

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 3

2023

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The Tug of War: Decoding the Public/Private Divide

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ABSTRACT

The paper sheds light on the complexities of power dynamics and societal interactions, providing insights into the interplay between public engagement and private autonomy.

Keywords: *decision-making, democracy, justice, public interests, public-private sphere.*

I. INTRODUCTION

The public-private sphere in context of political science, sociology and other sciences refers to the distinctions between the public and private realms of human activity and denotes social interactions and their implications for individual freedom, justice, and democratic governance.

The public sphere is characterized by its openness, inclusivity, and collective decision-making processes. It is the arena where individuals come together to discuss and debate matters of common interest like political, economic, and social issues².

Democracy must be built through open societies that engages itself in public discourse.

The private sphere, on the contrary, is characterized by its exclusivity, privacy, and individual autonomy. It is the realm of personal life where individuals exercise their right to freedom from public scrutiny³. Simply put, public sphere concerns the domestic life, intimate relationships, and personal hobbies.

II. KEY THEORIES OF PUBLIC SPHERE

1. The Classical Liberal Theory of the Public Sphere:

This theory advocated by Jürgen Habermas in his book called *The Structural Transformation of the Public Sphere* posits that the public sphere is a space where individuals assemble to discuss and debate issues of common concern in an open, rational, and democratic manner.

Criticisms:

- Habermas's theory assumed that the public sphere was open to everyone, regardless

¹ Author is a student at SLS Pune, India.

² Charles Sampford, *Law, Institutions and the Public/Private Divide*, 20 *FED. L. REV.* 185 (1991).

³ Chris Ashford & Mark O'Brien, *Privacy and the Public/Private Divide*, 17 *INFO. & COMM. TECH. L.* 1 (2008).

of their social status, race, gender, or other factors. Yet prior to the 20th century, the public sphere was highly restricted to white bourgeoisie men.

- His theory didn't adequately address the role of power relations in the public sphere. Critics argue that power inequalities influenced the nature of discourse occurring within the public sphere.
- Also, his theory failed to account for the impact of these technologies on the public sphere.
- Further, Habermas's theory emphasized reaching consensus through rational debate and discussion, disregarding emotions, and conflicting views.

2. The Marxist Theory of the Public Sphere:

Marxist believed that the public sphere is not neutral but rather reflected the interests and values of the dominant classes in society.

3. The Feminist Theory of the Public Sphere:

This theory critiques the dominant models of the public sphere, which have historically excluded women and marginalized groups. Therefore, women were denied the voice and platform to address their concerns.

4. The Networked Public Sphere Theory:

This theory states that the public sphere is now shaped through discussions and debates happening on social media, resulting in circulation of less reliable information.

5. The Deliberative Democracy Theory of the Public Sphere:

This theory, influenced by the classical liberal theory, placed greater emphasis on dialogues and deliberations in the public sphere. Citizens are encouraged to collaborate and share their views on various issues relating to the governance of the country.

In light of this, citizens in India are guaranteed fundamental right to speech and expression under Article 19 of the Constitution.

(A) Research Objective

To explore the inter-relationship between the public and private sphere.

(B) Statement Of Problem

The Public Sphere tends to arbitrarily influence the private sphere in multiple instances.

III. RELEVANCE OF PUBLIC/PRIVATE SPHERE IN INDIA AND CONTEMPORARY WORLD

1. Right To Information v. Right To Privacy:

Governmental transparency⁴ and good governance are the sine qua non of participatory democracy. Citizens' right to know stems from the fundamental right of freedom of speech and expression, enshrined in Article 19(1)(a) of the Constitution. This is because access to information is a pre-requisite to critique the policies and functioning of the government, holding the State accountable. Also, denying information to citizens chip away their right to equality under Articles 14 and 15 of the Constitution.

In *Bennett Coleman and Co. v. Union of India*⁵, the right to information was incorporated in the right to freedom of speech and expression under Article 19(1)(a). The Court stated in *Indira Gandhi v. Raj Narain*⁶ that the public officials are obligated to explain and justify their acts. Further, the *State of UP v. Raj Narain*⁷ case discussed the citizens' rights to know details of public transactions undertaken by public officials. The Court in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. UOI*⁸ reaffirmed the fundamental right of citizens to know about public acts. In *SP Gupta v. Union of India*⁹, the right to information was held to be implicit in Article 19 under Part III of the Constitution.

The right to privacy¹⁰ falls within the realm of private sphere and is implicit in the right to life, liberty guaranteed to the citizens of India by Art. 21 of the Constitution. Right to privacy is not absolute, and is subject to legally justified acts to safeguard the rights and freedoms of others¹¹.

The Court stressed in *R. Rajagopal v. State of TN*¹² that right to privacy is implicit in the fundamental right to life and personal liberty under Article 21 of the Constitution. In *Kharak Singh v. State of UP*¹³, the right to life was held to have similar meaning to that of fourteenth and fifteenth amendments to the US Constitution.

⁴ *General Manager Finance Air India Ltd. v. Virender Singh*, LPA No. 205/2012.

⁵ *Bennett Coleman and Co. v. Union of India*, AIR 1973 SC 106.

⁶ *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299.

⁷ *State of UP v. Raj Narain*, AIR 1975 SC 865.

⁸ *Indian Express Newspapers (Bombay) Pvt. Ltd. v. UOI*, (1985) 1 SCC 641.

⁹ *SP Gupta v. Union of India*, AIR 1982 SC 149.

¹⁰ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.; *Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, (2008) 5 SCC 33.; *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1.; *Bhaves Jayanti Lakhani v. State of Maharashtra*, (2009) 9 SCC 551.; *Amar Singh v. Union of India*, (2011) 7 SCC 69.

¹¹ *James T. O'Reilly*, *Government Information and Right to Privacy*, 1999 DEV. ADMIN. L. & REG. PRAC. 79 (1999-2000).

¹² *R. Rajagopal v. State of TN*, (1994) 6 SCC 632.

¹³ *Kharak Singh v. State of UP*, AIR 1963 SC 1295.

Further, the right to privacy was ruled to be protected as a fundamental right under Articles 14, 19 and 21 of the Constitution of India in *K.S. Puttaswamy v. UOI*¹⁴.

In *Unique Identification Authority of India v. Central Bureau of Investigation*¹⁵, the CBI sought for access of the Unique Identification Authority database. The Supreme Court held that prior consent of the citizens must be obtained before accessing their data.

In the interplay of the competing rights under Article 19(1)(a) and Article 21 of the Constitution, information having no relation to public interest or activity is personal and such disclosure is exempted under Clause (j) of Section 8(1)(j) and Section 11 of the RTI Act. Section 8(1)(j) protects citizens from unwarranted invasion of their privacy. Additionally, Section 11 of the Act excludes from disclosure confidential information related to third party unless the disclosure satisfies the larger public interest test.

The principle of indivisibility of fundamental rights requires that the rights equally complement each other in promoting government accountability, while ensuring privacy protection.

The Constitutional Bench in *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*¹⁶ and *Bihar Public Service Commission v. Sayad Hussain Abbas Rizvi*¹⁷ observed that the right to information is not absolute.

The case *Karim Maraikayar v. Haji Kathija Beeru Trust, Nagapathinam*¹⁸ held that disclosure of information pertaining to public authority is mandatory when such information comes within the purview of the Act.

The government also stores personal information of citizens ranging from driving licence details to income tax returns. The question of balancing the right to information with the right to privacy arises when the citizens seek information held as personal by the Courts.

The 2005 Act has not defined “personal information”. Nonetheless, the term “personal information” has been referred to as information that is capable of identifying a natural person in Section 2(i) of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

The Courts have subsequently interpreted the scope of personal information under the RTI Act following the principle of conceptual balancing. In *Central Public Information Officer, Supreme*

¹⁴ *Ibid.*

¹⁵ *Unique Identification Authority of India v. Central Bureau of Investigation*, Appeal (Crl) No (s).2524/2014.

¹⁶ *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

¹⁷ *Bihar Public Service Commission v. Sayad Hussain Abbas Rizvi*, (2012) 13 SCC 61.

¹⁸ *Karim Maraikayar v. Haji Kathija Beeru Trust, Nagapathinam*, AIR 2008 Mad 91.

Court of India v. Subhash Chandra Agarwal¹⁹ case, inter alia, medical information, details of personal relations, employee records, professional income have been classified as personal information and disclosure of same must be determined by CPIO, considering the larger public interest test.

The Bhagwan Chand Saxena v. Safdarjang Hospital²⁰ case reiterated that disclosure of medical reports of citizens amount to unwarranted invasion of privacy, thereby exempted under Section 8(1) (j) of the Act. Likewise, the Court observed in Subhash Chandra Agarwal v Registrar, Supreme Court of India²¹, that public interest doesn't require disclosure of the details of the medical facilities availed by the individual Judges and such disclosure would amount to an invasion of privacy.

In contrast, the Commission in Jyoti Jeena v. PIO²² hold that the disclosure of the medical reports of the husband was not exempted under Section 8(1)(j) as the disease was communicable and concerned a larger public interest. Similarly, in Venkatesh Nayak v. CPIO²³, the Central Information Commission directed suo motu disclosure of the information related to covid-19 pandemic sought in the RTI application.

In Girish Ramchandra Deshpande v. Central Information Commissioner²⁴, the petitioner sought copies of inter alia memos, show-cause notices, gifts awarded by the employer to the third respondent. The Court observed that the performance of an employee is a matter between the employee and employer and holds no relationship with public interest, thereby the information sought falls under the expression "personal information" and is exempted under the Act.

Similarly, the Court in R K Jain v. UOI²⁵, held that the denial of information sought including personal details like date of joining, designation of employee, details of promotion, was justified for the respondent failing to establish a larger public interest.

The Shasankar Koushik Boruah v. The MD, Assam Electricity Grid Corp. Ltd.²⁶ case reiterated the larger public interest test. The information sought in relation to the marks obtained by the selected candidates to the post of Assistant Managers in the Corporations coming under the ambit of Article 12 of the Constitution is in the realm of public activity and thus, not exempted

¹⁹ Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481.

²⁰ Bhagwan Chand Saxena v. Safdarjang Hospital, New Delhi, ICPB/ A-10/ CIC/ 2006.

²¹ Subhash Chandra Agarwal v. Supreme Court of India, (2018) 11 SCC 634.

²² Jyoti Jeena v. PIO, 2015 SCC OnLine CIC 6095.

²³ Venkatesh Nayak v. CPIO, 2020 SCC OnLine CIC 346.

²⁴ Girish Ramchandra Deshpande v. Central Information Commr., (2013) 1 SCC 212.

²⁵ R.K. Jain v. Union of India, (2013) 14 SCC 794.

²⁶ Shasankar Koushik Boruah v. The MD, Assam Electricity Grid Corp. Ltd., RTIR II (2022).

under Section 8(1)(j) of the Act.

The cases *Bhagat Singh v. Delhi Police*²⁷ and *Nahr Singh v. Deputy Commissioner of Police*²⁸ upheld that disclosure of witness names endangers their safety and hence exempted under the Act.

The *Ranveer Singh v. National Commission for Minorities*²⁹ case stated that disclosure of personal information of third party is unjustified unless in relation to public activity.

Accordingly, in *Rajendra Vasantlal Shah v. Central Information Commissioner, New Delhi*³⁰, the disclosure of accounts of Income-tax returns and assessment orders of the Religious Charitable Trust was held to be not exempted under Section 8(1) (j) of the Act as functioning of the Trust under scheme formulated by District Court had public importance.

Furthermore, the voters have the right to know about the antecedents of the candidates contesting elections to make an informed decision. The representatives of the people run the State and thus, knowing the bio-data of the electoral candidates is within the realm of freedom of speech and expression enshrined in Article 19 (a) of the Constitution, as underlined in *Union of India v. Association for Democratic Reforms*³¹. Article 324 of the Constitution, read with Section 33A of the Representation of the People Act, 1951 mandates the electoral candidates to disclose information about their assets, liabilities, educational qualifications, and pending cases, amongst others.

Government activities influence its citizens. Discussing and debating on such checks misuse of power and corruption.

Friedrich Hegel said that the public sphere is an integral aspect of the political process, as it allows citizens to engage in public opinion and hold those in power accountable for their actions.

Thus, the right to information complies with Hegel's views on public sphere by providing for holding the Government accountable for its actions.

2. Abortion

Discussions in public sphere influence government policies. Due to the increasing popular opinions on banning abortions to protect the unborn, the Government has imposed a ban on the same in several countries.

²⁷ *Bhagat Singh v. Delhi Police*, F. No. CIC/ AT/ A/ 2006/ 00274.

²⁸ *Nahr Singh v. Deputy Commissioner of Police & PIO, Delhi Police*, CIC/ AT/ C/ 2006/ 00452.

²⁹ *Ranveer Singh v. National Commission for Minorities*, F. No. CIC/ MA/ A/ 2008/ 01340.

³⁰ *Rajendra Vasantlal Shah v. Central Information Commissioner, New Delhi*, AIR 2011 Guj 70.

³¹ *Union of India v. Association for Democratic Reforms*, (2002) 3 S.C.R. 294.

In the United States, the Supreme Court in *Planned Parenthood v Casey*³² case overruled the dicta in *Roe v. Wade*³³ that had established a constitutional right to abortion in 1973.

Ban on abortion increases unwanted pregnancies and births, thereby affecting welfare of children born unwanted or in difficult circumstances. Also, women seek to terminate their pregnancies by resorting to unsafe methods, resulting in serious health complications and even death. The World Health Organization says approximately 7 million women worldwide are hospitalized each year due to complications arising from unsafe abortions.

Finally, banning abortion limit women's rights and freedoms in terms of social and reproductive rights and leads to a backlash against progress.

Thereby, the researcher opines that the Private Sphere in context of human body and procreation should be free from intervention of the Public Sphere. Marxist' s theory of Public Sphere is underlined in this context as the ban on abortion favours a handful and deprives the women of their rights.

3. Domestic Violence

Prior to the 20th century, the public authorities failed to intervene in the protecting women and children from being subjected to cruelty in their own homes, based on the notion that domestic relationships fall within the realm of private sphere and should be free from State interference.

Domestic violence have serious consequences on the abused that includes physical injuries, emotional trauma, and even death.

Therefore, stringent legislation to address the same are needed to hold the perpetrators accountable and ensure justice.

Increased awareness and education has developed the urge in individuals to assemble either physically or virtually, to fight for the rights against such exploitation. Following the Feminist theory of Public Sphere, this has led to enactment of stringent legislation for holding the perpetrators accountable and ensuring justice.

For instance, the Protection of Women from Domestic Violence Act was enacted in India in 2005. Additionally, inter alia Sections 304B and 498A of the Indian Penal Code, 1860 protects women against dowry deaths and cruelty inflicted upon them by their husbands and in-laws.

Accordingly, in *Yogendra v. State of Madhya Pradesh*³⁴, the convict was sentenced to life

³² *Planned Parenthood v. Casey*, 505 U.S. 833.

³³ *Roe v. Wade*, 410 U.S. 113.

³⁴ (2019) 9 SCC 243.

imprisonment for causing the death of his estranged wife by throwing acid on her.

Similarly, the European Union adopted the Istanbul Convention in 2011 and Victims' Rights Directive in 2012, mandating its member states to ensure that victims of domestic violence have access to appropriate support and protection.

Likewise, the European Court of Human Rights recognized in *Opuz v. Turkey*³⁵ case that the State's failure to address gender-based domestic violence constitutes discrimination under the Convention. The Turkish government was held liable for its unresponsiveness concerning repeated domestic violence, thereby in violation of the right to life (Article 2, the prohibition of torture and inhuman treatment (Article 3), and the prohibition of discrimination (Article 14).

IV. CONCLUSION

To wrap up, Habermas's notion to debate issues of common concern; Feminists views to incorporate challenges faced by women and Hegel's ideas to hold the Government accountable are widely followed in democratic nations.

The researcher opines that the private sphere despite being a safe space for individuals to conduct their personal affairs, must be subjected to public discussions and just legislations to check exploitation against minorities. Nevertheless, these discussions must not be against the best interests of individuals and the regulations must not be absolute and should adhere to laws of natural justice³⁶.

For instance, discussions on abortion, or criminalising divorce hold no rational basis and are mere infringement of personal rights of individuals, thus should be excluded from the public sphere. Whereas, public discussions on government activities and violence are requisite for good governance and just society.

The researcher feels that the Public-Private Divide is essential in the working of modern societies, but rational principles must be adopted governing the same to emphasize the best interests of the public.

³⁵ *Opuz v. Turkey*, App. No. 33401/02 (Eur. Ct. H.R. June 9, 2009).

³⁶ *State of Orissa v. Dr. (Miss) Binapani Dei*, AIR 1967 SC 1269.; *Manohar Manikrao Anchule v. State of Maharashtra*, AIR 2013 SC 681.; *Pema Khandu v. Speaker, Arunachal Pradesh Legislative Assembly*, 2016 SCC OnLine Gau 284.

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