

Intersection of Social Media and Right to Privacy

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Abstract: As popularity of social media is rising, there has been a constant concern regarding the protection of the privacy. While using various social media platforms, the question triggers in the mind of many that, is their privacy really safeguarded? The social media platforms collect a vast amount of user data which is they further analyse and sell them illegally, which is a clear violation of the right to privacy, our privacy is our personal property which cannot be put on sale, just because we are on internet. It has been rightly said by marlo Brando that "Privacy is not something that I am merely entitled to, its an absolute prerequisite". So this paper tries to study the intersection of social media and right to privacy.

Keywords: privacy, social media, right

1. Introduction

Today we belong to an ultra modern society where no one is untouched by the technological advancements, and one of the product of this technology is social media. Social media are websites and programs, where people interact with various other people across the world and stay in touch. There are various social media platforms such as facebook, twitter, instgram, LinkedIn and many more, where people are connected to each other and share their personal data and information. From a new born baby to an old man, almost everyone's information is available on these social media. According to the report, as of 2021 about 56.8% of the world's population uses social media, with over 4.48 billion users¹. As the usage of social media is growing, there has been a rise of concern regarding right to privacy and risk which involves by the exposure of such personal information on these platforms.

But at the same time, this intersection of social media and the right to privacy has both pros and cons. On one side, it amass a large amount of data of their users such as photos, videos, message, finger-prints, signature, bank account details, address and even their browsing history. This data is further used for various purposes which directly or indirectly influence users life in an undesired way. Also users do not have control over the exploitation of their personal data. On the other side social media has opened a new way to express and connect others. It provides various opportunities for the growth and upliftment of career and lifestyle.

In this context, it becomes crucial to analyse the relationship between social media and the right to privacy. Especially for a country like India, which has the largest social media users, it is important to safeguard the interest of the people and make strict laws.

Right to Privacy and It's Evolution in India

The word privacy has been defined as "right to be let alone, the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted

interference by the public in matters with which the public is not necessarily concerned"- Black's Law Dictionary²

Right to privacy is the protection of one's identity. It recognises the fact that all information about a person is his personal property and he is totally free to disclose or retain it to himself. Right to privacy put restrictions on the government and private actions that have potential to harm the privacy of individuals. Over more than 150 countries have recognised and mentioned the right to privacy in their constitution.

In india right to privacy has been provided as a fundamental right under the article 21 of the constitution. But the recognition of this right has a long history. It has been a significant journey marked by various judgements and debates. The chronology of the timeline is as follow;

In 1950, although the constitution of India was adopted, but there was no space for the right to privacy. First attempt to protect the privacy of an individual against unreasonable state interference under article 20 was in the Constituent Assembly. Mr. Kazi Syed Karimuddin moved an amendment however, the right to privacy did not find it's place in the constitution.

In the *MP sharma vs. Satish Chandra 1954*³, majority decision by an eight judge bench held that the right to privacy is not a fundamental right under the Indian constitution. A similar approach was taken in the case of *kharak Singh vs state of Uttar Pradesh*⁴, therein the 6 judge bench also stated the same thing but the dissenting opinion of justice K. Subba Rao paved the way for the future scope of the right to privacy as a fundamental right.

In *Govind versus state of Madhya Pradesh*⁵, the approach of the court was little different that it had adopted in the *kharak Singh versus state of UP*. Previously the court had negated the acknowledgement of right to privacy as a fundamental right but in *Govind vs state of MP* the court does not specifically considered privacy as a fundamental right but it

²Black's law dictionary, <https://thelawdictionary.org/privacy/> (last visited on Nov, 26,2023)

³1954 AIR 300, 1954 SCR 1077

⁴1963 AIR 1295, 1964 SCR (1) 332

⁵1975 AIR 1378 1975 SCR (3) 946 1975 SCC (2) 148

¹Blacklinko, <https://backlinko.com/social-media-users> (last visited on Nov, 20,2024)

indicated the need of the right to privacy as fundamental right in the constitution.

In the case *Menaka Gandhi versus union of India*⁶, article 21 was interpreted in a wide manner and the court said that article 21 does not mean mere life and personal liberty, it's scope is much wider, It paved way for the inclusion of right to privacy as a fundamental right in the future..

In the 1997 case of *People's Union for Civil Liberties (PUCL) v. Union of India*⁷, the Supreme Court recognized the right to privacy of telephone conversations as an extension of Article 21. This decision affirmed the importance of protecting private communication from unwarranted interference. The court accepted the right to privacy and said that it is necessary to lay down the procedure for the protection of right to privacy unless parliament frames rules related to the procedure.

Finally the question of whether right to privacy should be fundamental right or not was put to an end in the landmark case of *JUSTICE K.S. PUTTASWAMY (RETD.) V. UNION OF INDIA*⁸. The Supreme Court recognized that privacy includes informational privacy of an individual and protection from excessive surveillance by the state or private entities. This judgment also emphasized the need for a robust data protection framework. And after this landmark judgement the right to privacy is protected as an intrinsic part of right to life and personal liberty under article 21 as a part of the freedom guaranteed by the part 3 of the constitution.

Social Media Regulation in India

In India social media platforms are regulated by various laws and guidelines. The primary law which governs the social media is the information technology act of 2000 (IT act) and its amendments. This act was made to deal with the crimes related to electronics. It defines various kinds of cybercrime and their punishments and penalties. Most recent amendment of IT act 2000 is Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules⁹ 2021. It provides a detailed guidelines and rules to regulate both social media and OTT platforms. This act require to social media platforms to follow due diligence while performing their duties. Which includes collecting user data for certain period, maintaining security and adherence to the law. It provides intermediary guidelines for the social media platforms. Section 79 of the IT Act makes the intermediaries not liable for any third party fault, as long as they follow to certain due diligence requirements. It empowers government to block or remove any content from these. Platforms which finds objectionable or against the public order. Additionally, social media. Platforms are expected to have a grievance redressal mechanism in place to address user complaints regarding content. Non-

⁶AIR 1978 SC 597; (1978) 1 SCC 248

⁷AIR 1997 SC 568, (1997) 1 SCC 301

⁸Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

⁹THE HINDU, <https://www.thehindu.com/sci-tech/technology/explained-the-amendments-to-the-it-rules-2021/article66079214.ece> (last visited on Nov, 26,2023)

compliance with these rules can result in the loss of intermediary status and other penalties.

Data protection bill was tabled before parliament of India in 2019 is milestone step towards the protection of privacy. The bill aims to regulate the collection, storage, and processing of personal data, promoting transparency and individual control. This bill requires the organisation to make lawful and fair use of collected personal data of individuals. Also it mandate that storage should be limited to a fixed duration only. The liability is on the organisation or the person who decides the purpose and means of the processing of personal data for non adherence to the rules and regulation and for any malfunction. But the fact is that this bill has not been passed by the parliament yet.

How Social Media Violates the Right to Privacy?

The issue of privacy in regards to social media is not new to anyone. Everyone experience this unwanted interference in their life. As soon as a person makes his account or login into the social media platforms, they provide the various access to their database such as gallery, contacts, browsing history, also the access of other apps and devices. Knowingly or unknowingly users grants the permission to these platforms and loses control over their own data and information. The social media platforms violates and hamper the right to privacy of individual in following ways --

1) Data collection

While using the social media platforms users data which include personal information such as location, profile, likes and dislikes, preference, biometrics, bank details, messages, and even browsing history are being collected without any explicit content by these platforms. These data are often misused for targeted or personalised advisement.

2) Privacy settings

Many users are not aware about the privacy settings of different apps and websites so they often. Grant permission to their personal information unintentionally. This way they lose control over their personal data.

3) Third party app.

Some social media platforms share the personal data of the users with the third party app or they make collaboration with third party app by which the users unknowingly grant permission and loses control over their privacy. For example of when we search for a item on a shopping app or browse something, then we often see the advertisement of the same on another apps. This happens because our data is being transferred from one media platform to another. Also the user data is sold for revenue generation by these social media platforms.

4) Psychological manipulation

Social media platforms psychologically manipulate its user. The algorithm analysis the behaviour of individual and control over his choices, opinions and decisions of life. The targeted or personalised advisements and feeds affect the mental health of its users. It distracts the user from the reality by false information, which often causes conflict and violence in the society.

5) Hacking and cybercrime

Social media platform are often hacked and the amassed user information is then used for blackmailing, frauds, terrorist and other illigal activities.

2. Conclusion

It is clear that our privacy is at stake. Despite having the right to privacy as a fundamental right, the social media platforms continues to violate it through various unauthorised way. The protection of privacy is the main issue of this digital era. Users themselves have a responsibility to ensure that privacy rights are safeguarded. They should also be more careful while granting consent to any social media platforms. They should not overshare everything online. Also the user should be aware of the recent trends of cybercrime and its laws. The technological advancements are a blessing and curse at the same time. Striking a balance between the benefits of social media and the right to privacy is essential to create a safer and more secure digital environment for all.