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The Meaning of Privacy in the Digital Era

Jackson Adams, University of Essex, UK*
https://orcid.org/0000-0002-4569-7011

Hala Almahmoud, Al Yamamah University, Saudi Arabia
https://orcid.org/0000-0003-3005-1039

ABSTRACT

The key research objective of the current study is to answer the following research question: Why is 'privacy' a contested concept that is hard to define? In doing so, the study will raise awareness of the contemporary meaning of 'privacy' in relation to cyber activities and to draw attention to the need for developing the right to cyber privacy and its legal protection. Hence, the current study has embarked on analysing the meaning of privacy in general, and the meaning of cyber or online privacy in particular. As a result, privacy has been found to be a perennially contestable concept, and this is exacerbated by the ever more rapidly developing digital world and also by the diverse perceptions which vary across societies, cultures, and generations. This has created a big challenge for regulators and legislators to define a specific privacy right that can be accorded with a legal protection against violations across national and international jurisdictions. However, the right to privacy has been found to be vague and open to multiple, competing interpretations.

KEYWORDS

Cyberspace, Data Control, Human Rights, Privacy

INTRODUCTION

The current study elaborates on the shift in the conceptualisation of 'privacy' across time from the concrete private domain to the abstract complex and diversified concept of the 'right to privacy' that needs to be protected against malpractices and violations. Now, the right to privacy has incorporated the individual's right to control own personal information although this has become quite challenging in the era of digital platforms. Accordingly, the objective of the current study is to clarify and review why there is no universal agreement about the contents of the right to privacy, and how this issue was problematic for regulating bodies. This is a very contested issue that has been aggravated by advancements in the digital technology, such as: the Internet, cloud computing, digital platforms, metaverse, etc. For instance, privacy on the Internet has been often violated as firms have illegally collected, stored and manipulated or misused customers' information without due permission (Lambrecht et al., 2014) despite the fact that the European Parliament and Council have adopted the Directive 2009/136/EC – which advocates the 'informed consent' standard (Article 29/WP 188, 2011). Hence, the EU has attempted to strengthen its laws and regulations by introducing the General Data Protection Regulation (GDPR) in 2018 regarding the data industry. With the use of cloud servers, the challenge to privacy has become stronger in the time of Covid-19 pandemic where COVID-19 Electric Medical Records (CEMRs) needed to be managed and shared across the world using cloud

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servers. Here, the privacy of patients needed to be protected against malicious users who were trying to tamper with those records – so, technological (*see* Tan et al., 2021) as well as regulative (*see* Shachar et al., 2020) solutions have been sought to deal with this privacy problem. Again, more recently, Metaverse has become a challenge for privacy scholars as it combines both physical and virtual worlds, showing no boundaries between digital privacy and physical privacy (*see* Sebastian, 2022). Its applications have reached social media, education (Jeon & Jung, 2021), and smart cities (Wang et al., 2022) and modern forms of entertainment.

Regulation wise, privacy was a contagious issue across world states ranging from no appetite for regulating privacy to a very stringent privacy law such as the EU GDPR (Albakjaji et al., 2020). For instance, the US lacks a federal law that recognises and protects the right to privacy (Clayton, 2019), and more specifically the privacy of the cyberspace user (Solove & Schwartz, 2020). Meanwhile, the EU has taken a restrictive legislative approach, which extends to all who wish to use European customer data (Hoofnagle et al., 2019).

Hence, the study will briefly review how 'privacy' was conceptualised across history in relation to the legal context. The discussion will also explain the social value of 'privacy', its significance in the digital world, and its relevance to other rights of the individual. Then, privacy will be discussed from a legal perspective, emphasising it as a right of the individual that needs to be protected by a privacy law.

The Conceptualisation of 'Privacy'

The literature on 'privacy right' indicates that the concept of 'privacy' is quite remote and based in the antiquity of philosophy, where the Aristotelian era has marked the birth of the concept of privacy by distinguishing between the political activities, and the private or domestic sphere. This distinction between what belongs to the public and that of the domestic has been confirmed by John Stuart Mill – in his essay on *Liberty* - stating that there is a separating line between the realm of government authority and the realm reserved for self-regulation. Again, in his discussion of property in his Second Treatise on Government, Locke has clearly identified the boundary between the public and private realms - stating that the elements of nature are common for humanity, thus, it is public; meanwhile, one has oneself, one's own body and property, and this is one's own private property. The theme of privacy protection has later appeared in the writings of anthropologists such as Mead (1949) – who identified the various ways cultures could deploy to protect privacy, such as: concealment, seclusion or restricting access to secret ceremonies. For instance, for the Romans, the privacy concept was associated with the *private domain* that meant the individual has the right to do as they like in their property that they own (Debatin, 2011). So, they have the right to behave as they like over their *property. The Master* can sell his property and he has the right to sell his children and the slaves who live in his property (Hongladarom, 2016).

However, in the current era, the privacy concept has shifted from the concrete private domain or property to the privacy of one's thoughts, ideas and desires. So, it is quite evident now that 'privacy' was conceptualised differently by different cultures and at different times – as it is demonstrated in the following section. In other words, privacy is a very broad and diverse notion for which the literature offers many dentitions and perspectives (Renaud & Cruz, 2010). From a linguistic view, the Oxford dictionary defined the word privacy as a state in which one is not observed or disturbed by other people (The New Oxford Dictionary,1993). Or in other words, it is the state of being free from public attention. But, this concept becomes more complex once we realise that the right to privacy is deeply-rooted in human beings, and that this right may include the right to freedom of thought and conscience, the right to be alone, the right to control one's own body, the right to protect one's own reputation, the right to a family life, the right to a sexuality of your own definition, or the right to be excluded from publicity (Neetling et al, 1996). So, the definition of this right is not limited to only one side of life – it is more concerned with personal integrity and dignity. Hence, we cannot associate 'privacy' and its importance to us with a single definition (Rachels, 1975). This was re-iterated by Klitou (2014), who advocates that the concept of privacy is perceived from different angles depending on people's

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