



BREACH OF PRIVACY

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ABSTRACT

Privacy cannot be defined it can only be understood as a personal space which no one wants to get intruded by any third person and the right to have this private space is available to each and every person. But when circumstances arise which leads to such intrusion than the researcher has tried to analyze the situation where it is breached and how far it is justified to breach it for the welfare of the country. Breach of privacy is not justified but, in some circumstances, it is needed, so it needs to be understood that when such breach is required and when it is not.

Privacy and the constitution

The law of privacy can be understood as the recognition of the individual's right to be let alone and to enjoy one's personal space inviolate. The need for privacy and its recognition as a right is a modern phenomenon. It is the product of an individualistic society in which the focus has been shifted from society to the individual. Earlier, the law afforded protection only against physical interference with a person or his property. As civilization progressed, the personal, intellectual and spiritual facets of the human personality gained recognition and the scope of the law expanded to give protection to these needs¹.

The term "privacy" has been described as: The rightful claim of the individual to determine the extent to which he wishes to share himself with others and his control over the time, place and circumstances to communicate with others. It means his right to withdraw or to participate as he sees fit. It also means the individual's right to control dissemination of information about himself; it is his own personal possession².

Another author defined privacy as a "zero-relationship" between two or more persons in the sense that there is no interaction or communication between them, if they so choose.³ The Supreme Court has defined privacy as "the state of being free from intrusion or

¹ Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

² A.C. Breckenridge, *The Right to Privacy* (1971) cited in Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

³ E. Shils, Privacy: "Its Constitution and Vicissitudes", *Law and Contemporary Problems* (1966) 31. Cited in Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

disturbance in one's private life or affairs"⁴. The concept is used to describe not only rights purely in the private domain between individuals but also constitutional rights against the State. The former deals with the extent to which a private citizen (which includes the media and the general public) is entitled to personal information about another individual. The latter is about the extent to which government authorities can intrude into the life of the extent to which government authorities can intrude into the life of the private citizen to keep a watch over his movements through devices such as telephone tapping or surveillance. This aspect also concerns the extent to which government authorities can exercise control over personal choices.⁵

Privacy has not been expressly provided in the constitution of India it can only be impliedly derived by reading Articles such as 21 and 19 (1) (a). Higher judiciary of India has recognized right to privacy as a right implied in the right to life and liberty guaranteed to the citizens of this country provided under article 21. Some exceptions have been made by the Indian Law to the rule of privacy in the interest of the public, after the enactment of Right to Information Act, 2005. As RTI by virtue of Section 8 (1) (j) disclosure of personal information which is not connected to any public activity or of public interest and will cause an unwarranted invasion of privacy of an individual.

Right to privacy is recognized as a fundamental right provided under Article 19 & 21. Therefore, it is Article 19 which is responsible for providing freedom of speech and expression to media to publish any information subject to the restrictions imposed by the state in respect to secure the sovereignty and integrity of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

In **R.Rajagopal v State of T.N**⁶ and **PUCL v UOI**⁷, the courts observed that the right to privacy is an essential ingredient of the right to life.

R. Rajagopal v State of Tamil Nadu⁸

Auto Shankar was sentenced to death for committing six murders — in his autobiography disclosed his relations with a few police officials. The Supreme Court while dealing with the question relating right to privacy, observed, that right to privacy is implicit in the right to life and liberty guaranteed to the citizens of the country by Article 21. It is a 'right to be left alone.' "A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation,

⁴ *Shardav Dharmpal*, (2003)4SCC493,521, para. 71: AIR2003SC3450 cited in Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

⁵ *Roe v Wade*, 35 L Ed 2d 147: 410 US 113 (1973) cited in Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

⁶ (1994) 6 S.C.C. 632

⁷ AIR 1997 SC 568

⁸ 32(1994) 6 S.C.C. 632

motherhood, child-bearing and education among other matters.” The publication of any of the aforesaid personal information without the consent of the person, whether accurate or inaccurate and ‘whether laudatory or critical’ would be in violation of the right to privacy of the person and liable for damages. The exception being, when a person voluntarily invites controversy or such publication is based on public records, then there is no violation of privacy.

In **PUCL v UOI**⁹,

Popularly known as the wire-tapping case, the question before the court was whether wire-tapping was an infringement of a citizen’s right to privacy. The court held that an infringement on the right to privacy would depend on the facts and circumstances of a case. It observed that, “telephone conversation is an important facet of a man’s private life. Right to privacy would certainly include telephone-conversation in the privacy of one’s home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.” It further observed that the right to privacy also derives from Article 19 for “when a person is talking on telephone, he is exercising his right to freedom of speech and expression.”

In **Kharak Singh v State of U.P.**¹⁰ In this case police surveillance was challenged on account of violation of the right to privacy, the Supreme Court held that domiciliary night visits were violative of Article 21 of the Constitution and the personal liberty of an individual. The court, therefore, has interpreted the right to privacy not as an absolute right, but as a limited right to be considered on a case-to-case basis. It is the exceptions to the right to privacy, like ‘public interest’, that are of particular interest to this paper.¹¹

Therefore, privacy and constitution go hand in hand as it is the constitution which provides and safeguards the privacy of an individual. Constitution or any other statute does not expressly provide any provision defining privacy but it is the term which needs to be interpreted depending upon the facts and circumstances of each case. Privacy of an individual is a fundamental or the basic right which needs to be protected otherwise it will intrude the life of a person but if that privacy is concerning the society or the public at large than it needs to be intruded. So it is true that through the medium of media the privacy of individuals are interrupted but sometimes it is necessary to disclose the evils of the administration.

Privacy Laws in the Current Scenario:

⁹ The centre for internet and society, *Privacy and Media Law* <<https://cis-india.org/internet-governance/blog/privacy/privacy-media-law>> accessed 15th May 2018

¹⁰ AIR 1997 SC 568

¹¹ The centre for internet and society, *Privacy and Media Law* <<https://cis-india.org/internet-governance/blog/privacy/privacy-media-law>> accessed 15th May 2018

In India expressly there is no law which talks about the right to privacy of an individual. It is through the medium of precedents or by impliedly interpreting the provisions of the constitution and statutes, one can determine the laws or the guidelines relating to privacy. The issue of privacy recently arose in the controversy related to Adhaar Card which made Right to Privacy a fundamental right.

Right to privacy in India is mainly derived from two sources mainly they are: common law of torts and constitutional law. Under common law private action for damages lies for unlawful invasion of privacy.

Govind v State of Madhya Pradesh¹²

In this case it was held that printer and publisher of a journal, magazine, or book are liable in damages if they publish any matter concerning the private life of the individual, which would include his family, marriage, procreation, parenthood, child bearing, education etc. without his consent.¹³

However, this is with two exceptions which are:

This right is not applicable where the publication has become public record

Publication which relates to discharge of official duties of a public servant, unless the publication is proved false, malicious or is untruthful.

The Right to Information Act provides that information which intrudes privacy of a person and that information has nothing to do with the society or of any public importance than in such case such private space of an individual should not be intruded. With the increasing boom in the industry of media the private space of an individual has been taken over as with the increase in technological development there are very few barriers which restrict this intrusion. In the name of right to freedom of speech and expression sometimes the rights of other individuals are infringed.

So, there are no laws which expressly regulate the concept of privacy on the other hand it is on the discretion of the court of law deciding the matter to interpret whether there is breach of privacy or not. Sometimes there is breach of privacy but that breach is necessary for the country and to reach the ends of justice, in such case the intrusion into the privacy of an individual is considered to be valid or essential.

Impact of Media on the privacy

¹² (1975) 2 SCC 148

¹³ Lawyers Club India, Rights of Media and Privacy Issues : Bridging the gap <<http://www.lawyersclubindia.com/articles/Rights-of-Media-and-Privacy-Issues-Bridging-the-Gap-3927.asp>> accessed 18th May 2018

The exponential growth of the media, particularly the electronic media in recent years, has brought into focus issues of privacy. The media has made it possible to bring the private life of an individual into the public domain, exposing him to the risk of an invasion of his space and his privacy. At a time, when information was not so easily accessible to the public, the risk of such an invasion was relatively remote. In India, newspapers were, for many years, the primary source of information to the public. Even then, newspapers had a relatively limited impact given that the vast majority of the population was illiterate. This has changed today with a growth in public consciousness, a rise in literacy and perhaps, most importantly, an explosion of visual, electronic and social media, which have facilitated an unprecedented information revolution. It is no longer the film star alone who is in the public eye. Politicians, business persons, media personalities, professionals and socialites actively court the media to project themselves and to advance their agenda¹⁴.

Advances on computer technology and telecommunications have exponentially increased the amount of information that can be stored, retrieved, accessed and collated almost instantaneously. An enormous amount of personal information is held by various bodies, both public and private- the police, the income tax department, banks, insurance agencies, credit rating agencies, stock brokers, employers, doctors, lawyers, marriage bureaus, detectives, airlines, hotels and so on. Till recently, this information was held on paper; the sheer volume and a lack of centralization made it hard to collate. With the result, that it was very difficult for one body or person to use this information effectively. In the Internet age, information is so centralized and so easily accessible that one tap on a button could throw up startling amounts of personal information about an individual. Technology brings down the traditional boundaries between unconnected systems. Techniques such as data mining ensure that every bit of valuable information is extracted and logged. Data matching enables linkages to be made between the contents of previously uncorrelated data banks. This enables public authorities to keep a closer watch over the individual¹⁵.

The move towards convergence will further blur traditional distinctions between activities, technologies and regulatory schemes. Information obtained by private agencies is used (and misused) not only by the private sector but is easily accessed by public authorities. Police and tax authorities, the world over, are known to rely on the private sector for information about suspects and tax evaders. Seemingly innocuous information disclosed in a specific limited context may be collated and used in a completely unforeseen and startling context may be collated and used in a completely unforeseen and startling context¹⁶.

¹⁴ Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

¹⁵ Ibid.

¹⁶ For instance, in the US, the Selective Service System is reported to have purchased a list of 1,67,000 names of boys who had responded to a promotion organized by Ben & Jerry, a chain of ice cream parlours offering free ice cream on the occasion of their 18th birthday. This list of names, addresses and dates of birth was used to track down those who failed to register for military service cited in Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

Coinciding with this technological revolution, is the enactment of a law on the right to information. The Right to Information Act, 2005 (RTI Act) creates rights of access to information relating to public affairs and proceeds on a presumption on favour of openness.

In 2011, the Government of India flagged off the Unique Identification Number (UID) scheme by which every resident of the country would be given a unique 12-digit identification number. The avowed object of the scheme is to create a direct link between the State and the individual and ensure that financial benefits reach the intended beneficiaries rather than get sloughed off on the way by inefficient and corrupt officials and mid-dlemen. Despite its noble objects, the scheme has raised serious privacy concerns. There is enormous scope for abuse of this information without the knowledge of the individual¹⁷. It doesn't end at public authorities. There are other big brothers watching¹⁸. Every time you log on to the internet, you leave behind an electronic trail. Websites and advertising companies are able to track users as they travel on the internet to assess their personal preferences, habits and life styles. This information is used for direct marketing campaigns that target the individual customer. Every time you use your credit card, you leave behind a trail of where you shopped and when, what you bought, your brand preferences your favourite restaurant.

Employee privacy is under siege: employers routinely use of software to access their employees' email and every move of the employee.

Field sales representatives have their movements tracked by the use of location-based tracking systems in new wireless phones.

The availability of camcorders on mobile phones means that anyone could be clicking you or recording your conversation without your knowledge. Instances which kicked up a storm in the media, include: 1) The MMS case involving the circulation and sale act with a fellow student; 2) the purported expose of Bollywood's casting couch showing an aging actor propositioning a journalist posing as a Bollywood aspirant; 3) the telecast on a TV channel of a video allegedly showing a teacher at Aligarh Muslim University engaging in a homosexual encounter in the privacy of his home; and 4) the "reverse sting" by Naveen Jindal, MP on the Zee group, allegedly showing editors demanding a 100 crore Rs ad-deal for going slow on its coverage of the Coalgate scam.

How far the breach of Privacy justified by the Media

The roots of right to privacy may be traced back from the natural rights, which are basic, inherent and inalienable rights. There are also strong legal bases for the right to privacy in

¹⁷ Madhavi Goradia Divan, *Facets of Media Law* (First Edition, Eastern Book Company Lucknow, 2006)

¹⁸ *ibid*

international law and human rights. In addition to this a number of regional legal instruments also recognized the right to privacy¹⁹.

In the current scenario media is the major source of information to the whole country it forms the fourth pillar of the democracy. It is the duty of media to provide fair and unbiased information to all the people. But sometimes this power of media is misused. In the fight of providing more and more information to the public and gaining TRP ratings they knowingly and unknowingly intrude into the privacy of an individual and also provide news in an exaggerated manner to develop interest in the public. But this might lead to the facts which are not true or are just a hypothesis created by the media. Media Trial is one such example as in this the media give its verdict or opinion in such a strong manner that people assume it to be true without knowing the actual truth or before the investigation by various agencies is created. In Aarushi Talwar's case media made such an opinion that it is the parents who are the real culprits and hence resulting in affecting the investigation proceedings and the decision given by the court.

It is not always true that intrusion by media is always a problem or hindrance sometimes it brings the matter into the knowledge of the general public, and also makes sure that justice should be speedily provided and it should not be interrupted. There are always two sides of a coin one good and the other bad same is with media it is both useful and harmful.

To minimize this problem steps should be taken to regularize the freedom of media by imposing some rules and regulation, though there are various statutes regulating the media but still there is a need to regulate this freedom otherwise it will lead to infringement of others' rights.

Breach of privacy is valid only till the time it is for the betterment of the nation and is essential for providing justice.

CONCLUSION:

We have discussed about the relation between privacy and media and how they are regulating the society. Expressly there are no provisions which talk about privacy but by interpreting Article 21 and 19 (1)(a) an attempt has been made to define the extent of the privacy and to make right to privacy a fundamental right. Privacy can be defined as the inner space of each individual which no one wants to be intruded by any means and when that space is intruded then the need to provide laws for safeguarding right to privacy is required. Privacy is mainly protected by means of precedents. Right to Information also provides that information concerning the privacy of an individual and which has nothing to

¹⁹ Role of Media and Right to Privacy in India – A Legal Perspective <http://shodhganga.inflibnet.ac.in/bitstream/10603/40105/17/17_summary.pdf>

do with the nation than such information should not be disclosed. Media has a great impact on the minds of the people and whatever they show people considerate to be true so when the media talks about the privacy of an individual they should be very careful while providing that information as it will lead to breach of their privacy. Information about one's life should not be disclosed unless it is concerning the nation or is required for providing justice. Because any statement made by the media leave an impact or affects the mindsets of large number of people and sometimes it affects the judgement also. As the statements made by the media are again and again shown and it sometimes affects the mind of the judges and the judgement delivered by them. So, media before making any statement should think twice that whether it is true or not and how will it impact the society and the personal space of that individual. Breach of privacy will be considered to be valid if such information is concerning the nation. So breach of privacy by media should be allowed upto some extent and an attempt should be made to regularize the freedom provided to the media so that this freedom is not misused.

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