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Media and Privacy Laws in India – A Legal Viewpoint

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INTRODUCTION

Privacy is not something that I'm merely entitled to, it's an absolute prerequisite–
Marlon Brando[1] .

Right to Know&Right to *Privacy* are the two essential fundamental Human Rights in the era of human rights and Democracy. A Democracy without media is like a vehicle without wheels. Media is one of the strong social instrumentalities in an organic society, which regulates the behavior of an individual in a society for development and destruction. The primary object behind the media is to ensure transparency and openness for building a constructive society of thoughts and intellectuals.

The conflict between right to freedom of speech and expression and the right to privacy is examined with particular attention to media (print and electronic) in India. Freedom of press is an integral part of freedom of expression. Infant print media has grown up as a youth with tremendous dimensions viz., electronic media.In the age of information technology, the pulse of the world's events can be had with just a click of a mouse; the role of media plays a crucial role in shaping a healthy democracy. Today media has globalized the information; we get Live news through the various medium of media, which influences the society. In the electronic age, we access information through internet and social networking sites. Each generation consumes the product from media in different ways. Currently media plays a pivotal role in influencing the ideas, decisions, thinking and analyzing capacity of the millions of individual. However, in recent times the democratic intent behind the media is vanishing. Probably due tolack of regulating mechanism for the media, it has given way for increasing incidences of infraction or invasion of privacy of an individual and derailment from the true purpose of the press in the democratic society.

The Democracy can thrive not only under vigilant eye of its legislation, but also under the care and guidance of public opinion and the media is par excellence, the vehicle through which opinions can become articulate. The purpose of the powerful media is for construction of a expressivesociety and considered as an eye, ear and mouth of the public.[2]The existence of a free, independent and powerful media is the cornerstone of a successful democracy, especially of a highly mixed society like India. India is the world's largest democracy and protects free speech in its laws and constitution. The media plays the role of a watchdog in most situationswhile, in other situation it is manipulated to reflect views of a particular political group in power.Social contract theory stipulates that man entered into social contract to form a state for his own protection. This theory is now being turned on its head whereby the primary duty of the state to protect individual has been turned into the primary right of the state to take away all freedoms in the name of National security and safeguards.

The Right to Privacy in India

Privacy and freedom are the two sides of the same coin. If one is curtailed other gets impacted adversely. The concept of right to privacy is developed with the advancement of human civilization and through judicial interpretation by judges of Article 21 of the Indian Constitution. Privacy emboldens the mind of the individual to think creatively and uniquely without any fear. Privacy is vital to the mental, spiritual and physical well-being andto the morality and personality development of the individual in an open society. The literal meaning of Privacy, as defined in the ***New Oxford Dictionary***, is the '*absence or avoidance of publicity or display; the state or condition from being withdrawn from society of others, or from public interest, seclusion.*'The **Black's LawDictionary**refers to privacy as"*the right to be let alone; the right of a person to be away from unwarranted publicity; and the right to live without any unwanted interference by public in matter with which the public is not necessarily concerned.'*Therefore, the right to privacy,

[1] . www.goodreads.com/quotesretrieved on 27th Sep 2016.
[2]. Dr Mohd. Ranja, Role of Media in Indian Democracy; An Evaluation, Indian streams Research Journal, Vol-6, Issue 7, Aug 2016.

notwithstanding its differing connotations, remains a private right of an individual. The right to privacy is the hallmark of a cultural existence, as in the words of *Louise Brandeis, J*"*the right most valued by civilized men*."[3]

India at present does not have an independent statute protecting privacy; the right to privacy is a deemed right under the Indian Constitution. Article 21 of the Indian Constitution provides, "***No person shall be deprived of his life and liberty except by the procedure established by law".*** In**R. Rajgopal Vs State of Tamil Nadu[4] and PUCL Vs Union of India,[5]** the courts have observed that the right to privacy is an essential ingredient of the right to life. "*A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters."*[6]

The Courts have interpreted the right to privacy, as implicit in the right to life. The unbridled expansions of media pose an extensive threat to privacy of an individual. In the age of internet, information is centralized and so easily accessible with one tap on the button. The law relating to privacy is of recent origin in India and it recognizes an individual's right to be '**let alone'**. The meaning of privacy is to be extended by the development process,and in the light of the media laws and mass communication that are to be sensitive towards individual personality and progress of the society.The fight for privacy is not just about semantics but also about protecting a basic right. It is been won after many battles and should not be surrendered so easily. We claim violation of fundamental Rights to privacy every time.

The roots of privacy aretraced back to the Natural rights, which are basic, inherent and inalienable. The right to Privacy in India has derived its origin especially from two sources namely common law of torts and Constitutional law. The right to privacy in India has failed to acquire the status of an absolute right. These rights in comparison to other competing rights like, the right to freedom of speech and expression, the right of the State to impose restrictions on account of safety and security of the State, and the right to information, is easily relinquished. The exceptions to the right to privacy, such as, overriding public interest, safety and security of the state, apply in most countries.

In India, the right to privacy is not a positive right. It comes into effect only in the event of violations. The law on privacy in Indiais recognition of the individual's right 'to be let alone' and to have his personal space inviolate. The Concept of Piracy rests on the promise that *"a certain private sphere of individual liberty will be kept largely beyond the reach of the government*" and it embodies the acceptance of the moral fact that a person belongs to himself and not to others nor to society as a whole.

Right to privacy is a recently developed phenomenon; in fact, it is still developing. Now, this right is passing through crucial stage in the era of information technology and digital age. The Media has made it possible to bring the private life of an individual into the public domain, thus exposing him to the risk of his space and privacy. In India, newspapers were the primary medium through which information reached to the public at every corner of the state. This has changed with the development, increase in the literacy and an explosion of visual and electronic media that have facilitated an unprecedented information revolution. In the age of internet, information is centralized and so easily accessible that one tap on a button could throw up startling units of information about an individual. The commercialization of the press and electronic media also calls for intense debate on protection of privacy.

However, the Supreme Court has soon read the right to privacy into the Indian Constitution. The movement of right to privacy started with *Kharak Singh Vs State ofPunjab*[7]wherein the apex court held that it is true that our constitution does not expressly declare a right to privacy as fundamental rights but the right to privacy is an essential ingredient of personal liberty. The Supreme Court has repeatedly realized that the right to liberty and freedom of expression cannot survive, if the right to privacy is compromised. It began with recognizing people's rights against government intrusion into their homes[8] and went on to build a strong norm over the years across variety of cases. It is the right of privacy thatprotects us from the indiscretions of doctors who see us at our most vulnerable. It is the right to privacy that prevents the police from our homes inside out on a whim. It is the right to privacy that prevents, albeit ineffectively, law enforcement agency from listening to our phone conversations and recording them.[9] This is all a result of the Supreme Court recognizing time after time, across decades, that our other rights will not stand for much without privacy.

Privacy and Freedom of Expression

The Individual privacy has gained impetus, especially when it comes to cyberspace, through its inclusion in the Information Technology Act (ITA) 2008. The IT laws in India are yet to catch up with the dynamic digital space. The

[3]. IRSHADB HIJAZI, Media Law and Ethics://books.google.co.in; retrieved on 20th Sep 2016.
[4]. (1994) 6 SCC 632.
[5]. AIR 2002, SC, 40.
[6]. Rajgopal Vs State of Tamil Nadu. 1994) 6 SCC 632.
[7] . 1963 SC 1295; (1964) 1 SCR 332.
[8] . Ibid.
[9]. Arun Chinmayi, Privacy is a Fundamental Right, The Hindu, March18, 2016.

provision of privacy under the IT Act, however, only protect against dissemination of sensitive personal information through criminal prosecution and civil action. In addition, capturing, publishing or transmitting images of parts of individuals without his consent is a punishable offence. Apart from this, punishment for publishing or transmission of pornographic content can be squeezed into the privacy slot.

Tapping of telephones-

The Indian standards of using technology for widespread surveillance began with the use of telephone.[10] Telephone tapping also constitutes a serious invasion of an individual's right to privacy. The large-scale telephone tapping was challenged before Supreme Court in *PUCL Vs. UOI*,[11] also 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 on 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." Therefore, telephone tapping is a serious violation of privacy.

Aadhaar Bill and Right to Privacy-

The Government attitude to introduce Aadhaar database without a proper legislation has invited certain inadequate standards. The Aadhaar bill is been passed without public consultation about the privacy safeguards necessary for such database and no provisions for public or independent oversight. The noble goal of Aadhaar is creating a functional public Distribution System. The legislation does a fine job of obfuscation: labeled 'protection of information', it begins with very promising norms about not sharing information for purposes outside the legislation, and undoes these norms completely by permitting the government through exceptions to easily dip into Aadhaar data. Privacy rights champions say that because Aadhaar is not backed by legislation, the government can abuse data gathering under the said program.[12] The Supreme Court recent judgment[13] has upheld privacy as a fundamental right under Article 21 and part III of the Indian Constitution. The restrictions on the privacy will depend upon which article it emanates from. The right to privacy is an integral part of right to life, but without any clear-cut laws, it remains in the grey area.[14] The biggest immediate impact of the privacy judgment on Aadhaar is that it will end the legal gridlock over the fundamental nature of a 'right to privacy'.

International mandates on Privacy issue

Internationally, the right to privacy is been protected in a number of conventions. The Indian courts have recognized right to privacy in conformity with international norms. **Universal Declaration of Human Rights, 1948 (UDHR) under Article 12** provides that:

"Noone 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."

The Universal Declaration of Human Rights (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 honour and reputation."*** Thus, ensuring that States enact laws to protect individual right to privacy. India has ratified the above conventions. The Ratification of the Conventions mandates the State to take steps to enact laws to protect its citizens. Although, human right activists have periodically demanded that the State take adequate measures to protect human rights of the vulnerable in society, the right to privacy has received little attention.

Similarly, **Article 16 of the Convention on the Rights of the Child (CRC**) provides protection to a minor from any unlawful interference to his/her right to privacy and imposes a positive obligation on States who have ratified the convention to enact a law protecting the same. India does have safeguards in place to protect identity of minors, especially, juveniles and victims of abuse. However, there are exceptions when the law on privacy does not apply even in case of a minor. The regional conventions also recognize the right to privacy.[15]

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[10]. ibid.
[11]. Supra @ n- 3
[12] . www.livemint.com/opinion retrieved on 24-9-2016.
[13] . the Privacy judgment case, August 2017. (Petition by Puttaswamy and others) the five judge bench.
[14] . infra n 2.
[15]. Article 8 of the European Commission of Human Rights also proclaims the significance of existence of right to privacy and its exception in the interest of national security, public safety or the economic well- being of the Country for the protection of rights of others.

The right to privacy, therefore, is not an absolute right and does not apply uniformly to all situations and all class of persons. For instance, privacy with respect to a certain class of persons, like a person in public authority, affords different protection as opposed to private individuals.

The *so* called……..Media ----business -----responsibility

The mirror of the social, economic and political status would generally be part of media and its business kind. A person has the right to determine what sort of information about them is collected and how the information is used. Internet users can protect their privacy by taking action that prevents the collection of information. Privatization and globalization has had its poor impact on information dissemination. Presently we see a shift in the purpose attributed to the media: there is a rat-race for enhanced readership and high TRP rating. Today the media compromise their social contribution towards commercial ratings. As the technology has influenced change in the communication landscape, the future belonged to its reach, scale, variety and accessibility. The technology thrust, has alsoaffectedthe nature of information dissemination in view of changes that takes place globally across platforms.

The Right to Information Act 2005 also stresses for the open society where transparency is ensured and according to Section 8 of the Act, unwanted invasion of privacy have been listed as an exception to the right to information. Transparency and accountability are sine qua non in a genuine democracy. The publication, of any previously mentioned personal information without the consent of the person, whether accurate or inaccurate, and whether laudatory or critical would amount in violation of the right to privacy of the person and liable for damages. The exception being, when a person voluntarily invites controversy or such publication is based on public records.

a. Sting operation and right to privacy-

A sting operation is an operation designed to catch a person committing a crime by means of deception. It is primarily a secret operation carried out by undercover agents to unveil criminal. A complicated game planned and executed with great care. They are also known as investigative journalism or undercover journalism. A positive sting operation is one, which results in the interest of the societies, which pierces the veils of the working of the government and make them accountable.[16]The sting operation though acts, as a strong weapon against corruption, its adverse effect on the right to privacy should‘t be completely ignored.

The individual who is the subject of press or other form of media has to have his or her personality, reputation or to be protected under Article 21 of the Constitution and not to be dasheddown due to media exposure. Sting operations are not legal method of law enforcement, and also raises certain moral and ethical issues involved in it while conducting the investigating operation. To avoid falling into the trap, the sting operation needs a code of conduct. Laws are to be strengthened in this regard. Sting operations will be completely justified if they are carriedin accordance with law and for the proper investigation purpose.

b. Media Trial *V/S* Privacy

The importance of mediaarises from the importance of information. From the early newspaper to cable television, news channel, media has assumed a greater role. It now acts as a bridge for dissemination of information, news, trends across the world. In a democratic country like India, right to press is an important right. It is a limited right to be exercised for public good.[17] How can we forget to give a mention of double murder story, [18]which has witnessed trial and conviction by media? In *Saibal Kumar Gupta Vs B.K Sen,*[19] the Supreme Court said, “it would be mischievous for newspapers to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of that investigation” and thereby discouraging the tendency of media trial in India.

CONCLUDING THOUGHTS -

Right to privacy, once incorporated as a fundamental right, is wide enough to encroach into any sphere of activity. The conferment of such a right has become extremely difficult with the advancement of technology and the Social Networking sites. However, the other side of the picture is that right to privacy of a person includes the right to seclude personal information. The extent to which the realm of privacy of each person should remain is subjective, which might differ from person to person.

Privacy is one of the easily attacked areas in Neo Electronic age. The irregular practices of media have orchestrated violence systematically and has infused the opinion of masses, there by a wrong signal is sent in democratic country especially India. The Rights of media without law over-laps the right of the privacy. A need for stringent Law to

[16]. Sting Operation not a legal method of law enforcement: Supreme Court, THE HINDU, April 24, 2014.m.thehindu.com.>news>article5944283.
[17]. Introduction to the 200th report of Law Commission of India, presented on Aug 31, 2006.
[18] . Arushi murder case, Nupur talwar Vs CBI & Another, AIR 2012, SC 1927.
[19] . AIR 1961, SC 633.

regulate conflicts of rights is a need of the hour. Currently, this right is becoming more essential as every day passes. With all our lives being splattered over the media, be it through social networking sites or the spy cameras, we need protection so we can exercise our rights as guaranteed under Indian Constitution to live with dignity and respect. The recognition of right to privacy is also found in **section 43A** of Information Technology Act (IT Act) that makes unauthorized access into a sensitive personal data or information of others in the computer resource punishable offence. The Supreme Court has categorically held that, the state must not make public anypersonal information/data about an individual, which would result in violation of his/her privacy.[20]Recent Government initiatives such as e-Governanceand Aadhaar would require maintenance of data or information of individual in electronic form may increase the risk of infringement of privacy.[21]

The Privacy (proposed) Bill, 2013 does not provide any definition of **'privacy'**. However, it gives protection from a citizen's identity theft, including criminal identity theft (posing as another person when apprehend for a crime), financial identity theft(using another's identity to obtain credit, goods and services) etc. As per the bill, no person can process the data (personal and sensitive) of other person without the consent and thus punishes the person who obtains any record of information under a false pretext. However, the bill is yet to become a law.

India's information protection laws are currently inadequate to tackle the issue of data commodification and exploitation. We need toenact a comprehensive legislation on privacy that would ensure the protection of sensitive and personal data/ information of the people, as well as protection against the privacy violation by the government and individual, which is the need of the hour, especially with the rampantly increasing number of internet users in India year after year.[22]

The privacy of an individual is encroached by the media, print or electronic in many different ways. The right to life and liberty of an individual is being forced to compromise under the unethical practices adopted by the media. Examples are many when media has crossed its limits of fair reporting; in cases, Sub-Judice.

Always a monitoring mechanism has must be initiated to ascertain whether media is functioning within its arena of Constitutional freedom of speech and expression properly, are the internal norms to regulate media are virtually followed, should there be other checks on media freedom or it is against the democratic principles of freedom of speech and expression.

The State should not be allowed to disclosethe personal information or data of an individual except under exceptional circumstances. The aggrieved individual can avail appropriate reliefssuch as injunction or damages for violation of his right to privacy. The Data protection law needs to be strengthened with strong teeth to tackle the threats to privacy in the present age of sophisticated technology. The Recent Supreme Court judgment can be used to reinvigorate conversation on how India's data protection models should be considered and reconfigured towards greater user protection.

Advance training should be given to trained police personnel especially at the lower level to handle the case of privacy violations through use of technology, such as internet, social networking sites, e-banking, ATM, credit card etc.

To protect the potential users on the social media, awareness should be created among the *neitizens* with regard to use the social networking sites with due care and responsibility. What the country needs is not only a safe means of digitizing citizen's identity particulars but also a comprehensive law to protect their privacy and personal data from unauthorized surveillance and misuse.The journalist and the government authorities and officers must have training and awareness for the respect of privacy of the persons. To conclude we must see to that, we should create an *environment where there is balance of media and right to privacy and protect those individual who are vulnerable to privacy invasion.*

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