Lecture- 19

1.4 PRIVACY – HISTORICAL AND CULTURAL PERSPECTIVES

Though the interest in the right to privacy increased worldwide in the 1960s and 1970s with the advent of information technology, the concept of right to privacy has historical, cultural and religious connotations which reinforce the view that privacy is extensively valued and preserved in various cultures.

Psychological and anthropological evidence suggest that every society, even the most primitive, adopts mechanisms and structures that allow individuals to resist encroachment from other individuals or groups. Historical origins of concept of privacy can be traced in the well known philosophical discussions, most notably Aristotle's distinction between the public sphere of political activity and the private sphere associated with family and domestic life.

Lord Denning has articulated the need of recognising the 'right to privacy' as, "English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right to confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each one of them is subject to exceptions. Therefore exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the courts. As each case is decided, it will form a precedent for others. So a body of case law will be established".

1.5 MEANING AND SCOPE OF PRIVACY

Although privacy concerns are deeply rooted in history, privacy protection as a public policy question can be regarded as a comparatively modern notion. Academically also most of the privacy theorists are of the view that privacy is a meaningful and valuable concept. There have been much extensive philosophical debate on the meaning and scope of privacy in the second half of the twentieth century, and are deeply affected by the development of privacy protection in the law. Various jurists and scholars have extensively analysed the judicial trends and academic discourse on personal and property rights having a symbiotic relationship with privacy rights. Discussion on privacy has been further complicated by the fact that privacy

appears to be something we value to provide a sphere within which we can be free from interference by others, and yet it also appears to function negatively, as the cloak under which one can hide domination, degradation, or physical harm to women and others.

Another scholar, Solove in his work 'Conceptualizing Privacy'14 has summarized privacy under six recurrent themes, namely (1) the right to be let alone; (2) limited access to the self – the ability to shield oneself from unwanted access by others; (3) secrecy – the concealment of certain matters from others; (4) control over personal information – the ability to exercise control over information about oneself; (5) personhood – the protection of one's personality, individuality, and dignity; and (6) intimacy – control over, or limited access to, one's intimate relationships or aspects of life. Privacy is both a negative and positive right. It imposes both a negative obligation upon the State to let alone the individuals of a society, and positive obligation upon the State to protect individuals via property rights, tort law, criminal law and other legal devices'. Solove contends that attempts to conceptualize privacy by locating the common denominator to identify all instances of privacy have thus far been unsatisfying.

The lack of a single definition should not imply that the issue lacks importance. Privacy protection is frequently seen as a way of drawing the line at how far society can intrude into a person's affairs. Adam Carlyle individual's 'right to be left alone'15 has been defined as "the rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as he sees fit. It also means the individual's right to control dissemination of information about himself; it is his own personal possession". Thus, it can be fairly argued that privacy is the ability to determine for ourselves when, how, and to what extent information about us is communicated to others.

1.6 CRITIQUES OF PRIVACY

Taking a counter view, critics argue that privacy is not an independent value at all but a composite of interest in reputation, emotional tranquility and intangible property18. Critics dispute that privacy can be accorded as a separate right because any interest protected as private can be equally well explained and protected by other interests or rights, most notably rights to

property and bodily security. Other critics profess that privacy interests are not distinctive because the personal interests they protect are economically inefficient In some countries individual privacy may conflict with freedom of speech laws and some laws may require public disclosure of information which would be considered private in other countries and cultures.

1.7 RIGHT TO PRIVACY - LOUIS BRANDEIS AND SAMUEL WARREN

The modern history of privacy can be traced to the famous phrase, the right "to be let alone" dated 1834. The Supreme Court of U. S. stated that a "defendant asks nothing — wants nothing, but to be let alone until it can be shown that he has violated the rights of another"[Wheaton v. Peters, 33 U.S. 591, 634 (1834)]. Later the same statement, "the right to be let alone", appeared in Cooley's book21 as corresponding to the duty "not to inflict an injury". This argument was expanded by Warren and Louis Brandeis (Later, Judge, Supreme Court of U.S.), (who went on to become Judge Brandeis of the US Supreme Court), in their famous law review article advocated the privacy rights. (Subsequently, Brandeis used the phrase "the right to be let alone" in his famous dissent in Olmstead v. U.S. [277 U.S. 438, 478 (1928)], the first wiretapping case heard by the U.S. Supreme Court.)

This article can be credited as the pioneering work, instrumental in the acceptance by the majority of American States of the existence of a legal right to privacy within a relatively short period following its publication. Brandeis contented that privacy was the most cherished of freedoms in a democracy, and he was concerned that it should be reflected in the Constitution. Citing "political, social, and economic changes" and a recognition of "the right to be let alone" they argued that existing law afforded a way to protect the privacy of the individual, and they sought to explain the nature and extent of that protection. Focusing in large part on the press and publicity allowed by recent inventions such as photography and newspapers, but referring as well to violations in other contexts, they emphasized the invasion of privacy brought about by public dissemination of details relating to a person's private life.