



Evolution of Privacy Rights and It's Analysis Through Hohfeld's Theory of Rights and Duties

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ABSTRACT

Privacy is essential to a person's identity. Experts in human behavior concur that people have an innate need for personal space and control over their private lives. This includes the right to manage personal information and live without undue interference. Protecting privacy is crucial as it fosters self-respect, independence, and the ability to make one's own choices. Right to privacy evolved in broadly 6 stages, from right against the government to individuals right against society i.e individualistic approach towards privacy. In the beginning, India's view of privacy was centered on a person's liberty—their freedom from governmental interference. This is seen in seminal decisions where the court stressed the restrictions on government searches, such as *M.P. Sharma v. Satish Chandra* (1954). This early phase represents the freedom of a right-holder to operate without hindrance, and the state's obligation to uphold individual autonomy in line with that freedom. The development of the internet and large-scale data collection methods drastically changed the privacy environment. People started to worry more and more about who could access and utilize their personal data and this change reflects in 2017's Supreme Court judgement in *Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors* ruled that the right to privacy is a fundamental right. It is inextricably linked to the right to life and to personal freedom guaranteed by Article 21 of the Indian Constitution. Dignity has inherent characteristics related to sexual orientation, family, marriage, and childbearing. They combine to create the privacy of a home. This ruling represents a step in the right direction: people now have more control over their data, and others (including businesses) are required to get permission and make sure the data is protected. Four basic legal connections are outlined by Hohfeld's theory: power, privilege, liberty, and right. This research article uses this paradigm to apply to privacy rights in order to investigate how these rights have changed in terms of what people can do (liberty), what other people cannot do (right), what people can choose not to do (privilege), and what people can be prohibited from doing (power). We can better grasp how the legal foundation for privacy rights has changed and is still developing

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in response to shifting societal demands and technological breakthroughs by applying Hohfeldian notions. Hohfeld's framework can further illuminate the evolution of privacy rights and expose potential gaps in legal protection.

INTRODUCTION

We are now living in a time of unparalleled connectedness and convenience thanks to the digital technology. But there's a price to this networked world: our personal data is constantly being collected and analyzed. This begs the important question, what exactly is data privacy, and why is it important in the modern world?

The control people have over their personal data is referred to as data privacy. It covers a variety of topics, such as who has access to this data, how it's utilized, and the control over how it's disseminated. Anything that may be used to identify a specific individual, such as name, address, phone number, email address, financial information, health records, browsing patterns, and online activity, is considered personal data. Digital footprints are left by every click, search, and purchase we make, building a comprehensive picture of our life.¹

Data privacy is important in many ways. First of all, it protects people from identity theft, which is a felony in which someone impersonates another person in order to commit fraud. The financial stability of individuals can be severely impacted by a data breach that exposes millions of social security numbers. Second, data privacy shields us against prejudice.² Our data can be analyzed by algorithms that reinforce prejudices, which can result in unfair treatment when applying for loans or jobs. Thirdly, trust in the digital world is enhanced by data privacy. People are more likely to participate in online activities confidently when they believe that their information is handled appropriately.³

However, in the digital era, data privacy is frequently a moving target. Businesses and organizations gather personal data in a variety of ways, frequently with oblique terms and conditions tucked away. Free websites and apps could need much more access to the microphone, camera, and location data than is essential for their basic operations. After it is gathered, this information is frequently

used to target advertisements, which personalizes our online experiences, but frequently at the expense of our privacy.⁴ Because they track us across several platforms, targeted advertisements can give us the impression that we are being watched all the time.

Data leaks are also becoming a bigger threat. Hackers take advantage of holes in systems, revealing the personal information of millions of people. Devastating outcomes may result from this, including money loss, identity theft, and even harm to one's reputation. The Cambridge Analytica event, in which hundreds of thousands of Facebook users' personal information was acquired without their consent and used for political lobbying, is among the most prominent examples of the potential risks associated with data breaches.⁵

Individuals must take the initiative to safeguard their data privacy in order to overcome these obstacles. This entails exercising caution when disclosing personal information online and using discretion when deciding which websites and apps to provide access to.⁶ While it may seem laborious to read privacy policies, it's important to know how a platform collects data. Adding two-factor authentication and using strong passwords are two more ways to improve online security.

Beyond taking personal responsibility, further discussion about data privacy laws is required. Strong data protection regulations that offer people more control over their information are required by governments; these regulations should resemble the General Data Protection Regulation (GDPR) of the European Union. These regulations ought to mandate that businesses disclose all relevant information about their data collection procedures, grant people the ability to view and update their data, and specify the purposes for which it is used.

In the end, protecting our privacy online does not mean isolating ourselves from the digital world. It all comes down to finding a balance between the advantages of technology and our privacy rights. We can control our online presence and feel secure navigating this digital world by being aware, protecting ourselves, and holding businesses responsible.⁷

¹ Salomon, D., 2012. *Data privacy and security*. Springer Science & Business Media.

² De Capitani Di Vimercati, S., Foresti, S., Livraga, G. and Samarati, P., 2012. Data privacy: Definitions and techniques. *International Journal of Uncertainty, Fuzziness and Knowledge-Based Systems*, 20(06), pp.793-817.

³ Mooradian, N., 2009. The importance of privacy revisited. *Ethics and information technology*, 11(3), pp.163-174.

⁴ Joyce, D., 2015. Privacy in the digital era: Human rights online. *Melb. J. Int'l L.*, 16, p.270.

⁵ Guerrier, C., 2016. *Security and privacy in the digital era* (Vol. 1). John Wiley & Sons.

⁶ Ibid

⁷ Zaem, R.N. and Barber, K.S., 2020. The effect of the GDPR on privacy policies: Recent progress and future promise. *ACM Transactions on Management Information Systems (TMIS)*, 12(1), pp.1-20.

RESEARCH QUESTIONS

1. Whether the privacy rights have adequately evolved according to Hohfeld's theory of rights and duties?
2. How can Hohfeld's analysis contribute to the development of effective privacy policies and regulations?

RESEARCH METHODOLOGY

This research is a doctrinal Research. The relevant material will be collected from primary as well as secondary sources. All this existing information will be taken from legal as well as non-legal sources such as international legal instruments, legislations, court orders, books, judgements of tribunals, high courts and supreme court, newspapers, law, journals, legal reports of reputed organisations, credible websites and also work of research eminent scholars, academicians and all those experts in the field of law.

Privacy

There are several justifications for preserving one's privacy. Certain individuals choose to remain anonymous, while others wish to hide embarrassing or discreditable information about them or anything that could endanger their life or property. Still others just want to be left alone in peace.⁸ Therefore, it is reasonable to say that privacy essentially consists of three elements: solitude, anonymity, and secrecy. That is a condition that can be lost, either by the individual's decision or by another person's deed.

The concept of privacy encompasses different aspects depending on what we're trying to protect. Currently there are four key types of privacy:⁹

1. Information Privacy:

This focuses on controlling your personal information. It's about who can access it, how it's used, and your ability to decide how it's shared. This includes things like:

- Your name, address, email, phone number
- Financial information, health records
- Online activity, browsing history, and search habits

Information privacy is crucial in today's data-driven world, where personal information is collected constantly. Laws and regulations like GDPR (General Data

Protection Regulation) exist to give individuals more control over their information.

2. Bodily Privacy:

This protects your physical self from unwanted intrusion. It concerns your right to control your body and make decisions about what happens to it. Examples include:

- Protection from unwarranted searches and seizures
- Right to refuse medical procedures (except in emergencies)
- Control over genetic testing and other bodily samples

Bodily privacy is a fundamental human right, and laws protect individuals from physical violations.

3. Communication Privacy:

This safeguards the content of your communications, ensuring they remain confidential. It applies to:

- Phone calls, emails, text messages
- Private messages on social media platforms

Communication privacy allows for free and open communication without fear of interception. Laws may restrict unauthorized surveillance of communications.

4. Territorial Privacy:

This protects your physical space from unwanted intrusion. It concerns your right to control who enters and uses your:

- Home (including curtilage, the surrounding area)
- Vehicle
- Other private spaces

Territorial privacy allows for a sense of security and control over your environment. Laws may restrict unreasonable searches and seizures of private property.

These types of privacy are interconnected. Sharing information online (information privacy) can reveal details about your physical location (territorial privacy). Similarly, a body camera recording a protest (bodily privacy) might capture communication between participants (communication privacy). Understanding these different aspects of privacy empowers you to make informed decisions about how much you share and how you protect yourself in the digital and physical world.

Hohfeld's analysis

According to Hohfeld, a "right" is a legal interest with associated obligations. Hohfeld states that "if X has the right to prevent Y from using his land, then Y has the corre-

⁸ Zhou, B. and Pei, J., 2008, April. Preserving privacy in social networks against neighborhood attacks. In 2008 IEEE 24th International Conference on Data Engineering (pp. 506-515). IEEE.

⁹ Dworkin, Ronald. Taking Rights Seriously. London: Duckworth, 1977.

sponding (and equivalent) duty to keep X off the property." Power imposes an analogous and equivalent no-right, just as a "privilege" imposes a corresponding exemption and obligation that results in a handicap. The difference between a privilege and a right is vital in this situation.¹⁰

He points out that other legal interests, such as powers, privileges, and immunities, were frequently denoted by the term "right." Hohfeld's article addressed this prevalent problem, and he was able to secure sufficient legal support for it. As a remedy, Hohfeld proposes dismantling rights, privileges, powers, and immunities—all of which he sees as separate legal interests.¹¹ Interestingly, he makes an attempt to differentiate between the two by mentioning the legal duties that these interests place on a different organization. Hohfeld's distinguishing methodology is based on the utilization of opposites and correlatives.

The most basic legal connections are *sui generis*, which means that attempts at formal definition are almost always unsuccessful, if not utterly unsatisfactory. Therefore, it seems that the most effective approach is to arrange all of the various relations in a framework of "opposites" and "correlatives," and then to illustrate their distinctive scope and practical applications using actual cases.¹²

The notion of "rights" holds a significant place in the complex realm of legal discourse. Beneath this seemingly simple word, though, is a complicated web of relationships between people and the related rights, obligations, and privileges they enjoy. Wes Newcomb Hohfeld's perceptive examination of rights provides a potent framework for analyzing these connections, giving legal reasoning precision and clarity. This essay examines the many advantages of Hohfeldian analysis, emphasizing how it helps us comprehend rights and the legal environment they live in in a more complex way.¹³

The elimination of uncertainty from legal discourse is one of the main benefits of Hohfeld's method. Legal jargon like "privilege" and "right" is frequently used synonymously, which causes misunderstandings and confusion. These ideas are divided into four main categories under Hohfeld's framework: claim-rights, freedoms, powers, and immunities. Every category has a distinct meaning and creates a special bond amongst the participants. A claim-

right, for example, the right to free speech, gives a person the ability to force the government (the duty-bearer) to stop censoring. On the other hand, a liberty, such as the right to contract, gives someone the ability to behave as they like without worrying about the law, even when the other person might think differently. This comprehensive grasp of the relationships at play guarantees that legal arguments are based on a clear distinction between concepts.¹⁴

By encouraging accuracy, Hohfeld's analysis improves legal thinking even more. By breaking down rights into their component elements, it forces attorneys and judges to pinpoint the precise legal connection being invoked in a given circumstance. Is the plaintiff asserting a liberty (the ability to act without restriction) or a right (the duty-bearer must act)? Is a defendant claiming immunity from the authority of another person or power, the capacity to alter the nature of the legal relationship? This degree of accuracy encourages more focused legal arguments and rulings. Think about a situation where a renter violates the terms of their lease. Although the tenant may be able to assert immunity from eviction on the grounds of exceptional circumstances, the landlord may still have the authority to evict (modify the legal relationship). Hohfeldian analysis guarantees that these discrete ideas are dealt with head-on, resulting in more stringent legal conclusions.¹⁵

Hohfeld's framework is not only precise and clear, but it is also an effective instrument for deciphering intricate legal relationships. Multiple parties with perhaps competing rights and interests are frequently involved in legal conflicts. Legal experts are able to carefully map out these relationships through the use of Hohfeldian analysis. An understanding of each party's claim-rights, liberties, powers, and immunities helps to unravel the complex web of legal interactions. This can be especially helpful in situations when there are rights of groups or individuals against the government. For example, demonstrators may be free to gather in a peaceful manner, but the government may still be permitted to put reasonable limitations on that freedom in the name of public safety.¹⁶ A more complex understanding of the interactions between these different rights and powers is made easier by Hohfeldian analysis.

Although there are others who contend that Hohfeld's framework is too narrow in scope and does not encompass all rights, especially rights of groups or rights against the state, its fundamental ideas still hold true today. Hohfeld admitted that there might be a need for additional cate-

¹⁰ Stone, R.L., 1963. An analysis of Hohfeld. *Minn. L. Rev.*, 48, p.313.

¹¹ Lazarev, N., 2005. Hohfeld's analysis of rights: An essential approach to a conceptual and practical understanding of the nature of rights. *Murdoch University Electronic Journal of Law*, 12(1).

¹² *Ibid*

¹³ Allen, L.E. and Saxon, C.S., 1995, May. Better language, better thought, better communication: the A-Hohfeld language for legal analysis. In *Proceedings of the 5th international conference on Artificial intelligence and law* (pp. 219-228).

¹⁴ Hudson, S.D. and Husak, D.N., 1980. Legal rights: How useful is Hohfeldian analysis?. *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 37(1), pp.45-53.

¹⁵ *Ibid*

¹⁶ *Ibid*

gories in addition to the four he created. Furthermore, by recognizing the larger social framework in which these interactions operate, objections pertaining to its emphasis on personal relationships can be addressed. After all, legal rights are not created in a vacuum; rather, they serve society goals and have effects that go beyond the people directly engaged.

Jurisprudential evolution of right to privacy

- **Daniel Solove**

A legal scholar and prominent voice in privacy law, offers a nuanced perspective on privacy. Here are some key points from his work:

Privacy as a multifaceted concept: Solove argues that privacy is not a single, monolithic right, but rather a collection of interrelated interests. He identifies eight privacy interests:

Privacy as secrecy: The control over personal information and who has access to it, Privacy as solitude: The freedom from unwanted attention or intrusion, Privacy as autonomy: The right to control your own life and make your own choices, Privacy as intimacy: The ability to form close relationships without unwarranted scrutiny, Privacy as property: The control over information about yourself as a kind of personal property, Privacy as personality: The protection of your identity and reputation, Privacy as security: The safeguarding of yourself and your belongings from harm, Privacy as anonymity: The ability to act or speak without being identified.¹⁷

1. Privacy in the Information Age: Solove emphasizes the challenges new technologies pose to privacy. He highlights the concept of “context collapse,” where information collected in one context is used in another, unforeseen way. For example, medical records used for insurance purposes.
2. Fair Information Practices (FIPs): Solove proposes a set of principles for protecting privacy in the digital age. These principles advocate for transparency in data collection, individual control over information, and limitations on data use.

- Solove vs. Hohfeldian Analysis:

Solove's framework expands on Hohfeldian analysis by focusing on the various interests encompassed by privacy. While Hohfeld offers a legalistic framework for

understanding rights and duties, Solove delves into the broader societal values underlying privacy concerns.

- **Adam Carlyle**

A common view is that protection serves as a boundary for the extent to which society can meddle in an individual's concerns. “The rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place, and circumstances to communicate with others” is the definition given to Adam Carlyle's “right to be left alone.” It refers to his freedom to abstain or take part as he thinks suitable. Additionally, it refers to a person's ownership and control over the information that is shared about them. Therefore, it is reasonable to say that privacy is the freedom to choose for ourselves when, how, and how much information about us is shared with third parties.¹⁸

- **Lord Denning**

Even though the concept of the right to privacy gained international attention in the 1960s and 1970s with the advent of information technology, it still has historical, cultural, and religious overtones that lend credence to the belief that privacy is highly prized and protected in many different cultures.

English law should recognize a right to privacy, according to Lord Denning, who outlined the necessity for this recognition. If it is violated, there should be a basis for a lawsuit for damages or, if necessary, an injunction. Additionally, it ought to acknowledge that every letter and communication that is provided in confidence, whether explicitly or implicitly, has a right to confidentiality. These rights are not all-inclusive. All of them are susceptible to exceptions. Thus, when the public interest in transparency exceeds the public interest in confidentiality or privacy, an exception may be made. It's a balancing act for the judges in every case. Every case will set a precedent for subsequent ones once it is resolved. Consequently, a corpus of case law will be created.¹⁹

- **Louis Brandeis and Samuel Warren**

The well-known 1834 right “to be let alone” is where the modern history of privacy begins. In *Wheaton v. Peters*, 33 U.S. 591, 634 (1834), the U.S. Supreme Court declared that a defendant “wants nothing, but to be let alone until it can be shown that he has violated the rights of another.” Later, Cooley's book²¹

¹⁷ Solove, D.J., 2002. Conceptualizing privacy. *Calif. L. Rev.*, 90, p.1087.

¹⁸ Adam Carlyle Breckenridge. *The Right to Privacy*. Lincoln: University of Nebraska Press, 1971.

¹⁹ Denning, Lord. “What next in Law”. Butterworths, 1982.

used the same phrase, “the right to be left alone,” to refer to the obligation “not to inflict harm.” Warren and Louis Brandeis, who later became Judge Brandeis of the US Supreme Court, developed this argument in their well-known law review essay supporting the right to privacy. (Thereafter, in the well-known opinion in *Olmstead v. U.S.* [277 U.S. 438, 478 (1928)], the first wiretapping case considered by the U.S. Supreme Court, Brandeis employed the term “the right to be let alone.”) Within a relatively short time after publication, this paper can be recognized as the ground-breaking work that helped the majority of American States acknowledge the existence of a legal right to privacy. Convinced that the most prized freedom in a democracy is privacy, Brandeis was worried that the Constitution ought to protect it. They said that the law as it is provided a means of protecting an individual's privacy and attempted to clarify the scope and nature of that protection by citing “political, social, and economic changes” and the acceptance of “the right to be let alone.” They highlighted the invasion of privacy brought about by the public disclosure of information about an individual's private life, focusing mostly on the press and publicity made possible by modern innovations like photography and newspapers, but also mentioning transgressions in other situations.²⁰

- **William Prosser**

The creation of a legally protected right to privacy in the United States was not only attributed to the influence of Warren and Brandeis' paper. Following the Warren and Brandeis paper, prominent tort expert William Prosser examined more than 300 privacy cases in 1960. Thus, Prosser's essay formalized the fundamentals of privacy law, and it was later included in the Second Restatement of Torts, namely on pages 652A–652I (1977).²¹

Prosser lists the following four categories of privacy rights for which there is a tortious remedy:

1. An unreasonable encroachment on someone else's privacy or isolation
Physical invasions of homes include things like breaking in without permission, using binoculars or a camera to see through windows, tapping phones, making intrusive calls, and gathering personal and financial information without the owner's knowledge or approval.
2. Using someone else's name or likeness to benefit

another Unlawful use of a person's name or likeness on a product label that offends the individual in order to recruit business or consumers.

3. Making private information embarrassingly public
The individual's financial status, sexual preference, private correspondence, family conflicts, medical background, and home-taken private photos.
4. Falsely portraying someone in the public eye
Through publicity incidents where information was released into the public realm with the intention of misrepresenting the subject.

National evolution of Right to privacy

In India right to privacy evolved through case laws

- **M. P. Sharma v Satish Chandra, AIR (1954) SC 300**

It is stated that Dalmia Group of Industries engaged in dishonest business dealings and fabricated documentation. In accordance with section 138 of the Indian Companies Act, the government appointed an inspector and began an investigation. According to the inspector's findings, a small number of the Dalmia Group's founding leaders hid the real situation from the shareholders and made a concerted effort to embezzle and misappropriate money. Search warrants were issued and a formal complaint was filed.

Up to 34 sites were examined, and a sizable amount of documents was taken from numerous locations. The petitioners said that in violation of Article 20(3) of our Constitution, seizing documents would amount to self-incrimination. The SC noted that the right to have property searched and items seized is only momentarily interfered with by search and seizure. Additionally, it noted that as it is recognized by statute, it cannot be deemed unconstitutional:

*“A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law.”*²²

It was also observed that the constitution of India does not guarantee a fundamental right to privacy similar to the one provided by the American constitution:

*“When the Constitution makers have thought fit not to subject such regulation to Constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction.”*²³

²⁰ Samuel Warren and Louis Brandeis. “The Right to Privacy”. *Harvard Law Review* 4 (1890): 193-220.

²¹ Prosser, W., *Engineering Privacy in Social Applications*. 2016–2017 *Editorial Calendar*, p.72.

²² M. P. Sharma v Satish Chandra, AIR (1954) SC 300.

²³ Ibid

- **Kharak Singh v. the State of Uttar Pradesh (1962)**²⁴

The Hon. Supreme Court of India's primary concern during the case hearing was whether the basic right to privacy protected by Article 21 of the Indian Constitution was violated by the police's surveillance and domicile inspections conducted in accordance with the U.P. Police Regulations. The following elements can be used to dissect the particular problem:

1. **Right to Privacy:** The Court was required under Article 19 of the Constitution to decide whether the Right to Privacy falls under the broader notion of personal liberty. The recognition of the right to privacy as a fundamental right was closely related to the constitutionality of surveillance and domiciliary visits.
2. **Constitutionality of Surveillance:** The Hon'ble Supreme Court was required to determine whether the U.P. Police Regulations' classification of certain individuals as belonging to Classes A and B of criminals, which permitted police surveillance without appropriate safeguards and oversight, violated the right to privacy. It was unclear if this type of monitoring infringed on someone's right to privacy and personal freedom.

The Hon'ble Supreme Court of India awarded the right to privacy in relief for the first time with the Kharak Singh case verdict, albeit the SC did not recognize it as a fundamental right. It served as the basis for other decisions that strengthened the right to privacy and placed restrictions on government monitoring. The court's decision also underlined how important procedural safeguards are and how any invasion of privacy must be supported by objective standards rather than subjective judgments. This eventually led to the notion that the right to privacy is fundamental and should only be restricted through procedures that are outlined in law.

- **District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496, AIR 2005 SC 186.**²⁵

A division bench held that "every citizen has a right to safeguard the privacy of his own. However, in the case of a matter being part of public records, including court records, the right of privacy cannot be claimed."

- **Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1**²⁶

A Supreme Court case involving a law on judicial appointments (99th Amendment) raised concerns about balanc-

²⁴ Kharak Singh v. the State of Uttar Pradesh (1962) 1 SCR 332, AIR 1963 SC 1295

²⁵ District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496, AIR 2005 SC 186.

²⁶ Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1, (2016) 2 SCC (LS) 253.

ing openness (transparency) with secrecy (confidentiality). The court worried that revealing private details about judicial candidates could damage their reputation and dignity. They argued the law didn't consider individual privacy enough.

The court also weighed the right to public information (right to know) against the right to keep things private (right to privacy). They said the right to know isn't a core right, but might be implied, and it's limited by the right to privacy, which everyone has.

- **Rajagopal v. State of T.N., (1994) 6 SCC 632**²⁷

The right to privacy is the right to be left alone, according to a two-judge bench. It was decided that the right to privacy was inalienably linked to the life and liberty that Article 21 of the Indian Constitution guaranteed to its citizens.

- **Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors.**²⁸

The Supreme Court declared that privacy is a separate and independent basic right under Article 21 of the Constitution in six different rulings. The main thrust of the ruling established a broad definition of the right to privacy, "one that encompassed the body and mind, encompassing judgments, choices, information, and freedom, rather than being limited to protection against physical invasion or a derivative right under Article 21." It was decided that the right to privacy was an extensive, multidimensional, and enforceable right under Part III of the Constitution. In the several opinions, specifics of the rights' extent were talked about.

The M.P. Sharma and Kharak Singh rulings, which maintained that the right to privacy was not a basic right, were overturned by the court. In the case of M.P. Sharma, the Court upheld the validity of the ruling, holding that the Indian Constitution did not impose any restrictions on the laws pertaining to search and seizure that were comparable to those found in the Fourth Amendment of the United States Constitution. The Court reversed the M.P. Sharma decision, stating that the Fourth Amendment did not define privacy in detail and that the absence of a comparable safeguard in the Constitution did not imply that India did not have an innate right to private. The Court rejected Kharak Singh's narrow interpretation of personal liberty, or "ordered liberty," which Justice D.Y. Chandrachud referred to as the "silos" approach, which was taken from A.K. Gopalan. The Court noted that following Maneka Gandhi,

²⁷ Rajagopal v. State of T.N., AIR 1995 SC 264, (1994) 6 SCC 632.

²⁸ Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors (2017) 10 SCC 1, AIR 2017 SC 4161

this strategy of seeing fundamental rights in airtight containers was abandoned. The Court went on to note that the majority ruling in *Kharak Singh* was internally inconsistent because there was no legal foundation for overturning police surveillance and domestic visitation on any other basis than privacy, a right they acknowledged in theory but maintained was not guaranteed by the Constitution. The Court further concluded that the principles established in the ruling should be applied to decisions made after *Kharak Singh* upheld the right to privacy.

The Court also examined the affirmative argument about the protection of the right to privacy under the provisions of Part III of the Constitution, which guarantees the right to life, personal liberty, and other freedoms. Privacy was found to be “not an elitist construct” by the Bench. It disregarded the Attorney General’s contention that the state’s social benefits require the sacrifice of the right to privacy.

Notably, the ruling acknowledged that the right to privacy was not unqualified, but it also provided a summary of the judicial review standards that need to be followed when the government intrudes on an individual’s privacy. It ruled that restrictions on the right to privacy may be imposed when a breach of privacy satisfies the three requirements of

- A. “Legality, which postulates the existence of law;
- B. need, defined in terms of a legitimate state aim; and
- C. proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.”²⁹

This test was expanded by Justice S.K. Kaul to include a fourth factor that required “procedural guarantees against abuse of such interference.”

Justice J. Chelameswar held concurrently that privacy claims deserving of “strict scrutiny” were the only ones for which the test of “compelling state interest” should be applied. He held that the just, fair, and reasonable test under Article 21 would apply to other privacy issues. His ruling stated that the circumstances of the case would determine whether the “compelling state interest” criterion was applied.

The Court further emphasized that a crucial aspect of privacy was one’s sexual orientation. It went on to address the positive and negative aspects of the right to privacy, emphasizing that the State was required to defend an individual’s private in addition to refraining from infringing upon it.

According to the ruling, the right to privacy includes the right to informational privacy. Although the Hon’ble Supreme Court acknowledged the necessity of a data protection law, it delegated the task of enacting legislation to Parliament.

Article 51(c) of the Constitution states that India has a fundamental duty to uphold foreign treaties because it is a signatory to the UDHR.³⁰ Under Article 253 of the Constitution, the Parliament is specifically authorized to employ its overriding powers and adopt appropriate legislation in order to accomplish the goal of implementing international accords. In compliance with this constitutional mandate, the Parliament enacted the Protection of Human Rights Act, 1993. The National Human Rights Commission (NHRC) was established by this Act as a powerful statutory agency with the goal of enhancing accountability and transparency in the application and upholding of human rights.³¹

The U.N. Human Rights Council in Geneva established the “International Principles on the Application of Human Rights to Communication Surveillance,” which have been widely referred to as the “Necessary and Proportionate Principles,” in September 2013 in response to the growing challenges of “Communication Surveillance” through the “world wide web,” which seriously impinge upon the right to privacy. “Privacy is a fundamental human right, and is central to the maintenance of democratic societies,”³² the Preamble to these Principles states unequivocally. It reinforces other rights, like the freedom of expression and information, the freedom of association, and recognition under international human rights law. The 1948 Declaration of Human Rights’ Article 12 warned that disobeying it “would by itself sound the death knell to...the fundamental right of privacy” in light of these developments. In conclusion, the “right to privacy” has evolved into a fundamental right that is guaranteed by the constitution as a result of the 9-Judge bench decision that addressed the issues of the modern society that is dominated by the digital realm.³³

Due to this advancement, the right to privacy has become more powerful than ever. Firstly, it now serves as a “limitation” on the State’s ability to allow violations of the right on the grounds of some “public purpose.” Secondly, the protection of the right to privacy as a value guaranteed by the Constitution has turned into a “public purpose.”³⁴ This suggests that the right to privacy must be carefully

³⁰ Kaul, J., *Right to Privacy case (2017)*, at 4400 (para 420).

³¹ Nariman, J., *Right to Privacy case (2017)* at 4363 (para 309).

³² *Right to Privacy case (2017)* at 4364 (para 311).

³³ *Right to Privacy case (2017)* at 4364 (para 312).

³⁴ *Right to Privacy case (2017)* at 4415 (para 459).

²⁹ *ibid*

considered and should only be restricted if the State's countervailing interest is demonstrated to be stronger. This would be considered a "compelling State interest," meaning that the interest is so important as to warrant restricting one's "right to privacy."³⁵

The right to privacy is a fundamental constitutional right that allows us to defend, uphold, and advance an individual's "personal liberty," "dignity," or "self-esteem." Without a doubt, "something worth protecting as an aspect of human autonomy and dignity" is the right to privacy. The straightforward rationale behind this is that it symbolizes the fundamental ideal or "the inner sphere" of a person's existence and, as such, needs to be protected from intervention by the government and non-governmental organizations in a way that permits people "to make autonomous life choices."³⁶ In order to protect himself "from unwanted access," he has the right "to control dissemination of his personal information." This right to be protected has a very broad scope. Within its campus, an individual's

- a) Right to be free from unfair injury, both from falsehood and from certain truths, is one of its features. Consequently, "true information that violates privacy may also need to be protected."³⁷
- b) To stop others "from exploiting his name, image, and other elements of his/her identity and personal life for commercial purposes without his/her consent."
- c) To uphold a person's "individual autonomy and personal dignity," which implies that she has a right to autonomous self-definition and that others have no right to interfere with the meanings and values that the public attaches to her.
- d) Because the "majoritarian concept does not apply to Constitutional rights and the Courts are often called upon to take what may be classified as a non-majoritarian view, in the check and balance of power envisaged under the Constitution of India," the right "[t]o live with dignity" and "cannot be denied, even if there is a miniscule fraction of the population which is affected."³⁸
- e) To safeguard it as an essential component of the "human rights compendium," which refers to "the

fundamental, innate, unchangeable, and inalienable rights to which every individual is entitled merely by virtue of his or her human birth." These are the kinds of rights that ought to be granted on the basis of entitlement. They are recognized by the laws and constitutions of any civilized nation since they are a fundamental component of all people. For this reason, every democratic nation that upholds the rule of law has put in place systems to ensure its protection and enforcement.

- f) To safeguard its expanded definition as it has evolved through "case law, both in the U.S. and India," "from the mere right to be let alone to recognition of a large number of privacy interests, which have been extended beyond protection of one's home and rights from arbitrary searches and seizures to safeguarding an individual's interests in making important personal decisions, such as the right to an abortion; rights of same-sex couples, including the right to marry; rights as to procreation, contraception, general family relationships, child rearing, education, dataprotection, etc."³⁹

The Right to Privacy: A Hohfeldian Analysis in the Digital Age

The concept of privacy, a cornerstone of individual liberty, has become increasingly complex in the digital age. The vast amount of personal information we generate and share online necessitates a nuanced understanding of the legal framework protecting this right. Wesley Newcomb Hohfeld's analytical scheme, which dissects legal relations into four incidents – right, privilege, power, and immunity – offers a valuable tool to examine the intricacies of the right to privacy.

At its core, the right to privacy translates to a **liberty** for individuals. This liberty manifests in the ability to control access to personal information. We decide when, how, and to what extent information about ourselves is disclosed. This right empowers individuals to create a sphere of autonomy, free from unwarranted intrusion. Imagine Sarah, who chooses to share vacation photos on a private social media platform, exercising her right to control the audience for her information.⁴⁰

The Hohfeldian concept of **privilege** complements this liberty. Individuals have no general duty to disclose

³⁵ Right to Privacy case (2017) at 4335 (para 232).

³⁶ Kaul, J., Right to Privacy case (2017) at 4407-08 (para 466), citing Lord Nicholls and Lord Hoffmann in their opinion in Naomi Campbell's case [Campbell V. MGN Ltd. 2004 UKHL 22], which recognized the importance of the protection of privacy.

³⁷ Id., at 4401 (para 426), citing Samuel Warren and Louis D. Brandeis, "The Right to Privacy" 4 Harv. L. Rev 193 (1890)

³⁸ Id., at 4409-4410 (para 474), citing Mark P. McKenna, "The Right of Publicity and Autonomous Self-Definition" 67 U. PIT'T. L. REV. 225, 282 (2005).

³⁹ Id., at 4363-64 (para 310), citing Ram Deo Chauhan v. Bani Kanta Das [(2010) 14 SCC 209]

⁴⁰ Morse, H.N., 1987. Applying the Hohfeld system to constitutional analysis. Whittier Law Review, 9, p.639.

private information. This means Sarah has no legal obligation to share her vacation photos publicly, even if others express curiosity. This “no duty” aspect strengthens her control over personal information. However, it's important to note that privileges can be overridden. For instance, a court order compelling Sarah to reveal vacation photos as part of a legal investigation would negate her privilege in that specific context.⁴¹

The right to privacy also grants individuals certain **powers**. These powers allow individuals to take proactive measures to safeguard their privacy. Sarah can leverage privacy settings on social media platforms, utilize encryption software to secure her communications, or simply choose not to answer overly personal questions. This power to shape the privacy landscape empowers individuals to navigate the digital world on their own terms.⁴²

Finally, the right to privacy grants individuals **immunity**. This immunity protects them from actions that would unreasonably intrude upon their private sphere. This includes protection from unreasonable searches and seizures by the government. For example, the Fourth Amendment in the US Constitution safeguards individuals from warrantless searches of their homes and electronic devices. Similarly, individuals are generally immune from private actors collecting and using their personal data without consent. Imagine a company scraping Sarah's social media data without her knowledge to target her with unwanted advertisements. This action would violate her immunity.⁴³

However, the Hohfeldian analysis also highlights limitations on the right to privacy. These limitations often arise from balancing the right to privacy with other compelling interests. National security concerns may justify some government surveillance activities, or the freedom of the press might permit the publication of private information when it is deemed newsworthy.

Furthermore, the content and scope of the right to privacy can vary depending on the legal jurisdiction. Some countries have more robust legal frameworks protecting privacy compared to others. Additionally, the rapid evolution of technology constantly presents new challenges to the right to privacy. As we generate and share ever-increasing amounts of personal data online, the boundaries of what constitutes “private” information constantly shift.

⁴¹ Henket, M., 1996. Hohfeld, public reason and comparative constitutional law. *Int'l J. Semiotics L.*, 9, p.202.

⁴² Ibid

⁴³ Etienne, M., 2012. Arrest Records and the Right to Know. *The Right to Privacy in the Light of Media Convergence-: Perspectives from Three Continents*.

In conclusion, a Hohfeldian analysis offers a valuable framework for understanding the right to privacy. It highlights the different facets of this right, including the liberty to control personal information, the privilege of non-disclosure, the power to take protective measures, and the immunity from unreasonable intrusions. However, this analysis also underscores the limitations of the right and the need to consider competing interests in the digital age. As technology continues to reshape our world, the ongoing legal discourse on the right to privacy must strive to balance individual autonomy with the legitimate needs of law enforcement, businesses, and society as a whole.

CONCLUSION

Hohfeld's analysis of rights offers an invaluable tool for legal professionals and anyone seeking a deeper understanding of legal concepts. By fostering clarity, precision, and a more nuanced approach to untangling legal relations, Hohfeld's framework empowers more rigorous legal reasoning and fosters a more sophisticated understanding of the rights that underpin our society. While some limitations exist, the enduring value of Hohfeldian analysis lies in its ability to bring order to the complex world of legal rights and the relationships they embody.

A Hohfeldian Analysis of Deficiencies in the Privacy laws

The right to privacy, a cornerstone of individual liberty, faces unprecedented challenges in the digital age. While technological advancements have undeniably enriched our lives, they have also facilitated the mass collection, storage, and analysis of personal data. This essay, through the lens of Hohfeld's analysis of rights and duties, explores the deficiencies in protecting privacy rights in this complex landscape.

Hohfeld's framework dissects legal relations into four incidents: right (claim), privilege (no duty), power (to change legal relations), and immunity (freedom from another's power). Each facet of the right to privacy presents vulnerabilities in the digital age.

Weak Claims and the Erosion of Control: A right, in Hohfeldian terms, translates to a “claim” against another party. When it comes to privacy, this claim pertains to an individual's ability to control their personal information. However, the current data landscape often weakens this claim. Opaque data collection practices, where companies bury privacy settings or use convoluted terms of service agreements, make it difficult for individuals to under-

stand what information is being collected and for what purposes. This lack of transparency weakens their claim to control their data. Imagine Sarah, applying for a loan online. The loan provider's privacy policy is dense and legalistic, making it difficult for Sarah to understand what data is being collected beyond what's necessary for the loan application. This obscurity weakens her claim to control her personal information.

Limited Power and the Burden of Choice: Hohfeld defines "power" as the ability to alter legal relations. In the digital age, individuals often lack sufficient power to meaningfully control their privacy. Pre-configured privacy settings that are difficult to modify or opt-out mechanisms that are cumbersome and time-consuming restrict an individual's ability to effectively manage their privacy. Furthermore, the pervasiveness of data collection can create a situation where opting out feels futile, further diminishing one's power. Consider Rahul, bombarded with targeted advertisements based on his online browsing history. Rahul attempts to adjust his privacy settings on various platforms but finds the process daunting, leading him to resign himself to the feeling of being constantly tracked. This exemplifies the limited power individuals have to alter the data collection practices they encounter online.

Erosion of Immunity and the Chilling Effect: Immunity refers to freedom from another party's power to negatively affect one's legal position. The vast collection and use of personal data by corporations and governments can erode this immunity. Data breaches, where personal information is compromised, are a stark illustration of this vulnerability. Additionally, targeted advertising that exploits personal data for manipulation or mass surveillance programs that collect data indiscriminately can all be seen as violations of immunity. Imagine Maya, a journalist living in a country with a repressive regime. Fearful of government surveillance, Maya avoids expressing critical opinions online, effectively chilling her right to free speech. This exemplifies how the erosion of immunity can have a cascading effect on other fundamental rights.

Unclear Privileges and the Pressures to Disclose: The "privilege" aspect of privacy refers to the absence of a duty to disclose information. However, the boundaries between public and private information can blur online. Social pressure to share personal details on social media platforms or the expectation of employers to access online profiles can create a situation where individuals feel compelled to disclose information, effectively negating their privilege of non-disclosure. This pressure to conform can be particularly pronounced for teenagers or young adults who navigate a world where online presence is seen as

paramount. For instance, Anika, applying for a prestigious university program, feels pressured to create a detailed social media profile showcasing her achievements and extracurricular activities. This pressure to disclose potentially private information weakens Anika's privilege of non-disclosure.

The Path Forward: Empowering Individuals

By applying Hohfeld's framework, we can diagnose the weaknesses in current privacy protections and advocate for solutions. Clear and enforceable data protection regulations that grant individuals clear ownership of their data and the right to rectification and erasure can strengthen individuals' claims and empower them to manage their personal information. User-friendly privacy settings with clear and concise language, along with easily accessible opt-out mechanisms, can enhance individuals' power to control their privacy. Furthermore, strong legal frameworks that limit government surveillance, impose stricter data breach notification requirements, and hold companies accountable for responsible data collection practices can bolster individuals' immunity. Finally, fostering a culture that respects individual privacy choices and critiques the pervasive collection and analysis of personal data can reinforce the "no duty" aspect of the privilege.

In conclusion, the digital age presents a complex paradox for privacy rights. While technology offers undeniable benefits, it also threatens our sense of control over our personal information. By acknowledging the deficiencies in the current legal and technological landscape through the lens of Hohfeld's analysis, we can advocate for a future where individuals are empowered to navigate the digital world with a greater sense of privacy security.

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