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PRIVACY IN THE AGE OF DIGITAL GOVERNANCE

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Abstract:

Privacy is a fundamental human right that has served as a constitutional limit on government. Privacy is a subset of liberty. Despite such importance, the Right to Privacy concerns raised by surveillance and information technologies were widely recognised, presenting new challenges to the Right to Privacy on the most basic questions of its scope and derivation. Faced with this challenge in the 21st century, the Right to Privacy hasn't become absolute. In fact, it was interpreted that the Right to Privacy doesn't necessarily co-exist with data protection. Thus, "a government that cannot protect its citizen's right to privacy cannot credibly maintain a democratic regime of equal treatment under the law". *Edward Snowden* demonstrated in his revelations that these concerns were real, and the technical capabilities to collect, store, and search data over the internet, through telephonic conversations, and via e-payments are now in place and are used by government agencies regularly. My focus here would be on exploring and critically analysing information technology and the right to privacy in relation to the state and democracy.

Introduction:

Since time immemorial, human beings have valued privacy and the protection of their personal liberty. They were implicit in legal or social protection and enshrined in numerous international human rights instruments. According to *Micheal Foucault*, there is a type of sovereign power which is constantly being exercised by surveillance rather than in a discontinuous manner by means of system of levies or obligations distributed over time which presupposes a tightly knit grid of material coercions rather than physical existence of sovereign power. Right to privacy in the contemporary world focuses on three interdependent phenomena, such as jurisprudence in digital libertarianism, a separate but related set of beliefs about the state's supposed inability to regulate the internet and a preference for technological solutions to complex legal issues online. Thus, online has scrambled our personal information for monetary values, blurring the traditional image of privacy.

Privacy is not just an absolute term that defines space in one's own life instead it defines life. How we exercise privacy indicates what sort of life we are leading. Privacy is not just an explanation of life. It is an action. How it is exercised, what type of predicaments are stopping it from unleashing its power, need to be understood to comprehend the position of the individual in society. Human beings live in/with communities. They share common traits like culture, tradition, and customs and so on. An individual is an individual and he/she lives with the commonalities of group he/she belongs. These commonalties are safeguarded by rules. The government uses various apparatus like the Judiciary, the police, the military and so on to control people. It always butchers the freedom of people and buries their privacy. Privacy is a right that every individual must exercise without any obstacle. But, the state is always in fear of privacy as it allows individuals to use their thoughts, and thoughts are powerful. These thoughts can dismantle any government. To stop this, any state goes to any extent. Before we get into the mechanisms of state and its modes, we need to understand what privacy really means. There is a plethora of definitions available across the world. It is difficult to embrace one definition that covers every aspect of human space. It is, currently, a sweeping concept that encompasses freedom of thought, control over one's body, solitude in one's home, control over personal information, freedom from surveillance, protection of one's reputation, and protection from searches and integrations(Daniel Solove, 2008). It is difficult to reach a satisfactory answer. Privacy is a plurality of different things that lead to no one singular definition or answer. It is an amalgamation of plenty of thoughts and actions. Jurists, Samuel warden and Louis Brandels of united sates in 1890, wrote a article Right to privacy to defend privacy as a right and argued for the "right to be alone", a phrase used as a definition of privacy (Samuel warden and Louis Brandels,



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1890). Universal declaration of human rights, 1948 always stressed the importance of privacy in article 12 by saying that no one shall be subjected to arbitrary interference with his/her privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Professor Hyman Gross asserts that “the concept of privacy is infected with pernicious ambiguities” and another legal theorist of America, Robert Post, “privacy is a value so complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings, that I sometimes despair whether it can be usefully addressed at all”. Though it has many unclear definitions, it is necessary to understand that privacy is the foremost important issue for freedom and democracy. It has been used widely in various fields from judiciary to academics. Privacy problems are not articulated adequately and the problem of conceptualizing it remains elusive. But, it is hard to identify one definition that encompasses every aspect of/on anything exist on this earth.

Relevance of the study:

There has been a long-standing debate about what constitutes the public and private spheres. Though many philosophers, political scientists, sociologists and jurists talked about it in a detailed way, it was not enough to address and understand the changing nature of society.

Many studies have undertaken the task of understanding the role of the state in relation to the individual and their society. There are many theories that attempted to understand the conflict between state, individuals and its society. The first theory that tried to capture this essence in its approach was Social contract theory. But, it was inadequate in understanding this scenario. Many other theories have attempted to decipher this, but have not been successful in doing so. Society continually evolves in terms of people’s behaviour and their usage of nature. These age-old theories are not capturing or comprehending the changing behaviour of humans. In this context, I would like to study privacy in the present scenario, especially so when the right to liberty is threatened by various spheres of the society like state, technocrats, and individuals.

This study is so important in the context of India. India is a populated country which has been suffering from poverty on one hand and security threats on the other hand. In dealing many issues prevailed in country, the government always relying on ICT for development. In this context, Privacy plays a major role and is a main concerned for both state and its citizens as well. The impact of globalisation is very much visible in many spheres of public and private life that has become a threat to privacy. With the advent of ICT, the privacy is in danger. The state is always using its advantage to surveillance its own citizens in many spheres. This study aims at understanding this areas related to violation of human rights by governance in relation to privacy.

Review of Literature

Right to privacy has its roots in Philosophy of Individualism. Individualism centres human and it is moral stance that emphasis the moral worth of the individualism. It advocates for one’s own goals, desires, values and self-reliance. It believes in agency. According to individualism human being is centre of everything and it emphasis more on individual than to collective. Individualism is understood against the collectivism, authoritarianism, altruism, and communitarianism. Individualism makes the individual its focus and it states that with the fundamental premise that human individual is of primary important in the struggle for liberation. Classical liberalism and existentialism are among the prime advocates of individualism.

Philosophy of individualism derived from these following sources.

1. Being the nature of human being- self actualisation; Karl Marx, Descartes, John Lock
2. The means of the power – social contract theory ; Thomas Hobbs, Lock, Rousseau, Bentham
3. The innate nature of human being- Thomas Hobbs



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The relationship between the individual, the society and the state and the areas of conflict on their mutual spheres of activity has engaged the attention of the philosophers, sociologists, political scientists. There are however political philosophers succeeded systematically in understanding these concerns. Political philosophy was previously treated as branch of theology. The Greeks were the first people to develop contours of the relation between the individual and the state in its systematic and pure form. Though oriental scholar like Confucius from China, Koutilya from India written on this conflict, it was more about statecraft, the rulers, and the subjects, but they didn't produce any comprehensive view of political theory. Previously religion and politics were intertwined one another. Even prior to Aristotle, there were philosophers in Greece, Sophists, advocated individualism. Especially Protagoras the 5th century Greek thinker had opined that "man is the measure of all things". Though Aristotle inspired from these sophists, he systematically studied the relationship between state and individual and complied all those in his book Politics. He distinguished private sphere and public sphere. According to him, the private sphere means a house in which a joint family resides and which is also exclusively sphere of activities of family free from any interference of the the 'polis'(state). The famous phrase of Aristotle "My house is my castle" is central to the concept of Right to privacy. However with the fall of the Roman Empire and the rise and growth of feudalism (It was a way of structuring society around relationships derived from the holding of the land in exchange for service or labour) in Europe, the importance of individual was lost and relegated to the background. So, in the feudalism the individualism; privacy of individual lost its space. It was only with the advent of industrial revolution (it was a period of major industrialization that took place during the late 1700s and early 1800) and with the birth of theory of 'Laissezfaire' (it is an economic system in which transactions between private parties are free from government interventions) which in essence means let alone arose as a natural reaction to the middlesome interference on the part of the state in all walks of life. Men of industry popularly referred as the Manchester man clamoured for the right to be let alone, so that he could utilize his potentialities to the maximum advantages. It was however the social contract theorists (This theory concerns the origin of the society and the legitimacy of the authority of the state over individual. Here individuals have consented either explicitly or implicitly to surrender some of their freedoms in exchange for protection of their remaining rights. Like Thomas Hobbs, Rousseau, and most importantly John Locke in his book "Two Treatises on Civil Government" sowed the seeds of the Right to privacy by advocating the theory of natural rights, which, according to him, are inviolable and inalienable. According to Locke, setting up a government and making laws was only transaction between the individuals, the primary being preservation of life, liberty, and property. He opines that people give only a part of their natural rights while abandoning that state of the nature (The hypothetical condition what the lives of people might have been before societies came into being). The concept was given by Thomas Hobbs. John Locke in his work "Essay concerning human understanding" introduces the concept called "Tabula rasa" which means the mind of the individual was a clean slate and the individuals were free to author their own soul. This presumption of a free, self-authored mind combined with an immutable human nature is the essence of Locke's doctrine of "Natural rights". The 18th and 19th-century Europe thus gave a tremendous boost to the principle of individual rights and dignity.

John Stuart Mill in his work "Essay on Liberty", brought about a separation between self-regarding action and other regarding actions. While self-regarding actions are exclusively the realm of the individuals, and other-regarding actions can be interfered with by the state, the state can regulate its sphere. Thus according to J.S.Mill, the only part of the conduct of any one, for which he is amenable to society is that which concerns others. He proposed that "Over himself, over his own body, and mind the individual is sovereign." J.S.Mill is also credited for having given true meaning and content to the concept of individual liberty and dignity of the individual from which logically flows the right to privacy.

Marking a serious departure from the utility theory of Bentham (the greatest happiness of the greatest numbers), Mill proclaimed that it is not the quantity of pleasure which determinates but the quality of pleasure. Thus according to Mill it is better to be a "Socrates dissatisfied than the fool satisfied." Over time, in the USA, the concept that certain rights are inalienable came to be embodied in the American Declaration of Independence (1776). In France, the rights were recognised in the declaration of the Rights of man and of the citizen (1789). In Germany, the of individual uniqueness and self-realization acquired centre stage.



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Karl Marx, in his work "Economic and Philosophical Manuscripts", recognised the importance of the individual in his theory of alienation.

American jurist Samuel d. warren Louise d. brandies in article right to privacy articulated coherently about right privacy. They argued not only materialist objects that need to be protected but also about thoughts, emotions and sensations that need to protected legally also. They were of the same opinion that rendered by American jurist Cooley, which he calls the right "to be let alone", this phrase had been widely recognised in relation to individual freedom and privacy. They argued how jurisdiction has to protect individual freedom and privacy with explation of numerous examples. They asserted that common law should secure to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others. They clearly indicated that it not just a physical pain but also mental pain to considered unlawful and need to corrected in order to protect individual freedom and privacy. They argued that without individual consent his/her work need not be published and not to be disclosed to public in any manner.

The cornerstone for individual privacy is consent, in their opinion. Consent has to be respected and have legal sanctity. No family member has a right to publish or disclose to the public the work of their deceased family member posthumously, as the deceased person is no longer alive and cannot render his/ her consent.

No individual has the right to ridicule, malign, and defame others in public view. Individual privacy has been protected in the sphere of life. Max Weber, in his theory of Bureaucracy, explains that the overuse of rationality upon emotion ultimately leads to disenchantment of the individual. Weber called Bureaucracy an iron cage where individuals have no freedom, which means Bureaucracy puts people in an iron cage which limits individual freedom. It is the way of the institution where we donot have choice anymore.

Micheal Foucault in his article "The Subject and Power" talks about how the modern state uses its resources and power as a weapon to control its subjects. Micheal Foucault in his book "Discipline and Punish" invoked the idea of the panopticon, which means a type of institutional building that allows all inmates of the institution to be observed by a single watchman without the inmates being able to tell whether or not they are being watched. Likewise, in a modern state using CCTV and other forms of communication, the state controls its citizens' behaviour and monitors their presence to enforce its power over them. In this context, Focault says that privacy is being curtailed by the state which is against the natural justice.

Ulrich Beck, in his theory of risk society of modernity argues that technology produces new forms of risk where people are constantly required to respond and adjust to these changes. According to Antony Giddens, modernity is more dynamic than semi-previous type of social order. It is a society which, unlike any preceding culture, lives in the future rather than the past. Beck and Giddens speaks about reflexivity, the idea that society examines itself, which inturn changes itself in the process. In this context, many sociologists understand the dynamic nature of technology and its implications.

Historical background in India :

M.P. Sharma vs Satish chandra, 1954, in this case right to privacy is not a fundamental right, but is an alien right since it was not considered as an essential part of human life. Later, in Kharak Singh vs state of UP, it was not considered as a fundamental right. For the first time, in post-independent India, the Maneka Gandhi vs Union of India case, right to privacy was interpreted within Article 21 and was maintained within. In 1997, People's Union for Civil Liberties (PUCL) vs Union of India case, positive recommendations were made in this regard in Article 21. Fortunately, on 24th August, 2017, K.S. Puttuswamy vs Union of India case, right to privacy was regarded as a fundamental right.

Areas of concern in relevance with the contemporary world:

Privacy concerns in the contemporary world include social networking sites, big data, artificial intelligence, globalisation, effects of modernity, surveillance, terrorism, cultural lag, technocracy, advancements in ICTs, Article 377



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(Homosexuality) of the Indian Constitution, the digital age, Aadhaar, GPS, and so on. Privacy provisions perhaps connected to specific technological developments in the contemporary world, and the legal framework for privacy is disjointed and remains a piecemeal work for the following reasons

- Right to Privacy was not raised as an issue of concern either by UN members or by external stakeholders.
- Also, there was no mention regarding digital protection and information and communication surveillance in the National Report submitted by India.

Simultaneously, there was a switch in the society from static to dynamic phase with the advent of Information and communication technology, which transmits information globally with a single click, threatening privacy, in turn, the democracy of the state. Thirdly, under the Unified Access Service (UAS) license, service providers are required to maintain a subscriber database and to require proof of identity and address when issuing SIMs to individuals. Such blanket subscriber registration for the use of postpaid, prepaid, and public Wi-Fi services collects, stores and retrieves details under blanket surveillance, which in light of national security concerns around the misuse of public Wi-Fi. Although such security measures may contribute to privacy, their protection is only instrumental to the protection of other information, and the quality of such security measures is therefore out of the scope of our considerations.

Objectives and aims:

- Examining the role of the privacy in parlance of development.
- Critically analyzing the privacy as a two edged sword in the development of a country with reference to ICT.
- Reconceptualizing the whole debate of public and private sphere in the globalised context.

Working Bibliography

1. Aristotle. Politics, penguin publication. Translated by T.A Sinclair. 1989.
2. Locke, John. To treatise of government. Azn Shachurchill. England (1689)
3. Locke, John. An essay concerning women understanding. Scholar press. University of Michigan, England 1690.
4. Stuwart Mill, John essays on liberality. Oxford university press. UK.1859.
5. Marx, karl economic and philosophical manuscripts. Progressive publishers. Mascus.
6. Orwell,George 1984 fingerprint classic Secker and waruverg.united kingdom.1949.
7. Orwell,George Animal Form fingerprint classic Secker and waruverg. United kingdom.1949.
8. Nilekani, Nandan Rebooting India: Realizing a Billion Aspirations. Penguin publications.
9. Lyon, David British library catalogue in publication data
- 10 Russel, Bertrand the impact of science and technology

ARTICLE (ONLINE RESOURCES)

1. Foucault, Michael. The subject and power. justor, Chicago. USA. 1982.
2. Rubenfeild, Jed . The right of privacy. Faculty scholarship series. Yale. USA. 1989
3. Waran D Samul& Brandeis,Louis . the right to privacy, harward Law review association. Harward USA. 1890.
4. Debries, Will Thomas. Protecting privacy in digital age. Barkely Technology Law Journal. USA.2003.