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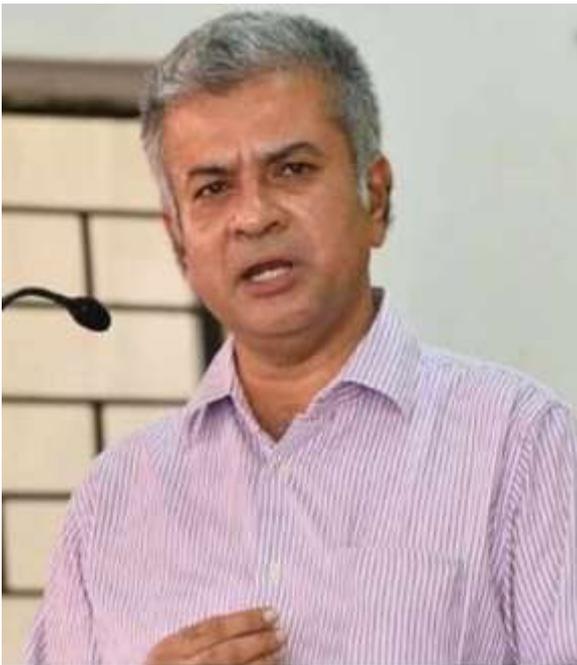
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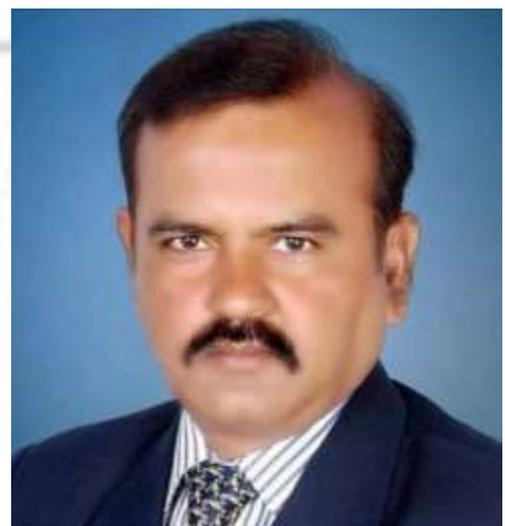


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More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PRIVACY AND MORAL RIGHT OF AUTHOR: **AN APPREHENDED REPERCUSSION**

AUTHORED BY - SHREYA SINGH PARIHAR

Designation: Assistant Professor law

Institute: Amity Law School, Amity University Gwalior.

ABSTRACT

“The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign”.

John Stuart Mill

The right to privacy is undoubtedly intricate part of human life underlying the fact that castle protection cannot entitle any person whatsoever to evade the other concise. However, with the technological advancement the solitude comes at the cost of mental distress and pain. Right to let alone go hand in hand with the intellectual property as well. Intellectual Property despite having been set loose in the world - and having, inevitably, been created out of an individual's relationship with the world - that information retains some connection with its author that allows that person some control over how it is replicated and used. In other words, the claim that lies beneath the notion of intellectual property is similar or identical to the one that underpins notions of privacy. Which replicate the idea the two are inseparable, because they are fundamentally aspects of the same issue. This paper is an attempt to analyse the facets and effect of right to privacy on the moral right of the artist. It gives due emphasis to the fact that since the moral right are more the reflection of personality of the artists which he secure even after its transfer to some other persons. So, do the provision of privacy as the fundamental right will lead to need of much more stringent for the purpose securing moral right. It answers these questions with the help of various stated International Instruments and comparative study of studied legislation.

Keywords: Privacy, Intellectual Property, Technological Advancement, Moral Right.

INTRODUCTION

The desire for privacy is a fundamental aspect of human nature. At its core, privacy is closely linked to the concepts of personal dignity and individual integrity. Yet, defining privacy with universal clarity is challenging, as its meaning shifts across various contexts. It can refer to the freedom of thought and conscience, the ability to be alone, bodily autonomy, the protection of one's reputation, the right to maintain a family life, or the freedom to define one's own sexuality. These interpretations vary depending on societal, cultural, and technological settings.

In today's world, privacy is understood in two main dimensions: first, the protection of personal identity; and second, the control over how personal data and information are collected, used, and shared. Concerns about the erosion of privacy are not unique to the digital era; they have been present for over a century. In fact, the landmark 1890 article by Warren and Brandeis, titled "*The Right to Privacy*", emerged at a time when newspapers began publishing individuals' photographs. They famously described privacy as "the right to be left alone," emphasizing the protection of the "inviolable personality" and upholding values such as dignity, autonomy, and independence.

Technological advancements have continually reshaped the boundaries of privacy. The rise of genetic profiling, social media platforms, smartphones, surveillance systems, cybersecurity programs, targeted advertising, Big Data, wearable tech, and search engines has fueled ongoing debates over privacy rights. While technology can offer solitude and connectivity, it often brings with it psychological distress and emotional discomfort.¹

In the realm of intellectual property, although ideas and creations enter the public domain, they remain inherently tied to their creator. This connection gives the author a measure of control over how their work is used or reproduced. As technology continues to evolve, society increasingly questions whether traditional moral rights remain valid and applicable in the digital age. These rights, once considered vital, are now often seen as barriers to innovation or economic progress.²

Moral rights represent an extension of the author's personality, serving not just to protect

¹ Bloustein, E. (1964) Privacy as an aspect of human dignity: an answer to Dean Prosser 39 NYU L Rev 962.

² Samuel D. Warren and Louis D. Brandeis: "The Right to Privacy" Harv. L. R., vol. 4 (1890), pp. 193 ff.

individual creators, but also to preserve cultural heritage, as noted by Nocella (2008). Nonetheless, in the contemporary digital and cultural economy, these rights are frequently challenged by high-tech and cultural industries that act as both creators and users of intellectual content. Consequently, the debate surrounding moral rights has extended beyond the cultural sphere into economic considerations.³

The real challenge now lies in finding a fair and sustainable balance between protecting the moral rights of authors and preserving individual privacy, especially in a world increasingly driven by technology, data, and rapid innovation.⁴

CONCEPT OF MORAL RIGHTS

In many nations of the world, the law has long recognized interests of authors and artist in their work that are separate from copyright and that can be retained by an author or artist even after he has transferred his copyright to another person or persons and in the case of visual arts, such as painting or sculpture) has also parted with the physical work of art itself. Principal among these legally recognized interests are four distinct rights that are commonly referred to collectively as authors and artists " moral rights": the right of integrity, under which the artist can prevent alterations in his work; the right of attribution or paternity, under which the artist can insist that his work be distributed or displayed only if his name is connected with it; the right of disclosure, under which the artist can refuse to expose his work to the public before he feel it is satisfactory; and the right of retraction or withdrawal, under which the artist can withdraw his work even after it has left his hands. Most countries that recognize these rights make them, to a greater or lesser degree, inalienable⁵.

THE EMERGENCE OF MORAL RIGHTS

Moral rights gained widespread international acceptance during the 1920's to the extent that sufficient support existed to add them to the minimum rights of Berne at the Rome revision conference in 1928.

³ Jeroen van den Hoven Martijn Blaauw, Wolter Pieters and Martijn Warnier *Nov 20, 2014* Privacy and Information Technology: Stanford Encyclopedia of Philosophy, online manuscript

⁴ Ying Zhou, Moral Rights in the Information Society, Beijing Law Review, Vol.5 No.2(2014), Article ID:47124,7 pages

⁵ Henry Hansmann; marina Santali- authors and artist moral rights: a comparative legal and economic analysis the journal of legal studies; vol.26 no.1 (Jan, 1997) pp. 95-143.

In terms of international regulation, Art.6 bis of the Berne Convention provides:

- (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.
- (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.
- (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed" (The Berne Convention, Art.6 bis, 1886).

There are independent rights deriving from moral rights, including rights to claim authorship, to object to certain modifications and other derogatory actions which will be prejudicial to an author's honor or reputation⁶.

PHILOSOPHICAL VIEWS ON PRIVACY AND MORAL RIGHTS

Kantian Ethics

Kant does not explicitly discuss the concept of privacy or the private sphere. However, his philosophy emphasizes that a truly free individual is governed by their own reason, rather than being subject to the will of another. This self-governance defines autonomy in Kantian terms. For Kant, autonomy is essential for moral action, as moral responsibility requires that one's choices stem from rational self-direction. Furthermore, Kant holds that individual freedom is the only justifiable foundation upon which the state may exercise power over its citizens.

As explained by Robert Johnson, Kant's *categorical imperative* draws its moral authority from the fact that it originates from each person's own rational will. In other words, it carries weight because the individual, through reason, is both the author and enforcer of moral law. According

⁶ Ying Zhou, Moral Rights in the Information Society, Beijing Law Review, Vol.5 No.2(2014), Article ID:47124,7 pages.

to Kant, true freedom means that a person's will must be free from both external physical coercion and internal psychological manipulation.

Autonomy, therefore, lies at the heart of Kantian ethics. Scholars such as Finn and others argue that this concept is also crucial in discussions surrounding privacy. They suggest that privacy plays a vital role in allowing individuals to choose how to act and express themselves—whether in public, semi-public, or private settings—without being subjected to undue pressure or control. Thus, privacy is not just a matter of keeping information hidden, but a necessary condition for individuals to exercise autonomy and moral agency.

Millian ethics

Looking at John Stuart Mill's work, the most relevant lead seems to be the principle that "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection, "and "That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."⁷ Let me focus on Mill's claim that "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their

Number, is self---protection." For those actions of each that do not concern the interest of other people, it thus seems, Mill wants to protect a sphere which we could call private. In this sphere, the individual is free to do what he wants. In principle, this concerns multiple aspects of privacy. To prevent understanding Mill wrongly, we have to remember that Mill is not libertarian. There are many cases in which he thinks liberty can be restricted, some to prevent harm but also some to provide benefits to others.⁸

Kohler Ethics

Kohler, whose foundational work on the "rights of personality" dates back to around 1880, supported—like Gierke—the idea of a broad, overarching "general right of personality." This right, he argued, guarantees every individual the ability to be acknowledged and respected as

⁷ John Stuart Mill, "On Liberty," in John Stuart Mill, *On Liberty and other essays* (Oxford: Oxford University Press, 1991), 14.

⁸ John Stuart Mill, "On Liberty," in John Stuart Mill, *On Liberty and other essays* (Oxford: Oxford University Press, 1991), 14.

a person. From this general principle stem several specific, more narrowly defined rights, including the right to personal intimacy, the right to one's name, and the right to control the use of one's likeness.

In his seminal 1907 treatise on literary copyright, Kohler elaborates on what he terms the "right of secrecy." This right serves to protect individuals from the unauthorized publication of private letters—even when those letters lack the originality required for traditional copyright protection. Additionally, this right extends to safeguarding personal details from being exposed, particularly when real individuals are used as identifiable characters in fictional works. The scope of the right of secrecy also includes the protection of a person's name and physical likeness from unauthorized use or public disclosure.⁹

IMPACT OF PRIVACY AS FUNDAMENTAL RIGHT ON MORAL RIGHT OF AUTHORS

The notion of informational privacy is deeply rooted in philosophical thought, with Immanuel Kant recognizing it as an essential human right. According to Kantian principles, this form of privacy enables individuals to shape their own lives in alignment with rational and universal moral standards. It safeguards their ability to fully realize their unique personalities and capabilities by shielding them from external societal pressures, expectations, and potential ridicule or criticism. Informational privacy also serves as a foundation for building and maintaining interpersonal relationships, allowing individuals to share personal details with others to varying extents, depending on the depth of the relationship. Importantly, it encompasses the control over the dissemination of truthful information and images related to an individual, especially in situations involving potential harm or exploitation. The concept of informational privacy was first formally recognized and elaborated upon in the landmark case **of Whalen v. Roe**¹⁰

"The cases sometimes characterized as protecting 'privacy' have in fact involved at least two different kinds of interests. One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions. The interest in avoiding disclosure is now commonly called informational privacy, or the confidentiality branch of the right to privacy. The interest in making certain important

⁹ Kohler, *Urheberrecht an Schriftwerken und Verlagsrecht*, 1907, p. 443.

¹⁰ *Whalen v. Roe* 429 US 589 (1977).

decisions is better known as decisional privacy, or the autonomy branch. Moreover, the significance of Informational Privacy was rightly deduced by Daniel J. Solove & Paul M. Schwartz¹¹, *Information Privacy Law* (3rd ed. 2009)

“The constitutional right to information privacy serves a profound function in today’s Information Age. The government has vast powers to gather personal information and maintains extensive dossiers of people’s data, and this information can be very sensitive, critical to people’s reputations and well-being, and the leaking of it can result in serious harm. I doubt we can go back to the early days of government where not much personal data was collected. But if the government is going to keep our data, it should have a responsibility to avoid unwarranted disclosures and to keep it secure. The constitutional right to information privacy is a sensible extension of the right to privacy”.

The manner in which Informational privacy will secure the moral rights of authors¹²:

1. In a distributed information environment, informational privacy will act as authoritativeness of information sources. It is precisely through the strengthening of the moral rights regime in order to assist the public in identifying reliable and relevant information for their needs that progress in the sciences and useful arts can be assured.
2. Through the informational privacy moral rights will be best understood as the implementation of information policy designed to further the interests of society in an expanding supply of reliable, available information.
3. In the rapidly evolving society after the industrial and print revolutions, other indications of the authority of information had to be established to minimize reliance upon misinformation, thus ensuring that the new wide information dissemination pushed forward the progress of societies. The lag in development of the moral rights regime behind copyright can be explained by the fact that, until the end of the nineteenth century, there were various other mechanisms in existence in society which served to largely fulfill the need for authority in information selection: a combination of the effects of the emergence of copyrights in combination with authority controls exercised by the new industrial elites. The traditional print publishing industries had, in most jurisdictions, created an imprimatur of quality through the identities of the major publishing houses.

¹¹ Solove & Paul M. Schwartz¹¹, *Information Privacy Law* (3rd ed. 2009)

¹² Simone Fischer-Hübner, Chris Hoofnagle, Ioannis Krontiris, Kai Rannenberg, and Michael Waidner, *Online Privacy: Towards Informational Self-Determination on the Internet*, March 15, 2018, 22:19, http://drops.dagstuhl.de/opus/volltexte/2011/3205/pdf/dagman_v001_i001_p001_11061.pdf

1. Privacy as the fundamental Right will define the autonomy of the author:

Right to privacy as the fundamental right has developed to shield various private aspects of a person's life from interference by the state - such as conscience, education, personal information, communications and conversations, sexuality, marriage, procreation, contraception, individual beliefs, thoughts and emotions, political and other social groups. As rightly pointed through various pronouncements.

Case: 1

National Coalition for Gay and Lesbian Equality v Minister of Justice¹³. "Autonomy must mean far more than the right to occupy an envelope of space in which a socially detached individual can act freely from interference by the state. What is crucial is the nature of the activity, not its site. While recognising the unique worth of each person, the Constitution does not presuppose that a holder of right is as an isolated, lonely and abstract figure possessing a disembodied and socially disconnected self. It acknowledges that people live in their bodies, their communities, their cultures, their places and their times. ...It is not for the state to choose or to arrange the choice of partner, but for the partners to choose themselves."

This broad approach is also present in the recent cases of European jurisprudence.

Case:2

S and Marper v United Kingdom¹⁴the ECHR held, with respect to right to respect for private life, that :

"The concept of "private life"... covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8".

Case: 03

Varec SA v. État belge, Case C-450/06, [2008] ECR I-581,¹⁵where it was observed that that:

"The right to respect for private life, enshrined in Article 8 of the ECHR, which flows from the common constitutional traditions of the Member States.... is restated in Article 7 of the Charter of fundamental rights of the European Union". name, his or her private and family

¹³ **National Coalition for Gay and Lesbian Equality v Minister of Justice** 1999 (1) SA 6 (CC)

¹⁴ **S and Marper v United Kingdom** 2008 [ECHR 1581](#);

¹⁵ **Varec SA v. État belge, Case C-450/06, [2008] ECR I-581**,

life may include other means of personal identification and of linking to a family... Information about the person's health is an important element of private life... The Court furthermore considers that an individual's ethnic identity must be regarded as another such element... *The concept of private life moreover includes elements relating to a person's right to their image*"

CONCLUSION

The advancement of modern surveillance technologies and data collection tools has significantly enhanced the capacity of governments and institutions to penetrate private spheres that individuals generally consider personal and inviolable. These sophisticated mechanisms now allow the state to access aspects of personal life that were previously shielded from public scrutiny. As a result, individuals find themselves in a precarious position where the confidentiality of their personal information or creative expressions is constantly at risk of unwarranted disclosure.

However, individuals possess the inherent right to exercise control over their intellectual creations and private data. This includes the autonomy to define the scope, timing, and method of disclosure of their work. They have the moral authority to decide whether, when, and under what circumstances their creative or intellectual output should be made public. Such autonomy is not merely a matter of property but a deeply personal right linked to individual identity, dignity, and moral agency.

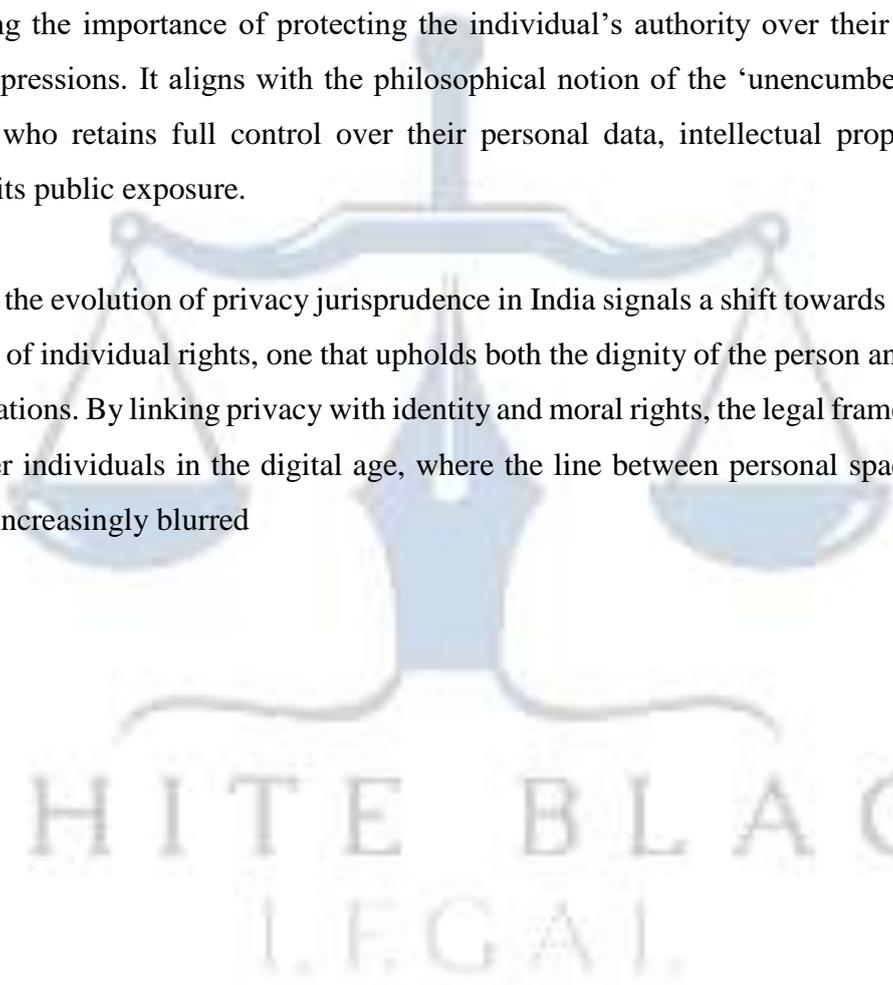
Despite this, the real-world protection of such rights often proves inadequate. The creative labor of individuals is frequently subjected to exploitation under the guise of public accessibility or commercial redistribution. The creative outputs, though legally attributed to their original authors, are often manipulated or commodified in ways that disproportionately benefit a growing class of investor-collectors or digital platforms. These entities enjoy the fruits of increased market value, while the actual creators receive only a fraction of the economic rewards. This imbalance highlights a stark inequity in the distribution of benefits and points to the broader challenges in the enforcement of moral and intellectual rights in a market-driven ecosystem.

In recognition of these concerns, the government has made periodic attempts to reconcile the

tension between public interest and individual rights. One of the most significant steps in this direction has been the formal and emphatic recognition of the Right to Privacy as a fundamental right under the Indian Constitution. This landmark development acknowledges that privacy is not merely a legal construct but a core element of human dignity and freedom.

The judicial pronouncements affirming the Right to Privacy have underscored its intrinsic connection to personal identity, autonomy, and self-determination. These rulings have laid the foundation for reinforcing moral rights, especially those of authors and creators, by emphasizing the importance of protecting the individual's authority over their personal and creative expressions. It aligns with the philosophical notion of the 'unencumbered self'—an individual who retains full control over their personal data, intellectual property, and the context of its public exposure.

In essence, the evolution of privacy jurisprudence in India signals a shift towards a more robust framework of individual rights, one that upholds both the dignity of the person and the sanctity of their creations. By linking privacy with identity and moral rights, the legal framework aspires to empower individuals in the digital age, where the line between personal space and public domain is increasingly blurred



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