Right to Privacy and Its Infringement by Media

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ABSTRACT
“Privacy is not something that I’m merely entitled to, it’s an absolute prerequisite.”
Privacy is a fundamental human right. It underpins human dignity and other values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age. Privacy is recognized around the world in diverse regions and cultures. It is protected in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and in many other international and regional human rights treaties. Nearly every country in the world includes a right of privacy in its constitution. In India where privacy is not most explicitly recognized in the constitution, the court has found and evolved that right in other provisions as Article 21. It is proclaimed that “in one sense all human rights are aspects of the right to privacy”. The framers of our Constitution knew the immense power vested in the print media, therefore they imbibed the Freedom of Speech and Expression in Article 19(1) (a) of the Indian Constitution from Article 19 of the UDHR, and also reflected similarly in Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR). At the same time UDHR 1948 in Article 12 and ICCPR 1966 in Article 17 give protection to the concept of privacy. Though freedom of speech and expression given in Article 19 of the UDHR 1948 and ICCPR 1966 was enshrined in Article 19(1)(a) of the Indian Constitution. We do not find such constitutional recognition given to privacy in India. With the emergence of media being one of the most reliable public’s source of information and awareness, privacy of individuals, are often harassed and infringed. Media tends to write stories from their own biases ,heartlessly intruding the private lives of citizen who happens to stumble in to the public forum. While Media should prioritize individual’s right to privacy which is widely recommended as ‘ethical journalism’, but there are times when the individual’s right to privacy is brutally eroded by the media which should be strongly resisted. As a result there is a need to protect Privacy as a fundamental right in the Constitution and also to give a higher status to it in reference to Press.

Key Words : Article 21, Indian Constitution, Human right, Media.

‘A free and democratic society requires respect for the autonomy of individuals, and limits on the power of both state, media, and private organizations to invade on that autonomy ..........Privacy is a key value which underpins human dignity ....Privacy is a basic human right and the reasonable expectation of every person.’

MEANING OF RIGHT TO PRIVACY
The privacy of a person is a fundamental right and most of the governments all over the world have been obligated for safeguarding their citizens in their values, emotions, vibrations, and opinions. In the likewise manner every individual has the right to verify what kind of information is taken about him and the reason...
for taking of that information as all such kinds of rights help protecting the person from maltreatment or exploitation.

Definitions of privacy vary widely according to context and environment. In many countries, the concept has been fused with data protection, which interprets privacy in terms of management of personal information. However outside this rather strict context, in India the right to privacy is frequently seen as a protection by way of drawing the line at how far society can intrude into a person’s affairs.

Allan Westin, author of the seminal work titled as “Privacy and Freedom,” defined privacy as the, ‘desire of people to choose freely under what circumstances and to what extent they will expose themselves, and their attitudes and their behavior to others.’

*The Right to Privacy means the right* to be let alone; the right of a person to be free from unwarranted publicity and the right to live without undue interference by the government or any private individual in matters with which the public is not concerned. It prevent unlawful disclosure of personal information as well. It is the right of the person to review their information, ask for any corrections, and be informed before any disclosure.

In sum up I may say that the right of privacy is the right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.

**GENESIS OF THE RIGHT TO PRIVACY**

The recognition of privacy is deeply rooted in history. The Bible has numerous references to privacy. Jewish law has long recognized the concept of being free from being watched. There were also protections in Classical Greece and ancient China. Western countries have had protections for hundreds of years. In 1361, The Justices of Peace Act in England provided for the right to be protected from privacy invasion. Various countries developed specific protections for privacy in the centuries that followed. In 1776 the Swedish Parliament enacted the Access to Public Records Act which required that all government held information be used for legitimate purposes. France prohibited the publication of private facts and set stiff fines for violators in 1858. The Norwegian Criminal Code prohibited the publication of information relating to “personal or domestic affairs” in 1889. In the year 1890 American lawyer and future U.S. Supreme Court Justice Louis Brandeis articulated a concept of ‘privacy’ that urged that it was individual’s “right to be left alone.” Brandeis argued that privacy was the most cherished of freedoms in a democracy, and he was concerned that it should be reflected in the Constitution. Along with this American Lawyer Samuel Warren with Louis Brandeis wrote a seminal piece on the right to privacy as a tort action. Following this publication the concept of privacy was gradually picked up across the U.S. as a part of the common law. They both identified the ‘injury to the feelings’ and recognized it as a legal injury and through invasions upon his privacy, subjected him to mental pain and distress. In India the right to privacy has not been explicitly recognized under the Constitution. However the Supreme Court of India first recognized in Kharak Singh v. State of U.P. and Others 1964 that there is a right to privacy implicit in the constitution under Article 21 of the Constitution which states that, “No person shall be deprived of his life and liberty except according to procedure established by law.”

Even before India became Independent, it had already become party to the United Nations Declaration on Human Rights 1948 (UDHR). Press had played a very important and productive role in the independence movement, through its strong support for the popular movement of Satyagraha and abdication of foreign goods and other similar forms of freedom struggle. Such was the impact of the print media that it frightened the British, as it gave a picture of a strong India, though the reality was a disintegrated India ruled by princely kings and people in deep poverty. The framers of our Constitution knew the immense power vested in the print media, therefore they imbibed the Freedom of Speech and Expression in Article 19(1) (a) of the Constitution.
Indian Constitution from Article 19 of the UDHR, and also reflected similarly in Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR). UDHR 1948 in Article 12 and ICCPR 1966 in Article 17 give protection to the concept of privacy. Though freedom of speech and expression given in Article 19 of the UDHR 1948 and ICCPR 1966 was enshrined in Article 19(1)(a) of the Indian Constitution. We do not find such constitutional recognition given to privacy in India. Here, privacy is not given any separate constitutional status. Right to life, liberty and security of person is enshrined in Article 3 of the UDHR 1948. This is recognized in Article 21 of the Indian Constitution. Privacy was not included in this Article. In Nihal Chand v. Bhagwan Dei during the colonial period, as early as in 1935, the High Court recognized the independent existence of privacy from the customs and traditions of India. But privacy got recognition in free India for the first time in Kharak Singh case. Privacy was recognized as a separate right in UDHR 1948. This has failed to materialize in the same spirit as a fundamental right in the Indian Constitution, like the right to speech and expression and right to life. Article 3 of the UDHR 1948, protects life and personal liberty, not privacy. In India privacy is described as part of right to life and personal liberty in Article 21 of the Constitution as there is no separate provision for privacy in the Constitution. Privacy has been defined by Supreme Court in Sharada v. Dharampal as ‘the state of being free from intrusion or disturbance in one’s private life or affairs’. This is different and distinct from the life and liberty in Article 21 of the Constitution. India being signatory and party to the UDHR 1948 is bound to protect Privacy as a fundamental right in the Constitution and also to give a higher status to it in reference to Press. In short although the right to privacy has not been explicitly guaranteed under the Indian Constitution , the Supreme Court of India first recognized in Kharak Singh v. State of U.P. and Others 1964 that there is a right to privacy implicit in the constitution under Article 21of the Constitution which states that, “No person shall be deprived of his life and liberty except according to procedure established by law.” There is also a right to privacy guaranteed by Indian laws. Unlawful attacks on the honor and reputation of a person can invite an action in tort and / or criminal law. Article 19 (1) of the constitution of India has guaranteed the right to information and the right to communicate the information through media before the enactment of The Right to Information Act 2005. In the State of Uttar Pradesh Vs. Raj Narain, the Supreme Court of India held that Article 19 (1) (a) in addition, to guaranteeing freedom of speech and expression, guarantees the right to receive information on matters concerning public interest. Every person would like to enjoy the right to intimate personal relationships and activities including conversations without any interference. However, the Right to Privacy, like the freedom of the press, is not an expressly guaranteed Fundamental Right in the Constitution. The freedom of the press has been read into the Right to Freedom of Speech and Expression guaranteed to citizens by Article 19 (1) (a) from the inception. On the contrary he Judicial system of our country has recognized the right to privacy as a right “implicit in the right to life and liberty guaranteed to every person by Article 21, but there are some limitations to the rule of privacy in the public interest especially subsequent to the enactment of the Right to Information Act 2005 (RTI). The RTI Act makes an exception under section 8 (1) (j), which exempts disclosure of any personal information which is not related to any public activity or of public interest or which would cause an invasion of privacy of any individual, unwarranted invasion of privacy is undefined. However courts have taken positive stand on what constitutes privacy in different circumstances. Evolution of the right to privacy under the Indian legal regime At present India does not have an independent statute protecting privacy ; the right to privacy is considered a deemed right under the Constitution. The right to privacy has to be understood in the context of two fundamental rights : the right to freedom under Article 19 and the right to life under Article 21 of the Constitution. But the role of judiciary in evolving privacy jurisprudence in India has been exceptionally outstanding which should be taken into notice.
The Supreme Court of India (hereinafter referred to as the "Supreme Court") had the opportunity to first decide and lay down the contours of the right to privacy in India in the case of *Kharak Singh v. State of Uttar Pradesh*. This case did not witness the recognition of the right to privacy as a fundamental right under the ‘personal liberty’ clause of Article 21 of the Constitution. Majority of the judges in this case refused to interpret Article 21 in a manner to include within its ambit the right to privacy, however two of the seven judges asserted that the right to privacy does form an essential ingredient of personal liberty. Subsequently, the Supreme Court while deciding the case of *Govind v. State of Madhya Pradesh* laid down that a number of fundamental rights of citizens can be described as contributing to the right to privacy. Although the Supreme Court also stated that the right to privacy will have to go through a process of case by case development.

The Supreme Court in the case of *R. Rajagopal v. State of Tamil Nadu*, for the first time directly linked the right to privacy to Article 21 of the Constitution and laid down: "The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages."

Further, while deciding on the issue of telephone-tapping in the case of *PUCL v. Union of India*, the Supreme Court observed that telephone-tapping would be a serious invasion of an individual’s privacy. Thus, telephone-tapping would infract Article 21 of the Constitution unless it is permitted under the procedure established by law.

Therefore, the concept of privacy of an individual has evolved over the years and has been held to be a fundamental right by the Supreme Court. In the case of *Selvi v. State of Karnataka* the Supreme Court held that an involuntary subjection of a person to narco analysis, polygraph examination and BEAP tests violates the right to privacy. Finally the Supreme Court conclusively established privacy jurisprudence on July 4, 2011, by its judgment in the *Ram Jethmalani and Others Vs Union of India and Others case*, known as the black money case. The honorable court had then held: ‘Right to Privacy is an integral part of the Right to Life. This is a cherished Constitutional value and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner. As Constitutional adjudicators we always have to be mindful of preserving the sanctity of Constitutional values, and hasty steps that derogate from Fundamental Rights, whether urged by governments or private citizens, however well meaning they may be, have to be necessarily very carefully scrutinized.’

It is to be noted that even with the enlarged scope of Article 21 of the Constitution covering right to privacy, the right to an individual’s privacy is not an absolute one and comes with certain exceptions. The Supreme Court observed that the right to privacy may be restricted for the prevention of crime, disorder or protection of health or morals or protections of rights and freedom of other. The Supreme Court has articulated an implicit right to privacy derived from the language set out in Article 21 of the Constitution. However, India does not have a separate and specific legislation that explicitly recognizes the right to privacy and sets out the contours of its applicability.

**MEDIA AND INFRINGEMENT OF PRIVACY**

Today there is an open and candid conflict between the ‘informational activism’ and the right to privacy which may be summed up as Public's Right to Know versus Infringement of Privacy. Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right "to be let alone". Instantaneous photographs and media enterprise have invaded the sacred precincts of private and
domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the house-tops." For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of information of private persons; and the evil of invasion of privacy by the newspapers, long keenly felt, has been but recently discussed and debated by the intellectuals. Of the desirability -- indeed of the necessity -- of some such protection, there can, it is believed, be no doubt. The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as confidence. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, with the advancement of civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury. Nor is the harm wrought by such invasions confined to the suffering of those who may be the subjects of journalistic or other enterprise. In this, as in other branches of commerce, the supply creates the demand. Each crop of unseemly gossip, thus harvested, becomes the seed of more, and, in direct proportion to its circulation, results in the lowering of social standards and of morality. Even gossip apparently harmless, when widely and persistently circulated, is potent source for evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus dwarfing the thoughts and aspirations of a people. When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, it is not unusual that the ignorant and thoughtless persons might not understand the relative importance of privacy and other issues of societal concern. Easy of comprehension, appealing to that weak side of human nature, no one can be surprised that it usurps the place of interest in brains capable of other things. Triviality destroys at once robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its bad influence. Consequently the media should exercise some restraints while publishing any information regarding individual’s private affairs.

**RECENT TRENDS OF TRIAL BY MEDIA**

Recently the press, especially the electronic media has been very enthusiastic to grab and report it even before the Police or other channels get to know about it. This investigative journalism is good but at the same time it is going out of hand. There is no way to regulate it or stop it. Though we have the Press Council of India, which was established around twenty two years before, the electronic media will not come under its regime. The PCI entertains more than 10,000 complaints a year, has no teeth and the purpose is defeated as it evokes no fear or sanction. Simply an apology is demanded from the press, if found guilty. These types of liberal approaches are not going to remedy the harm caused by press reporting. More stringent measures are to be adopted to curb the malady though self-regulation can operate as a useful and viable tool. The Government in its zeal to bring liberalization in media has allowed foreign direct investment into it. The policy brought in 2003, permits unto 26% in print media, while in broadcasting, it is allowed unto 100%. This is in a situation, where there is no law to control the tyranny of electronic media. With the doors open for the foreign media to invade India with their ideas and experiment with the Indian youth, the government is taking no urgent steps to bring in a regulation to control the widespread electronic media.

**Remedy for protection of Privacy of Individual by Media**

A study of the development of privacy traces back to Nihal Chand v. Bhagwan Dei in 1935, where the High Court recognized the independent existence of privacy from the customs and traditions of India. India even
before independence became a member of UN and was signatory to the UDHR 1948. The UDHR was almost fully incorporated into the Indian Constitution. One of the exceptions to it was the giving no recognition to the concept of privacy. UDHR gave privacy a foremost position in Article 12, while freedom of speech and expression found place only in Article 19. Article 19 was subject to conditions such as reputation, national security, and public order and of morals. In the Indian Constitution, the restrictions imposed on freedom of speech and expression in Article 19(2) was on the lines of libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the state. This clause was later amended by the 1st Amendment Act of 1951, and a new clause was inserted instead of the above clause. The new clause brought reasonable restrictions on the lines of security of state, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. This took away further, the grounds of restrictions in the earlier unamended clause i.e. libel and slander. Freedom of press was included in this right to speech and expression by the Apex Court in Romesh Thapper v. State of Madras. Here the Court held that this freedom includes right to propagate ideas including the right to circulate. All the above factors further gave impetus to press but at the same time the right of an individual to plead right to privacy against undue interference by press was completely denied as this right to privacy was not given an independent status as a fundamental right on the same footing as of freedom of press in the Constitution. The framers of the Constitution failed to imbibe the full spirit of UDHR 1948 by neglecting to recognize the right to privacy as a fundamental right It was in Kharak Singh, that the Apex Court had the opportunity to discuss privacy for the first time, wherein it struck down domiciliary visits on an accused under Article 21 of the Constitution. But it was only through the minority view of Justice Subha Rao, that privacy found a place in Article 21 of the Constitution. This was due to lack of an article on privacy. Article 21 of the Indian Constitution protects life and personal liberty which is on the lines of Article 3 of the UDHR. Therefore Article 21 is not the solution to the problem faced in the matter of privacy protection. Article 21 is only an interim relief till legislative weapons are put in action to bring in a parallel Article on the lines with Article 12 of the UDHR in the Indian Constitution to protect Privacy.

CONCLUSION

Due to lack of Constitutional and legislative measures to protect privacy, the victims of press abuse have to take the help of tort law. Tort law does not refer to privacy but only other offences such as libel, slander, defamation, morality and decency. These different offences form part of the term ‘Privacy’ but individually these offences can never fulfill the need of protection of privacy faced by individuals. Even Indian penal code has allowed punishment or penalty for the above offences but not for privacy. Privacy as a term never come into the minds of legislators. The courts have also given decisions on the lines of the various offences mentioned above. The other grounds left for the victims were only Article 19(2) and Article 21 of the Constitution. There is no legislative effort to codify and protect privacy till date neither in the Constitution nor in any legislation. The victims has to always depend on the court’s discretion and interpretation of privacy, when the question of infringement of privacy is considered. This has been a loophole since the time of independence. It is therefore recommended that the Constitution should be amended to include this right to Privacy as the first step. Once the ground norm is amended, the position of privacy will be legally at par with international standards. Then is the need to enact a Privacy Act. Thirdly the need to amend the Contempt of Court Act 1971, to give the courts, specific powers apart from the general powers to issue gagging orders and other orders to protect an accused from media intrusion which has the effect of tampering with evidences and witnesses and causing interference in administration of justice. Besides this the intellectuals should initiate a movement promoting a "right to be forgotten” by which the freedom of expression should be balanced by a right to erase information which affects an individual, under certain
conditions. Rights to privacy need extending and strengthening in the digital era. Also as stated in Rajendra Sail’s case, we need a strong press council in India. It should be a strong regulatory authority with representatives of legal, social, common man and press. Presently the Press Council is dominated by the different newspapers.

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