# Lecture- 20

## 1.8 MODERN PRINCIPLES OF PRIVACY LAW

However, the impact of Warren and Brandeis' article was not the sole basis for the development of a legally protected right to privacy in the U.S. In 1960, a renowned tort scholar William Prosser surveyed over 300 privacy cases which came after the Warren and Brandeis article. Thus, Prosser codified the principles of privacy law in his article which also found a place in the Second Restatement of Torts at pages 652A-652I (1977).

The four categories of privacy rights having a tortious remedy, as enumerated by Prosser, are:

1. Unreasonable intrusion upon the seclusion or solitude of another

● Instances of physical intrusion in a person's home, namely, undesirable entry, peeping into the house, through windows with binoculars or camera, telephone tapping, obtrusive telephone calls, scanning and collating financial and personal data without person's consent and information.

2. Appropriation of a person's name or likeness for advantage of other

● Unlawful use of a person's name or likeness for advertising and soliciting clients/consumers on a product label which injures the personal feelings of the person.

3. Public disclosure of embarrassing private facts

● Financial position, sexual orientation, personal correspondences, family feuds, medical history, person's private photographs clicked at his/her home.

4. Publicity placing one in a false light in the public eye

● Instances of putting information in public domain to create a false impression about the person.

For a detailed discussion on the tortious remedies available for protection of privacy.

## 1.9 LEGAL REGIMES FOR PROTECTING PRIVACY

History of modern day statutory and legislative framework protecting privacy can be traced as far back as 1361, where the Justices of the Peace Act in England provided for the arrest of peeping toms and eavesdroppers. Various countries developed specific protections for privacy in the centuries that followed. In 1776, the Swedish Parliament enacted the Access to Public Records Act that required that all government-held information be used for legitimate

purposes25. France prohibited the publication of private facts and set stiff fines for violators in 185826. The Norwegian Criminal Code prohibited the publication of information relating to "personal or domestic affairs" in 1889.

Modern privacy jurisprudence developed during the latter half of the 1960's which saw The Concept of Privacy a flurry of legislative activities across the globe stimulated by exponential growth in the area of computational technologies and other forms of telecom and information system automation, such as audio-video devices, and telecommunications. Many countries saw the emergence of new information technologies systems as a challenge which the existing legal regime were incapable to redress. Thus, in the decade of 1970's, many western nations proactively enacted legislations and provided privacy protocols to protect privacy rights.

In 1973, the United States Department of Health Education and Welfare (HEW) issued a report, Records, Computers, and the Rights of Citizens, which analysed these problems in depth and recommended the passage of a code of Fair Information Practices.

The Fair Information Practices "played a significant role in framing privacy laws in the United States," and influenced privacy law around the world.

Legislation in Europe began even earlier, with the West German Land of Hesse passing the very first Data Protection Act in 1970, and Sweden's Data Act of 1973 being the first comprehensive legislation at national level. In the United Kingdom, Private Members' Bills were introduced in the late 1960's. Since the early 1970's, most of the advanced western nations have legislated. In addition, many of the states of the U.S.A., provinces of Canada and West Germany have also passed privacy laws. Some of these apply to all personal data systems, while others are restricted, e.g. to the public sector, or to automated or computerised systems. In an endeavour to achieve some amount of consistency in the highly varied approaches, the European Economic Community adopted a Convention in 1980 (EEC 1980). The United Kingdom ignored the recommendations but finally responded to commercial pressure to ensure that British companies were not disadvantaged against their European competitors, and finally in 1984 passed the Data Protection Act.

## 1.10 PRIVACY AS A LEGAL RIGHT

In the earlier times, legal remedies were only available for physical interference with life and property, however, with the passage of time and change societal behaviour and norms gave the recognition to the individual's right to keep his feelings, emotions and intellect private. Changes in the legal framework are necessitated because of the transformation in culture mores, commercial practices, and technologies of the time. Most of the laws which still govern the commercial transactions, data privacy, and intellectual property were developed for a time when telegraphs, typewriters, and mimeographs were the commonly used office technologies and business was conducted with paper documents sent by mail. Technologies and business practices have dramatically changed, but the law has not been able to match pace with the advancement in technologies. Computers, electronic networks, and information systems are now used to routinely process, store, and transmit digital data in most commercial fields.

Electronic commerce, transborder data flow, and digital databases have necessitated a change in the legal order governing the modern day's communication and information technologies. Privacy as a justiciable, legally redressable right claimed much wider recognition with the wide-spread intrusion in individual's privacy invariably involving new telecom, surveillance, data storage software and technologies. Prior to such technological advancement, private affairs and personal data were confined to the realm of private houses, offices or paper thereby making it difficult for the intruders to collect, collate and exploit such information harming the individual.

Countries around the world have enacted different legal models for legal protection of privacy in the new technological milieu. While some countries have comprehensive general law governing the collection, use and dissemination of personal information by both the public and private sectors, other countries such as the United States, have avoided enacting general data protection rules in favour of specific sectoral laws governing, for example, video rental records and financial privacy.