

THE FUNDAMENTAL RIGHT TO PRIVACY: AN EVOLVING LEGAL LANDSCAPE

Written by *Shailendra Singh Bhadouriya** & *Vikash Mangodiya***

* 2nd year BALLB student, Amity University Madhya Pradesh, Gwalior, Madhya Pradesh, India

** 2nd year BALLB student, Amity University Madhya Pradesh, Gwalior, Madhya Pradesh, India

INTRODUCTION

The right to privacy is a fundamental and cherished right in many legal systems around the world. It is a right that has evolved significantly over time, adapting to the challenges presented by technological advancements and changing societal norms. This article explores the concept of the right to privacy, its historical development, and its contemporary relevance in an increasingly interconnected and digital world.

HISTORICAL DEVELOPMENT OF THE RIGHT TO PRIVACY

The notion of privacy as a legal right has deep historical roots. However, it was not until the 19th century that the concept began to take shape in the United States and later in other parts of the world. Notable developments in the historical evolution of the right to privacy include:

1. **Warren and Brandeis` influential article¹:** In 1890, Samuel D. Warren and Louis D. Brandeis published an article in the Harvard Law Review titled "The Right To Privacy". This article is often considered a landmark in the history of privacy jurisprudence. It argued that individuals have a right to be left alone and to protect their private affairs from intrusion.

2. **Tort law and invasion of privacyⁱⁱ**: The expansion of privacy rights was closely associated with tort law. The common law recognized that certain intrusions into one's private life could give rise to civil action for invasion of privacy, including intrusion upon seclusion, public disclosure of private facts, false light and appropriation.
3. **Constitutional protectionsⁱⁱⁱ**: Privacy rights have found protection in various national and international legal instruments. For example, Part III, article 21 of The Constitution of India provides the right to privacy, the U.S. constitution's fourth amendment protects against unreasonable searches and seizures, while the European convention on human rights enshrines the right to respect for private and family life.

CONTEMPORARY RELEVANCE AND CHALLENGES

In the modern era, the right to privacy faces new challenges and complexities due to rapid technological advancements and the proliferation of digital data. Some of the key issues include:

1. **Digital surveillance^{iv}**: mass surveillance programs, both by governmental and corporation, have raised concerns about the erosion of individual privacy. Debates surrounding the balance between national security and privacy continue to be central in many jurisdiction.
2. **Data privacy^v**: The collection, storage and processing of personal data by technological companies and online platforms have become a focal point of privacy debates. Regulatory frameworks like the European union's general data protection regulation (GDPR) aim to protect individuals' data privacy.
3. **Social media and public disclosures^{vi}**: The use of social media platforms has blurred the lines between public and private life. Individuals are increasingly sharing personal information online, raising questions about to extent to which these disclosures should be protected.
4. **Biometric data and AI^{vii}**: advances in biometric technology and artificial intelligence have created new privacy concerns. The use of facial recognition technology and other biometric data for surveillance and identification purposes has led to calls for stricter regulations.

CONCLUSION

The right to privacy is an essential pillar of a free and democratic society. While it has evolved over time to adapt to changing circumstances, it remains a fundamental right that must be upheld and protected. In an age where personal data is increasingly vulnerable to intrusion and misuse, legal systems must continue to evolve to safeguard this vital right. Striking the right balance between individual privacy and collective interests will be an ongoing challenge, but it is one that societies must address to protect their citizens and preserve the values of privacy and autonomy.

ENDNOTES

ⁱ Article on “the right to privacy” by warren and brandeis.

ⁱⁱ Law of tort by Dr. R K Bangia , defamation.

ⁱⁱⁱ The constitution of india, constitution of U.S..

^{iv} Surveillance-national security nexus Pg. 4,5 in politics of digital surveillance, national security and privacy on JSTOR.

^v Bulk data interception Pg. 5 in politics of digital surveillance, national security and privacy on JSTOR.

^{vi} ICT monitoring Pg. 5 in politics of digital surveillance, national security and privacy on JSTOR.

^{vii} Biometrics Pg. 6 in politics of digital surveillance, national security and privacy on JSTOR.