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An Analysis of the Impact of Technology Advancements on the Right to Privacy

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ABSTRACT:

Ever from the beginning of human history, technology and people have been intertwined. People cherish their privacy and independence. Their insatiable curiosity drives them to constantly seek out new and improved methods of accomplishing tasks. Humans' innate curiosity revealed the hidden aspects of nature that led to an endless stream of creations. Today, technical advancements are the main driver of innovation, and these have created new risks to our privacy and the security of the world's information infrastructure. Finding the most effective way to handle the enormous amount of information produced by modern living is one of the most pressing needs of contemporary society.

Although the right to privacy was acknowledged by the Supreme Court as a basic right guaranteed by Article 21 of the Constitution, this goal is still far off. The reason for this is that the right's exact provisions have not been clarified.

The study's main goal is to investigate how privacy and technology advancement interact. It also covers the particular privacy issues brought up by IT and technological innovation.

The idea of privacy protection now has a multifaceted realm because to the modern conception of privacy. It hasn't been able to keep up with the development of technology. There is no legal categorization for distinct privacy domains in our system. Various authors categorise it based on their own viewpoints.

India's privacy law has developed differently from other countries due in part to the country's lack of firsthand experience with the first effects of emerging technologies. Numerous laws, rules, regulations, and presidential orders that outline privacy concepts and practices are in place in India.

It is quite challenging to pinpoint the infringement of this right in the current era of technological growth in order to file a lawsuit. The legal framework pertaining to the right to privacy is continually developing.

Undoubtedly, throughout the last few decades, the nation has experienced legislative and policy changes pertaining to privacy regulations. The privacy law framework in India remains a patchwork of laws despite these improvements, with several laws, judicial rulings, and principles covering various areas of privacy existing at the same time. Since India lacks a framework for privacy laws, the numerous laws, legal rulings, and guiding principles pertaining to the privacy sector are incompatible with one another.

An attempt has been made in this study work to review the numerous privacy-related legal laws and the threat that technological innovation poses to privacy. This thesis has proposed several changes to the privacy framework's legal structure. Adopting these legislative changes will significantly contribute to protecting privacy. The government has a big part to play in making this happen.

Keywords: Fourth Amendment rights, wearable computing, thermal imaging, carnivore, Echelon, privacy, search, and seizures.

I. INTRODUCTION

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and numerous other international and regional conventions all recognise privacy as a fundamental human right.[1]Oneof the most significant human rights concerns of the modern era, it represents the principles of freedom of speech, association, and human dignity.

The Latin verb for "to separate or deprive" is where the word "privacy" originates, and it refers to the division of property between an individual and the State.The term "privacy" has been defined in a number of ways over the years. The range of personal matters that each definition covers could account for the diversity of definitions.

The word "privacy" refers to a type of power that each person possesses as a potent weapon to defend themselves against the outside world. In addition to losing his ability to set himself apart from the outside world, a person who loses his privacy also loses his ability to live an independent life and to be a fully realised, independent human being, Secrecy, anonymity, and solitude are the three components of privacy, according to Ruth Gavison.[2] When others learn details about an individual, they are able to get their private loss of secrecyeither become aware of him loss of anonymity or acquire access to him loss of isolation.

Taking a closer look, privacy has multiple dimensions:

1. The term "bodily privacy" can also apply to an individual's privacy. It is pre-occupied with the person's bodily integrity. Concerns include forced vaccinations, forced blood transfusions without consent, forced body fluid and tissue sample giving, and forced sterilisation;
2. Privacy of personal behaviour: This includes all facets of behaviour, but it particularly covers delicate subjects like political activity, religious beliefs, and sexual habits and preferences, both in private and in public. It encompasses what's occasionally called "media privacy";
3. Individuals assert a right to the privacy of their personal communications, which includes what is sometimes called "interception privacy" and the ability to interact with one another through a variety of mediums without regular surveillance of these conversations by third parties.
4. Privacy of personal data: People argue that information about them shouldn't be automatically accessible to other people or organisations and that they should have a significant amount of control over their data, even if it's in the possession of a third party. This is also known as "information privacy" and "data privacy" at times.

These days, privacy is crucial. According to Ruth Gavison, privacy is a personal idea.Individual autonomy, mental well-being, creativity, and the ability to establish and preserve meaningful relationships with others are all qualities that privacy embodies. It also embodies a healthy, liberal, democratic, and pluralistic society.[4] It offers respect, a safety net, and space for personal development.

The right to privacy was first formally recognised in the United States historically by Samuel Warren and Louis Brandeis in their article "The Right to Privacy," which they defined privacy as the right to be let alone. The American government honoured the idea that "a man's house is his castle" and added the Fourth Amendment in 1791 to preserve "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched.

II. A JUSTIFICABLE ASSUMPTION OF PRIVACY

The creators of the constitution intended the Fourth Amendment to shield citizens from arbitrary and indiscriminate general authority that had been asserted by the British against the American colonies.

The article "The Right to Privacy" by Warren and Brandies, which states unequivocally that the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection, is the best place to start when understanding the modern development of the Fourth Amendment.[6]

A century after the Bill of Rights was written, the Supreme Court rendered the first major ruling pertaining to both the Fourth and Fifth Amendment privileges against self-incrimination in the case of Boyd v. United States. However, police activity does not violate the Fourth Amendment in the absence of a search or seizure.[7]

In the Olmstead decision, the Court determined that the only interests covered by the Fourth Amendment were those pertaining to material property, such as homes, documents, and other items, and that those interests only extended to preventative physical invasions.[8]Therefore, there was no obstacle preventing the government operatives from listening in on private phone calls using electric gadgets.
However, the case of Katz v. America changed all that. In that case, Charles Katz was betting on the phone with his bookie when FBI agents planted an "electronic listening and recording device" from the booth. During the trial, Carlos was found guilty when the District Court for the Southern District of California allowed the government to present evidence that the petitioner terminated the negotiations over the objections of the petitioner. Because "there was no physical entrance to the area occupied by the petitioner," the appeals court affirmed and rejected the claim that the recordings were obtained in violation of the Fourth Amendment.[9] But even in a public place, what you want to keep private can be constitutionally protected. The Court recognized that the prohibitions of the Fourth Amendment no longer limited to tangible objects. Katz now represents a "new" understanding the Fourth Amendment and on individual protective measures. Therefore, the court was able to adopt a liberal interpretation that allows for changes to meet the evolving demands of society.

III. OBJECTIVE VERSION SUBJECTIVE EXPECTATION OF PRIVACY

The Court's Fourth Amendment analysis was modified by the Katz standard. Since Katz, there have been several judicial decisions that have defined the boundaries between the circumstances in which an expectation of privacy is subjective or objective. In *United States v. Chadwick*, that a person expects privacy in a package or container, and the Fourth Amendment protects that right to privacy. The defendant must show that his recognized subjective expectation of privacy, when viewed in the totality of the circumstances, is at least similar in quality to the privacy requirements ordinarily expected of an individual. from his home or office, the court said in *United States v. Gerena*. Any reasonable expectation of privacy would be enhanced if steps were taken to keep others away. However, if an attempt is

made to prevent any type of invasion, the question arises as to whether any type of invasion is attempted to be prevented.[10] In *Smith v. In Maryland*, the court addressed this objective factor by examining whether the government invaded a suspect's privacy by recording his residential telephone numbers in the phone company's pen register. In response to a request from the police, the telephone company established a pen register at its central office to record the numbers called from the applicant's home telephone. The requester submitted a request to remove information from the write recorder. The District Court of Maryland rejected that claim, ruling that the warrantless installation of a pen recorder did not violate the Fourth Amendment. Following petitioner's conviction, the Maryland Court of Appeals affirmed.

However, the Supreme Court overturned the Court of Appeals' ruling, ruling that it was permissible under the Fourth Amendment to conduct warrantless aerial surveillance of a fenced-in backyard inside a house's boundaries.

IV. CONCEPT OF SEIZURE

In accordance with the Fourth Amendment, an individual is considered to have been "seized" whenever an officer notifies them that they are no longer free "to walk away" or "to ignore the police presence and go about his business." An individual cannot be confiscated if it is not placed in handcuffs and brought to the police station. The use of physical force or a display of power by the police can influence a seizure.

The defendant in Michigan v. Chesternut contended that his seizure following a police pursuit was illegal. In the Detroit metropolitan area, four police officers were performing their usual patrol responsibilities while seated in a marked police car. Standing on the curb was the accused. When the defendant saw the squad car approaching, he began to flee. In the patrol car, the officers pursued the defendant, caught up with him, and briefly trailed him. The cops watched the respondent toss several packets out of his right pocket as they passed him in the automobile. To inspect the packets, an officer exited the cruiser. He found out they were filled with tablets. The reply who was racing a few steps ahead of the officer stopped as the officer started the inspection. Making assumptions based on his background as the respondent was taken to the station house after the officer detained him for drug possession after informing the paramedic that the pills contained cocaine. Following a search, the police found a hypodermic needle, another packet of pills, and a packet containing heroin in the respondent's hatband.[11]

The accused was found guilty of will-fully and knowingly in possession of heroin, codeine- and diazepam-containing pills, and violating Mich. Comp. Laws section 333.7403(2) (1980). "No seizure of defendant occurred when police officers in an automobile observed," the Supreme Court's Justice Blackmun ruled. "Defendant started to run upon seeing the automobile, and officers accelerated to catch up to defendant and then drove alongside him before he discarded a pack of pills, which the officers then seized."

The Court disapproved with the defendant's conclusion that the officers' actions prior to the physical custody did not constitute a Fourth Amendment "seizure" because a reasonable person would not have felt obliged to halt.

When an unmarked police cruiser approached the defendant in California v. Hodari, the defendant ran away. The defendant threw aside a little rock containing crack cocaine as the cops pursued him and were about to assault him.

The primary question in this case concerned whether the defendant had been in custody in accordance with the Fourth Amendment. It was necessary to pinpoint the precise moment of the seizure. In the event that the defendant was tackled during the seizure, the medicines that were left behind would be admissible.
The evidence would not be admissible if the seizure was made by the police chasing the suspect while wearing police jackets as a show of authority.[12] For a "seizure" to have taken place, there needs to be some sort of physical force applied, even if very mild, or a demonstration of authority that the subject submits to; a demonstration of authority that the subject refuses to submit to without the use of physical force is not considered a seizure. The cops did not use any physical force in this instance.

V. CONCLUSION

Determining what constitutes a "reasonable expectation of privacy" serves as another foundation for the idea of a search. On the other hand, arguments of reasonable expectations of privacy are more frequently encountered in instances involving searches than in "seizure" cases. Therefore, the Court must decide whether the accused's reasonable expectation of privacy has been breached in order to assess whether a Fourth Amendment search has taken place. It is generally not regarded as a "search" to "look at what is already exposed to view." One may wonder if the Fourth Amendment covers everyone if they ask if the object was in plain view when it was observed. The police may see what may be seen from a public vantage point where they have a right to be, the Florida Supreme Court ruled in the case of Florida v. Riley. An owner's privacy interest in an item is forfeited once law enforcement officials are authorised to view it directly. That item's privacy cannot be retained by the owner, but title and possession can. But if the police surveillance becomes so excessive that it is doubtful whether it is realistic to believe that any member of the public would ever make an observation, even though the public might legally make the same, then the matter would become even more complicated.

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7. The case of Commonwealth v. Louden illustrates the voluntary loss of privacy occasioned by an individual speaking loudly so that a third party could overhear the conversation without any electronic interception device. In this case the Pennsylvania Supreme Court held that "once the conversation, threats and arguments between the Loudens and the screams of the children became audible to the neighbours, through a

dividing wall in their home, the Loudens lost whatever expectation of privacy of privacy they had that their secret discussions and conversations would not be overheard." 638 A. 2d 953, 959 (Pa 1994).

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9. Christopher S. Milligan, Facial Recognition Technology, Video Surveillance, and Privacy, 9 S. Cal. Interdisciplinary L.J. 295, 312 (1999). With the advent of quick photography and mass-circulation newspapers, the latter part of the century saw the first invasion of privacy lawsuits in the United States.
10. Black's Law Dictionary defines "reasonable" as: Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. Thinking, speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable. BLACK'S LAW DICTIONARY 1138 (5th ed. 1979).
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