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The Meaning of Privacy in the Digital Era

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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

individual personalities, experiences and their positions and roles in the society. Its value stems from its necessity to protect individuals and their interests from the deleterious consequences of information leaks. So, it is a valuable human need like education, health, and developing social relationships, and without having the right to privacy, the individual cannot flourish or develop his personality (Moore, 2010). Thus, although there is a semi-consensus on the idea that the privacy right relates to personal integrity and dignity, there is no universal agreement about the contents of the right to privacy.

The complexity of the privacy concept is also increasing by the fact that this concept is gradually evolving. For instance, while the right to privacy included life-related issues such as physical space, home and family life, the concept currently includes, in addition to the concepts mentioned earlier, the individual right to control own personal information that firms acquire, for example. Again, the invasions of privacy right were made by traditional media such as newspapers or TV where the effects of the erosion of privacy is limited and is only for a short time; yet, by contrast, the new technology era (which includes some emerging issues such as new business models, modern media, fashions and the emergence of digital marketing) makes it so hard to protect the privacy right, and its invasion effects are regarded as constant due to the cyberspace ubiquity that is characterised by deterritorialisation, detemporalisation and dematerialisation (Adams & Albakjaji, 2016). The best description of this era was given by Brenton (1964 cited in Mendel et al, 2012), who stated that we are living in the "age of the goldfish bowl", where private lives are made public property by the manipulation and exchange of personal data.

Thus, based on the above, it can be said that the concept of the right to privacy has two dimensions; the first one is related to the personality and identity of an individual, whereas the second one centres on the individual right to control the way by which the firms handle his/ her personal information where the privacy protection is priceless, and its absence will be more harmful than its presence. This view was clarified further by Keizer's (2012) assertion that privacy exists only by choice, and that in the absence of choice, privacy is merely the privation with which it shares a common linguistic root, just as sex, work, and singing a song become rape, slavery, and humiliation when forced on us against our will. Thus, he points out that:

The girl who died in a tragic way at the hands of her psychotic parents was not living a private life; she was living in a hell of loneliness. They are not the same thing (p.14).

The right to be alone was an earlier definition of privacy that was given by the two scholars of the late nineteenth century, Warren and Brandeis (1890), who shed light on the importance of finding an effective law to protect the right to privacy in response to the invasions that the individual right to privacy may encounter (Kauffman et al, 2011). They revealed this view on this right at a time when the personal privacy was invaded by the traditional media such as newspapers that were publishing photos of people without their permission or consent (Bloustein, 1964; Mendel, 2012). According to Warren and Brandeis (1890), the right to privacy is conceived as the right to determine

to what extent his thoughts, sentiments, and emotions shall be communicated to others, or the individual right to decide … whether that which is [theirs] shall be given to the public.

Moreover, they are the first who established the concept of inviolate personality by protecting the individual right to develop his personality without any interference. The right to be alone is emphasized by Neethling (1996) who argues that "*privacy refers to the entirely off acts and information which is applicable to a person in a state of isolation*" (p. 35).

Warren & Brandeis (1890) found that only the general rights of privacy were protected by the existing laws, but the items produced, or intellectual property were not protected by those laws. They said that the privacy laws should protect these rights that are part of the right to privacy which is

based on a principle of "inviolate personality" which was part of a general right of immunity of the person, "the right to one's personality (Bloustein, 1964; Solve, 2002; Citron, 2010). According to Warren & Brandeis, limitations of the right could be determined by analogy with the law of slander and libel, and would not prevent publishing information about public officials running for office, for example (Thomson et al., 2015, p. 3). Their principle which is recognised as the right to privacy was considered as a legal basis on which the USA courts relied on to justify their rulings in cases of breach of privacy. The case of Manolo v. Stevens was the first case in which the judge relied on the right to privacy to protect the private individuals against the outrageous and unjustifiable infliction of mental distress (New York Times, 1890). In this case an actress appeared upon the stage in tights, and the defendant snapped her picture from a box; but the New York trial judge enjoined the defendant from publishing it (Ibid). So, it is fair to say that Warren & Brandeis principle was the first of a long line of law review discussions of the right of privacy (Prosser, 1960). In fact, their principle was later affirmed by Scanlon (Scanlon,1975), who added that the privacy concept is conceived as the right to be free from any intrusion; that may include intrusions of our bodies, behaviours and interactions with others. In an attempt to clarify the contents of the emerging right of privacy, Prosser has identified four "rather definite" privacy rights that the tort law should take into consideration as follows:

Intrusion upon a person's seclusion or solitude, or into his private affairs.
Public disclosure of embarrassing private facts about an individual.
Publicity placing one in a false light in the public eye.
Appropriation of one's likeness for the advantage of another (p. 389).

The Significance of 'Privacy'

In terms of the importance of privacy, yet there is no agreement among the theorists and philosophers about what privacy protects and why it is important, but there is a consensus that privacy is a valuable issue because of the set of interests that it protects. These interests include: personal information, personal space and personal choice, freedom and autonomy (Allen et al., 2011). However, some other researchers have considered that the privacy concept is not only valuable for protecting individual interests, but also it is important for its social value (Allen et al, 2011; Reiman, 2004) – where the value of privacy can be better understood compared with its contribution to the society (Solove, 2008).

The social value of 'Privacy' is based on four values: *Individual value, common value, public value, and collective value*. The *individual value* is recognised where an individual has an interest in protecting his personal information, self-development, individual integrity, and human dignity. This value comes from its importance as a condition for other rights such as freedom and personal autonomy. According to Britz (1996), having the individual right to privacy is a proof that this individual has the right to freedom and the right to be an autonomous human being. The c*ommon value* means that all individuals have some degree of privacy. The *public value* is associated with the democratic political systems; while the *collective value* requires that for one to have privacy all people must have a similar minimum level of privacy (Regan, 1995).

Thus, privacy has acquired a social value through affecting the social life in profound and subtle ways – as explained by Benn and Gaus (1986), who stated that the concept of privacy regulates institutions, practices, activities and social and individual life generally. This view was shared by some other theorists (Rachels, 1975; Fried, 2013), who claim that privacy norms help regulate and develop social, family and professional relationships, and enhance the interaction on a variety of levels. This great value of privacy has been clearly identified by Solove (2008), who stated that a society without privacy is just like a suffocating society.

'Privacy' and Control of Access

The value of privacy has even increased with the increasing use and efficiency of electronic data processing, especially what is called 'information privacy'. Thus, according to Westin (1967), privacy may be defined as the claim of individuals, groups or institutions to determine when, how and to what extent information about them is communicated to others. In other words, privacy is your right to control what happens with personal information about you. In his surveyed studies of animals, Westin goes even further to confirm that the need to privacy is not only a human desire, but the animals need this right too.

With the increasing importance of privacy, the concept has shifted its focus to 'access', which may include either physical access or personal information or attention (Bok, 1982). In this regard, privacy has become associated with limited accessibility to others; and this has included the ability to make important decision without interference from others, but the protection of individual autonomous choice from governmental interference is not included in this view (Allen, 1988). Then, for other theorists (Altman, 1975), the right to privacy has been associated with the selective control of access to the self. Hence, privacy may be conceived as capability to determine what one wants to reveal and how accessible one wants to be (Bellotti, 1997). In this regard, an individual has a perfect privacy when others are completely inaccessible to that individual, and this can be achieved through independent but interrelated ways: through secrecy, anonymity and solitude (Gavison, 1980).

In identifying 'privacy' in terms of control over access, theorists have advocated that this may include control over access to information, bodies and places as well (Moore, 2010) or the control over information, access to oneself either physically or mentally and the control over one's ability to make important decision (Schoeman, 1985; DeCew, 1997). According to this view, there is a moral value of privacy that stems from being a shield to protect the individual against scrutiny, prejudice, pressure, exploitation and judgements of others. So, by enabling individuals to have freedom and independence, the importance of privacy is clearly manifested. This could be regarded as a human right that enables the individual to influence, or handle data about themselves – as pointed out by Clarke (2006).

However, limiting the privacy concept to the individual right to have a control over the information related to oneself, identity, family or personal life may involve some difficulties. Schoeman (1985) argued that although it does not seem to beg any moral questions, it does seem particularly vulnerable to a number of counter examples:

We can easily imagine a person living in a State of a complete privacy with strict privacy laws and regulations, but lacking control over who has access to information about him. For instance, a man shipwrecked on a deserted island or lost in a dense forest has, unfortunately, lost control over who has access to his information, but we would not want to say that he has no privacy. Indeed, ironically, his problem is that he has too much privacy. To take another example, a person who chose to exercise his discretionary control over information about himself by divulging everything cannot be said to have lost control, although he surely cannot be said to have any privacy (p.3).

Also, conceiving privacy as a state or condition of limited access to a person is not without flaws too. According to Schoeman, the characterizations of this definition leave open the question of whether privacy is a desirable state, and how valuable it is in relation to other things. He mentioned that this view will create a mix between the privacy concept and other concepts such as an individual rightful sphere of autonomy. Examples may include the case of autonomy over abortion, birth control, and the gender of one's sexual partner, as well as some issues concerning freedom of conscience. He stated that these issues are at least arguably privacy matters, but some researchers confirmed that these matters are related to other rights such as an individual rightful sphere of autonomy.

From a commercial perspective, the objective of privacy was to enhance autonomy and minimize vulnerability – as expressed by Margulis (1977), who refers to the importance of protecting the individual right to privacy during making an agreement or transactions, stating that:

privacy is the control of transactions between persons and others, the ultimate aim of which is.'' (p. 10)

In the E-commerce context, privacy invasion has taken the form of an authorised collection, use, transfer and misuse of personal information as a direct or indirect result of the e-commerce transitions. Here, personal information is viewed as any information related to or about an identifiable individual. This type of information has become more under threat with the advancement of information technology, data mining techniques and the development and diffusion of the Internet, which raised the concerns of both consumer and government about constant illegal online activities that led to breaches of privacy and violations of privacy rights (Kauffman et al, 2011). So, various stakeholders have been affected by such activities, including: business consumers, work organisations, business firms, employees, governments and users of online social platforms.

The concept of privacy access control has lost its focus with the advent of the Internet of Things (IoT). Therefore, Ziegeldorf et al (2014) have modified the concept of privacy in the Internet of Things to incorporate the threefold guarantee to the subject for

-Awareness of privacy risks imposed by smart things and services surrounding the data subject.
    - Individual control over the collection and processing of personal information by the surrounding smart things,
-Awareness and control of subsequent use and dissemination of personal information by those entities to any entity outside the subject's personal control sphere.

On the other hand, Chaudhary & Lucas (2014: 38) shed light on the idea that legislators and regulators should determine the categories of data that need to be protected when starting to regulate or govern the information privacy issue. From their points of view, three types of confidential information should be taken into consideration: personal data, company confidential data, and intellectual property data. As for the consumer personal information, it includes the less sensitive one, such as individuals' contact information, and the more sensitive one, such as Social Security numbers or medical and financial information. Again, the employees' information is personal information that organisations must safeguard. Secondly, company-confidential data may include any non-public internal information, such as: hiring and firing, and unreleased earnings reports. Thirdly, intellectual property data may include: patents, copyrights, and trade secrets, as well as clinical trial results, prototypes, a methodology or process, or a list of prospective clients.

Privacy and Other Rights of the Individual

It is quite important to distinguish between the concept of 'privacy' and the concept of 'confidentiality'. According to Kauffman (2011), the core of confidentiality concentrates on protecting transactional or sensitive information of a firm from unauthorized disclosure by adopting a controlling system to control the access to the information that is stored in the company's information systems. In contrast, information privacy centres on the idea of the necessity of protecting the personal information that the businesses acquire from the individuals. Thus, the confidentiality focuses on the idea of using privacy enhancing technology to protect the business data, whereas, the focus of information privacy is on enabling individuals to control the ways by which firms use their personal information, and store it in the company systems (Culnan, 2003). In general, the privacy concept ranged from regarding it as a claim or entitlement, or even the right of an individual to control own personal information to considering it as a state or condition of limited access to a person (Schoeman, 1985). However,

despite there is no consensus on the uniformity of the privacy concept, there remains the question of the characterization of the right to privacy.

The other distinction we need to make is that between the 'moral' right to privacy and the 'legal' right to privacy. The 'privacy' literature has often emphasised the importance of recognizing the moral right to privacy; while the legal right is clearly stated and stipulated in constitutions or laws. Hence, the problem was always how to determine the moral right. For instance, Schoeman (1985) stated that to know whether the privacy right and protection should be accorded to individuals formally, and explicitly, we should focus the attention on sensitivity to privacy interests when respect for them cannot feasibly be part of any clear and explicit institutional rules. So, the distinction between the moral right of privacy and the legal one depends on whether the interest of individuals in terms of privacy is very important to their lives and hence there is a moral right to privacy. So, understanding the person, his perception and his appreciation of the importance of interest may help determine whether there is a moral right or not.

Thus, the literature on privacy considered the moral importance of privacy as a moral and social virtue. In this regard, Debatin (2011) argued that privacy seems to be a quintessential individual concept and it is a social concept that belongs to the individual. In a similar line, Schoemann (1985) argued that privacy has a moral aspect since it is a need for maintaining the individual dignity. He relied on the idea that privacy is a *human need* for enabling an individual to be seen as a being with a point of view, moral character, value and worth, searching for meaning in life. He also viewed privacy as a *social need* for enabling individuals to develop their relationships in the society. This point of view relies on the conception of the individual as substantive, objective, and self-subsisting entity with an individual autonomy. However, Hongladarom (2016) criticized this view by arguing that self-subsisting concept means that the individual does not need other individuals for her/his very being, and consequently, that individual's moral value or dignity would not suffer. Hence, Hongladarom has argued that *trust* has an essential value, and that in the society where individuals trust each other, and the law is just, everything is known to everybody, the human dignity and moral value are maintained although privacy is neither available nor existing. He stressed that in the case of imbalance of power there is no dignity or moral worth - only in this case it is possible to say that privacy is very necessary for human dignity (p.27).

Again, Parent (2017) conceived privacy as a moral value, not as a moral or legal right, making a distinction between undocumented personal information and documented personal information, emphasising the condition of keeping undocumented information out of the reach of others. He argued that the undocumented information may become documented one once others possess this undocumented value. He justifies possessing or acquiring the undocumented information by others if this information belongs to the public records such as newspapers or courts records. So, in this case there is no privacy invasion, but rather he views this invasion as abridgment of autonomy, trespass, or harassment regardless of how many times the information has been published or released.

The ethical value of privacy was also based on three applicable ethical norms, as explained by Britz (1996) - Truth, Freedom and Human rights. Truth - as an ethical norm - serves for the factual correctness of information, guiding the information professional regarding the accurate and factually correct handling of private information. Also, truth is an expression of ethical virtues such as openness, honesty, and trustworthiness. Freedom is more associated with the individual's freedom of choice and the freedom from intrusion. The norm of human right to privacy entails that as long as there is a juridical acknowledgment and protection of person right to privacy, this right should combine the right to protection from unlawful interference from others in one's private life.

The literature has also associated the concept of 'privacy' with the concept of 'liberty' which refers to free will as contrasted with constraint. In politics, liberty means that all the community members are entitled to the social and political freedom. This concept is deeply rooted in the earliest times; for instance, the Roman Emperor Marcus Aurelius (121–180 AD) wrote that a kingly government should respect the freedom of all the governed, and he defined a polity as the entity that enacts laws for all,

and ensure that all people have equal rights and equal freedom of speech (Aurelius, M Translated by Robin Hard, 1997). According to Thomas Hobbes (1904), liberty is the freedom of doing what the individual likes to do. He stated that:

"a free man is he that in those things which by his strength and wit he is able to do is not hindered to do what he hath the will to do" (p. 137).

However, the philosopher John Locke (1823) argued that conceiving the liberty as an absolute discretion, or what the individual likes is a rejected perspective. He argued that freedom should be restrained or tied by laws that are established on consent in the commonwealth, and enacted by a law-making authority that the common wills confer this power to. According to his theory, only in the *nature state* people are free from any law or any law-making power, but they are only subject to the law of nature of their rule. But in political society, freedom of people under government is to be under no restriction apart from standing rules to live by that are common to everyone in the society and made by the law-making power established in it.

Persons have a right or liberty to (1) follow their own will in all things that the law has not prohibited and (2) not to be subject to the inconstant, uncertain, unknown, and arbitrary wills of others (p.114).

In fact, John Stuart Mill (1806–1873 in O'Rourke, 2003) was the first philosopher who distinguished between liberty as the freedom to act and liberty as the absence of coercion (Hooks, 2008: 134). In his work on liberty, he classified liberty into two opposite concepts: positive liberty and negative liberty. The former one confers the individual freedom to exercise his civil right, while the latter confers the individual freedom from tyranny and the arbitrary exercise of authority (Schermer, 2007).

According to these views, it is worth mentioning that liberty is the framework that combines the civil, political and social rights such as the freedom of speech, freedom of assembly and the right to privacy which are altogether fundamental right to human and are necessary for flourishing the free and democratic societies. Liberty and privacy are interrelated concepts where the protection of liberty will ensure that the right to privacy will be taken into consideration as well. Klitou (2014:20) argued that "*privacy is not necessarily an end, but rather a means to an end; instead, the end is greater liberty*". So, privacy is an important value for enabling other basic entitlements (Holtzman, 2006). In this regard, Fulda (Fulda, 1996) confirmed the importance of privacy for free and democratic society, he stated:

It is no accident that totalitarian systems in which there is no freedom whatsoever also tolerate no privacy. For Big Brother to act, he must know, and state surveillance with spies everywhere was a staple of the now-fallen totalitarian regimes (p.2).

So, in these societies, privacy becomes a vital importance in its presence, and its absence has catastrophic affects (Westin, 1967; Klitou, 2014).

Concerning privacy and negative liberty, Schermer (2007) argued the Warren and Brandeis in their interpretation of the right to privacy as the right to be alone, they emphasised the importance of adopting legal framework for protecting it. Based on this view, the right to be alone is regarded as the concept of negative liberty. If no one knows what I do, when I do it, and with whom I do it, no one can possibly interfere with my privacy (Fulda, 1996). So, the interference with the inviolate personality will undermine the privacy of this personality, but not every violation to the liberty will constitute a violation of privacy, for example, Schermer (2007) argues that there is no violation of the right to privacy if the interference does not affect the private sphere:

If, for instance, I am physically constrained by a person from leaving or entering a certain area, my freedom is diminished while my (informational) privacy is not. When I am denied the freedom of religion or the right to protest, my liberty is diminished while my privacy is not. This means that certain important elements of negative liberty that do not have a 'private component', such as free speech and freedom of information, find little or no protection in the right to (informational) privacy and are possibly neglected (p. 122)

This view is based on the idea that the right to privacy relies on the distinction between private and public spheres, and if the violation of freedom affects the public, the right to privacy is not protected.

Privacy on the other hand, is also a positive liberty. In this way, privacy is conceived as the instrument that enables the individual to take an autonomous decision, and this gives him/ her the right to exercise their choices (election), their attitudes (freedom of speech) where this individual is not able to exercise these rights without entailing a degree of anonymity. The Panopticon (a model prison that was designed by the Utilitarian philosopher Jeremy Bentham) is a good example on how an individual without his/ her privacy cannot exercise their rights or make any decision or choice, he/ she is thus enslaved. So, privacy protects positive liberty. To conclude, the relationship between liberty and privacy is regarded as instrumental since they complement each other. Klitou (2014), stated that:

A threat to privacy, therefore, is also a significant threat to liberty, since privacy and liberty indeed go hand in hand and a threat to privacy and liberty is a direct threat on democracy (p.21).

In terms of the relationship between privacy and autonomy, Hongladarom (2016) criticized the philosophers and researchers who argued that privacy is a necessary means for autonomy, trust and accountability. He argued that in the close-knit society, individuals know very well small details about each other, and trust each other as well. So, in this society, trust becomes as the corner stone for developing the society even though there is no privacy and it becomes not necessary for autonomy to function. Once the individual has the ability to make decision from his/her own will, he/she has the autonomy even though their details are known by others. He acknowledges the idea that complete trust is a highly ideal, and it has no real existence, and in real human societies, the lack of trust is the dominant feature. He added:

…the need for privacy protection then becomes almost universal. Furthermore, if one is not accountable for what one does, then there would be no means to sanction anyone's behaviour, including snooping and violating others' private personal space. So, if there is no accountability, it is very likely that there is no privacy either (p.21).

But he resorted to this interpretation to support the idea that the best way to understand the concepts of privacy, autonomy, trust and accountability is to conceive them as distinct concepts rather than define them as they are related to each other.

All the discussions above have taken their point of departure from the literature that regards 'privacy' as a significant concept that is quite important to investigate within the realms of theory and practice motivated by human needs, human rights, and jurisdictions of the law theory. In this regard, two theories were competing to define the boundaries of the concept of 'privacy': the Coherentism Theory and the Reductionism Theory.

Legal Right to 'Privacy'

Scholars of the Coherentism Theory have advocated that that 'privacy' cases consist of fundamental, integrated and distinctive elements that make it different from other issues. For instance, according to Gavison (1980), the concept of privacy is a coherent one that combines some interests such as the

promotion of liberty, autonomy, selfhood, human relations, and furthering the existence of a free society. Schoeman (1985) stated that:

I shall refer to the position that there is something common to most of the privacy claims as the "coherence thesis". The position that privacy claims are to be defended morally by principles that are distinctive to privacy I shall label the "distinctiveness thesis" (p.5).

In opposing this position, scholars of the Reductionism Theory argued that privacy issues are diverse, disparate, and superficially connected. These theorists have rejected the distinctiveness and coherence theory of Schoeman. They deny the idea that the privacy concept is a separate one. According to them, the privacy cases may be reducible to other sorts of interests, such as infliction of emotional distress or property interests (Bork, 1990). Thus, Thomson (1975) does not believe that there is a distinctive right to privacy. He examined a number of cases where the court relied on the right to privacy to justify its judgements. He argued that all of these cases which are based on the right to privacy ground may be combined under the rubric of violations of property rights or rights over the person, such as a right not to be listened to. Moreover, he interpreted this concept as the right that is related to the concepts of property or the person:

For example, cutting someone's hair while she is asleep does not harm her, or does not cause bodily pain, but cause a violation to her privacy, then her right over her body is violated. According to him, he plainly has a right that these things too shall not be done to him (p.305).

So, according to Thomson's view, the right to privacy is merely a cluster of rights which can be explained by property rights or rights to bodily security. He is against the most common view that tries to find a common ground for the privacy rights. He stated that the violation of privacy is better understood as the violation of a more basic right. However, this view was criticised by Rachels (1975), who argued that Privacy is not limited to one side of one's life (like Intimacy), but it rather includes the right that enables us to develop diverse interpersonal relationships with others. This also goes in line with Murphy's (1964) view, who argued that privacy is a means that helps the individual to boost his relationships with others and enhances the sense of the self and social relationships. So, privacy is quite essential to establish relationships in all societies and all cultures (Westin, 1967). Hence, Rachels and Schoeman have confirmed that the privacy concept combines two rights: the right to control our information, and the right to control our relationships with others. For example, Rachels stressed the idea that there is no single answer to the question of why privacy is important to us, because it can be necessary to protect one's assets or interests, or to protect one from embarrassment, or against the deleterious consequences of information leaks. For him, privacy accords us the ability to have control over who knows what about us and who has access to our information, and thereby allows us to vary our behaviour with different people, so that we may maintain and control our various social relationships, many of which will not be intimate. An intriguing part of Rachels' analysis of privacy is that it emphasizes ways in which privacy is not merely limited to have control over information. Our ability to have control over both information and access to us allows us to control our relationships with others. Hence privacy is also connected to our behaviour and activities.

Again, the distinctiveness of the privacy concept has been emphasised by Hongladarom (2016), who claims that privacy will be beneficial in particular when information privacy is involved. He believed that:

when someone inserts a smart card into a machine, or when someone carries an electronic passport equipped with an RFID chip, one's privacy would be threatened if the information related to the individual who carries the passport or who owns the card is used in a way that is not consented to by the individual in question. This could be reduced to some kind of bodily integrity, but in order for

us to be able to focus our attention solely on the problem of information and of how such information is used, then a distinct concept of privacy seems to be in order (p.10).

The theme of privacy distinctiveness has been criticised by scholars, such as Raymond (2013) and Posner (1981), who stated that the interests protected under privacy rubric are not distinctive, and the ground by which privacy cases should be relied on is economically inefficient. Thus, people may conceal personal information in order to mislead; and the economic case for according legal protection to such information is no better than that for permitting fraud in the sale of goods (Raymond, 2013). In doing this, Judge Posner reflects his view of the relationship between law and economics – it is a conservative ideological approach to law and economics that has a focus centred on wealth maximization and the promotion of market efficiency (Malloy, 1990).

The Posner's view distinguishes between organizational or corporate privacy on one hand and personal ones on the other which is less important than the previous one. He built his theory on the idea that protection of individual privacy is less defensible than people may have thought of, because it does not maximize wealth (Ponser, 1984). So, the protection of corporate privacy is more important than the individual one, because the former is more likely to enhance the economy. He applies the same idea to information privacy - in his view, the law should protect privacy only when access to the information would reduce its value (e.g. unreleased earning reports or merger and acquisition details). The sensitivity of each depends on the timing and effect of the disclosure. For example, "an earnings report due to be released on July 28 is more sensitive on July 25 than on July 29" (Chaudhary & Lucas, 2014: 38).

On the extreme side of criticism was Bork's (1990) views, which challenged the decision of the Supreme Court in the case Griswald v. Connecticut. He claims that Justice William O. Douglas and his majority opinion in this case erroneously interpreted the right of privacy from the Constitution. For him, this emerging right was never actually written into the Constitution or mentioned in pre-existing right or in the natural law - he argued that this issue was never envisioned by our forefathers (Ibid , 1990). Accordingly, Bork maintains that the court should not interpret the right depending on the spirit of the Constitution or the law, but it must strictly adhere to the language of the constitution, and that by creating new right, the supreme court exceeded its authorisation (power) which is limited to the interpretation of the Constitution or the laws not to the creation of new rights. Judge Bork stated that while the Bill of Rights does in fact protects certain specific states of privacy, the constitution as a whole does not protect privacy in general because the founders did not etch the word `privacy` in ink Allen, 1987. For him, the constitution does not contain explicit provisions on the right to privacy. So, the right to privacy lacks definite contours because courts do not rely on a constitutional guidance. In support of this view, Peter (Flaherty, 1990) in his theory on the moral aspect of privacy conceived the constitutional right to privacy as an interest in liberty, not privacy itself. Some other theorists have also agreed that the Constitutional rights contain some provisions that described the right to liberty rather than the right to privacy (Henkin, 1974; Thomson, 1975; Gavison 1980; Parent, 2017). In this way, the constitutional protection is only concerned with liberty or autonomy.

By contrast, some theorists argued that various guarantees create zones of privacy. Privacy-relevant concepts such as protecting interests in seclusion, personal information and family life have got similar features of American law (Allen, 1987). Again, there is the belief that the federal constitution and its amendments protect the aspects of privacy. The First Amendment is considered as a guarantee for protecting the family privacy. The Third Amendment in its prohibition against the quartering of soldiers in private home in peacetime is regarded as a guarantee for protecting the privacy of the home. The Fourth Amendment explicitly affirms 'the right of the people to be secure in their persons, houses, papers, effects, against unreasonable searches and seizures. The Fifth Amendment in its Self-Incrimination Clause protects the privacy interest of the individual from self-disclosure. The Ninth/sixth Amendment provides: 'The Enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. This amendment is conceived as a guarantee for protecting privacy rights, including procreative and sexual autonomy (Ibid, 1987).

Based on these constitutional provisions, many modern scholars and jurists mentioned that the notion of privacy is driven from the constitution, thus, there is a conceptually and historically coherent notion of privacy, distinct from liberty driven from the federal constitution and its amendments (Inness, 1992; Schoeman, 1992; Johnson, 1994; DeCew, 1997). With respect to this view, Allen (Ibid, 1987) argued that the Supreme Court has played a significant role in clarifying the meaning, requirements and limitations of constitutional rights and principles, and its judgment in the case of Roe v. Wade on the abortion was a good example on the role that the court plays when there is no legal/constitutional provisions. In this case, judges must be able to imply decisions based on the general spirit of the original document. So, the constitution does not prohibit the right to privacy, then judges are allowed to create this right. This is called the judicial precedent. If the court does not have this permission, so the constitution will be an outdated, historical document. Judge Bork`s theory will prevent the constitution from being vital today as it was 200 years ago. Thus, Judge Bork's view was challenged on the basis that privacy and liberty are distinct concepts, in the sense that liberty is a broader notion, whereas privacy protection is essential to protect our liberty, and it helps us to define ourselves and our relations to others (Schoeman, 1985, 1992; DeCew, 1997; Reiman, 1976, 2004). The liberty concept is a different one from the individual interest in making decisions about personal and intimate concerns about one's body (Buck v. Bell, 274 U.S. 200, 1927; Skinner v, Oklahoma 316 U.S. 535, 1942).

CONCLUSION

The study has demonstrated that the privacy concept does not seem to have a uniform definition and is not accorded a straightforward legal treatment. The difficulty of curbing the competing interpretations of the right to privacy poses a threat to a human right which is often violated by malpractices carried out in the cyberspace. The shift in meaning of 'privacy' has taken place through time and across cultures. This challenge has been accelerated with the introduction of new media and communication technology, such as: The Internet, search engines, e-commerce platforms and social media networks. For instance, the Internet has made it very easy for online entities to conduct various cyber activities that may pose problems and threats to the customer privacy. When companies use the Internet for conducting their activities, they try to collect, store and transfer consumer data from one space to another around the world. This creates a challenge to the consumer privacy.

Hence, it is important for future research to identify and discuss the challenges that the Internet and new technology may pose to the privacy protection laws in general, and more specifically to the international law. So, more interest should be accorded to the implications of contemporary digital platforms and its impacts on the concept of 'privacy' and the development of relevant protection laws. This will require more attention given to cyber data and personal information of cyber users. Thus, future studies may need to focus more on the obligations which data controllers should have to individuals in regard to issues such as: "compliance: notice and data disclosures, the legitimate grounds for data processing, data security, international data transfers, and registration of data processing activities" (Cooper et al., 2013: 354).

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