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The Right to Privacy: A Reflection on Warren and Brandeis' Interpretation and the Case of Ethiopia 1991-2018

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ABSTRACT

The Right to Privacy is a form of negative liberty that ensures people to enjoy life without unlawful interference from the state or other agents. Samuel Warren and Louis Brandeis are the two forerunner activists on the Right to Privacy. Although some of their propositions are debatable, their insight in the Right to Privacy is still valid. This article tries to reflect on Warren and Brandeis' contribution to concept of the "Right to Privacy" and its practical application in the contemporary world taking Ethiopia as a case study.

Keywords: Right to Privacy, Warren and Brandeis, Ethiopia

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INTRODUCTION

The Right to Privacy Defined

Downes [1] and Thomson [2] define privacy as a component of negative liberty; a form of liberty people should enjoy without unlawful interference from the state or other agents. Allen [3], Schwartz [4], and Cohen [5]define privacy in a much broader sense - as a vital enabler of positive liberty. According to them, privacy enables people to attain independence and self-confidence. In human development, during adolescence, a young person asserts his autonomy by establishing private spaces. Without such private spaces, self-knowledge and self-determination are impossible. Privacy, therefore, can be understood as a peaceful breathing space, an essential element to sustaining personal development and self-management. Privacy enables individuals to determine the depth and breadth of their relationships with their surroundings, including the state.

Everyone has the right to life; it is one of the fundamental civil rights [6]. The right to life means the right to enjoy life [7]; and this may include the right to be left alone [8]. At times, people may want to be forgotten. From this perspective, privacy compliments the right to life, more specifically, the right to enjoy life.

Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property [6]. The right to property includes not only the tangibles but also intangible assets. A person's dignity, reputation [9], goodwill, and private knowledge about himself [10] are the person's intangible properties. From this perspective, the right to privacy augments the property right.

Warren and Brandeis' Account on the Right of Privacy

Samuel Warren and Louis Brandeis are believed to be pioneers in writing on the Right to Privacy in Harvard Law Review in 1890. Warren and Brandeis [8] argue a person's reputation, his standing among his fellows, is an asset that can be trespessed by publicising personal information without his knowledge and/or consent. A person's family is also part of his life. Damaging an individual's reputation may inflict damage on the whole family, and it is a trespess.

The proposition that it is a right of humans "with whose affairs the community has no legitimate concern" to not be dragged into undesirable and undesired publicity" was provided in the article published in Harvard Law Review by Warren and Brandeis [8]. Warren and Brandeis listed five points to show the boundaries of the right of privacy. According to them:

- 1) The right to privacy does not prohibit any publications of matter which is of public or general interest:
- The right to privacy does not prohibit the communication of any matter that can be administered by the law of slander and libel;
- The right to privacy would probably not grant any redress for invasion of privacy by oral publication in the absence of special damage;

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