

JUSTICE V. R. KRISHNA IYER CHAIR ON HUMAN RIGHTS, SCHOOL OF
LEGAL STUDIES, COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY,
KOCHI-22

THREE DAY NATIONAL SEMINAR

ON

CONTOURS OF RIGHT TO PRIVACY: NEW DIMENSIONS AND EMERGING CHALLENGES

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A Conceptual Note on the Seminar:

Privacy is an intrinsic facet of human life which ensures dignified existence for man in this earthy planet possible. Thus it is a concern in everyone's life. It is a multi facet concept compendiously including within its fold many meanings, interpretations and shades. With the passage of time, there has been an entrenched and growing difference in the underlying assumptions and essential orientations on the concept of privacy. Also the legal and jurisprudential discourses as to whether the legal protection of privacy, is subservient to instrumental goals, such as economic rationality or efficiency, or whether it should be directed at promoting the non-instrumental values of human dignity and individual autonomy continues to remain unresolved. The concept of privacy occupies an especially difficult position in Western legal and political discourses. It is often termed as an 'elusive' concept that is difficult to define in any satisfactory manner. As long ago as in 1873, Sir James Stephen concluded that '*to define the province of privacy distinctly is impossible*'. The lack of consensus as to the definition of privacy and the values sought to be protected and promoted within the legal protection of privacy is thus evident. The post-World War II period saw the emergence of welfare state concept and a corresponding increase in the need for efficient information collection and processing for better social planning purposes. Apart from this personal data was required for crime detection, medical and clinical purpose, research and development, state incentives etc. Most of these data were stored and transferred through electronic means especially the computers. Thus automated processing, storing and transfer of data have become a major concern in today's globalised world. This prompted the legal system and its institutional framework especially the judiciary to revisit the conceptual edifice and the practical application of the notions of privacy.

It has been argued that the practical requirements for the operation of modern governments and markets necessarily mean that it is impossible for individuals to assert complete control over their personal information and hence this has ignited the need for a re -evaluation of the content, scope and extent of the concept of right to privacy. On the other side, there are arguments that the increased information available from data processing could provide the means for the development of totalitarian practices by the state, whereby non-conforming individuals would be somehow marginalised, disciplined or 'disappeared'. However the threat of surveillance by the state through the collection and processing of personal data and the non protection of the same leading to abuse of data is being viewed as a threat to human dignity and autonomy. There are also views that privacy may become a utopian idea in the future robot controlled consumer society which we are incapable of even dreaming off today. On the other hand, there exist strong views that non recognition of this facet of human life can lead to devaluing human life as such as it would justify commercial misuse of personal information leading to exploitation of man at all levels. Thus the arguments and counter

arguments raised in the realm of privacy prompts the relevance of a systematic exploration of the contours of this concept in today's world.

Privacy has been recognised as a Constitutional and legal right in most of the legal systems. However there has been consistent assertion by the judiciary in most of the legal systems that it is the basic right of the individuals and is integral part of right to dignity and autonomy. Similar to the American Constitution, there is no explicit declaration of the right to privacy in the Indian Constitution, but the same has been culled out of the Constitution by the judiciary through various decisions. Several aspects of privacy has been discussed and asserted in a variety of factual scenarios ranging from police surveillance, tapping of telephones, sensitive medical information to sexual rights, the use of interrogation techniques like narco-analysis and search and seizure powers of different state agencies to reproductive rights of women and so forth. However recently the Supreme Court of India through its nine judges emphasised unanimously that the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed under Part III of the Constitution.

The right to privacy in India has evolved over a period of 60 years through a series of judicial decisions; however different interpretations have been given to the basis of this right under Constitution. The inconsistency in the two early judgments in the petition challenging the constitutional validity of the Indian biometric identity scheme Aadhaar accentuated a divergence of opinion on whether the right to privacy is a fundamental right or not. The Court was reluctant to define the content of the right to privacy; rather it went on to discuss the various hues and colours of this right and the implications if the right is not validly protected. However the question as to the validity of the mandatory application of Indian biometric identity scheme Aadhaar is yet to be decided by the court. This decision has triggered the discussion on various aspects of privacy which mandates an independent evaluation so as to know the implications of the decision on citizen's life. Legitimacy of any form of governance is derived from ensuring a dignified existence for its citizenry. However very often the omnipotent state tends to overlook this major priority and peeps into private zones of its citizen's life on public interest grounds. Can the state pry into its citizen's life and interfere on their actions based on public interest grounds and if so to what extent? is an area of concern. Government surveillance of citizen's life has been a matter of concerns since decades. Apart from it, contemporary challenges today relates to the security and privacy issues in e governance. The government and service providers collect personal data like mobile phone numbers ,bank details, PAN numbers, addresses, date of birth, health records, ownership of property ,tax details etc without providing any security of data for the same . Thus not only biometric identity (whether Aadhaar is implemented or not), identity information, personal information are at stake in the absence of law to protect it. The accountability of Government in this sense is also needed.

Technology has changed the way we as individuals live. In this internet age, what we read, search, buy, talk , transact etc gets stored, used as well as circulated. Sometimes websites may be free yet the

song , movie , books downloaded would be at the cost of our privacy. Hence virtual privacy is the need of the hour both for adults and children alike. The very same concerns lie at ubiquitous use of CCTV to surveillance using electronic gadgets in private and public spaces.

Privacy questions have always been a moot point of concern criminal investigations and crime detection. The application of modern technology and forensic medicine in criminal investigations and trials has also risen on questions of privacy. It not only include includes an accused privacy but also the suspects.

Similarly, with the emergence of advanced medical technologies, privacy questions have turned out to be troublesome zone. Access to medical information from biological specimens to electronically stored medical data mandates protection and security. Biomedical research including genetic research and protection of data on clinical trials has also raised privacy concerns. Data storage and sharing are an area which needs attention.

The question of recognition of the rights of the LGBT have always centred around the right of privacy hence the relationship of privacy with the right of identity is also an area which mandates an evaluation given the legal landscape in this area. Similarly the question as to one's right to eat whatever one likes, drink and live according to one's wish would necessarily fall as an facet of privacy or not is a question which mandates an in depth inquiry. Whether personal choices governing a way of life can be treated to be part of privacy requires an evaluation. Questions on legality of marital rape, sexual orientation etc in relation to privacy warrants an all around reassessment. Thus the contours of the right to privacy and the growing need for an deliberation in this area is crucial not only in the contemporary context but also might provide answers to questions which our future progeny need to confront.