

**AN ARTICLE ON
PRIVACY CONCERNS IN MEDIA LAW**



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INTRODUCTION

With the advent of media, a world of nearly limitless possibilities have opened up. Media comprises of the social component that makes it so popular among the people. Also, it helps in the efficient functioning of a democracy¹. Media laws in India have a long history right from the British rule.² The Constitution of India does not provide for a direct provision for the freedom of media but has an indirect provision for the same. Article 19(1) (a) guarantees all citizens the right to freedom of speech and expression. It is under this Article, that the media derives its freedom of speech and expression and the right to publish any piece of information. But one cannot ignore the fact that the sub-clauses that follows Article 19, imposes certain restrictions on the exercise of this freedom of speech and expression. Reasonable restrictions on the exercise of the right can be imposed by the State in the interests of sovereignty and integrity of the State, the security 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 addition to this, there are many other laws which govern libel, slander, defamation, contempt of court, or any matter that offends against decency or morality or that undermines the security of, or tends to overthrow the State. At present, there is no independent statute governing the aspects of privacy in India. However, the same is dealt with under Articles 19 and 21 of the Indian Constitution. The judiciary has recognized the right to privacy available to the citizens of India under the right to life and liberty guaranteed under Article 21 of the Constitution. But there are certain exceptions available to the rule of privacy under the Indian Law, in the interest of the public, especially after the enactment of the Right to Information Act,

¹ Law Commission Consultation Paper on Media Law, May 2014

²“Media Law- An introduction”, by Prof. Manoj Dayal available at <http://www.ddegjust.ac.in/studymaterial/mmc-2/mmc-204.pdf>

2005 (for short RTI Act).³ Under Section 8(1)(j) of the RTI Act, an exemption with regard to disclosure of any personal information which is not connected to any public activity or of public interest or which would cause an unwarranted invasion of privacy of an individual is available. Though, what constitutes an unwarranted invasion of privacy has not been defined. But the Courts have attempted to take a positive stand on what constitutes privacy in different circumstances. But once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by the Press and the media, among others.⁴

CONSTITUTIONAL FRAMEWORK FOR RIGHT TO PRIVACY

The right to privacy is recognized as a fundamental right under the Constitution of India. Courts have interpreted that the right to privacy is implicit within the right to life. In *R. Rajagopal v. State of T.N.*⁵ and *PUCL v. U.O.I.*⁶, the courts made an observation that the right to privacy is an essential ingredient of the right to life. In *R. Rajagopal v. State of Tamil Nadu*, the Supreme Court laid down certain propositions defining the right to privacy. These propositions are:

“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 whether laudatory or critical and. If he does so, he

³An article on “Privacy and Media Law”, available at <http://cis-india.org/internet-governance/blog/privacy/privacy-media-law>

⁴“Norms on Journalistic Conduct” by the Press Council of India available at <http://www.presscouncil.nic.in/OldWebsite/NORMS-2010.pdf>

⁵(1994) 6 SCC 632

⁶AIR 1997 SC 568

would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”

In *PUCCL v. UOI*, 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 of 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 *Express Newspaper Limited v. Union of India*⁷, It was stated by the Supreme Court of India that, *"the freedom of the press can suffer with some restrictions."*

INTERNATIONAL FRAMEWORK OF RIGHT TO PRIVACY

The right to privacy has been protected internationally, in a number of conventions. For instance, the Universal Declaration of Human Rights, 1948 (UDHR) under Article 12 provides that:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

⁷ AIR1958SC578

The UDHR protects any arbitrary interference from the State to a person's right to privacy. Similarly, International Covenant on Civil and Political Rights, 1976 (ICCPR) under Article 17 imposes the State to ensure that individuals are protected by law against "*arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.*"⁸

The above conventions have been ratified by India, which is why it is mandatory on India to take appropriate steps to enact such laws as to protect its citizen. Despite of all the efforts of the human right activists, the right to privacy has received little attention.

PRIVACY CONCERNS FOR DIFFERENT PERSONS

Though right to privacy is not an absolute right and is not applicable uniformly to all situations and all class of persons, but the same needs to be given due importance. Privacy concerns vary from person to person. For a person in public authority, protection criteria differs as opposed to a private individual.

For instance, privacy with respect to a person in public authority, affords different protection as opposed to private individuals.

Norms of Journalistic Conduct have been laid down by the Press Council of India (PCI), which addresses the issue of privacy. The PCI Norms of Journalistic Conduct, recognizes privacy as an inviolable human right, but adds a caveat; that the degree of privacy depends on circumstances and the person concerned.⁹

⁸"International Covenant on Civil and Political Rights", available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

⁹An article on "Privacy and Media Law", available at <http://cis-india.org/internet-governance/blog/privacy/privacy-media-law>

TRIAL BY MEDIA

Right to fair trial is an absolute right that flows from Article 21 read with Article 14 of the constitution. The right to privacy of the suspect or the accused, is recognized by the PCI to guard against the trial of media.¹⁰ The issue of trial by media was covered by the 200th Law Commission report, under the heading **Trial by media: Free Speech vs Fair Trial under Criminal Procedure**. It focused on the pre-judicial coverage of crime, accused and the suspect and also, on its impact on the administration of justice. In a democracy, the right of free press and right of fair trial must peacefully co-exist.¹¹

In *State of Maharashtra v. RajendraJawanmal Gandhi*¹², while dealing with a case of alleged attempt to rape a minor, the Apex Court observed, “*A trial by press, electronic media or public agitation is the very antithesis of the rule of law. It can well lead to miscarriage of justice. A Judge has to guard himself against any such pressure and he is to be guided strictly by the rules of law.*”

In *M.P. Lohia v. State of W.B.*,¹³ the Apex Court observed, “*we have no hesitation that these type of articles appearing in the media would certainly interfere with the administration of justice. We deprecate this practice and caution the publisher, editor and the journalist who were responsible for the said article against indulging in such trial by media when the issue is sub-judice.*”

Recently, in *Manu Sharma v. State (NCT of Delhi)*,¹⁴ the Apex Court has extensively observed about the danger of trial by media. It opined as under, “*There is danger of serious risk of prejudice if the media exercises an unrestricted and unregulated freedom such that it publishes photographs of the*

¹⁰*ibid*

¹¹ “Trial by Media: An International Perspective”, by Justice R.S. Chauhan, available at http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=22062

¹²(1997) 8 SCC 386

¹³(2005) 2 SCC 686

¹⁴(2010) 2 SCC (Cri) 1385

suspects or the accused before the identification parades are constituted or if the media publishes statements which out rightly hold the suspect or the accused guilty even before such an order has been passed by the court.”

However in these recent times, the media has been much of a boon for ensuring justice to the common man. For instance, in the above mentioned case¹⁵, i.e. the Jessica Lal murder case, the media took great pride in acting as a facilitator of justice as they took on the responsibility of administering justice and ensuring that the guilty is punished, candle light vigils and opinion polls on the case were also organized by the media.

CONCLUSION

The judiciary and the press are two important pillars of any democracy. Both have a pivotal and a crucial role to play as they have to uphold the constitutional philosophy and also, the rule of law for the better functioning of the administration of justice. They are present to supplement each other and not to supplant each other. The media should make sure that right to privacy of an individual is protected while exercising its right to free speech and expression. While the people have a right to be informed, but an accused or a suspect also has a right to be protected and defended, and the same cannot be violated. His presumption of innocence cannot be sacrificed at the altar of freedom of speech and expression of the media, as this would violate Article 21 of the Constitution of India. If the rule of law is to be protected and promoted, administration of justice has to be given preference over the freedom of speech and expression as enjoyed by the press.¹⁶

¹⁵2010) 2 SCC (Cri) 1385

¹⁶ “Trial by Media: An International Perspective”, by Justice R.S. Chauhan, available at http://www.supremecourtcases.com/index2.php?option=com_content&itemid=1&do_pdf=1&id=22062

