



The Protection of Data on the Touchstone of the Right to Privacy under the Constitution of Pakistan, 1973

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ABSTRACT

This paper discusses the intricacies of data and data protection. It discusses how a right to privacy is inherent in data. It discusses how there is no exclusive legislation on data protection. How it exists only in certain statutory provisions. Whether privacy is a sacred human right and whether it exists in the Pakistani Constitution. The main findings of this paper are that there is an inherent right to privacy in data that necessitates data protection as data is important information that could be used for nefarious purposes. While there is no exclusive legislation on data protection, the Protection of Data Bill, 2023 is a most recent attempt on the same. While data protection exists in certain statutory provisions, its scope is limited and thus for Pakistan's best interest, this bill should be passed. The right to privacy is a sacred human right under western jurisprudence, Islamic law and international law. It is incorporated within Articles 4, 9, 13(b) and 14(1) of the Constitution. The Pakistani Superior Courts have recently expounded upon the principles of data protection, it is still a small step and the bigger step towards data protection in Pakistan would be the passing of the Protection of Data Bill, 2023. The methodology used in this paper is doctrinal.

Introduction

This paper discusses what is meant by data and why should it be protected; it discusses how the law of data protection exists due to the fact that it has an inherent right to privacy; it discusses how in Pakistan data protection exists in the provisions of different statutes but there is no exclusive statute as of yet for data protection; how attempts have been made in the past and the most recent attempt has come in the form of a bill; how the right to privacy has been recognized as a sacred human right in not just western jurisprudence but also Islamic and international law; how the right to privacy has been recognized as a fundamental right as expounded by the Pakistani Superior

Courts; how the Pakistani Superior Courts have expounded in the principles of data protection but the best step forward would be the passing of an exclusive legislation on the same;

Protection of Data

Data refers to any particular information or knowledge. Data protection refers to any method of securing information, especially information stored on a computer, from being either physically lost or seen by an unauthorised person.¹ Hence, there is a duty imposed for the protection of particular information or knowledge as it could be of a personal or sensitive nature. In other words, data protection may also be referred to as safeguards that relate to personal data, that is to say, personal information about individuals that is stored on a computer and on any other relevant manual filing systems.² So any type of data, especially of a personal nature and is stored in a computer must be safeguarded or protected from any person intending to use them for any nefarious or malicious intention. In other words, there is an inherent right to privacy for data protection. Different types of data exist for different purposes. It could be someone's identity, someone's belief, someone's genetic and medical history. All of these are collected and stored for different purposes. Imagine if someone who is not to be privy to such data somehow accesses it. He has now accessed personal and sensitive information which was not for his eyes. Now imagine the potential consequences of this. What could he do with such information? He could use it for nefarious or malicious purposes. He could use someone's identity to commit crimes on his name, thus bringing forth a criminal record on that person without that person actually committing any sort of crime. He could access someone's beliefs, make it public and potentially make him a victim of religious extremism. He could use his medical history against him, maybe get him fired from his job or modify it and make him a victim of the wrong dosage of medicine or the wrong kind of medicine. Or he himself could potentially harm him by knowing his allergies and sneakily make him consume it. All of these are just hypothetical scenarios but the point still stands that the possibilities of harm are endless. As the old saying goes, 'Knowledge is Power'. It is the difference between life and death. It is what has caused the difference in strategic wins and defeats in war. And knowledge could be used for the sake of harm as well. And hence, knowledge, especially that of a personal nature must be protected.

Data Protection in Pakistan

Data protection comes under the realm of cyber law. In Pakistan, cyber law is incorporated within the following pieces of legislation:

- i. Customs Act, 1969
- ii. Pakistan Telecommunication (Re-Organisation) Act, 1996 (PTA)
- iii. Electronic Transaction Ordinance, 2002 (ETO)
- iv. Freedom of Information Ordinance 2002
- v. Unsolicited Fraudulent and Obnoxious Communication Regulations, 2009
- vi. Investigation for Fair Trial Act, 2016
- vii. Prevention of Electronic Crimes Act, 2016 (PECA)
- viii. State Bank Regulations for Secure Internet Banking

Each of these statutes have their own specific scope and policy and they do not exclusively cover data protection although there are some provisions that provide for it. As of now, PECA serves as the primary legislation that provides for the protection of data. It contains certain provisions that

¹ Henry Campell Black, "*Black's Law Dictionary*" in Bryan A. Garner (ed.), (West, Thomas Reuters, 9th ed., 2009), 452.

² Elizabeth A. Martin (ed.), "*Oxford Dictionary of Law*", (Oxford University Press, 5th ed., 2002), 134.

pertain to unauthorised access and the confidentiality of information. Section 38 of PECA provides that if any person including a service provider who has access to any personal or sensitive data of another person transfer such data without the consent of said person except when required by law than they shall be punished with an imprisonment which may extend up to 3 years or a fine which may extend up to Rs. 1 million or both. Furthermore, the Pakistani Federal Government has appointed the Federal Investigative Agency to investigate any complaints which pertain to any offences under PECA.³

The Ministry of Information and Technology, under Section 37 of PECA, has promulgated the Removal and Blocking of Online Content (Procedure, Oversight and Safeguard) Rules 2021, which authorizes the PTA to block or remove any content of unlawful nature PECA.⁴ They have also issued Pakistan's first 'Cloud Policy',⁵ which if it is implement by the both the federal and provincial governments, cloud service providers will be required to comply with confidentiality obligations contained therein.⁶

The Mental Health Ordinance 2001 provides for the prohibition of disclosing a patient's identity or being publicized unless the patient themselves allow it.⁷

The PTA lays down certain provisions that prohibit unauthorised transmission, either through a telecommunication system or a telecommunication service, of any intelligence which is known to be false, fabricated or obscene.⁸ Whoever does so shall be punished with either an imprisonment which may extend to 3 years or with a fine of Rs. 10 million or with both.⁹

Hence, we have discussed some of the primary legislation that deals with the protection of data of different kinds. However, as of now, there is no exclusive legislation on the subject. Attempts have been made in recent years to promulgate a statute that provides for the protection of data exclusively. The most recent attempt was made as recently as last year. A bill has been drafted on the protection of data. This bill is called the Personal Data Protection Bill, 2023 (hereinafter referred to as the "Bill"). The Bill provides that it has been devised to regulate all matters related to data and also provide a data protection mechanism including the offences concerning an individual's rights of data privacy. It has categorized data into multiple types such as anonymized data, authorized data, biometric data, critical personal data, genetic data, health data and personal data under Section 2 of the same. It provides for the establishment of the National Commission for Personal Data Protection ("NCPDP"). This commission shall be responsible to protect data subject's interest, enforcing the protection of personal data, precluding illegal activities amongst other things. It can even entertain complaints about the infringement of personal data protection and the violation of the Bill's provisions. It shall also examine various pieces of legislation and sub-legislation about the protection of data and may recommend amendments to them and also advise the Federal Government on the appropriate measures to undertake for the sake of data

³ PECA, s 29(1).

⁴ Removal and Blocking of Online Content (Procedure, Oversight and Safeguard) Rules 2021.

<<https://moitt.gov.pk/SiteImage/Misc/files/Removal%20Blocking%20of%20Unlawful%20Online%20Content%20Rules%202021.PDF>> accessed 28th March 2024.

⁵ Pakistan Cloud First Policy, 2022.

<<https://moitt.gov.pk/SiteImage/Misc/files/Pakistan%20Cloud%20First%20Policy-Final-25-02-2022.pdf>> accessed 28th March 2024.

⁶ Sahar Iqbal, 'Data Privacy and Protection in Pakistan' (*International Bar Association*, 24th July 2023)

<<https://www.ibanet.org/data-privacy-and-protection-in-Pakistan#.edn5>> accessed 28th March 2024.

⁷ Mental Health Ordinance 2001, s 50.

<<https://pakistancode.gov.pk/pdf/files/administrator/f3bd8ebe041346ad002f70ddae5d0799.pdf>> accessed 28th March 2024.

⁸ PTA, s 31(1)(d).

⁹ *ibid*, s 31(2).

protection. Hence, it has advisory, judicial and administrative powers amongst others. Hence, the Bill brings forth a huge step for ensuring the protection data. However, it needs major improvement on some fronts.¹⁰ For example, the Bill lacks a more accountable data processing regime that deals with processing for the purposes of law enforcement and extend its protection to personal data processing by intelligence services and their processors.¹¹ It provides the Federal Government with sweeping powers without any Parliamentary scrutiny.¹² It also provides the Federal Government with powers of administrative powers in regards to the NCPDP as well.¹³ A full legislative analysis is beyond the scope of this paper, however from this we can conclude that while the Bill itself is a great step in the direction of data protection if passed, it still requires some major amendments in order for it improve the quality of data protection even further.

Right to Privacy

The definitions of privacy of privacy vary significantly in different fields, ranging from a right or entitlement in law, to a state of boundary regulation, limited access or isolation in philosophy and psychology, to control in social sciences and information systems.¹⁴ The word ‘private’ refers to something that relates to an individual or something that is confidential or secret.¹⁵ Hence anything that exclusively belongs to someone means that it is private. In simpler word, he has a “right of privacy”, that is to say, he has a right of ‘personal autonomy.’¹⁶ It is also referred to as the right of a person and the person’s property to be free from unwarranted public scrutiny or exposure.¹⁷ Any unjustified exploitation of one’s personality or intrusion into one’s personal activities which is actionable under tort and even on rare occasions constitutional law is termed as an ‘invasion of privacy.’¹⁸

Hence, privacy is a sacred right. It cannot be easily restricted or breached except where said restriction or breach is reasonable. This is the case in not just Western law but also in Islamic Law.¹⁹ In Islamic law, both the primary sources of Islamic Law, the Holy Qur’an and the Sunnah of the Holy Prophet (P.B.U.H) have a lot of verses and *ahadith* respectively that provide rulings for the various dimensions of privacy to be implemented in true letter and spirit.²⁰ Aspects like peeping into another person’s house, investigating someone’s financial, private and family affairs are covered.²¹ This duty of respecting someone’s privacy is not just imposed on an individual but is also imposed on the State as a whole.²² It is the obligation of the state that it should make efficient arrangements for the protection of the honor and repute of the people, which is not limited; it

¹⁰ For a detailed analysis on the Bill’s strengths and drawbacks, see, Jannat Ali Kaylar, Protecting the Data: A Comparative Analysis of Pakistan’s Personal Data Protection Bill, 2020, Media Matters for Democracy: Policy Research and Initiative. <<https://mediamatters.pk/wp-content/uploads/2021/02/Comparative-Analysis-of-Personal-Data-Protection-Bill-2020.pdf>> accessed 28th March 2024.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

¹⁴ Subhajit Basu, “Privacy Protection: A Tale of Two Cultures”, (2012), *Masaryk University Journal of Law and Technology*, vol. 6, no. 1, 1, 6-7. <<https://core.ac.uk/download/pdf/230601209.pdf>> accessed 25th March 2024.

¹⁵ Black, *Black’s Law*, p. 1315, (n 1).

¹⁶ *ibid.*, p. 1439.

¹⁷ *ibid.*

¹⁸ *ibid.*, p. 900.

¹⁹ For a detailed discussion on the right of privacy as a sacred human right in Islam, see Atique Tahir, “Privacy in Islam, a Sacred Human Right”, (Dec-2012), *Al-Baseera*, vol. 1, no. 2, 17.

<[https://www.numl.edu.pk/journals/subjects/156109886911-AL-BASEERA%202%20\(Vol.%201%20-%20Issue.%202\)%20DEC-2012.pdf](https://www.numl.edu.pk/journals/subjects/156109886911-AL-BASEERA%202%20(Vol.%201%20-%20Issue.%202)%20DEC-2012.pdf)> accessed 25th March 2024.

²⁰ *ibid.*, p. 24.

²¹ *ibid.*, p. 18.

²² *ibid.*, p. 24.

extends to their honor, repute and privacy of homes.²³ In fact, in this regard, Islamic law declares any interference or encroachment on the privacy of a person's life, as illegal and sinful.²⁴

In International law, the right to privacy is incorporated within the foundational treaties such as the Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) amongst others. Article 12 of the former provides that

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

Hence, a safeguard against any arbitrary interference with someone's privacy has been universally recognized as a human right. Article 17 of the latter also provides this provision word to word. Other than these two covenants, the right to privacy has been incorporated within other covenants as well.²⁵ Hence, even under international law, the right to privacy has been recognized and protected as a fundamental right.²⁶

Right to Privacy in Pakistan

Seeing as we have established that the right to privacy is a sacred fundamental right which is recognized as such under western, Islamic and international law. We shall now see whether the right to privacy exists under Pakistani law as well. The Pakistani Constitution does not provide any provision that exclusively discusses the right to privacy. Article 14(1) of the Constitution provides that *“the dignity of man and, subject to law, the privacy of home, shall be inviolable.”* Hence, privacy of the home has been incorporated as an inviolable constitutional right subject to reasonable restrictions by law. This provision is provided alongside the inviolable right of dignity in the Constitution. However, the meaning of this provision was extended to include even those locations that are outside of the home. The Supreme Court ruled that the term ‘home’ includes all those places where an individual enjoys both personal freedom and security.²⁷ The Court further held that subject to law, a person's privacy could be not be intruded even in public places.²⁸ Hence, the right to privacy has been extended to include any place a person feels secure and enjoys a semblance of personal freedom. However, similar to the American jurisprudence of the right to privacy being an unenumerated right under the American Bill of Rights²⁹ and the scope and ambit of liberty under the 14th Amendment,³⁰ the right to privacy which extends even further than an

²³ *ibid.*

²⁴ *ibid.*

²⁵ See: United Nations Convention on Migrant Workers 1990, art. 14, United Nations Convention on the Rights of the Child 1989, art. 16, African Charter on the Rights and Welfare of the Child art. 10, American Convention on Human Rights, art.11, African Union Principles on Freedom of Expression art. 4, American Declaration of the Rights and Duties of Man, art. 5, Arab Charter on Human Rights, art. 21, European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8 as cited in Sherwani note 26 below at p. 33.

²⁶ For more information on the right to privacy under International law, see, Mariam Sherwani, “The Right to Privacy under International Law and Islamic Law: A Comparative Legal Analysis”, *Kardan Journal of Social Sciences and Humanities*, vol. 1, no. 1 (2018): 30. <<https://kardan.edu.af/data/public/files/Mariam-sherwani27102018070627.pdf>> Accessed 26th March 2024.

²⁷ *Mohtarma Benazir Bhutto v. President of Pakistan*, PLD 1998 SC 388, 621.

²⁸ *ibid.*

²⁹ *Griswold v. Connecticut*, 381 U.S. 479 (1965), 484. The Court held that specific guarantees in the Bill of Rights have penumbras, formed by the emanations from those guarantees that help give them life and substance.

³⁰ *Roe v. Wade*, 410 U.S. 113 (1973), 153. The Court held that right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action or . . . in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. It should be noted however that *Roe v. Wade* has been overruled in *Dobbs v. Jackson*, No. 19–1392, <https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf> accessed 27th March 2024.

individual's home is also an unenumerated right of the Constitution. Article 9 of the Constitution has had its scope and ambit extended under the precept of "life" incorporated therein as the "Right to Life". This jurisprudence however is similar to America's substantive due process which also extends the scope and ambit of liberty under the 5th and 14th Amendments, being termed as substantive due process.³¹ Therefore, Article 9 is also in fact, Pakistan's substantive due process.³² Hence, the right to privacy can be incorporated within the scope and ambit of "life" under Article 9 of the Constitution as was deliberated upon by Tariq J. in "*Ghulam Mustafa v. Judge Family Court*"³³, where the proposition concerned the infringement of a person's right to privacy due to being compelled to subject themselves to a medical check-up. Tariq comprehensively discussed the right of privacy under western jurisprudence, Pakistani jurisprudence, Islamic jurisprudence and international law. He held that the right to privacy is incorporated within Articles 9 and 14 of the Constitution of Pakistan.³⁴ He further held that the right to privacy is not an absolute right in nature³⁵ and that a person could be compelled to a medical examination if it is unavoidable and absolutely necessary.³⁶ Hence, the right to privacy has been recognized under Articles 9 and 14 of the Constitution. However, Article 4 of the Constitution may also be added to these two fundamental rights as it provides for the protection of life, liberty and property in accordance with law. Thus, the right to privacy can be incorporated within this constitutional provision as well similar to the right to life phenomenon under Article 9 of the Constitution as it is in fact the due process clause of the Pakistani Constitution alongside Articles 4 and 10A.³⁷

From Tariq J.'s ruling, we can conclude that the right to privacy although recognized is not absolute and can be limited due to reasonable restrictions imposed by law. He himself held that these restrictions could be due to the fact that there is no constitutional stipulation for the right to privacy and such rights can be restricted due to compelling public interest.³⁸ It would seem that he has forgotten about the restriction on the right to privacy imposed under Article 14(1). Although, the right to privacy conferred therein was strictly confined towards only an individual's home and not to mention, the restriction itself was subject to law in which case, Tariq J. was correct to state that there is no specific constitutional stipulation for the right to privacy as a whole.

Protection of Data viz-a-viz The Right to Privacy

We have previously discussed how crucial the protection of data is, how the right of privacy is a sacred fundamental right and how it exists under the Pakistani Constitution as well. We shall now discuss whether there is an inherent right to privacy for data?

There are a lot of grounds that privacy has a central place when it comes to the protection of data. First, the protection of privacy serves a large range of other values and interests such as personal autonomy, integrity and dignity amongst others, the safeguarding of which must accordingly form

³¹ For a detailed discussion on this, see, Erwin Chemerinsky, "Substantive Due Process", (1999), *Touro Law Review*, vol. 15, no. 4, 1501.

<<https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2480&context=lawreview>> accessed 27th March 2024. See also, this author's, The Doctrine of Due Process in the USA: A Critical Evaluation.

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4521019> accessed 27th March 2024.

³² For a comprehensive discussion on this, see this author's, Article 9 of the Constitution of Pakistan: The Right to Life or Substantial Due Process, *Manchester Journal of Transnational Islamic Law & Practice*, Volume 20, Issue 3 (2024): 58. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4522566> accessed 7th August 2025.

³³ 2021 CLC 204 [Lahore (Multan Bench)].

³⁴ *ibid*, at para 46.

³⁵ *ibid*, at para 71.

³⁶ *ibid*, at para 106.

³⁷ For more information on this, see this author's, Due Process in the 1973 Constitution and its Judicialization.

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4522354> accessed 27th March 2024.

³⁸ 2021 CLC 204 [Lahore (Multan Bench)], at paras 71-72.

part of the rationale and agenda of data protection law.³⁹ Secondly, data protection instruments are expressly concerned with setting standards for the quality of personal information.⁴⁰ Lastly, data protection laws ensures that individuals and organisations are able to process information about others for various legitimate ends.⁴¹ Hence, there is indeed an inherent right to privacy in the protection of data. It is rather the foundational touchstone upon which the protection of data stems its validity from.

We have understood hereinabove that a person's home is to be protected from any invasion of his privacy subject to reasonable restrictions imposed by law. Does this same principle also apply to devices that have data such as phones, computers, laptops, USBs? Is there an inherent right to privacy for these devices as they could potentially contain data of a rather personal nature? This proposition was examined in the case of "*Muhammad Rehmat Ullah v. The State*"⁴² The facts of this case were that Rehmat Ullah was accused of being part of the terrorist organization, Al-Qaeda and also of distributing banned books, magazines and stickers to propagate his banned organisation. A raid was conducted where he was apprehended and the other party who was supposedly the recipient of the banned materials fled the scene. While searching, the police found no material that could serve as evidence that could tie the accused to Al-Qaeda during the trial. The Court also observed that the other party who fled was most likely made up as there was no arrest made after the accused. However, the police did find material evidence during the raid both in person and on the accused's phone. The Court discussed whether the police was allowed to access the accused's mobile phone without his consent and knowledge? Does this not violate the accused's constitutional right of privacy?⁴³ The Court then discussed the implications of using a mobile phone in the modern era. How we are all practically living in said phone, using it for the purposes of chatting to those who are dear to us, talking through video or audio calls and posting and uploading different types of data. The Court further discussed how an individual's pursuits or inclinations know no limits. He/she may like books of different subjects or of different literature. He/she may explore knowledge through different types of social media like facebook, twitter etc. Such pursuits or explorations are not prohibited are not prohibited by law. Any type of information which an individual wants to keep secret or private, then such information cannot be extracted without said individual's consent as similar to the principle of an individual having an inherent right to privacy in his home, an individual also an inherent right to privacy in his mobile phone as per Article 14(1) of the Constitution. However, by virtue of the same constitutional provision, such privacy is subject to law and thus where the individual's limits or collection of information are against the law of the land, then he can well be restricted through the process of law.⁴⁴ The Court further discussed certain international treaties to whom Pakistan is signatories to and Pakistan's own law in which the acquisition of data and protection thereof is incorporated therein. The Court then discussed the process involved in cases where information is to be extracted from the accused's own mobile phone, where Section 523 of the Code of Criminal Procedure, 1908 is to be adopted for extracting said information.⁴⁵ The Court also discussed American jurisprudence that relates to the infringement of privacy through mobile phones. The Court concluded its discourse by ruling that depending upon the facts and circumstances and the method adopted to seize the mobile

³⁹ Lee A. Bygrave, "The Place of Privacy in Data Protection Law", (2001), *UNSW Law Journal*, vol. 24, no. 1, 277. <<https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/24-1-4.pdf>> accessed 6th April 2024.

⁴⁰ *ibid*, p. 281.

⁴¹ *ibid*.

⁴² Criminal Appeal No. 73676/2022. <<https://sys.lhc.gov.pk/appjudgments/2023LHC4087.pdf>> accessed 28th March 2024.

⁴³ *ibid*, at para 12.

⁴⁴ *ibid*, at para 13.

⁴⁵ *ibid*, at para 16.

phone, an individual is subject to a certain set of rights, laws or protections.⁴⁶ The Court also held that by virtue of Article 13(b) of the Constitution, an individual has a right to protect himself from self-incrimination and thus he has right to not incriminate himself by the extraction of information from his own mobile phone.⁴⁷ Offering one's phone for scrutiny can cause someone to potentially be incriminated for an offence as not everything you store is fresh in your memory.⁴⁸ This observation is laudable. The Court has further incorporated the right to privacy within Article 13(b) of the Constitution of Pakistan. Even more laudable is the following observation of the Court:

“By concluding the above discussion, it could be said that our digital belongings i.e., phone, SIM, SD card data could have been copied and gone through; our phone may have been turned on, apps and browsers opened; the police might have access to any accounts our phones logged into. This means they may have read personal communication, noted personal accounts including email addresses, social media account names to follow, sent messages or made posts using our log in. Depending upon the circumstances of the arrest and the method of seizure of mobile device, we are subject to a certain set of rights, laws, or protections. In USA, it is the right of every person to decline the warrantless search of his mobile phone, if he is arrested or taken into police custody; he should verbally state that he does not consent to a search of his devices. A law enforcement agency is only permitted to conduct a warrantless search of his device if a compelling case for an emergency can be made.”⁴⁹

This observation has thus accurately grasped the potential harm and consequences that could be incurred where information is extracted from a phone without an individual's consent and knowledge. Even more appreciative was how the Court held that a warrantless search of the mobile phone's data is a very big exception that can be resorted in case of an emergency. The Court further ruled that

“...On the spirit of Article 13 & 14 of the Constitution of the Islamic Republic of Pakistan, 1973, it is, therefore, held that spying over or extracting data from a personal phone of an individual or suspect is unconstitutional and illegal except with the permission of Court concerned. Any violation may entail punishment under the statutory law.”⁵⁰

Hence, no authority has the power to spy or extract information from somebody's mobile phone except when the concerned Court gives permission to do so. If no permission is given, then such spying or extraction shall be deemed illegal and unconstitutional. This jurisprudence is indeed a welcome one for it has amplified the necessity for data protection. However, it is unfortunate that while the Court deliberated upon the right to privacy on the touchstone of Articles 13(b) and 14(1) of the Constitution, the Court did not at all apply Articles 4 and 9 of the Constitution.

While we understand now that the principle of inviolable privacy of the home under Article 14(1) of the Constitution has been extended to include mobile phones as well, what about other similar data storing devices such as computers, laptops, cameras, USBs etc.? Can we include them as well? Indeed, we can. Although, each of them has their own unique functions and applications in their daily usage, they all have the same property of the mobile phone which is the storing of data. Hence, if these devices can also store data similarly to a mobile phone, why should there not be any inherent right to privacy there? The issue is the same. The same potential harm could be

⁴⁶ *ibid*, at para 19.

⁴⁷ *ibid*, at para 20.

⁴⁸ *ibid*.

⁴⁹ *ibid*, at para 19.

⁵⁰ *ibid*, at para 20.

caused. Hence, the same principle applies here. Thus, any device which can store data of a personal nature for a specific purpose or any purpose, the same inherent right to privacy exists in all of them which cannot be violated except in exceptional circumstances and also reasonable restrictions imposed by law. While the jurisprudence does not extend to all of these yet, the Bill does exclusively cover all of this and thus it shall be in the country's best interest if it were to be passed as it would not only exclusively provide safeguards for data, it could amplify our fundamental right of privacy to include data protection even further.

Conclusion

From the discussion hereinabove, we can conclude that data which refers to particular information or knowledge. There is an inherent right to privacy when it comes to data as it could be used for any malicious or nefarious purpose and could cause a lot of harm. This is what we refer to as data protection. In Pakistan, while there are a lot of statutes that discuss the protection of data in some of the provisions incorporated therein, there is no primary legislation on the same. The primary legislation that has some provisions of data protection is the PECA. It contains certain provisions that pertain to unauthorised access and the confidentiality of information. However, in recent years, there has been a bill that has been forwarded that exclusively provides for and deals with the protection of data called the Protection of Data Bill, 2023. Although, there are problems that come with it as well, the Bill is still a great effort and nice step in the direction of data protection in Pakistan. Privacy has been long since recognized as a sacred human right under Islamic Law, western jurisprudence and International Law. While the Constitution of Pakistan does not exclusively provide for a provision that safeguard's a person's privacy safe for Article 14(1) which provides for the protection of an individual's home, the right to privacy is in fact incorporated within Articles 4 and 9 of the Constitution as well. It has been interpreted to include all locations outside the home which makes a person feel secure and enjoy personal freedom. Although, the Pakistani Superior Courts have only incorporated it within Articles 9, 13(b) and 14(1), nevertheless, the right to privacy does exist in the Constitution. The Superior Courts have also recently ruled that an accused's phone could not be accessed into without his knowledge or consent as it would be a violation of his right to privacy. Hence, a person has an inherent right to privacy with not just his house but also his mobile phone. But what about other similar electronic devices that can also store data such as USBs, cameras, laptops, computers etc., then in that case, there should also be an inherent right to privacy for the data in these devices as well. While the Pakistani jurisprudence does not extend to this extent yet, the Bill does cover all of these and thus it would be in Pakistan's best interest to have this Bill passed and be officially recognized as a law of the land so as to make sure that the realm of cyber law grows even bigger.