

Right to Privacy as a Fundamental Right and Media Trials in India

*Sonakshi Pandey*¹
*Snigdha Srivastava*²

Abstract

In this research it is planned to analyze the Right to Privacy as forming an intrinsic part of the fundamental right of 'right to life and personal liberty' under Article 21 of Constitution of India, and the way it is being abused via media trial being carried out by various media houses. Media is considered as the fourth pillar of our Indian democracy and plays a very important role in our daily lives as well as for safeguard of democracy, dilution of concentration of power within the country, it is very important to keep the check and balance and due to lack of Constitutional and legislative measures to protect privacy, the big role media plays in our democracy having such laws expressly can be viewed as hindrance in letting the media express their views openly that too beyond the reasonable restrictions as imbibed in the Constitutional framework of our Country.

Keywords : *Article 21, Constitution, fundamental rights, UDHR, privacy, democracy.*

1. Introduction

The Right to Privacy has been very much in news lately, so as for determination as an important aspect of fundamental right of 'right to life and personal liberty' under Article 21 and as a part of the freedoms, that have been guaranteed by Part III of the Constitution. There has been almost an evolution of the very subject through various landmark decisions taken over the course of time. Starting with the decision in **MP Sharma v. Satish Chandra**³ that got carried forward with the Judgment in **Kharak Singh v. State of Uttar Pradesh**⁴ establishing that privacy is not a fundamental right. Over the period of time, through various judgments, now such an interpretation has been made and such an expansion has been done that now, Right to Privacy stands embedded in the foundation of right to life and personal liberty under Article 21 as well as various freedoms guaranteed under Article 19 in Constitution of India. Now, it is the right to freedom of speech and expression that gives the media, the right to publish any information. But along with this right being provided, entails a very important aspect of maintaining the privacy of individuals as well.

¹ Assistant Professor, Siddhartha Law College, Dehradun

² Assistant Professor, Siddhartha Law College, Dehradun

³ (1954) S.C.R 1077.

⁴ (1997) S.C.R. 332.

In India, lately concept of media trial has emerged out as to be a very dangerous trend, putting in danger the very fabric of justice which needs to be preserved. Media bashing on the basis of allegations put by one side, without giving an equal opportunity to be heard to the other side has become like a trend followed by every other media house, like as if they are managing the judicial framework of our country on their own. Press Council of India clearly reiterates that the media should not intrude "the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity."

2. Historical Background

In India, starting with the case of **Kharak Singh v. State of U.P.**⁵ in 1962 wherein on the question of right to privacy being given a status of fundamental right, minority was established, still it was also established that, it provides both the right to personal liberty as well as freedom of movement, but with passage of time, more recognition was provided to it in the case of **Govind v. State of M.P.**⁶ in 1975, wherein a confirmation entailed as with regards to the status of Right to Privacy as a fundamental right, which was contended to include and thereby protect the bonds of marriage, motherhood, privacy of family and ultimately it was regarded as to be a matter of state subject, which needs to be looked upon with priority.

Further in 1978, the Apex Court in the case of **Smt. Maneka Gandhi v. Union of India & anr.**⁷ brought forth the triple test for any law as to which would interfere with the personal liberty and privacy being such an important aspect of the liberty in the Grundnorm law was given the utmost importance. In 1994, in **R. Rajgopal v. Union of India**⁸, Apex court was of view that the very right pertaining as to be a part of right of personal liberty requires to be treated as covering all the protection as given to a fundamental right and be brought forth as an actionable claim. But it was in 1996, that with the case of **People's Union for Civil liberties v. Union of India**⁹, regulations were brought forward in interception provisions and the necessity of such information was primarily to be considered. Further, in 2004 with the case of **District Registrar and Collector v. Canara Bank and Another**¹⁰, Apex Court again discussed that the freedoms provided under Article 19 are meant to provide and strengthen the right to privacy further. It was in year 2010 when the case of **Selvi v. State of Karnataka**¹¹ brought a very important analogy forth as because of observations made by

⁵ *Supra* note 3.

⁶ (1975) S.C.R. (3) 946.

⁷ (1978) A.I.R. 597.

⁸ (1995) A.I.R. 264.

⁹ (1997) 1 S.C.C. 301.

¹⁰ Appeal (CIVIL) 6530-6374 of 1997.

¹¹ Criminal Appeal No 1267 of 2004.

Supreme Court regarding the classification of privacy into mental and physical privacy, a very important aspect was discussed and it straightaway directed the right to privacy being linked to fundamental right of Article 20(3).

Evolution of varied aspects of Right to privacy as a human right continued as when in 2014 in the case of **Unique Identification Authority of India and anr. v. Central Bureau of Investigation**¹², when the Central Bureau of Investigation asked for the access into the database of Unique identity Authority of India, it was denied same, as for the purpose of investigation into the criminal offences, such an act would require the consent of individuals so as to protect their privacy.

3. Negation of Right to Privacy by Media Trial

3.1 The Decline in Importance of Media as Fourth Pillar of Democracy because of Media Trial and Negation of Privacy

There has been a big decline in the very importance of media, the way that importance is perceived in the society, as it is quite evident these days, that in wake of competition, all the media channels seem to be trying to get better of each other. India became party to the United Nations Declaration on Human Rights 1948 (UDHR). Press had played a very important and productive role in the independence movement, through its strong support for the popular movement of Satyagraha and abdication of foreign goods and other similar forms of freedom struggle. Such was the impact of the print media that it frightened the British, as it gave a picture of a strong India, though the reality was a disintegrated India ruled by princely kings and people in deep poverty. The framers of our Constitution knew the immense power vested in the print media, therefore they imbibed the Freedom of Speech and Expression in Article 19(1) (a) of the Indian Constitution from Article 19 of the UDHR, and also reflected similarly in Article 19 of the International Covenant on Civil and Political Rights 1966 (ICCPR). UDHR 1948 in Article 12 and ICCPR 1966 in Article 17 give protection to the concept of privacy. Though freedom of speech and expression given in Article 19 of the UDHR 1948 and ICCPR 1966 was enshrined in Article 19(1)(a) of the Indian Constitution. We do not find such constitutional recognition given to privacy in India. Here, privacy is not given any separate constitutional status. Right to life, liberty and security of person is enshrined in Article 3 of the UDHR 1948. This is recognized in Article 21 of the Indian Constitution. Privacy was not included in this Article. In **Nihal Chand v. Bhagwan Dei**¹³ during the colonial period, as

¹² Petition(s) for Special Leave to Appeal (Crl) No(s).2524/2014 in the Supreme Court, Order dated March 24, 2014.

¹³ (1935) A.I.R. S.C. (1002).

early as in 1935, the High Court recognized the independent existence of privacy from the customs and traditions of India. But privacy got recognition in free India for the first time in **Kharak Singh**¹⁴ case. Privacy was recognized as a separate right in UDHR 1948. This has failed to materialize in the same spirit as a fundamental right in the Indian Constitution, like the right to speech and expression and right to life. Privacy has been defined by Supreme Court in **Sharada v. Dharampal**¹⁵ as, the state of being free from intrusion or disturbance in one's private life or affairs .

3.2 Incidents Of Media Trail

The exponential growth of media, particularly the electronic media in recent years has brought into focus issues of privacy. The media has made it possible to bring the private life of an individual into the public domain, exposing him to the risk of an invasion of his space and his privacy. In India, newspapers were for many years, the primary source of information to the public. This has change today with the growth in public consciousness, a rise in literacy and perhaps most important , an explosion of visual, electronic and social media which have facilitated an unprecedented information revolution.

Some of the form of Media trials that violate the Right to Privacy are :-

3.2.1 Photographs

This is more intrusive than news reports, some of cases are **Hannover v. Germany**¹⁶ (Princess Caroline case), in this case the eldest daughter of prince of Monaco named Caroline was photographed in her childhood despite of her efforts of not being getting photographed by German press. In 1999, an injunction was also issued by the German courts to prevent the publication of her childhood pictures but German constitution ruled that there was no breach of her right to privacy since she was a public figure. On June 2004, the court unanimously held that taking such photographs is a breach of Article 8 of European Convention on Human Rights and public figures are protected from getting photographed without their permission and knowledge. The another case is **Murray v. Express Newspapers Plc.**¹⁷ Where again the right to privacy of a child of celebrity was recognized by the court. The case is related to the famous author Mrs. Murray who has penned down the Harry Potter books and is commonly recognized by the name of J.K. Rowling. in this very case, Dr. Neil and Mrs. Murray were walking in the streets of Edinburg with their 19 months old son named David and they were photographed by Big pictures Ltd. They filed

¹⁴ *Supra* note 2.

¹⁵ (2004) 1L.J.R. 540.

¹⁶ (2004) EMLR 379; (2005) 40 EHHR.

¹⁷ (2008) WLR 1360.

a case against the said publication house on the behalf of David and asserted that such publication of photos seriously injured their right to privacy provided under article 8 of ECHR. The case went to court of Appeal and they ruled that a child has a right has a freedom of normal living without the interference of media and this right is protected by the law.

3.2.2 Biographical Works

In **Kaleidoscope (India) pvt. Ltd.v. Phoolan Devi**¹⁸, Phoolan Devi once India's most dreaded dacoit, sought an injunction restraining the exhibition of the controversial biographical film 'Bandit Queen' both in India and abroad. The said film contained various naked scenes of Phoolan devi and atrocities done on her by the villagers. The court passed a 37 pages judgment and ordered the prevention of exhibition of the film in India and abroad because such cinematographic work seriously destroys her right to privacy which is enshrined under Article 21 of Indian Constitution.

Another case of **R. Rajagopal v. State of T.N.**¹⁹ strikes a balance between the Right to privacy and Right to freedom of speech and expression. In this case a prisoner was prevented from getting his autobiography being published in magazine as it could defame the state. Jail officials pressurized the prisoner so that he refused to publish his autobiography but court pointed out that there is a balance between the Right to privacy and freedom of expression and jail officials do not have a right to prevent the prior publication of those works which may eventually defame the state.

3.2.3 Medical Records

Does the disclosure by a hospital of the medical conditions of an AIDS patient to his fiancée amount to a breach of the patient's privacy? in **Mr. X v. Hospital Z**²⁰, the SC was confronted with the task of striking a balance between two conflicting fundamental rights. There was therefore no infringement of the right to privacy.

3.2.4 Privacy of the Dead

It is often assumed that deceased persons have no privacy. One tragic instance of this was in the aftermath of **Arushi case**²¹, involving the mysterious killing of a school girl in her own home. Case involved the insensitive media coverage of the Arushi's dead body, the SC passed a series of interim directions to protect the honor and reputation of the deceased minor girls. The court in this very case gave protection to dead persons also of their right to privacy. After the killing of Osama Bin Laden

¹⁸ AIR (1995) DEL.316, ILR 1996 DEL. 586.

¹⁹ (1994) S.C.C. (6) 632.

²⁰ Appeal (civil) 4641 of 1998.

²¹ (2013) 82 A.C.C. 303.

by the American forces in Abbottabad, Pakistan in May 2011, there was pressure on the US government to release photographs of his corpse. President Obama stood firm on his decision not to allow publication of the photographs as it could create chaos and stress at the international level.

3.2.5 Sting Operations

On 30 August, 2007 Live India, a news channel conducted a sting operation on a Delhi government school teacher forcing a girl student into prostitution. Subsequent to the media exposé, the teacher **Uma Khurana**²² was attacked by a mob and was suspended by the Directorate of Education, Government of Delhi. Later investigation and reports by the media exposed that there was no truth to the sting operation. In this case, the High Court of Delhi charged the journalist with impersonation, criminal conspiracy and creating false evidence. The Ministry of Information and Broadcasting sent a show cause notice to TV-Live India, alleging the telecast of the sting operation by channel was “defamatory, deliberate, containing false and suggestive innuendos and half truths.”

Subsequently, in 2001, the sting operation conducted by Tehelka named “**Operation West End**” exposed corruption in defense contracts using spy cams and journalists posing as arms dealers. The exposé on defense contracts led to the resignation of the then defence minister George Fernandes. Sting operations gained legitimacy in India, especially in the aftermath of the Tehelka operation, exposing corruption within the government. The original purpose of a sting operation or an undercover operation was to expose corruption. Stings were justifiable only when it served a public interest. Subsequent to the Tehelka exposé, stings have assumed the status of investigative journalism, much of which has been questioned in recent times, especially, with respect to ethics involved in conducting sting operations and the methods of entrapment used by the media. Further, stings by Tehelka, where the newspaper used sex workers to entrap politicians have brought to question the manner in which stings are operated. Although, the overriding concern surrounding sting operations has been its authenticity, as opposed to, the issue of personal privacy.

4. Trial By Media and Media Victimization

The rights of an accused are protected under Article 21 of the Constitution, which guarantees the right to fair trial. This protects the accused from the over-zealous media glare which can prejudice the case. Although, in recent times the media has failed to observe restraint in covering high-profile murder cases, much of which has been hailed as media’s success in ensuring justice to the common man.

²² 146(2008) DLT 429.

For instance, in the **Manu Sharma vs. State of Delhi (NCT)**²³, very famously called Jessica Lal murder case the media took great pride in acting as a facilitator of justice. The media in the case whipped up public opinion against the accused and held him guilty even when the trial court had acquitted the accused.

The Apex Court observed that the freedom of speech has to be carefully and cautiously used to avoid interference in the administration of justice. If trial by media hampers fair investigation and prejudices the right of defense of the accused it would amount to travesty of justice. The Court remarked that the media should not act as an agency of the court.

The Court, commented, "Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending."²⁴

5. New Dimension to Right to Privacy

The most liberal and biggest dimension to Right to Privacy was given by the historic 9 judge bench of the supreme court in Justice **K.S. Puttaswamy vs. Union of India**²⁵. The bench overruled the earlier decisions given by the 8 judge bench in the cases of **Kharak Singh**²⁶ and **M.P. Sharma**²⁷ and held that Right to privacy is an integral part of Part III of Indian Constitution. The whole judgment given in the case consists of 547 pages, six different opinions and a lot of observation. Court highlighted that Right to privacy finds its space under article 21 of Constitution which talks about personal life and liberty. The said case arose out of an ADHAR scheme provided by government which ensures that every citizen must have a Adhar card for availing various government schemes and benefits. Controversy arose because the Adhar consists of individual's biometric and personal details including his/her fingerprints and this destroys right to privacy. The court in this case gave the welcoming decision and held that right to privacy comes under the ambit of right to life and personal liberty and includes right to have autonomy over one's personal decisions, bodily integrity and personal information as well. Although this right is not absolute in nature and every law framed by the legislation which directly or indirectly infringes the right to privacy of any person must be tested on the ground of justness, fairness and reasonableness.

²³ (2010) 6 SCC.1.

²⁴ *Ibid.*

²⁵ WRIT PETITION (CIVIL) NO. 494 OF 2012

²⁶ *Supra* note 2.

²⁷ *Supra* note 1.

6. Conclusion

It may be concluded that although media plays a very important role in our daily lives as well as for safeguard of democracy, dilution of concentration of power within the country, it is very important to keep the check and balance and due to lack of Constitutional and legislative measures to protect privacy, the victims of press abuse have no other option but to take the help of tort law, because taking into consideration, the big role media plays in our democracy having such laws expressly can be viewed as hindrance in letting the media express their views openly that too beyond the reasonable restrictions as imbibed in the Constitutional framework of our Country.

Rights to privacy need extending and intensification in the digital time. Also as stated in **Rajendra Sail v. M.P High Court Bar Association**²⁸, we need a strong press council in India. It should be a strong regulatory authority with representatives of legal, social, common man and press. Presently the Press Council is dominated by the different newspapers. Also, importance of media cannot be undermined but lately there have been humongous advances in technology which has acted as both boon and bane for the common people, on the one hand it has revolutionised the communication of information, ultimately providing the shot in arm for better connectivity and conveying of information, which is must in a democracy and on the other hand, which has led to evils of sting operations, tapping of private conversations, hacking into personal information of an individual without taking the consent and so on, and to curb the same, need for a specific law to safeguard the personal interests of an individual is clearly the foremost requirement at present. Media is a necessary evil, if the democracy is to function properly, but out of this necessary evil to some aspects of evil like media trial need to be curbed as soon as possible, because safeguarding the privacy of an individual, which is an important aspect of liberty as guaranteed in the Constitution of India is equally important as well.

²⁸ Appeal (crl.) 398-399 of 2001.