

Lecture- 21



1.13 DIGITAL AND INTERNET PRIVACY CHALLENGES

Telemarketing calls from credit card, cell phone, and car sales companies are intruding into the privacy of individuals by accessing the data, without any authority, available to another vendor with whom the individual has dealt with in the past. Whether one has the right to do so is a question of law and legal policy, but the medium supplies the capability'. The law on privacy has not kept pace with technological development.

Countries across the globe are grappling to come to terms with the new evolving relationship between data and Internet technologies and the right to privacy with respect to collection, sharing and use of data. Even today, in no country does the right to privacy enjoy the status of a specific constitutional right. There are some countries which have enacted general comprehensive data protection laws, and sectoral legislations dealing with privacy rights, yet privacy law has primarily evolved through The Concept of Privacy judicial interventions where the courts have read a right to privacy in the existing provisions.

The advancement in technology has made it possible to inviolate individual's privacy without physically entering into his place or property. Privacy concern has grown manifold in the recent years and has been causing havoc. It is made possible to infiltrate into someone's bank account, read private communications, intercept confidential communication, disparage people's reputation and put up individual's personal details in a virtual market place. Individuals are at a greater risk to suffer harassment and loose their peace of mind. Such technological vulnerabilities have necessitated that legal protection be afforded to protect the privacy, and set out specific rules governing the collection and handling of personal information.

The last decade of the 20th century presented profound new challenges for the protection of information privacy, such as rise of the Internet and the increasing use of email in the mid-1990s. The most imminent threat to privacy comes from the innocuous machine that we call computer which when networked with other computers can transmit information from one corner of globe to the other within fraction of seconds. The computers ability to store and process mass data has put individual's privacy to greater insecurity than any other technological advancement in the recent times. A new jurisprudence on privacy is evolving because of the inherent susceptibility

of individual's privacy because of the advent of computers, internet and database management software and systems. It has given rise to the unfair practice of collecting personal information through unfair and unlawful means. Even where it is necessary to process personal data of the individuals, scrupulous companies for their commercial benefit, use the data for other purposes without the consent of the individuals or with legal authority, or worse sell off the data to other companies. On the other hand, some of these data warehousing companies do not employ security measures to protect personal data from unintended or unauthorized disclosure, destruction or modification.

Further, it has often been seen that the individuals whose data has been retained by companies, are neither informed of, nor given access to the data on them held by these companies so that they can rectify these data if inaccurate or misleading. In the technological age that we are living in, where one can have any information available and processed at a click of a button, it is increasingly becoming difficult to protect the privacy. However, it is not difficult to protect the fairness, integrity and effectiveness of data protection technologies safeguarding individual's privacy. To uphold individual's right to privacy, corporations using computer, database management systems and internet technologies need to put in place privacy risk management programmes to shield them from exposure as they move on their operations worldwide. Using benchmarking tools, proven methodologies and diagnostics — a business enterprise needs to mitigate privacy risks and vulnerabilities.

1.14 SUMMARY

- Privacy can be defined as an interest of the human personality that protects the inviolate personality, independence, dignity and integrity of individuals.
- Privacy is a state which can be lost, whether through the choice of the person in that state or through the action of another person. There are basically three essential elements in privacy: secrecy, anonymity and solitude.
- Louis Brandeis in his article 'The Right to Privacy' articulated the concept of privacy that suggested that it was the individual's "right to be left alone". 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.

- It is difficult to define the 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. Nonetheless, privacy can be said to comprise of four separate nonetheless related aspects

- (i) Information privacy, which involves the establishment of rules governing the collection and handling of personal data such as credit information, and medical and government records. It is also known as “data protection”;

- (ii) Bodily privacy, which concerns the protection of people’s physical selves against invasive procedures such as genetic tests, drug testing and cavity searches;

- (iii) Privacy of communications, which covers the security and privacy of mail, telephones, e-mail and other forms of communication; and

- (iv) 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.

- Concept of right to privacy has historical, cultural and religious connotations which reinforce the view that how extensively privacy is valued and preserved in various cultures.

- Critics dispute that privacy can be accorded as 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.

- Prosser codified the principles of privacy law in his article Privacy, 48 Cal.L.Rev. 383 (1960).

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

- (i) Unreasonable intrusion upon the seclusion or solitude of another

- (ii) Appropriation of a person’s name or likeness for advantage of other

- (iii) Public disclosure of embarrassing private facts

- (iv) Publicity placing one in a false light in the public eye.

- 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.

- Modern privacy jurisprudence developed during the latter half of the 1960’s which saw 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.

- Privacy issues do not only figure in academic discourse or courtroom battles and this importance can be gauged by the fact that most of the international human rights treaties include a reference to privacy.
- The recent technological advancement in the way data is stored, transmitted, extrapolated and used poses an imminent threat to danger to privacy.
- The advancement in technology has made it possible to inviolate individual's privacy The Concept of Privacy without physically entering into his place or property. In the new global order, electronic database and Internet are vastly being used to share, collate, transmit and analyse personal information, individual choices and preferences, financial and medical history.
- Privacy concern has grown manifold in the recent years and has been causing havoc. It is made possible to infiltrate into someone's bank account, read private communications, intercept confidential communication, disparage people's reputation and put up individual's personal details in a virtual market place.