
UNIT 1 THE CONCEPT OF PRIVACY

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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 integrity¹. 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 person².

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 an 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 intrusions³. 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 define⁴. 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 discourse⁵. Despite the difficulties to ring fence the concept of privacy, Privacy International⁶ 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 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.

Please answer the following Self Assessment Question.

Self Assessment Question 1

Spend 2 Min.

What does the word ‘privacy’ connote?

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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 technology⁷, 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 groups⁸. 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 life⁹.

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”¹⁰.

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 notion¹¹.

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 law¹².

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 others¹³.

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"¹⁶. 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 others¹⁷.

Please answer the following Self Assessment Question.

Self Assessment Question 2

Spend 3 Min.

How will you define the meaning of privacy?

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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 inefficient¹⁹. 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.²⁰

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 Constitution²². 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 life²³.

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 article²⁴ 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, please refer to Unit 4 of Block 1.

Please answer the following Self Assessment Question.

Self Assessment Question 3

Spend 3 Min.

What are the modern principles of right to privacy?

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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 1889.²⁷

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. 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,"²⁸ 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. A detailed discussion on the international legal framework for protecting privacy has been provided in Unit 3 of Block 1 of this course material.

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 privacy²⁹. A detailed discourse on the national (India) and international legal framework has been provided in Unit 2 and Unit 3, respectively of Block 1 of this course material.

Further, in a number of countries, corporates and industries have established their own self regulating codes, security and privacy patrolling policies protecting data privacy. A detailed discussion on the subject is attempted in Unit 4 of Block 3 of this course material. Unit 4 of Block 2 examines the issues of security policy, standards and procedures to put in place a secured information system. Internet users on their own can employ a range of programs and latest privacy technologies and systems to impart varying degrees of privacy and security to their online communications Unit 3 of Block 4 provides a snapshot of such technology-based systems facilitating the individual users to protect their privacy at their own level.

1.11 PRIVACY – THE HUMAN RIGHTS ANGLE

Privacy is a basic human right which has its foundation in human dignity, personal liberty and freedom. Not only the religious texts, scriptures and cultures espouse for it, even the modern era's international treaties and conventions, many constitutions and domestic statutes have accorded it the place of indefeasible human right. It is protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and regional human rights treaties. Nearly every country in the world includes a right of privacy in its constitution. At a minimum, these provisions include rights of inviolability of the home and secrecy of communications. Most recently written constitutions include specific rights to access and control one's personal information. In many of the countries where privacy is not explicitly recognised in the constitution, the courts have found that right in other provisions. In many countries, international agreements that recognise privacy rights such as the International Covenant on Civil and Political Rights or the European Convention on Human Rights have been adopted into law³⁰.

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 reference to privacy. The formal normative basis for law and policy on data protection and privacy laws across the world can be traced to the human rights and freedoms comprised in these international treaties. This is expressly recognised in many data protection laws themselves³¹. Numerous international human rights treaties have enumerated privacy as a specific right³².

The Universal Declaration of Human Rights (UDHR), 1948 provides for the international benchmark for safeguarding territorial and communications privacy of individuals. Article 12 affirms that “No one shall be subjected to arbitrary interference with his 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”.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR 1966, Article 17) is couched in similar language.

The European Convention on Human Rights (1950), Article 8 ‘Right to respect for private and family life’, states that ‘Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’. The Charter of Fundamental Rights of the European Union (2000) deals with privacy in Articles 7 and 8, and there are many specific European Directives.

Even though the international human rights treaties and conventions touch upon the concept of privacy, their approach is inconsistent and they do not break common ground when it comes to defining ‘privacy’. The scope and meaning of privacy is juxtaposed with a string of other fundamental rights and liberty. It tends to scope out a wide range of possible meanings, and leaves it to the wisdom of ratifying countries (parties) to propose and adopt an interpretation suitable to changing needs and social order.

1.12 THREATS TO PRIVACY IN NEW TECHNOLOGICAL REGIME

In general parlance, the “right to be let alone”, though wide in ambit and import has largely been associated with government’s intrusion in individual’s private sphere without the due process and authority of law. But all that has undergone drastic changes in the new global era of information highway. Less than a quarter of a century ago, the Internet was an obscure network of large computers used only by researchers and scientists. Now, we see it everywhere – within the reach of everyone – corporates, governments and individuals around the world. It has revolutionised the way we deal with static information hitherto confined to paper trapped in manual files. Now, we live in an era of instantaneous and seamless communication and commerce originating from a wide variety of communication devices. The ‘killer application’ that transformed the Internet into a global phenomenon was the World Wide Web. Developed in the late 1980s at the European Center for Nuclear Research (CERN) from research by Tim Berners-Lee, the Web was initially created to share data on nuclear physics. By using hyperlinks and graphical browsing technology, the Web greatly simplifies the process of searching for, accessing, and sharing information on the Internet, making it much more accessible to a non-technical audience³³.

Till recently, this information was held on paper; the sheer volume and a lack of centralization made it hard to collate with the result that it was very difficult for one body or person to use this information effectively. In the Internet age, information is so centralized and so easily accessible that one tap on a button could throw up startling amounts of information about an individual. This enables public authorities to keep a closer watch over the individual. When committed to paper and trapped within the confines of a manual file, the utility of information is markedly limited. Convergence of technology with communication has blurred the boundaries between activities and technologies. Communication has undergone a sea change in last three decades with the new Information and Communication technologies fast outpacing the legal protection afforded to ‘person’s right to be let alone’. Internet is the latest meeting place for individuals and a business hub for corporates and merchandisers for selling and

promoting their products and services. Recent improvements in digital database-storage technologies have changed the ways in which data can be altered, examined, summarized and restructured to produce new or newly tailored information³⁴. Increasingly we see people trading and communicating with the help of computers and the Internet. The ability to communicate and exchange information instantaneously and seamlessly has given rise to privacy concerns i.e., control over information transmitted and stored over the Internet, and the control over who can access that information. Every time we do an online transaction over the internet, or talk over the internet telephony or even update our personal and financial records on the bank's website, we leave behind a string of private information on databases stored on networked servers over the Internet. It is an increasing security concern to protect privacy of data on networked servers connected to the Internet. This leads to a paradoxical situation where the computer and the Internet have accorded privacy and, at the same time, it has allowed eavesdroppers to intrude into our privacy. Therefore, today, 'information superhighway'³⁵ is not really the safest place to be. Despite the best of efforts of the software security professionals to protect privacy of information from unwarranted leaks or unauthorized intruders or inadvertent leaks, privacy is always at risk. Unit 1 of Block 2 of this course material examines the security challenges in cyberspace. It discusses how the practices commonly used on the Internet like, cookies, malware, cyberstalking, phishing, hacking and spamming leads to the violation of privacy. Unit 2 in the same block examines the technological vulnerabilities and their exploitation by hackers.

Please answer the following Self Assessment Question.

Self Assessment Question 4

Spend 3 Min.

What are the major threats to privacy in the new world of information technology?

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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 capability³⁶. 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 right³⁷. 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

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 lose 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. Unit 3 of Block 2 provides a brief treatise on the Indian and USA's legal position dealing with technological vulnerabilities.

The last decade of the 20th century presented profound new challenges for the protection of information privacy, such as the 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.

Let us now summarize the points covered in this unit.

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"³⁸. Brandeis contended 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 invade individual's 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.

1.15 TERMINAL QUESTIONS

1. Concern for privacy has grown in recent times. Discuss the evolution of privacy and the reason for the growing concern.
2. How is privacy related to law and torts?
3. What is the correlation between Right to Privacy and Human rights?
4. Develop a concept of privacy as per your understanding of the issue.

1.16 ANSWERS AND HINTS

Self Assessment Questions

1. 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.
2. Privacy can be defined 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.
3. The four categories of privacy rights having a tortious remedy, as enumerated by Prosser, are:
 - Unreasonable intrusion upon the seclusion or solitude of another
 - Appropriation of a person's name or likeness for advantage of other
 - Public disclosure of embarrassing private facts
 - Publicity placing one in a false light in the public eye
4. Cookies, malware, cyberstalking, phishing, hacking and spamming.

Terminal Questions

1. Refer to section 1.4 of the unit.
2. Refer to section 1.8 of the unit.
3. Refer to section 1.11 of the unit.

1.17 REFERENCES AND SUGGESTED READINGS

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