



# Lecture- 18



# **RIGHT TO PRIVACY**

## **Defining and origin of Privacy**

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Concept of Privacy
- 1.4 Privacy – Historical and Cultural Perspectives
- 1.5 Meaning and Scope of Privacy
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- 1.7 Right to Privacy – Louis Brandeis and Samuel Warren
- 1.8 Modern Principles of Privacy Law
- 1.9 Legal Regimes for Protecting Privacy
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- 1.11 Privacy – The Human Rights Angle
- 1.12 Threats to Privacy in New Technological Regime
- 1.13 Digital and Internet Privacy Challenges
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## **1.1 INTRODUCTION**

Privacy is a state of affairs where information regarding individual's life and conditions that are private in nature is beyond the reach and knowledge of others. In the current technological milieu where one can access the personal details and information regarding individual's diverse affairs, all what privacy means is that people want to have a control over what information needs to be there in the public domain. Privacy ordains that the individual is at liberty to avoid unsanctioned intrusions in his life and personal affairs and pre-supposes that the individual will have unqualified control over the information pertaining to him. Privacy is an interest of the human personality. It protects the inviolate personality, the individual's independence, dignity and integrity.

The reason behind protecting one's privacy are varied. Some people want to maintain anonymity, some others want to conceal facts about themselves that are embarrassing, discreditable or which may put them under some risk to their life and property, whereas a few may like to have peace and solitude. Thus, one can safely argue that basically there are three elements in privacy: secrecy, anonymity and solitude. It is a state which can be lost, whether through the choice of the person in that state or through the action of another person.

The Discourse on privacy interests and the corresponding legal rights have seen drastic changes from one technological era to another. Privacy intrusions, in the old legal order, when there was no telecom, communication and computational technologies available were primarily treated as trespassing, assault, or eavesdropping. Privacy in those days had not attained the intensity and magnitude as it has achieved in today's modern world where we have telephone wiretaps and microphones for overhearing, digital photography and spycams for undercover and intelligence operations, computers, mass storage devices and database software for storing, collating and circulating personal and financial information. With these inventions no one can be rest assured that his personal information shall remain within the confines of his home or personal archives. New technologies have made it possible to clandestinely transmit and broadcast information pertaining to individual without his knowledge. Organized collection, collation and storage of an individual's private and personal information on databases, has made it possible to invade people's privacy. The data storage and surveillance potential of computer systems has given a new direction to the discourse on privacy rights. The question could no longer be whether the information could be obtained, but rather whether it should be obtained and, where it has been obtained, how it should be used. Technological inventions such as data matching, profiling, data mining, smart cards, cookies and spam have created an increased threat to the privacy of persons.

## **1.2 OBJECTIVES**

After studying this unit, you should be able to:

- discuss the concept of privacy as it exists in different cultures and regions;
- comprehend the range and vastness of the right to privacy;
- know why critics disagree to privacy being a independent right;
- know the modern day principles of privacy laws ;

- know different legal regimes for protecting privacy;
- grasp the human rights angle of privacy ;
- know the threats to privacy in new technological milieu; and
- discuss digital and Internet challenges to the concept of privacy.

### **1.3 CONCEPT OF PRIVACY**

Privacy is a valuable aspect of personality. Sociologists and psychologists agree that a person has a fundamental need for privacy. A person's right to privacy entails that such a person should have control over his or her personal information and should be able to conduct his or her personal affairs relatively free from unwanted intrusions.

Privacy is also at the core of our democratic values. An individual has an interest in the protection of his or her privacy as preserving privacy encourages dignity, self-determination, individual autonomy and ultimately promotes a more robust and participatory citizenry.

Among all the human rights in the international catalogue, privacy is perhaps the most difficult to define. Despite attempts of jurists, scholars and theorists to define privacy, there remains confusion over the true meaning and scope of privacy. One of the problems is that, the very breadth of the idea, and its tendency, produces a lack of definition which weakens its force in the political discourse. Despite the difficulties to ring fence the concept of privacy, Privacy International has suggested that privacy can be said to comprise four separate nonetheless related aspects:

1. Information privacy, which involves the establishment of rules governing the The Concept of Privacy collection and handling of personal data such as credit information, and medical and government records. It is also known as "data protection";
2. Bodily privacy, which concerns the protection of people's physical selves against invasive procedures such as genetic tests, drug testing and cavity searches;
3. Privacy of communications, which covers the security and privacy of mail, telephones, e-mail and other forms of communication; and

4. Territorial privacy, which concerns the setting of limits on intrusion into the domestic and other environments such as the workplace or public space. This includes searches, video surveillance and identity checks.