse of Science And Technology:

Instruments of a General Character

International Covenants on Economic, Social, and Cultural Rights, as well as on Civil and Political Rights, adopted on 16 December 1966, reiterate those rights enumerated above.

The Covenant on Civil and Political Rights protects: The right to life (Article 6), The right to physical and spiritual integrity (Article 7), The right to privacy (Article 17), and the right to information (Article 19).

Article 7 stipulates specifically that:

"no one shall be subjected without his free consent to medical or scientific experimentation."

Article 19 adds details about various forms of communication for receiving and imparting information, implying that freedom of expression should be adapted to the conditions posed by the advances in communication technology.

("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.")⁹

International Instruments of A Specific Character :

Scientific And Technological Progress

Under Universal Declaration of Human Rights, the following rights would seem to be particularly affected by scientific and technological progress:

The right to life (Article 3):

In the sense that science (biology, medicine, etc.) as well as technology (gene technology, nuclear technology, etc.) can determine or influence birth and death. Problems posed

by abortion, in vitro fertilization, embryo transplantation, euthanasia techniques, untested drugs, are examples.

The right to physical and spiritual integrity (Article 5):

"No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment). Use of drugs and other chemical controls of the mind, psychological and physical testing methods, and behaviour therapy are still often used in interrogation."

The right to privacy (Article 12):

"No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, or to attacks upon his honour and reputation. The developments in recording, surveillance devices, personality tests, and other communication techniques based on electronics, optics, and acoustics, as well as new reproduction techniques, have considerably changed the ways in which privacy could be protected."

Computerized innovation can possibly give pleasant edges and improve social results, it also presents dangers to our essential human rights. The effect of computerized¹⁰

Reasonable Limitations on The Right to Privacy

The privilege to privacy isn't absolute. "At times governments will need to protect the interests of its citizens and to do so may gather intelligence to assist with the detection, investigation and prosecution of crime, as well as for national security"¹¹

Individual data may likewise be gathered about people for research and strategy purposes. In such cases point of limits may be placed on the privilege to protection. "Unlike other provisions of the ICCPR, the right to privacy does not explicitly set out what limits are permissible. However, authoritative international sources have established principles against which rights limiting measures can be assessed. These are the principles of legality, necessity and proportionality"¹² Any rights-restricting measure that doesn't accord with these standards is probably going to be unlawful or subjective and in breach of Article 17 of the ICCPR.

1. Legality

"Unlawful interference" with the right to privacy means that no interference can take place unless it is envisaged by the law".¹³ (UNHRC

This means that "States are required to have in place legislation that specifies in detail the precise circumstances in which interferences with the right to privacy may be permitted. The law must be publicly accessible, clear and precise,¹⁵ and individuals must be put on notice and foresee the application of the law that limits their right to privacy".¹⁴

2. Necessity

"The principle of necessity requires that any interference with the right to privacy must be limited to that which is strictly and demonstrably necessary to achieve a legitimate aim and the least intrusive option available."¹⁵

3. Proportionality

Any estimates that meddle with the privilege to protection must be proportionate to the goal. This includes an adjusting activity of the advantage tried to be accomplished against the mischief that would be caused to the person's privileges and to other contending interests.

Artificial Intelligence and Right to Privacy:

Accessing information accompanies its own inquiry of possession, protection, security, exactness and fulfilment, another territory of worry with the information is its invasion and infringement of right to protection of people. Algorithmic transparency and logic, lucidity on risk, responsibility and oversight, inclination and segregation, and security are ethical and administrative inquiries that have been raised.

Reasons for The Development of Legal Protection of Data:¹⁶

Human Dignity: The acknowledgment of the inalienable human condition of being deserving of regard, must not be damaged via 'autonomous innovations'.

Autonomy: The principle of autonomy is the opportunity of person. It is the human obligation to command over and information about 'self-sufficient' framework as they should not impede opportunity of person to set their own gauges and standards and have the option to live according to them.

Responsibility: 'Autonomous' frameworks

should just be conveyed and utilized in manners that serve the worldwide social and environmental good, as controlled by results of deliberative vote based procedure.

Legal Equality and Solidarity: Artificial Intelligence ought to add to worldwide equity and equivalent access to the advantages and advantage that AI, robotics and 'self-sufficient' frameworks be beneficial to the humankind. Prejudicial predispositions in informational collections used to train and run AI frameworks ought to be forestalled or detected, revealed and neutralised at the earliest point of time.

Democracy: Key choices on the guideline of AI advancement and application ought to be the after effect of just discussion and open commitment. A soul of worldwide co-activity and open exchange on the issue will guarantee that they are taken in a comprehensive, educated, and farsighted way.

Law and Accountability: Rule of law, access to equity and the privilege to review and a fair trial give the important structure to guaranteeing the recognition of human rights guidelines and potential AI explicit guidelines. This incorporates shielding against dangers steaming from 'self-governing' frameworks that could encroach human rights, for example, wellbeing and security.

Security, Safety, Human Integrity : Wellbeing and security of 'autonomous' framework appear in three standards (i) outer wellbeing for their environment and clients, (ii) unwavering quality and inside power, eg. Against hacking and (iii) passionate security with respect to human - machine collaboration. All elements of security must be considered by engineers.

Data Protection and Privacy: During a time of omnipresent and enormous assortment of information through computerized communication advancements, the privilege to insurance of individual data and the correct regard for protection are urgently tested. Both physical AI robots that as a feature of the web of things, just as AI softbots that work by means of the internet must follow information insurance guidelines and not gather and spread information or be run on set of information for whose utilization and scattering non educated

assent has been given.

Sustainability: "Artificial Intelligence must be in line with the human responsibility to ensure the basic preconditions for life on our planet, continued prospering for mankind and preservation of good environment for future generations"¹⁷

INDIA:

The privilege to security is a multidimensional idea. In present day society, right to protection has been perceived both in the eye of the law and in like manner speech. Article 21 secures the privilege to protection and advances the poise of the person. As of late there has been a developing apprehension about the enormous measure of data about people held in PC records. The privilege to security alludes to the particular right of a person to control the assortment, use and divulgence of individual data. Individual data could be as close to home interests, propensities and exercises, family records, instructive records, interchanges (counting mail and phone) records, restorative records and budgetary records, to give some examples. "An individual could easily be harmed by the existence of computerised data about him/her which is inaccurate or misleading and which could be transferred to an unauthorised third party at high speed and very little cost. This growth in the use of personal data has many benefits but it could also lead to problems"¹⁸

The Indian Constitution in Article 19(1) (a) provides the right to freedom of speech and expression, which implies that a person is free to express his will about certain things. A person has the freedom of life and personal liberty, which can be taken only by procedure established by law under Article 21. These provisions improbably provide right to privacy to individuals and or groups of persons. The protection of an individual is additionally verified from unreasonable arrest under Article 22 and under Article 25 the individual is qualified for express his desires with respect to proclaiming and engendering any religion. The security of property is likewise verified except if the law so approves for example an individual can't be denied of his property unlawfully under Article 300-A. The individual freedom in Article 21 is of the most stretched out abundancy and it covers an assortment of rights which comprise

the individual freedom, mystery, self-rule, human nobility, human right, self-assessment, restricted and ensured correspondence, constraining introduction of man and some of them have been raised to the status of major right viz. life and individual freedom, right to move unreservedly, the right to speak freely of discourse and articulation, individual and cultural right and given insurance under Article 19. Article 21 all things considered ensures the privilege to protection and advances the respect of the person. Security identifies with capacity to control the scattering and utilization of one's close to home data.

Judicial Activism:

The Right to Privacy:

Judicial activism has brought the right to privacy within the realm of fundamental rights by interpreting Articles 19 and 21. The judiciary has recognised right to privacy as a necessary ingredient of the right to life and personal liberty. The Supreme Court of India has interpreted the right to life to mean right to dignified life in Kharak Singh case, especially the minority judgment of Subba Rao, J. In Gobind v. State of M.P.¹¹, Mathew J. delivering the majority judgment asserted that the right to privacy was itself a fundamental right, but subject to some restrictions on the basis of compelling public interest. Privacy as such interpreted by our Apex Court in its various judgments means different things to different people. Privacy is a desire to be left alone, the desire to be paid for one's data and ability to act freely.

Concept of Data Protection:

The Information Technology Act which came into force in the year 2000 and is the only Act to date which covers the key issues of data protection, albeit not every matter. In fact, the Information Technology Act, 2000 enacted by the Indian Parliament is the first legislation, which contains provisions on data protection. According to Section 2(1)(o) of the Act, 2(1) (o) data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including

Information_Age

5. Meta data is data about communication, deals with details of location, device, time, sender, recipients.
6. Available on <https://www.ojp.gov/pdffiles1/nij/grants/251140.pdf>
7. Available on <https://www.nap.edu/read/9690/chapter/7>
8. <https://archive.unu.edu/unupress/unupbooks/uu06he/uu06he0c.htm>
9. Available on <https://www.humanium.org/en/1966-international-covenant/>
10. Available on <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ScientificAndTechnologicalProgress.aspx>
11. Report of Special Rapporteur on the right to privacy (19 October 2017) para 7
12. OHCHR Report, The Right to Privacy in the Digital Age, para 22, "Guidance on the meaning of the qualifying words "arbitrary or un-lawful" nonetheless can be drawn from the Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the practice of the Human Rights Committee as reflected in its general comments, including Nos. 16, 27, 29, 34, and 31, findings on individual communications and concluding observations, regional and national case law; and the views of independent experts."
13. UNHRC, General Comment No. 16 (right to privacy), para 3
14. Weber and Saravia v. Germany, App. No. 54934/00, European Court of Human Rights, Decision on Admissibility (29 June 2006)
15. . Report of the SR on countering terrorism, Martin Scheinin (23 September 2014) para 51; OHCHR Report. The Right to Privacy in the Digital Age, para 23.
16. Justice K.S.Puttaswamy(Retd) ... vs Union Of India And Ors. 2017 (10) SCC 1
17. Derek du preez artificial Intelligence-EU to debate 'thorny ethical, legal and societal 'question ship://government.diginomoca.com
18. Privacy and Data Protection in India Privacy and Data Protection in India By Dr. Shiv Shankar Singh* Cite as: (2012) PL February (The Practical Lawyer)
19. Ghulam Nabi Azad v. Union Of India And Anr. writ petition (civil) no. 1031 of 2019
20. Available on <https://www.ncbi.nlm.nih.gov/books/NBK11740/>

computer print outs magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.

Liability And Data Protection:

The Information Technology Act, 2000 provides, for civil liability in case of computer database theft, computer trespass, unauthorised digital copying, downloading and extraction of data, privacy violation, etc. Furthermore Section 43 provides for penalty for a wide range of cyber contraventions. Section 72A provides the Punishment for disclosure of information in breach of lawful contract. Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.]

Data Protection Laws:

The draft Personal Data Protection bill 2018 and the associated report that outlines and justifies a framework for privacy in India. The recommendations of the justice Srikrishna Committee stated that a new data protection law would need to balance innovation and privacy due to various technological advancements including use of Big Data Internet of things and artificial intelligence. The Bill creates a set of data rights for the individual including the rights to confirmation and access, correction, data portability, and right to be forgotten.

In contrary the Bill 2019 in its latest form, states that the Centre can issue an order to exempt any Government and law enforcement agency, from application of the Act. This could severely compromise the privacy of individuals. Data location which was a demand in the last Bill seems to have been ignored in the current version. Since it gives an opportunity to the companies to store and process personal data outside India. The previous bill already gave some power to access personal data. This

version gives further leeway to the state to use personal data in the name of national security, domestic law enforcement, sovereignty of the country. This could lead to compromise in privacy of individuals. The personal Data Protection Bill 2019 gives unrestrained power to the Government to infringe upon the privacy of individuals.¹⁹

Conclusion:

Advancements in science and technology have thus far tested a mixed blessing with relation to the protection of human rights, as an example, cheaper and additional economical suggests that of communication that have evolved over the past twenty to thirty years have served to extend the flow of knowledge across borders of all kinds: geographical, political, industrial, and social. Therefore, the proper to freedom of expression and, above all, the proper to data, is increased. However, it should be acknowledged that an equivalent advance in technology that afford folks bigger access to data conjointly allow governments, political parties, and alternative bureaucrats to realize even tighter management of that data. Moreover, the relative ease with that data will currently be communicated virtually outright to wide audiences heightens the risks expose by the dissemination of faulty or distorted data, i.e. misinformation. Digital technology has the potential to provide nice edges and improve social outcomes: it additionally poses risks to our basic human rights.²⁰ The impact of digital technology on the proper to privacy is of explicit significance. Privacy is central to our enjoyment of non-public dignity and autonomy. It permits the expression of individuality, facilitates trust, relationship and intimacy, empowers the individual against the state and is important for securing different human rights, like the proper to freedom of expression and opinion.

(Endnotes)

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