

Freedom of press vis-a-vis right to privacy

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Abstract

Media is not only a medium to express one's feelings, opinions and views, but it is also responsible and instrumental for shaping opinions and views on various topics of regional, national and international agenda. The crucial role played by media is its ability to mobilize the thinking process of millions of people. The existence of a free, independent and powerful media is the cornerstone of every society. 'Freedom of Press' is regarded to be a part of the Fundamental Right of 'Freedom of Speech and expression' guaranteed by article 19(1)(a) to the citizens of India. The freedom of the media, like any other freedom has to be exercised within reasonable boundaries. With great power comes great responsibility. There is an indomitable duty on media to respect the privacy of others. The individual who is the subject of a press or television 'item' has his or her personality, his or her reputation or career dashed to the ground after the media exposure. He too has a fundamental right to live with liberty, dignity and respect and a right to privacy guaranteed to him under Article 21 of the Indian Constitution. Today, it has been realised that the over-inquisitive media, which is a product of over-commercialization, is severely encroaching the individual's "Right to Privacy" by crossing the boundaries of its freedom. There is a need to maintain balance between the freedom of speech & expression of Press and right to privacy of the individuals. It is necessary to keep a check on the extent of its role and when it starts to forget the thin line between public and private interest. Since balancing of the right to privacy against freedom of press is a complex process and demands sensitivity to both interests, it requires a clear precision.

Keywords: Privacy, Media, Press

Introduction

Today, as the Indian society tries to stabilise on its three pillars, the guarantee of Article 19 (1) (a) has given rise to a fourth pillar i.e. media. It plays the role of a conscience keeper, a watchdog of the functionaries of society and attempts to address the wrongs in our system, by bringing them to the knowledge of all, hoping for correction. It is indisputable that in many dimensions the unprecedented media revolution has resulted in great gains for the general public. Even the judicial wing of the state has benefited from the ethical and fearless journalism and taken suo moto cognizance of the matters in various cases after relying on their reports and news highlighting grave violations of human rights. Media is not only a medium to express one's feelings, opinions and views, but it is also responsible and instrumental for shaping opinions and views on various topics of regional, national and international agenda. The crucial role played by media is its ability to mobilize the thinking process of millions of people. The existence of a free, independent and powerful media is the cornerstone of every society. 'Freedom of Press' has been held to be a part of the Fundamental Right of 'Freedom of Speech and expression' guaranteed by article 19(1) (a) to the citizens of India.

The criminal justice system in our country has many loopholes which are used by the rich and powerful to go scot-free. In such circumstances the media plays a crucial role in not only mobilizing public opinion but also bringing to light injustice which most likely would have gone unnoticed otherwise. However, there are always two sides of a coin. With the increased role and importance attached to the media, the need for its accountability, responsibility and

professionalism in reportage cannot be emphasized enough. In a civil society no right to freedom, howsoever invaluable it might be, can be considered absolute, unlimited, or unqualified in all circumstances. The freedom of the media, like any other freedom recognized under the constitution has to be exercised within reasonable boundaries. With great power comes great responsibility. There is an indomitable duty on media to respect the privacy of others. The individual who is the subject of a press or television 'item' has his or her personality, his or her reputation or career dashed to the ground after the media exposure. He too has a fundamental right to live with liberty, dignity and respect and a right to privacy guaranteed to him under Article 21 of the Indian Constitution.

Freedom of press

Freedom of expression is guaranteed under Article 19(1) (a) of the Indian Constitution. Restrictions on the exercise of the freedom of expression are found in Article 19(2) that can be enforced by the State and are 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 offense. When considering the right of freedom of expression and the right to privacy, traditionally there has always been a fundamental question about the relative weight of privacy and expression. An open democracy values a person's right to express opinions even when it conflicts with another's right to privacy. The freedom of expression has been seen by certain people as a counter to the right to privacy of the person whose information is being disclosed (expressed) by the other party, it is interesting to

note that the right to privacy was actually derived in part from the right to freedom of speech. In the case of *Kharak Singh v. The State of U.P.*, the Supreme Court for the first time recognized that citizens of India had a fundamental right to privacy which was part of the right to liberty in Article 21 as well as the right to freedom of speech and expression in Article 19(1) (a), and also of the right of movement in Article 19(1) (d). The relationship between the freedom of expression and privacy does not have to be a zero sum game but rather can be a positive sum game where both rights exist not only to not diminish each other but actively support and enhance each other.

Right to Privacy - A Legally Protected Interest

Since privacy is a recent development in the realm of law and the stream of its development is still flowing, it is difficult to give an exhaustive definition of what 'privacy' means in law. Theoretically, right to privacy is clearly a vital element in any system of individual rights designed to support the individual and to protect the core of individuality; in relation of the individuals to the collective society. Privacy is a broad term, encompassing within it various aspects of individual life such as privacy from press, unreasonable government surveillance etc. In a civilized society, reverence for one's autonomy over his affairs is a foremost rule. It should be the absolute discretion of an individual over his personality traits; over what he wants to expose to the world.

Those journalists or press, who regardless of any bounds of propriety and of decency and for their vested interests make public the affairs of individual's life, are not worthy enough. In India, the term privacy refers to use and disclosure of personal information and is only applicable specifically to individuals. Since personal information is manifestation of an individual personality. The Apex Court, in *Kharak Singh v. State of UP*, recognised the right to privacy as an integral part of right to life and personal liberty under Article 21, which is a fundamental right guaranteed to every individual under constitution of India (minority opinion of Justice Subba Rao) which was subsequently elaborated later in *Gobind v. State of Madhya Pradesh*.

The Legal Framework in India

In the Indian context, although there is no statutory enactment expressly guaranteeing a general right of privacy, elements of this right, as traditionally contained in the common law and in criminal law are recognized by the Indian Courts; these include the principles of Indian Penal Code, 1860, Section 228A. Disclosure of identity of the victim of certain offences etc. nuisance, trespass, harassment, defamation, malicious falsehood and breach of confidence. The right to privacy in India has derived itself from two sources: the common law of tort and constitutional law.

Privacy under the Constitution of India

Under the Indian Constitution, Article 21 is a fairly innocuous provision in itself i.e. "No person shall be deprived of his life or personal liberty except according to procedure established by law." However, the above provision has been deemed to include within its ambit, inter-alia, the Right to Privacy - "The Right to be let alone" as the Apex Court termed it. The concept of right to privacy finds its genesis in the case of *Gobind v. State of Madhya Pradesh* wherein

Justice Matthew of the Apex Court cited the Preamble of the Constitution of India which is designed to "assure the dignity of the individual". On the other hand, Freedom of press is not expressly mentioned in Article 19 but has been held to flow from the general freedom of speech and expression guaranteed to all citizens. This freedom is not absolute but subject to reasonable restrictions mentioned in Article 19 (2) of the Constitution. Initially it was implied for the press to not indulge in any unethical activity (infracture of privacy) but with the increased professionalism, it seems it has forgotten and remembers only its rights, but not the duties attached therein. Due to the absence of privacy as one of the ground for reasonable restriction on freedom of press (which seems necessary after seeing the nature of press) many-a-times they escape from their misdeeds. Circumstances demand an effective and adequate regulation. A kind of proper and harmonious balance between the rights of citizens and the Press is need of the hour. There are also a few statutory provisions contained in Cr. PC, 1973 (s.327 (1)), the Indecent Representation of Women (Prohibition) Act, 1980 (s.3 & s.4), the Medical Termination of Pregnancy Act, 1971 (s.7(1)(c)), the Hindu Marriage Act(s.36), and the Juvenile Justice Act, which seek to protect women and children from unwarranted publicity.

Privacy under the Common Law of Tort

Under the Common law, a private action for damages for unlawful invasion of privacy is maintainable. The printer and publisher of a (newspaper) journal, magazine or book are liable for damages if they publish any matter concerning the private life of a citizen which includes his family, marriage, procreation, parenthood, child-bearing, education etc. without his consent. Nevertheless, it is subjected to the following exceptions:

1. When the publication is based on public records, including court records- because the right of privacy no longer subsists once a matter becomes a matter of public records.
 2. When the offending publication relates to the acts and conduct relevant to discharge of the official duties of a public servant. - Unless the publication is proved to be false or actuated by malice or reckless disregard for truth.
- Sometimes, when the privacy action is covered under the Tort of Defamation, it is insufficient to protect the individual's privacy. There is a fundamental distinction between defamation and the privacy tort of public disclosure of embarrassing private facts. Truth is an (absolute) defence to the former, but not to the latter. This difference is crucial. This is the reason behind need of specific law protecting privacy of individual.

Role of Judiciary in Maintaining Checks and Balances

Since there is no comprehensive law to deal with the subject and the media is yet to evolve a code of conduct of its own, the judiciary is bound to play the role of an umpire. And it has done so on many occasions. Under our constitution there is no separate guarantee of freedom of press. It is implicit in the freedom of expression which is conferred on all citizens It is, therefore, not open for the state to curtail the Freedom of Speech and Expression for promoting the general welfare of a section or a group of people unless its action can be justified by the law falling under clause 2 of Article 19. However, freedom of press is not absolute, unlimited and unfettered at

all times and in all circumstances as it would lead to disorder and anarchy. In *Romesh Thapar v State of Madras* the Supreme Court laid down an important principle that clause (2) of Article 19 authorises the state to impose restrictions upon the freedom of speech only on certain specified grounds so that if, in any particular case, the restrictive law cannot rationally be shown to relate to any of the specified grounds, the law must be held to be void.

The movement towards the recognition of right to privacy in India started with *Kharak Singh v. State of Uttar Pradesh and Others*, wherein the apex court observed that it is true that our constitution does not expressly declare a right to privacy as fundamental right, but this right is an essential ingredient of personal liberty. After an elaborate appraisal of this right in *Gobind v. State of Madhya Pradesh and Another*, it has been fully incorporated under the umbrella of right to life and personal liberty by the humanistic expansion of the Article 21 of the Constitution. Today, it is seen that the over-inquisitive media, which is a product of over-commercialization, is severely encroaching on the individual's right to privacy by crossing the boundaries of its freedom. Yet another observation of the court which touched this aspect of violation of right to privacy of the individuals is found in the judgment of the Andhra Pradesh High Court in *Labour Liberation Front v. State of Andhra Pradesh*. The Court observed: "Once an incident involving a prominent person or institution takes place, the media is swinging into action virtually leaving very little for the prosecution or the Courts to examine in the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitments to the noble profession. The freedom of speech and expression, which is the bedrock of journalism, is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively". The following observations of the Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others* are true reminiscence of the limits of freedom of press with respect to the right to privacy:

"A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one 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 to action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy".

The ever-increasing tendency to use media while the matter is sub-judice has been frowned down by the courts including the Supreme Court of India on the several occasions. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*, the Supreme Court observed:

"There is the procedure established by law governing the conduct of trial of a person accused of an offence. A trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. If he finds the person guilty

of an offence he is then to address himself to the question of sentence to be awarded to him in accordance with the provisions of law".

The Hon'ble Supreme Court in the case of *Rajendra Sail v. Madhya Pradesh High Court Bar Association and Others*, observed that for rule of law and orderly society, a free responsible press and an independent judiciary are both indispensable and both have to be, therefore, protected. The aim and duty of both is to bring out the truth. And it is well known that the truth is often found in shades of grey. Therefore the role of both cannot be but emphasized enough, especially in a 'new India', where the public is becoming more aware and sensitive to its surroundings than ever before. The only way of functioning orderly is to maintain the delicate balance between the two. The country cannot function without two of the pillars its people trust the most. Matthew of Justice ruled in the case of *State of U.P. v. Raj Narain*, "the people of this country have a right to know every public act. The right to know comes from the concept of freedom of speech."

Conclusion

Today, it is being witnessed that the over- inquisitive media, which is a product of over- commercialization, is severely encroaching the individual's "Right to Privacy" by crossing the boundaries of its freedom. There is a need to maintain balance between the freedom of speech & expression of Press and right to privacy of the individuals. It is necessary to keep a check on the extent of its role and when it starts to forget the thin line between public and private interest. Since balancing of the right to privacy against freedom of press is a complex process and demands sensitivity to both interests, it requires a clear precision.

With power comes responsibility. With great power comes great responsibility and therefore, the freedom of speech and expression under Article 19 (1) (a) of the constitution of India correlates with a duty not to violate the law. If citizens and organizations are left absolutely free and unchecked, it will lead to conflict of rights and ultimately end in disorder and anarchy. Therefore, while exercising such rights of speech and expression, one should keep in mind the fundamental right to dignity and privacy of the individual concerned as guaranteed under Article 21 of the constitution of India.

Like other countries, India too does not have a very specific or codified law on the right to privacy. Nevertheless it has acquired constitutional recognition and thus, was carved out by the creative interpretation of the fundamental right to life under Article 21 of the Constitution. Even though picture is still not clear regarding some aspects of right to privacy and require a thorough revision.

In recent times, there have been spates of incidents which required the Courts to step in and restrain newspapers and other media from intruding into individual privacy. Whenever, such matters of invasion of privacy reach the court, journalists put forward a common defence that the disclosure was privileged because it was newsworthy and try to cover it with the 'public interest' blanket defence. There is no doubt that newspapers do a commendable job in bringing certain long buried issues to the forefront. However, it needs to be realized that even while reporting those news, some amount of restraint must be exercised. Every titbit of information or surmise about individuals cannot and should

not be forced into the category of 'news'. The advice of the Court to the masses is 'to approach the court when the loss or damage has already been occurred to the individual.' But, prevention is better than a cure. Hence, the Government should come up with a specific law, clearly laying down the guidelines for press while dealing with such threshold issues as soon as possible. All this mandates for a specific law on privacy, but still this law is nowhere near to reality.

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