

## AN EMPLOYEES RIGHT TO PRIVACY AT WORKPLACE

By Adv. Nisha Parekh<sup>64</sup>

### Introduction:

An employee's right to privacy in the workplace is an increasingly controversial legal topic, especially in an age of increased reliance on computers. An employee's private life often intersects with the workplace through personal phone calls, personal emails etc. Technology has enabled employers to monitor virtually all workplace communications made by employees using computers -- including use of the Internet and company e-mail. While employees may feel that this monitoring is a violation of their privacy rights, it is usually allowed under the law.

So an employer's right to monitor and have access to its computer recourses and all material found thereon is well founded. Privacy of the employee, on the other hand is also at least as important. Because of this, privacy has become one of the most contentious issues in an employer – employee relationship.

### Meaning of Privacy:

Privacy is

- (a) the quality or state of being apart from company or observation.
- (b) Freedom from unauthorized intrusions.

### Provision under Indian constitution:

The constitution clearly safeguards the right to privacy as a part of life under Article 21. Despite the fact that privacy is a fundamental right, it is a well established principle that it is not an absolute right and that may be lawfully restricted for the prevention of crime, disorder or protection of health or the protection of other's right and freedoms..

In fact, the Supreme Court has gone as far as stating that is there were a conflict between the fundamental rights of two parties, the right that advances public morality would prevail.

---

<sup>64</sup> Visiting Lecturer in ROFEL College, Vapi

Thus Employee's activities (such as private conversations) and certain physical spaces in the workplace (like locked desk drawers) receive more privacy protections, while specific activities like drug use may lead to testing for substance abuse. Below is a discussion of employees' privacy rights in the workplace.

#### **(a) Internet Usage and Email**

An employee's activities while using an employer's computer system are largely unprotected by personal privacy laws. Emails are considered to be company property if they are sent using the company's computer system. Employers generally have the right to monitor and view employee email, so long as they have a valid business purpose for doing so. Many employers now have email systems that copy all email messages as they pass through the system to check for productivity, illegal use, and other issues. Emails are frequently being used as evidence during trial to prove employee misconduct or wrongdoing.

In addition, employers have the right to track the websites visited by their employees, to block employees from visiting specific Internet sites, or to limit the amount of time an employee may spend on a specific website.

#### **(b) Phone Calls and Voicemail Messages**

Employers use electronic surveillance practices, including monitoring employee phone conversations and voicemail messages, in order to keep tabs on their employees and their business operations. Generally, employers can monitor telephone calls to and from their locations, but there are legal limits.

The **Electronics Communications Privacy Act (ECPA)** in us places some limitations on an employer's right to monitor its employees' telephone usage at work. Under the Act, an employer may not monitor an employee's personal phone calls, even those made from telephones on work premises. An employer may monitor a personal call only if an employee knows the particular call is being monitored and consents to it. The ECPA also provides protection for an employee's voicemail messages at work. Employers face legal

liability if they read, disclose, delete, or prevent access to an employee's voicemail messages.

### **(c) Post-Hiring Drug Testing**

An employer may be able to require its employees to submit to drug screening. However, a number of states' laws limit the circumstances in which an employer may test for drugs, and the methods they may use to perform such tests. An employer may generally test its employees for drug use if it limits its testing to:

- Workers whose jobs carry a great deal of risk to themselves or others.
- Workers who have completed a drug rehabilitation program or are currently enrolled in such a program.
- Workers who have been involved in a work-related accident where drug use was suspected.
- Workers whom management believe have been using drugs based on physical evidence or behavior (glassy eyes, slurred speech).

### **(d) Video Surveillance**

Video surveillance is governed by common law, using the “reasonable expectation of privacy standard.” Courts have consistently held that employees have a reasonable expectation only in bathrooms and locker rooms. Some courts have allowed video surveillance even in these areas.

## **Landmark Judgments on Employee’s Right to privacy at work place:**

### **1. Michal a. smyth V. The pilsbury company.**

The applicant claimed that he was wrongfully dismissed from the defendant’s company. The defendant maintained an email network in order to promote internal corporate communications and assured its employees that all email communication would remain confidential and privileged. Further, it assured it employees, including plaintiff, that email communication would not be intercepted and used by the defendant against its employees as ground for termination or reprimand.

However, in October 1994, when the plaintiff received certain email communication over the defendant's email system on his computer at home, he responded and exchange mail with his supervisor, relying on this assurance. Later the defendant be intercepted the plaintiff's email message and notified the plaintiff that it was terminating his employment effective February 1, 1995, for transmitting "inappropriate and unprofessional" emails.

### **The Court Ruled :**

The Court does not find a reasonable expectation of privacy in a email communications voluntarily made by an employee to his supervisor over the company email system notwithstanding any assurance that such communication would not be intercepted by management. One plaintiff communicated the alleged unprofessional comment to a second person over an e-mail system apparently utilized by the entire company, any reasonable expectation of privacy was lost. Significantly, the defendant did not require... plaintiff to disclose any personal information about him self. The court finds no privacy interest in such communications.

### **2. Doe V. XYZ Corporation.**

In this case, the plaintiff sued the defendant because of its lack of action when the plaintiff's husband send nude picture of their daughter over the internet from the official email system. The court said that an employee's privacy interest does not trump the employer's right to monitor an employee's computer to see if the employee had breached a duty.

### **3. In Copland. V. United Kingdom. \**

A woman's telephone line, email account and internet usages were under surveillance without her knowledge and permission. This was held to be a violation of article 8(1) of the European Convention on Human Rights (ECHR). The court said that all communication from the office phone calls, emails and internet usage were part of the appellant's private life and thus protected by ECHR.

**Conclusion:**

The ground breaking technology comes great responsibility. The future of our workforce will always be continually watched under a keen eye from their supervisors; however it is the technology aspects of workplace monitoring system that may be provide an more uncomfortable environment for employees.

A type of system should be created to aid in the stress illnesses of employees who are viciously monitored. It should be some reward system, so that the employees have some privacy of their own because its isn't right to take away some one's own feeling of self control.

Times need to changed so that we can see better opportunities as employees and being to enjoy going to work, not hating it and feeling like a big brother is watching over for any mistake that an employee makes.

