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Right to Privacy and Its Infringement by Media

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ABSTRACT

Privacy is a Human Right as well as Fundamental Right in India. It includes human dignity and other values also like Freedom of Speech and Freedom of Association. It is also protected in UDHR, ICCPR, and many other treaties. Nearly every country in the world adopts the Right of Privacy in its Constitution. In Indian Constitution, there is no specific article for Privacy but due to judicial advent, it includes in article 21 of the constitution. The maker of our constitution knew the immense power vested in the print media, therefore they include article 19(1)(a) from article 19 of UDHR and this right is also reflected in article 19 of ICCPR. Due to the emergence of media which is one of the most reliable and relevant sources of information and awareness for the public in the modern age, the privacy of the individual is often harassed and infringed. In modern scenarios media is going to write stories from their own biases and negligently or heartlessly encroach the private lives of individuals which is against "ethical journalism". As a result, there is a need to protect the right to privacy on a higher footing about Press.

Keywords: Article 21, Indian Constitution, Media, Human Right, Privacy, Public interest.

I. INTRODUCTION

(A) Meaning of Right to Privacy

Privacy means the person is entitled to live freely in his private domain without any interference from others. In India, privacy has been recognized as a fundamental right and even most governments all over the world have been recognized it to protect their citizens in their emotions, values, and opinions. Similarly, even an individual has the right to filter what kind of information is taken about him. The right to privacy is inherent and inalienable in any society. Privacy is difficult to define because no statute defines privacy. So, privacy has been interpreted as the capacity of an individual to keep their personal affairs out of the public domain or to take control of the flow of information about themselves. The definition is going to be varied according to the context and environment. In many regions, the concept is mixed

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with data protection, which constructs, privacy in terms of personal information. However beyond this strict context, in India right to privacy is continuously seen as protection by way of making a line at how far society can encroach into a person's affairs. Allan Westin author of the Seminal work titled " 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 behaviors to others.² The right to privacy means the right to be let alone. The right of an individual to be free from unwanted publicity and the right to live without any government interference or any private person in a matter where no public interest is concerned. It prevents or prohibits the unlawful disclosure of personal information as well.

As a whole, I may say that the right of privacy is the right of the individual to be protected against unwanted interference into his domain by direct and physical means or by media.

II. ORIGIN OF THE RIGHT TO PRIVACY

The recognition of privacy is deeply rooted in our history. The bible has several references to privacy. Jewish law has long recognized the concept of privacy to be free from being watched. There were also protections in classical Greece and ancient China. Western countries have protection even a hundred years back. In 1361, the Justice of Peace Act in England provided the right of privacy from unwanted invasion. After various countries developed specific protections and legislation for privacy that followed. In 1776 the Swedish parliament adopted the access to Public Records Act which provided the government can use personal information only for a legitimate purpose. France prohibited the publication of private facts and impose fines on the violators in 1858. In 1890 the American lawyer and U.S supreme court judges Louis Brandis developed the concept of privacy and urged that it is an individual right to be let alone. Brandies argued in any democratic nation, privacy is the fundamental part and he was concerned that it shall be reflected in the constitution, the following is opinion the right to privacy was wholly accepted in the U.S as a part of the common law. In India, the right to privacy was not expressly provided in the constitution but derived from article 21 of the constitution. However supreme court firstly recognized this right in *Kharak Singh v. the State of U.P*³ by saying that the right to privacy is implicit under article 21 of the constitution. Justice Subba Rao also equated the right to privacy as an inclusive part of the right to life and personal liberty.

Even before the Independent, India was a party of UDHR, 1948. Press had played a very

² Alan Westin "Privacy and Freedom" by IG Pub, 2015,p.523

³ AIR 1964 SCR (1) 332

effective and strong role in the independence movement. It was only the impact of print media which were portrayed the strong image of India and created fear in the mind of Britishers. So, the freedom of the press is also very important to protect. Again in the case of *Govind v. State of M.P.*⁴, the court agreed that privacy is the fundamental right of citizens. In *State v. Charulata Joshi*⁵ the court held that freedom of the press is not part of article 19 (1) (a) because if a person is not ready to give his interview then the press can not force him. Again in the case of *R. Rajagopal v. State of Tamil Nadu*⁶, for the first time court directly link the right to privacy with article 21 and laid down “ A citizen has personal right to protect the privacy of his own, his family, marriage, procreation, motherhood and among other matters and no one can publish anything about any person without his consent whether it is truthful or otherwise⁷”. Further the issue of telephone tapping in the case of *People Union Civil Liberties v. U.O.I*⁸ the supreme court observed that telephone tapping would be a serious intrusion of individual privacy, so, it can not be practiced unless it is permitted by the procedure established by law. The telephonic conversation is a part of confidential information, so, it is directly attacked on right to privacy⁹. In *Sharada v, Dharampal*¹⁰, the supreme court held that the right to privacy is not absolute in nature, if there is a clash between privacy and public interest, then public interest will prevail. In *Selvi v. State of Karnatka*¹¹, the supreme court held that if any involuntary scientific test has been done, then it is against the right to privacy. The supreme court has elaborated the concept of privacy in *Ram Jethmalani v. U.O.I and others*¹², known as the black money case. The honorable court held that the " Right to privacy is an integral part of the right to life". It is an ethical constitutional value that human beings are allowed to enjoy their free domain of freedom that is free from public scrutiny¹³.

In a recent judgment of *Justice K.S Puttaswamy v. U.O.I*¹⁴, privacy took a different view, and the nine-judge bench held that “ Privacy is a constitutionally protected right which emerges from right to life and includes the preservation of marriage, procreation, the home, and sexual orientation. The supreme court also held that the right to privacy can also be restricted for the prevention of crime, disorder, or protection of other rights.

⁴ AIR 1975 SC 1378

⁵ 63 (1996) DLT, 90

⁶ AIR 1994 SCC (6) 632

⁷ Ibid.

⁸ AIR 1997 SC 568

⁹ Ibid.

¹⁰ (2003) 4 SCC 493

¹¹ AIR 2010 SC 1974

¹² (2011) 8 SCR 725

¹³ Ibid.

¹⁴ AIR 2017 SC 4161

III. FREEDOM OF PRESS IN INDIA

In the Indian constitution, the freedom of the press is not expressly provided, but included in article 19 (1) (a) is freedom of speech and expression. Article 19 holds the freedom to express his opinion in a public forum and restriction on freedom of the press is also provided in article 19. The freedom of the press is not new in concept but had a long history in India from British rule. The British government at his time passed several legislations which were dealt with the press like the Indian Press Act, 1910, Indian Press (Emergency) Act, etc. There existed censorship on the publication of news on activities related to the congress, but after the era of independence, the concept of the press has changed because the constitution came into force. Then several cases were filed in the supreme court for expressing a clear line of press. In the case of *Romesh Thappar v. the State of Madras*¹⁵, it was observed by Patanjali Shastri a Chief Justice that freedom of the press is a stone foundation of any democratic nation because without free political discussion the people of a nation do not educate for the proper functioning of government. In this case, the journal " Cross Road" was banned by the Madras government. In another case *Indian Express Newspaper v. U.O.*¹⁶, it was realized that the press is a keystone of any democratic setup. Again in *Sakal Papers v. U.O.*¹⁷, The Daily Newspaper (Price and Page) Order, 1960 which fixed the number of pages and size of a newspaper, was held to be violative of the opportunity of the press. In *Benett Coleman and corporation v. U.O.*¹⁸, the court finally reserves the freedom of the press in article 19 (1) (a) of the constitution with the effect of 19 (2).

IV. MEDIA AND BREACH OF PRIVACY

In today's scenario, there is open conflict between the right to know, informational activism, and the right to privacy, which may result in a violation of rights. Recent inventions and technologies call attention to the protection of the individual, and Judge Cooley also calls, " The right to be let alone" is the paramount right. Even several frequent photographs and media have invaded the sacred and private zone of the person. It is running for many years that there has been a feeling to adapt some remedy for the unauthorized circulation of information of the private person and the evil of invasion of privacy by the newspaper. Even the press is also overstepping in every direction to make some gossip in their platform only for the sake of TRP. When personal gossip attains the dignity of print and crowds then it becomes a matter of

¹⁵ AIR 1950 SCR 594

¹⁶ 1985 SCR (2) 287

¹⁷ 1962 (3) SCR 842

¹⁸ AIR 1973 SC 106

societal concern. Consequently, the media should exercise some restraints while publishing any information regarding individuals' private affairs.

V. RECENT TRENDS OF TRIAL BY MEDIA

Recently the press especially electronic media is very enthusiastic to grab and report before the police get to know about anything. This investigative journalism is good but at the same time, it is going out of hand. We have a Press Council of India which was constituted around 23 years before, the electronic media will not come under this regime. Even the Press Council of India entertains 10,000 and more complaints in a year for invasion of privacy by media. The liberalization policy of government allows the direct investment of foreign into. the policy of 2003, up to 26% in print media, while in the broadcasting up to 100% by opening the door for foreign media to invade India within their ideas and experiment, the government is not taking any precautionary or strong step to control it. India before independence was a member of the UN and signatory of UDHR which was almost incorporated in the Indian Constitution, by articles 19 and 21. In recent issues of Raj Kundra, Shilpa Shetty (his wife) has again raised an important question: Should an individual right to privacy prevail over press freedom?

J.Gautam Patel carefully analyse and approach this case and directed the removal of videos that dealt with the inherently personal aspects of Shilpa life¹⁹. While seeking to balance privacy and press freedom, it is important to consider the rationale behind press freedom.

VI. CONCLUSION

Due to the lack of implementation of Legislature and Constitutional measures, the victims of press abuse have to take the help of tort law. Even IPC also provides punishment for defamation but not especially for privacy. Even framers do not mention the term "Privacy" in our fundamental but the courts gave huge decisions on privacy. The victims have to always depend on the court's discretion and interpretations of privacy when the question of infringement of privacy is considered. So, there is a need to extend and strengthen the right to privacy in the digital era.

¹⁹ News from Hindustan Times

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