

IMPACT OF DIGITALIZATION ON RIGHT TO PRIVACY: A LEGAL PERSPECTIVE.

BY

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ABSTRACT

In the world which races against time, technology has taken over every nook and corner of the human life. What lies more in the fact is that technically it has usurped almost all the time and deeds of mankind. In the digital era that has commenced recently, the dawn of social media has also led to the rise of some new doctrines that have emerged as instruments of safeguards.

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INTRODUCTION

Time and again the Indian Constitution through its various judgements has acknowledged the importance of Right to Privacy to live life with dignity as contemplated under Art.21 of the Indian Constitution. The emergence of technology & popularity of social media amongst people resulted into compromising Right to privacy of an individual. In recent famous Landmark Judgement of the Supreme Court of India¹ A nine-judge bench held unanimously that the right to privacy was a constitutionally protected right in India, as well as being incidental to other freedoms guaranteed by the Indian Constitution. The Court reasoned that privacy is an incident of fundamental freedom or liberty guaranteed under Article 21 which provides that: "No person shall be deprived of his life or personal liberty except according to procedure established by law".²

The emergence of the digital world occurred so as to bring the world closer. It was created with a point of view to grant speedy accessibility and connectivity in substantial activities. This led to the development of easier and quicker modes to implement activities such as communication, commerce, information exchange, etc. This led to the foundation for social media platforms to come into existence. This propaganda was for personal as well as professional purposes.

¹K.S. Puttaswamy v. Union of India,, 2017 (10) S.C.C 1

²The Constitution of India

Development of Technology- A historical Perspective

In the initial stages of creation, there was no object for asking personal information. The sole motive behind it was to ensure a unique identity that can be traceable and verifiable. This format continues till date, as one furnishes information like e-mail ID for signing up on any new platform for the first time. However, since e-mail IDs don't have any prerequisites except for the ID to be unique, one person was and is still able to create more than one e-mail ID for communication purposes. Although this is enabled so as to enable a user to segregate personal and professional communication, the maligned use of this liberty has led to perilous consequences as any form of empowerment goes hand in hand with danger if gone unchecked.

However, excessive usage due to relaxed data provision plans, integration of digital world in daily aspects of life didn't come as a surprise. Anything beyond adequacy and optimisation jeopardizes some crucial parameters. This also involves right to privacy, especially data privacy.

In order to secure personal information exchange, a need was felt for the law to entail provisions which would be the crux of reformative measures as per the situation. In order to crusade unnecessarily intrusive and non-permissible sharing of data, law took a step forward to bring these issues within its purview and draw healthy boundaries.³

Ever since the mankind came into existence, the basic needs of food clothing and shelter could suffice man's survival. However, that wasn't enough to sustain once the social life began. So, after man commenced living in a civilised manner, the other needs started emerging so as to foster the social life and means of communication had to notch up to match the pace of development. This led to the emergence and evolution of languages. However, the immeasurable difference in the languages as well as the innumerable civilisations that sprung up, only pointed towards the need of developing means of communication so as to flourish and enrich the dialogue between people residing in and around the region. This led to weaving of a connection between civilisations spanning the globe.

The further advancements resulted in the rise of the then contemporary kingdoms and empires. Side-lining the historical aspects, the context can be narrowed down to the bottom line that the communication modes felt inadequate and tad bit slow. Moreover, the process had become more intricate and was quite a time-consuming one until the message could get delivered.

The timeline of communication had stalled for centuries. Amidst the rise and downfall of civilisations and empires, amounting even beyond those on records in the preserved history of mankind till date, the progress in upgrading the means of communication had almost come to a standstill. The only few milestones it ever achieved was the shift from bark of birch tree to a paper from papyrus and from there to royal parchments followed by envelopes.

³Privacy And the Constitution: - By- N.S Nappinai

Almost no trace of advancements in the field of communication was to be found until the Industrial Revolution set its foot during the 17th and 18th centuries and the resultant scientific research galloped. The considerable inventions of telephone and telegram, postal services and radio, television, etc. proved to be innovative in those times. Despite this fact, there were more limitations in the case of these gadgets. Some were means of two-way communications but took much time, while few others were only a one-way mode of conveying messages. It took another century to change this picture.

The evolution in the communication sector underwent a transmogrification in the 20th century with the arrival of new technologies which became the talk of the town in no time. With the advent of Pager, Mobiles, Internet and especially social media when the 21st century and the 2nd millennium was just on the verge of arrival; mankind's life changed inside out due to these phenomenal discoveries. It totally changed the way of communication worldwide and made the world one complete unit in its own sense.⁴

Technology & Right to Privacy-

The primary motives behind these inventions, if considered independently, have been different altogether. What makes it indifferent is that all of them aimed to ease interaction between people. It is no surprise that this is exactly what actually assimilated them in a seamlessly woven mesh and streamlined these inventions to develop in accordance with each other, thus channelizing a chain reaction and resulting in a massive revolution in these particular segments of technology, which soon encompassed all the aspects of human life, almost in no time.

Soon, e-mail, social media, internet, data, and names of terms, technologies and applications corresponding to any of these became buzzwords reverberating everywhere. Along with these, some other concerns also came to light as the data so generated, unfortunately started falling into the wrong hands. The basic firewalls were not so good any longer and the technology had become sort of more harm than of good to the users. This led the public to demand and lay a constant emphasis on the right to privacy of their personal information as well as to keep any sort of data they generate, extremely personal unless it raises matters of grave alarming concerns. Law too, seconded the demand, and this led to a rapid development on a warfoot basis to legally empower the users with these safeguards and serve justice.

The object behind placing this entire prelude is actually the element that acts as a preface to the topic of research. The area of focus is not communication, but rather how evolution in communication culminated in the birth of a revolutionary subset of it, namely the social media. The research doesn't simply deal with the aim and functioning of social media. On the contrary, it is just the tip of the iceberg. The essence of the research rather lies in the legal sectors that are associated with social media in a typical sense, viz. Right to Privacy and Data Protection. To quote it in better and justifying statement, these three interconnecting factors are rather the nectar of the research, its soul!

The plethora of social networking platforms available generate almost unfathomable data and the developers as well as service provider's slackline to meet the generation and storage demands. However,

⁴BerzinyaAlgerium, "Data Privacy in Social Media: Who Takes Responsibility and Data Protection as a Priority Feature" (2018)

while this shoal of fishes is in play, the hackers commit theft to amass the vital credentials and try to get away. This caused a frenzy in the users, resulting into a panicky situation that raised the eyebrows of the developers and service providers to upgrade the security of the system and contain these technological wrongdoings.⁵

Being a technologically engulfed virtual world, the right to privacy on the grounds of data generation, storage and exchange; became of utmost importance since a surge in the cases of breaching the right took place around a decade ago. It was no later than the beginning of the previous decade when things started having immense damages in various senses. This caused the concept of data protection to be articulated and materialised on an emergency basis. Today Data Protection stands as one of the most prominent fields of research and an area of constant focus and alertness round the clock.

This research aims at over viewing the overall concepts of social media, Right to privacy and Data Protection in a nutshell; gauging the available legal provisions and remedies on various parameters and also trying to analyse the predictable developments and possibilities of infringement of right to privacy thereafter, finally concluding with the recommendations and solutions presently feasible up to the horizon of research.

The establishment of a robust framework for confirming the privacy of data and thus guaranteeing the users or subscribers that they can exercise their right to privacy has become the need of the hour. It is percolated in the digital culture these days, that one has to furnish some or the other information on his part, which can be regarded as personal. Systematizing the framework of all such means of any kind of information exchange must be equipped with secure gateway so as to safeguard the collected data.

The invasion of technology in the context of superfluous information collection needs to be curbed. Some strong boundaries need to be set so that the data is protected at all costs. Furthermore, the reliability of the data controllers must be assured time and again and the users must be enabled with some gauging procedure to verify this before they sign up for something. With future things coming up, such as Human DNA profile database generation and the like, the guidelines should be articulated in a moderately liberal as well as progressive way. Not only should such standards solve the prevalent hurdles, but also give an appreciable defence mechanism to a promising extent until the further advancements in the legislations are made to bring the issues that have newly emerged and are currently beyond the bounds of law, within its purview.

With the new generations of the world embracing globalisation and endearing digitalisation, the century has been truly called as "digital era". Almost all the people all over the world, especially the youth, are apparently connected through social media platforms that are easily available and accessible on international level. The social media has interconnected the humans so much that even the international norms show a certain level of leniency towards it. However, every boon comes with a curse. That being said, the evil-minded culprits take undue advantage of the same and track down the loopholes. After doing

⁵VermaAyush "Lack of jurisprudence in data protection laws in India November 10, 2020"

that, they attack the sensitive personal information and use it for foul means. The safeguards should be made more stringent in order to curtail the occurrence of such activities. For this, conscious and well-formulated international protocols should be established through research as well as surveys so as to enhance the reliability and nullify the threats possessed by the unfair and detrimental use of the advanced technology.

The service providers may be local or from overseas and it is not easy to trace the data controller in either case. So, there needs to be a wilful move on the part of the service providers in their privacy policy that the data that they generate by gathering, organizing and using the personal information, will not be superfluous and will be erased for sure after some time period. Moreover, the users must be given a choice of data erasure or modification at any point of time, keeping aside valid exceptional cases wherein prohibition to do so may be a prerequisite on the order of a competent law enforcement or judicial institution or personnel. In some cases, even in such developed times, many people still aren't aware about any way in which a verification can be made even on virtual basis. The much-relaxed digital boundaries would not go unchecked since data exchange in today's times has almost become equivalent to an act of information sharing done with freewill.

CONCLUSION

All these discussions led to compromising Right to privacy one of the precious right, at every stage of life. Mankind is so engulfed by use of excessive technology that we are not recognising that our basic fundamental rights are getting compromised. In Puttaswamy's case⁶, the Supreme Court confirmed that the right to privacy is a fundamental right that does not need to be separately articulated but can be derived from Articles 14, 19 and 21 of the Constitution of India. It is a natural right that subsists as an integral part to the right to life and liberty. It is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes. It protects an individual from the scrutiny of the State in their home, of their movements and over their reproductive choices, choice of partners, food habits, etc. Therefore, any action by the State that results in an infringement of the right to privacy is subject to judicial review.⁷

In spite of this decision, with the increased use of social media & e-governance, personal information is available which ultimately leads to violation of right to privacy. Man is a social animal. Mankind cannot survive without society. However in today's era if one wants to become social then he/she do not have any other choice but to opt for social media. This situation demands strict & appropriate legislation which will balance the interest between right to privacy & social media.

⁶"The Right to privacy in the Digital age", Report of the Office of the United Nations High Commissioner for Human Rights (30 June 2014).

⁷K.S. Puttaswamy v. Union of India,, 2017 (10) S.C.C 1