

MEDIA INVADES RIGHT TO PRIVACY

Written by Nishita Agrawal

2nd Year BA LLB Student, National Law University Odisha

ABSTRACT

Media Law is an emerging concept in India as compared to other countries. In India, media law is governed by Press Council of India, Code of Ethics and Cable Television Network (Regulation) Act, 1955 and it also has various provisions in other statutes. Both Media law and Privacy has evolved through judicial pronouncements. Right to privacy is now granted under constitution of India as well under Article 21. At the same time Media also has the freedom of speech and expression under Article 19(1)(a). Both these articles exist with reasonable restrictions. Media while exercising right to freedom of speech and expression invades the privacy of individuals. Media captures almost all kind of incidents in the society. It publishes things which are highly offensive to some people but it is allowed in the name of public interest and society. These incidents deal with children, rape victims, drug addicts, sting operations, politicians and many more. Media is supposed to safeguard the identity of these victims but media highlights them and causes media victimization and puts them in danger. Sometimes press invades privacy only in the way of attempting to gain information and some are about publication of information and many are about both. This way it violates the privacy of the individual. Also media trials and media opinions that are inflicted on the society invade our privacy in lot of ways. This research paper basically deals with what is the relation between privacy and Media law and how media violates individual's privacy by character assassination and what is the approach of the judiciary on the same.

INTRODUCTION

Even before the independence of the country, press had become an important entity in the lives of general public. The press broadcasted important and popular movements like Satyagraha and abdication of foreign goods. Such impact of print media frightened the Britishers and has driven them out. In the recent scenario print media plays a very important role and media has widened its scope and it is broadcasted on a wider platform due to internet. There are more chances of invasion of individual's privacy because there are various press circulations and each group wants to increase its circulation and they want to have spicy information in their papers. For this they go till any extent possible. Media violates the privacy of individuals in disclosing their identities. Media does not realize the extent of harm that gets caused in this manner. Despite of the rules being laid down by the press Council in the press ethics media continues to violate the same. There is also a Press Council Act, 1978 for the same. India is a signatory to many of these international conventions which prevent violation of Individual's privacy right being followed. It is also the party to United Nations Declaration on Human Rights 1948 (UDHR).¹ There is a privacy protection bill which helps till a certain extent in prevention of invasion of privacy. Other than that, there are various statutes, which have gone through various amendments to come up with laws to prevent invasion of privacy.

Radia tapes are one such controversy where a series of telephonic conversations of Nira Radia were published by the media and hence violated the right to privacy of the citizen. Upon this Ratan Tata filed a writ petition before the Supreme Court alleging that the media houses have violated his right to privacy by publishing the private conversations. He did not challenge the act of Income Tax to record the private conversation but he challenged the fact that it was published by the media.

India as if now does not have any specific provision to protect the privacy of its citizens. Except the Press Council ethics and some other under the right to privacy which is to be understood in the context of Article 21 of the Indian Constitution along with Article 19(1)(a).

As per the opinion of the judiciary, the right to privacy is a right 'implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21'. In the interest of public,

¹ Medialawjournal.co.nz. (2017). *Invasion of Privacy | Media Law Journal*. [online] Available at: http://www.medialawjournal.co.nz/?page_id=275 [Accessed 9 Jul. 2017].

the courts have put some exceptions to the rule of privacy by enacting Right to Information Act, 2005 (RTI). It exempts the media from disclosing any personal information which is not connected to any public activity.

Disclosing the identity of rape victims or on who sexual assault has happened is prohibited by the law. Section 228A of the Indian Penal Code (IPC) lays down the provision barring the disclosure of identity of the victim of certain offences.

In today's age, it is difficult to confine oneself to the traditional media. Cyber media that are internet, social networking sites are equally the part of it. There are various laws which deal with them and invasion of privacy as it is a developing concept is being developed through judicial pronouncements.

FREEDOM OF PRESS IN INDIA

Media in the 21st Century not only includes the press but also the electronic media and the social networking sites. In India Press is considered as the fourth pillar of democracy. It acts as a watchdog on the three pillars - Legislature, Executive and Judiciary. It is included under Article 19(1) of The Constitution of India. However it has certain restrictions imposed on it as per Article 19(2).. These restrictions are imposed in the light of the sovereignty and integrity of the nation and most important with respect to the security of the state. These grounds were inserted in the Constitution through various amendments and also judicial pronouncements. In *Brij Bhushan and Another v The State of Delhi*² case Supreme Court had held that the imposition of pre-censorship on a journal is restriction on the liberty of press which is an essential part of the right to freedom of speech and expression, Press plays a very significant role for public welfare but at times it acts in a very insignificant manner. It provides information to the people from every aspect and globally. It serves as an agency of the people to gather news for them. It is because of this reason that the freedom of press has been emphasized in the democratic countries, while it was not permitted in feudal or totalitarian regimes. Apart from all these things, Media has a great responsibility to see that the information which it is

² [1950] AIR 129.

imparting is true and also it is serving the public interest at large. When Media conveys false information, it harms the reputation of the individual which is irreparable.³ Also, at times it is necessary to hide the identity of the individual, because the disclosure of identity causes those problems like damage to reputation, harsh opinions and comments being passed by close and far off people, and friends and colleagues. When Alex Perry a foreign Journalist published an article about Prime Minister Vajpayee's fitness, thereby questioning his ability to lead nation, the ruling party took this as the damage to the identity of Mr. Vajpayee and his invasion of privacy by doubting his abilities and skills. This Right to privacy of individuals should be rightly blended with the Right to Know. Media should gather and broadcast only that much information which is in the interest of the public at large and just not keep on prying in the private lives of Princess Diana and President Clinton, the way it did. Because news likes these are simply waste of public energy and resources. So, this is how the freedom of press exists with reasonable restrictions.

Right to Privacy as defined in Black Law dictionary is the 'the right to be let alone, the right of the person to be away from unwanted publicity. It originated under tort law. 'Right to Privacy is granted under Article 21 of the constitution of India. Supreme Court first recognized Right to privacy in *Kharak Singh v State of Uttar Pradesh*⁴ in this case Article 21 was not referred to but in the subsequent case of *R. Rajagopal v State of Tamil Nadu*⁵ it was directly linked to Article 21. "The right to Privacy is the right to be let alone. A citizen has the 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 action for damages." However, this is with the exception that the publication has become a public record and publication relates to discharge of official duties of a public servant, unless the publication is proved false, malicious or is untruthful. This right has developed over a period of time and it comes with reasonable restrictions and is considered as a fundamental right. Violation of right to privacy brings action against the person violating the same. We have

³ [indialawjournal.org](http://www.indialawjournal.org). (2017). India Law Journal. [online] Available at: <http://www.indialawjournal.org/archives/volume7/issue-2/article3.html> [Accessed 9 Jul. 2017].

⁴ 1964 SCR (1) 332.

⁵ 1994 SCC (6) 632.

seen that press has violated the privacy of individuals in various ways. The Ratan Tata case that has been discussed above is the perfect example. Right to Information and Right to Privacy of Individual conflict between the press and the public at large. With the process of globalization, and development of technology, the convergence of information beyond technological barriers has become a common affair. Supreme Court held that in a case, that the petitioners have a right to publish what they allege to be the autobiography of Auto Shankar in so far as it appears from the public records and also his consent is not required. However, if they go beyond that and publish his life story, they might invade his right to privacy. Examples are many in which media has crosses its limit of fair reporting in cases. There was a case of brutal murder of a 14-year-old teenager in Noida in which media recklessly reported the incident and tarnished the reputation of the victim and her parents. The court clarified in this case that transparency is something and secrecy in investigation is another.⁶

David Feldman argues that privacy of an individual is limited by three factors out of which one of them is state's responsibility for the welfare of the citizen. Another one is the need for regulation in financial services, industries and professions. Thirdly, there is the aspect of public interest.

When there is conflict between the right to privacy of individual and right to know of citizens, at that point the right to know will prevail as it serves larger public interest. In *State of U.P v Raj Narain*⁷ the right to know of the citizen is defended by the court.

Privacy and defamation are two different concepts. Privacy is all about true information whereas defamation is about false information. However, a fictionalized non-defamatory story can invade the right to privacy.

It is seen that Newsworthiness is an exception to the right of privacy of the individual. It is the most convenient defense for the press. Public interests, figures and records are the three basic aspects of newsworthiness.

⁶ Bindu Singhal, 'Role of Media and Right to Privacy in India – Legal Perspective' [2013] MLJ 130.

⁷ 1975 AIR 865.

VIOLATION OF PRIVACY

Regarding the identity of Children:

The Juvenile Justice (Care and Protection of Children) Act prohibits media to disclose the names and sensitive information like address or school of juveniles. The only exception of the aforementioned law is that the media could disclose the information of a juvenile who is in need of care and protection if the disclosure is in the interest of the child.

Section 83 of Indian Penal Code (IPC), says that nothing is considered as an offence which is done by a child above 7 years of age and below 12 years, who has yet not attained enough maturity to judge the nature of his conduct and its related consequences. Convention on the Rights of the Child (CRC) states that, no child shall be subjected to unlawful interference with his right to privacy and that the law protects them against such unlawful interference.

In the landmark judgment, the High Court (HC) of Calcutta issued directives to conduct investigation under Prevention of Children from Sexual Offences (POCSO) Act, 2012. The court stated with 'utmost displeasure', that the identity of victim has been disclosed. Under POCSO it is an offence to disclose the identity of the individual.⁸

Regarding the Identity of Rape Victims:

Section 228A of the Indian Penal Code (IPC) states disclosing of the identity of a rape victim as punishable offence.

The Supreme Court of India has stated a rape victim's name in its judgment, forgetting the code which was imposed by itself in the year 2003 and 2006's judgment. Justice Arijit Pasayat, in these judgments mentioned that trial courts, HCs and the Supreme Court are exhorted to mention the name of rape victims in their judgment. However, he didn't bar the media from disclosing names of the victims while publishing the judgments.

⁸ The Centre for Internet and Society. (2017). *Privacy & Media Law*. [online] Available at: <https://cis-india.org/internet-governance/blog/privacy/privacy-media-law> [Accessed 9 Jul. 2017].

Section 228A of the Indian Penal Code (IPC) is similar to UK's Sexual Offences (Amendment) Act, 1976 which guarantees anonymity to rape victims. The Nirbhaya case that had occurred in that the girl's identity was disclosed. Her family had to go through lot of comments being passed on their daughter and her character and also the way they brought her up. The disclosure of identity was not required in that case.

Sting Operations:

There had been instances where media had broadcasted false and fabricated operation, which in turn violates the individual's privacy. The court had said that "Giving inducement to a person to commit an offence, which he otherwise not likely and inclined to commit, so as to make the same part of the sting operation is deplorable and must be deprecated by all concerned including the media." If the sting operation which is being carried out is true, then it is necessary in public interest to be broadcasted but otherwise having a hidden camera for these kinds of things is not acceptable. The court has directed the media channels to not broadcast or air any kind of information which is an entrapment or fabricated, intrusive or sensitive. The guidelines to prevent invasion of privacy has been laid down by the court as well as the Press Council. It states that a certificate must be acquired by the person involved in sting to ensure that it is genuine and also record the various stages in writing.⁹

Entrapment had taken place in 2005 in actor Shakti Kapoor's sting operation. As media wanted to expose him, they set up an entrapment. The court clearly opposed these kinds of sting operations.

Judicial Criticism and Media Victimisation:

Media shall also take caution in criticizing the judicial act. In camera proceedings take place but media has access to the information that can be published. But for this it must ensure that if some judge or the victim or witness is saying something which might demean him in the eyes of the right-thinking people of the society then those statements should not be published by the media.

⁹ S. Sivakumar 'Press Law and Journalists' 1 (2015).

Then media trials should not take place as it completely exposes the individual and shuns that person from the society completely. Fair trial is an essential requisite of any democratic country and an independent judiciary, but for the same it is also necessary to respect individual's privacy under Article 21. It should not be the case as it has happened in the Jessica Lal's case.¹⁰

Press Council also suggests that the press should not tape-record conversations without the consent of the people unless it is necessary to protect a journalist in legal action or for some other compelling reason. The term compelling reason is vague.

APPLICATION OF PRIVACY LAWS AND PRESS COUNCIL

Privacy law applies only to people as in human beings. Corporations and other organizations that wish to guard their information must do so through contract law or intellectual property rights.¹¹ But this rule has certain exceptions to it. This rule in case of death also applies to the family members of the deceased. This was seen in the case of *National Archives and Records v Favish*¹². The court said that survivors do have the privacy right in public access to the photos because that would outweigh the family's privacy interest.

Also in case of criminals, the idea is that the discharged convict has the right to start a new life and the state must encourage him for the same. There have been times when completely innocent family members or the person against whom charges had been fabricated gets discharged but find themselves in predicament due to unwarranted publicity through the press. This is suggestive of guilt by association and hence it violated right to privacy.

It is a general assumption that there should be no expectation of privacy in public. However, this is not true. Media can bring in limelight not what happens in public but what is of public interest. Like in 1964, in Alabama newspaper had published a photo of the girl whose dress had blown up from the waist. Court said though this happened in public the newspaper did not have any right to cause embarrassment to that girl. This was the invasion of privacy. In public there has to be reasonable expectation of privacy. This includes that a private area of the

¹⁰ Ashley Packard, 'Digital Media Law' 2 (2003) 257.

¹¹ L.Cohen & Co. v Dun & Bradstreet 629 1425, 1430.

¹² (2004) 541 U.S 157.

individual would not be visible to the public whether that individual is in a public or private place.¹³ In the discussed case the matter was also not of public concern. To determine what is of public concern we need to draw the line between when the media ceases to give information to the individual and becomes a sensational and morbid prying into private lives for its own sake.¹⁴

A public servant visiting a lady friend, getting drunk with her should not be the news item as it does not fulfill the public purpose. This was seen by council in *Ashok Vajpayi v Dainik Jagran*.¹⁵

There are times when disclosing identity becomes mandatory on the part of media to save individuals from mental trauma and harassment. People who are seeking dowry or identity of drug addicts needs to be disclosed if they are causing harm to the society at large.

Also, government has lot of confidential information which an individual as a citizen if the country is bound to share. If the government misuses the information for some personal gain or in light of exercise of some insignificant scheme then the government is liable for the invasion of privacy and not just the collector of the information.

In all these cases Press Council play an important role in giving proper guidelines to the media and if the press ethics are not followed it invites unnecessary litigation under tort law which has defamation and invasion of privacy as two different concepts.¹⁶ But we see despite of the guidelines being given by the press council, the media publishers make space for spicy publications that might increase their circulation.

Press acts maturely when it violates someone's privacy by bringing up the fact that the fundamental right under Article 21 is available only against state¹⁷ and press is a private body so the violation of fundamental right is not applicable upon the press. So the one body which curbs the arbitrary nature of media is Press Council. It acts as the ombudsman. It has laid down guidelines for the same.

¹³ *Daily Times Democrat v Graham* (1964) 276 Alabama 380.

¹⁴ Restatement of Torts 652 D Cmt.h Second Edition.

¹⁵ (1998-99) AR 174.

¹⁶ David Bedingfield, "Privacy or Publicity? The Enduring Confusion Surrounding the American Tort of Invasion of Privacy" (1992) 55 M.L.R 111.

¹⁷ Supreme Court's ruling in *Rajasthan State Electricity Board v Mohan Lal*.

The guidelines issued by the Press Council were considered for the first time in *Sr. Cyllia, Superior Franciscans of St. Mary of the Angeles 'Sneha Sadan' and Father Flacio Fonseca v The Indian Express*¹⁸ In this incident the image of the two deceased nuns was in question. The three major dailies published that the nuns were not virgin and also that they had sexually transmitted disease. The newspapers argued that the story was true and the source of information could not be revealed. Also the identity of the institution to which the nuns belonged was tarnished. The Press Council examined this case and said that the newspaper report was harmful to the image of the nun and that to the organization as well. Council found that there has been transgression of personal privacy right of the two nuns and their family members.

The main guidelines which were laid down in this case are that media must show that what it had published is true and has been published in good faith for public benefit and also in public interest.

This case sets a binding principle that no derogatory statement against the dead person can be made as it violates the privacy principle.¹⁹

Again in the *K.C. John Director, Institute of Journalism v Deepika*²⁰ Press Council laid down the guidelines that .. "Privacy should be respected and the names, photographs and other particulars leading to the identity of the victims or sordid details of the offence should not be published to those unconcerned with law enforcement or with administrative jurisdiction in the matter."²¹

In India Right to Privacy has limited legal status even in the last century, this is because of the lack of legal awareness and rapid changing law. The law needs to change with society and keep abreast with the same. This is not only the case in India but also countries in other parts of the world.²²

¹⁸ (1991-92) AR 92.

¹⁹ *Rasikal Dave v Gujarat Samachar* (1988-89) AR 209.

²⁰ (1992-93) AR 231.

²¹ *Ibid* (n 12).

²² [Digitalcommons.law.yale.edu](http://digitalcommons.law.yale.edu). (2017). Cite a Website - Cite This For Me. [online] Available at: http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3789&context=fss_papers [Accessed 9 Jul. 2017].

The concept of Right to privacy is not a positive right in India. It comes into picture only when the right is violated. This law has evolved through judicial intervention as it has failed to keep pace with the technological advancements of the so many media channels. Barring the few aberrations, the Executive Government and political parties too lag behind in safeguarding this valuable right which is the most significant value of our democratic culture. Because of this the press and media has emerged as powerful instruments to mould the public opinion and educate them and entertain and enlighten them.

In India, there has been great controversy over Section 66A of Information Technology Act which has been struck down by the Supreme Court. This was used to interfere with public's freedom of speech and expression. It also allowed the arrest of the people for posting offensive content.

CONCLUSION

Privacy right is not a settled principle. It has evolved through judicial decisions not only in India, but also in various countries like Europe and Great Britain. They also don't have any privacy laws as such. Strong opinions have been raised with regard to the same.²³ In most of the cases it is convenient to leave the matter to the Press Council as it always arrives at an amicable solution between the press and the victim of media. The Council keeps the media ethics and laws in mind while doing the same. Press is a public forum it should sustain press debates. Also, it is the 4th pillar of democracy so it should sustain individual freedom which is essential for the development of democracy. Press needs to act as a guide and a watch dog. It must guide the citizens to get knowledge and understanding; however, it should not poke into the private affairs of the individuals.

²³ Shreya Singhal v Union of India, (2013) 12 SCC 73.