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A DEEP DIVE INTO PRIVACY, DATA PROTECTION, AND THE RIGHT TO FREE SPEECH

AUTHORED BY - UMA K SHINDE

Abstract

With the shift towards a digital age there is an increasing recognition of the importance of a cohort of old and new rights. Privacy, data protection, and freedom of speech have always been fundamental rights, possibly already recognized by the ancients. However, they have undergone an enormous evolution, accelerated by the rapid development of technology, especially the digital one. This wave of digitalization has rapidly changed and, in some cases, totally reshaped these conventional rights and made legal reforms to tackle them, old and new issues, necessary. In light of the peculiarities of new technologies, the shift of individual data to a global network, and the continuous development of digital tools, these rights appear now to be more important than ever. The genie is definitely out of the bottle, but innovative solutions are required in order to steer this new age of constant data generation, knowledge sharing, and big data analytics so as to safeguard these fundamental rights and values. Yet, we claim that this aim cannot be effectively achieved without revising and re-evaluating the traditional conceptual and normative frameworks underlying these rights.

Keywords: Privacy, Freedom of Speech, Technology, Data Protection

Introduction

The exploration of the implications of the right to privacy in the digital age necessitates a thorough examination of how privacy intersects with autonomy, legal frameworks, and technological advancements. The literature on this subject has evolved significantly over the years, reflecting the complexities introduced by the digital landscape. In their 2019 article, Vold and Whittlestone articulate the historical context of the right to privacy, linking it to personal autonomy and the need for individuals to have control over their personal information They draw on foundational theories from Warren and Brandeis (1890) and Westin (1967), emphasizing that privacy is not merely a protective measure but a vital component of autonomous decision-making. The authors argue that as technology progresses, the manipulation of personal data has intensified, thereby reinforcing the need to prioritize the

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connection between privacy and autonomy. This assertion highlights a critical gap in contemporary policy discussions, suggesting that the evolving digital environment warrants renewed attention to the foundational principles of privacy.

2. Historical Development of Rights

Historically and legally, rights to privacy, data protection, and freedom of speech have developed as solutions to tackle societal norms and daily challenges prevalent at different moments in time. To discern the advantages and challenges that current citizens encounter online with regard to privacy, data protection, and freedom of speech, it is essential to be informed about the origins and historical development of these three rights. Only then can we comprehend the social and legal logic motivating contemporary debates. This Article follows the historical development of rights to privacy, data protection, and freedom of speech. Privacy is like a moving target: the right to be let alone and the possible control over personal data have existed from time immemorial in societal confrontations with new information technology. It is just that the right to privacy is more strived for at one moment or another. Accordingly, legal systems protect privacy in various forms while paying attention to the absorption of new technologies or social norms. Later, alongside the technological revolution and novel norms, there is nothing to keep the right to privacy from fading or being protected. Variables can, after all, affect the enthusiasm for privacy protection, be it economic, political, or cultural in nature.

2.1. Evolution of Data Protection

From a legal protection perspective, the idea that data needs its guardians is relatively new. In the second half of the last century, the growing number of countries started passing data protection laws as the state dictatorial regime was cut and more personal data was exchanged among private sector companies. Movement at the international level was aimed at the consolidation of statistical protection rules. However, currently, there is an increasing debate regarding the required revision of this set of principles to account for the different realities that apply in a digital world, in which the existing boundaries between online and offline are becoming less defined.

Now, personal data is considered a valuable asset that should be kept safe. Policymakers, digital rights advocates, and international organizations have agreed that this valuable asset should be preserved by recovering trust. This concern is what has forestalled regulations and international agreements. There are several legal provisions that were drafted with the sole purpose of

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protecting the fundamental right to privacy. Among these regulations is a provision from 1988. In Europe, the protection of personal data prompted the revision of the provisions laid out in a convention from 1950. A convention from 1989 extends a sort of legal shield to information constituting children's privacy. A convention from 1990 enshrined privacy in decision-making with legal consequences, making it necessary that this decision be made openly and with public accountability. The availability of this instrument increased the awareness of the need to spread the transparency principle not just in the public but also in the private domain. Today, the privacy right is officially enshrined in a declaration of human rights, which stipulates that the privacy of an individual's communication should not be violated. Another convention also grants individuals the right to be protected against arbitrary or unlawful interferences with their privacy.

3. Challenges in the Digital Age

The challenge for rights in the digital era has never been more pressing. One of the key issues in need of urgent attention is the sheer scale of big data that is now available about us as individuals. The technology that makes massive surveillance possible poses a threat to privacy that is of the same magnitude, threatening the very pillars of free democratic societies. Another dimension of the digital age lies in the IT applications that are central to the operation of organizations. These technologies provide valuable support to businesses, but also increasingly facilitate and depend on digital communications that, when hacked, exposed, or abused in other ways, can have a severe reputational and financial impact. Cybersecurity threats are not just a risk for personal privacy; at an organizational level, they can seriously endanger business operations of big and small organizations alike. At the social level, too, the risks in the digital space are serious. Especially the cold-blooded use of social media by certain terrorist organizations raises ethical and legal questions about the balance between the value of free speech and the harmful consequences of hateful online messages. The challenge becomes particularly severe when we notice that modern digital means of communication subvert information intermediaries. Although quite inefficient, intermediaries filter news and information that are passed on from sources to news aggregators, publishers, and stock brokers, all the way to generalist news-producing journalists. They have legitimate and important roles as guardians of truth, but often fail to deliver, leading to silos or echo chambers that inhibit plural usages of information. But in the realm of social networks, this fails. Platforms such as Facebook show news items but are essentially run away from intermediaries. Balancing the importance of free speech against the harm that is done through hate speech and fake news

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delivered via digital means is not simple. Moreover, part of the answer lies in societal responses: is it up to governments or to the tech companies that maintain the digital interface to decide where user rights end and the broader societal interests should prevail? Internet exceptionalism, the doctrine that suggests we ultimately argue in terms of user rights, seems inappropriate in view of the risks that have occurred in recent years. However, readers need to further explore each of these issues from legal and ethical research in order to construct an informed perspective on what our response should be.

3.1. Big Data and Privacy Concerns

Interconnecting the concepts of privacy and digital technologies has encountered frequent references to the rise and implications of big data. The analysis of vast data sets of both personal and non-personal information fuels digital privacy concerns. Information about individuals is collected when they use digital platforms or apps, digital services, when they are exposed to sensors or tags, and surveillance technologies. It is recorded in relation to their vital signs and biometrics when they are wearing digital wearables and in relation to their genetic makeup in digital health. Equally, consumers and users share personal data in relation to their buying habits and preferences, online and offline, in loyalty cards and with e-commerce giants. Very few individuals can claim not to enter personal data into a search engine, not to use GPS mapping services, or not to have mentioned family life or included personal photographs in relation to a social network website. This practice of smart companies offering leisure, shopping, and entertainment or providing products and services in the digital era is extensively documented. Digital practices involving the collection of personal data and the use of personal devices for measures are also increasingly part of the story of governments and public authorities.

As such, digital capabilities become endemic in just about every aspect and industry, talk of getting informed consent starts to seem rather hollow. Users and consumers are often unaware even that their data is being collected, and every industry is busy reducing the cost of understanding and measuring privacy practices. The truth is that big data has meant big revenues for many types of new and innovative cash-rich market sectors such as social networks and digital news outlets. If there is so much money in it for them, it makes you wonder just how valuable the wealth of skills over our activities, thoughts, and actions – information that big data hoovers up is.

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3.2. Social Media and Freedom of Speech

Social media networks are commonly seen as the new public sphere, occupying a central role in facilitating public debate on a broad range of topics. Indeed, they represent a unique venue for socializing, researching, and news gathering, where netizens can share opinions, information, and experiences. As a result of the growing presence in the public realm, online platforms are bound to assure free speech in respect of prominent human rights, such as the right to privacy and the right to data protection. Yet the moderation of the content disseminated online, in particular on social media platforms, represents a demanding task whereby the right of free expression may conflict with other individuals' rights, leading to ethical and legal dilemmas.

The exercise of content moderation by social media platforms recently fueled intense debates and controversies on a pervasive scale. In the context of the 2020 US presidential elections, for instance, social media platforms have confronted cases of misinformation and hate speech, sparking tensions with the political powers and affecting users' free speech rights. The rejection of controversial tweets by a former president constitutes an emblematic example of the tensions between the protection of the freedom of speech of the users and the rules of conduct of the platforms. Despite the legal framework of speech that delineates the extreme boundaries for content moderation, different countries adopt balanced approaches aimed at the protection of privacy and the freedom of speech and expression.

4. Legal Frameworks and Regulations

Critical Perspective on Existing Approaches of Law and Regulation: The legal dimension of the described rights offers a very important protection ground, raising numerous issues that are subject to continuous major debates related to mainly adapting regulations to the fast evolution of ICTs. These debates involve defining and characterizing the object of the protection provided in the digital era, the groups of persons who benefit directly from this protection, and the groups of subjects and behaviors that can be protected.

The legal perspective on privacy, data protection, and freedom of speech in ICTs is affected by the gap between the different initiatives made by various countries to regulate these rights at the national level, with more or less unitary regulations, and the efforts to create supranational and holistic regulations, potentially capable of providing a harmonized and effective protection. A holistic approach to regulating ICTs is an ambitious task, especially due to the complexity

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of the matters of interest and the fact that it relies on a series of different and rapid changes that have affected society, generating an impressive development and transformation of person-relevant technologies.

Regardless of the need and the success of any regulation concerning ICTs, some questions arise related to relevance and performance issues that can be debated from a legal perspective. The first relevance issue concerns the evolution of legal provisions and regulations. Therefore, to what extent have existing legal provisions concerning personal data and privacy protection, as well as free speech in ICTs, been concerned with keeping pace with the speed of the changes and societal demand? Subsequently, could existing laws, regulations, and enforcement mechanisms be perceived as valid and respected worldwide, taking into account that they have been created based on a balanced assessment of the benefits and constraints, reflecting diverse cultural perspectives, at least to some extent? The second relevance regards entirely new legal protections, such as the right to be forgotten, whose desirability and compatibility have been questioned. Compliance issues shall also be considered in relation to both individuals and organizations, regardless of the law and jurisdictions where they apply. Compliance refers to ensuring that organizations conform with minimal levels to a set of rules or laws referring to privacy and data protection. Moreover, the law often functions as a measuring stick against which the performance of privacy-enhancing initiatives should be judged. Not answering the question of what standards organizations, governments, and individuals should comply with can negatively affect, for instance, the implementation of ethical codes or technical and organizational measures for ensuring adequate privacy and data protection throughout digital processing technology.

4.1. International Standards

To ensure that human rights are protected in the digital age, various treaties, conventions, and declarations have been adopted by international and regional organizations and domestic states. The most comprehensive treaty is the International Covenant on Civil and Political Rights, which obliges states to establish domestic laws that uphold human rights in the digital world. The European Union and the Council of Europe have also developed an extensive regional framework for digital human rights in their respective jurisdictions. Moreover, various initiatives have been taken to uphold human rights in other international arenas by establishing alliances for digital governance. Various international and regional organizations also assist domestic states in identifying best practices to uphold human rights in their respective

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jurisdictions. For example, organizations in the western hemisphere and on the African continent have developed relevant e-commerce agreements to facilitate trade in their respective regions by, among other things, upholding human rights in the digital environment.

Even though comprehensive frameworks already exist, achieving uniform protection of digital rights remains problematic. Different countries are at different levels of digital development, and they have different histories, cultures, economies, and levels of technological infrastructure. Harmonizing domestic law with international standards may alter these existing differences. Thus, genuine international cooperation, rather than punitive measures, is essential to address issues in the digital environment, such as threats to freedom of expression in the online public sphere, from infringing physical boundaries. The concept of sovereignty is conventionally associated with international law. In addition to respecting physical boundaries, it generally obliges states to uphold human rights in the digital environment, such as data protection and the right to be forgotten.

4.2. EU General Data Protection Regulation

The GDPR was adopted by the European Union in April 2016 and developed over the years to 'harmonize data privacy laws across Europe, to protect and empower all EU citizens' data privacy and to reshape the way organizations across the region approach data privacy.' It replaces a data protection directive from 1995 that did not include the term 'privacy rights' in its title and did not receive deep attention in the media and scholarly literature until 2012, when a reform package was published leading to the GDPR approximately 40 years after the OECD Guidelines. More recently, in September 2021, a proposed reform of the GDPR was issued, aiming to address technological advancements and results of the GDPR implementation, including concerns with the Directive on Privacy and Electronic Communications, as its protections should apply across various data processing services.

4.3. US Privacy Laws

The global reading of the United States is that it has lacked a comprehensive federal-level data protection law. The U.S. privacy landscape is often described as fragmented, layered, and complex, characterized by states crafting their own distinct privacy laws. Some features of possible future U.S. federal privacy law or laws seem to be emerging today at the state level. California has been identified as a trendsetter when it comes to privacy rules, and the California Consumer Privacy Act has been seen as a key part of the 'patchwork' of American regulations.

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5. Conclusion

People have rights, and technology is deeply altering the meaning of the adjectives of liberty and security that are linked to each individual and which pertain to both the time of a person's life and which are perpetual, in the sense that they may correspond to guarantees of protection of the historical heritage of a people. This means that the evolution of guarantees must also evolve, as opposed to what we see to be the widespread practice in our country, in order to reconstruct, thanks to the legal practice of the law and in law and by law, the development of a different and compatible society that is interested in digital conflicts between fundamental principles, new orders, and the needs for ones own human existence. the protection of personal data and privacy, an increasingly necessary freedom of speech, can also be carried into future digital responses that, however, are stable but take into account all the possible scenarios and future developments in technological engineering. Even critical interactions between private rights and the rights of the community, especially with regard to freedom of movement against abuse, must take place using frangible and temporally dynamic paradigms.