

Use of Information Technology and Channels as a tool for Prevention of Violation of Right to Privacy – Challenges and Governance

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Abstract: *There are enormous privacy threats and challenges in today's technologically developing world. Different sections of the society are exposed to threats as to privacy. The 21st century has witnessed a number of cases on internet privacy, a peep into the personal life of citizens. Technological development could be like a sword which cuts, many cases are witnesses to this like Google map, right of being online anonymous, mobile phone tracking, surveillance etc which have close tie to safety and freedom of expression. The development of search engines and World Wide Web aid in users to infiltrate in order to seek the information, browse history; violate human rights such as freedom of privacy and compromise third parties rights. There have been many sex and MMS abuse leading to different types of scandals in India. Bulk messaging has also been used as a tool for phishing. There are many unsolicited telemarketing calls and text messages which pose a threat to privacy even if the number is has been listed under the DND Category. In cyberspace users' rights to privacy and freedom of expression, are infringed by government monitoring and surveillance (authorities), Internet intermediaries, corporate sector, Banks and Financial Institutions in the form of data secrecies and other users.*

Key Words: *Privacy Threats, Surveillance, Safety, Freedom of Expression, Monitoring.*

Objective: The work on this paper has been undertaken to find out the various challenges faced by the developing nations in technological progression and co related judgments' made in law to maintain privacy of individuals in the cyberspace which has now been declared as a Fundamental Right in the Indian Legal system.

I. INTRODUCTION

A. As per the Indian Constitutional Provisions:

Article 21 - Protection of Life and Personal Liberty: According to this provision: No person shall be deprived of his life or personal liberty except according to procedure established by law. The right is to prevent encroachment upon personal liberty and deprivation of life only according to procedure established by law.

B. Incidences of Violation of Privacy and their Judgments:

Privacy violation is an activity which is conducted purposefully, intently to harm the reputation of another. It is an act whereby the individual intrudes into the private affairs of the other. It may be by using a name, revealing personal information to the public or setting up false image in front of the public. Posner (1978) has suggested that privacy can be viewed in terms of an economic interest and that information about individuals might be thought of in terms of personal property that could be bought and sold in the commercial sphere. Clarke (1999) has recently suggested that privacy can be thought of as an "interest individuals have in sustaining personal space free from interference by other people and organizations.

In today's world a number of instruments like in-line tap, adapters have been developed to monitor telephonic conversation by third people. This may be legal as well as illegal. The following cases are cited which gives us an insight into violation of privacy and necessary court proceedings protecting Right to Privacy.

In People's Union for Civil Liberties versus Union of India ¹ popularly known as "Phone Tapping Case" where in the telephone conversation was tapped. The Supreme Court has held that tapping of telephone is a serious invasion of an individual's right to privacy which is a part of the right to "Life and personal Liberty".

The court has further stated that such a right cannot be encroached unless there is a public emergency or essential for public safety .The court has laid the following procedural safeguards for exercise of power i.e. A permission of the Home Secretary of Central Government or the State Government is required. There can be an authority appointed to review such and he shall maintain the records of intercepted communications.

Mobile phones have numerous privacy issues. Governments, law enforcement and intelligence services use mobiles to perform surveillance. Technology aids to activate the microphones in cell phones remotely in order to listen to conversations that take place near to the person who holds the phone. This gives yet another major challenge as to Right to privacy.²

II. CASE STUDY

In *R. Rajagopal versus State of Tamil Nadu*³ popularly known as “Auto Shanker case” the Supreme Court has stated that the right to privacy and the right to be let alone is guaranteed under Article 21. It is stated that every citizen has the right to safeguard the privacy of his own, family, marriage, procreation; motherhood, childbearing and education. No one can publish anything of the above without their consent unless such publication is based on court record. The biggest threat is web tapping whereby it is logging into the IP address of users. The VoIP, or Voice over Internet Protocol, is a means for transmitting two-way voice communications via the Internet.⁴

In *State of Maharashtra versus Madhukar Narain*⁵ it was held that right to privacy is available even to woman of easy virtue and no one can invade her privacy.

In *Mr. ‘X’ versus Hospital ‘Z’*⁶ the court laid that restrictions can be imposed on right to privacy if it for prevention of crime, disorder or protection of health or morals or protections of rights and freedom of others.

In *Malak Singh versus the State of Punjab*⁷, it was held by the Supreme Court that keeping surveillance on persons with bad character and habitual offenders is allowed in order to prevent crime in future. But if it is done for innocent persons then it may amount to violation of right to privacy.

In the case of *Jackuline Mary versus The Superintendent of Police, Karur and Ors.* B the Calcutta High Court and the Cyber Crime Bureau took action on the ground that the action done was a violation of her privacy.

In another very interesting case in the HIGH COURT OF BOMBAY (NAGPUR BENCH) namely *Sanj Daily Lokopchar versus Gokulchand Sananda*, here it was published about ‘Mata king’, scathing observations were made against the members of the family of the plaintiff and the question remains that it is a violation of a right of privacy.

The defendants have published various new articles referring to various criminal cases against the plaintiff and his family members. The finding is recorded that the plaintiff has right to safeguard the right of privacy of his own and family members.

III. GOVERNANCE IN INDIA

The Information Technology Act contains provisions in which it allows authorized agencies to intercept. These agencies are appointed by the government of India. Further it allows government to set national encryption standard. Agencies which are created to regulate what is to be put online and prohibit that which is detrimental to nation at large. To a certain extent the anonymous use of internet is prohibited. The jurisdiction of Information Technology Act applies to offences committed in India and outside India. The Digital Signatures authenticate electronic data.

Child Pornography has been prohibited by the Information Technology Act.⁸

The IT Act 2008 has carved an offence of violation of privacy.

“In which it punishes the infringers with imprisonment which may extend to three years or with fine not exceeding two lakhs rupees or both.”⁹

The Act further states duties of ISP and cyber cafes. The interception can be done in coordination with Internet Service providers and Unified Service Agreement License (UASL)¹⁰ “Telecom Commercial Communications Customer Preference Regulations, 2010” (CCCP Regulations) which regulate “unsolicited commercial communications”¹¹ Every telecom resource has to be registered with the authority before telemarketing data is provided to him.

There does exist certain OEDC guidelines which cast a duty on the data collector to inform as to the use of the data being collected. There must not be any misuse of data.

But the question arises as to the grievance of the offenders' who have liked the comment on any of the social networking sites. The major hurdle is the time taken to remove electronic data from the cyber world as strict procedures have to be followed leading to time consuming and violation of privacy.

The Information Technology Act including the Amendments needs to be updated with the recent developments and to add provisions in order to safeguard individual interests and help in to curb violation of right to privacy.

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