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MEDIA AND RIGHT TO PRIVACY – **“A LEGAL ANALYSIS”**

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Introduction

India, at present, doesn't have a freelance act protective privacy; the right to privacy may be a deemed right below the Constitution. The right to privacy has got to be below stood within the context of two basic rights: the proper to freedom below Article nineteen and therefore the right to life under Article twenty one of the Constitution. The higher judiciary of the country has recognized the privacy as a right “implicit within the right to life and liberty certain to the voters of this country by Article 21”. The Indian law has created some exceptions to the rule of privacy within the interest of the general public, especially, succeeding the enactment of the proper to info Act, 2005 (RTI). The RTI Act, makes an exception below section eight (1) (j), that exempts revelation of any personal info that isn't connected to any public activity or of public interest or which might cause an unwarranted invasion of privacy of a private. What constitutes an unwarranted invasion of privacy isn't outlined. However, courts have taken a positive stand on what constitutes privacy in several circumstances. The purpose of this paper is to delineate the rising privacy issues in Asian nation and therefore the existing media norms and pointers on the proper to privacy. At present, the media is ruled by disparate norms made public by sovereign media bodies, just like the Press Council of Asian nation, the Cable TV Networks (Regulation) Act, 1995 and therefore the Code of Ethics written by the News Broadcasting normal Authority (NBSA). The paper examines the present media norms, constitutional protection certain to an individual's right to privacy and upheld by courts

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The paper traces the implementation of media pointers and therefore the meanings accorded to unremarkably used exceptions in coverage by the media, like, 'public interest' and 'public person'. This paper isn't a thorough decide to capture all privacy and media connected debates. It does, however, capture debates inside the media once incursion on the proper to privacy is taken into account excusable. The queries that the paper seeks to reply to area unit: once is that the invasion on the proper to privacy defensible? However the media balances the proper to privacy with the proper to information? However is 'public interest' construed in regular reporting? The queries raised are seen within the light-weight of case studies on the invasion of privacy within the media, the interviews conducted with print journalists, the definition of the proper to privacy below the Constitution of Asian nation and media's code of ethics. Ironically, within the case of the Radia tapes, identical journalists found themselves within the centre of the media's frenzy-hungry, usually intrusive and unproven form of coverage. Exposés, such as, the Radia tapes and Wiki leaks have thrown open the conflict between the proper to info, or what has come back to be known as 'informational activism', and therefore the right to privacy. Right to info and therefore the right to speak the knowledge compromise is secured below Article 19(1) (a) of the Constitution of Asian nation. In State of province v rule Narain¹, the Supreme Court of Asian nation command that Article 19(1) (a), additionally, to guaranteeing freedom of speech and expression, guarantees the proper to receive info on matters regarding public interest. However, additional recently issues over leveling the proper to info with the proper to privacy are raised, especially, by controversies just like the Radia-tapes.

Key Words:- Media, Human Rights, Indian Constitution, Privacy, Infringement.

Constitutional Framework of Privacy

The right to privacy is recognized as a basic right underneath the Indian Constitution. it's warranted underneath the correct to freedom (Article 19) and therefore the right to life (Article 21) of the Constitution. Article 19(1) (a) guarantees all voters the correct to freedom of speech and expression. It's the correct to freedom of speech and expression that offers the media the correct to publish any data. Cheap restrictions on the exercise of the correct will be obligatory by the State within the interests of sovereignty and integrity of the State, the safety of the State, friendly relations with foreign States, public order, decency or morality, or in regard to contempt of court, defamation or incitement

¹ 1975 AIR 865, 1975 SCR (3) 333.

to an offence. Article twenty one of the Constitution provides, "No person shall be deprived his life or personal liberty except consistent with procedure established by law." Courts have taken the correct to privacy as inexplicit the correct to life. In *R.Rajagopal v. State of T.N.*² and *PUCL v. UOI*³, the courts discovered that the correct to privacy is a vital ingredient of the correct to life. For instance, in *R.Rajagopal v State of T.N.*, car it's a 'right to be left alone.' "A national contains a right to safeguard the privacy of his own, his family, marriage, reproduction, motherhood, child-bearing and education among different matters." The publication of any of the aforementioned personal data while not the consent of the person, whether or not correct or inaccurate and 'whether praising or critical' would be in violation of the correct to privacy of the person and answerable for damages. The exception being, once someone voluntarily invitations conflict or such publication relies on public records, then there's no violation of privacy. In *PUCL v. UOI*⁴, which is popularly referred to as the wire-tapping case, the question before the court was whether or not wire-tapping was an infringement of a citizen's right to privacy. The court command that an infringement on the correct to privacy would depend upon the facts and circumstances of a case. It discovered that, "telephone speech may be a crucial side of a man's non-public life. Right to privacy would definitely embrace telephone-conversation within the privacy of one's home or workplace. Telephone-tapping would, thus, breach Article twenty one of the Constitution of Bharat unless it's permissible underneath the procedure established by law." It additional discovered that the correct to privacy additionally derives from Article nineteen for "when someone is talking on phone, he's sweat his right to freedom of speech and expression." In *Kharak Singh v. State of U.P*⁵, wherever police work was being challenged on account of violation of the correct to privacy, the Supreme Court command that housing night visits were offending of Article twenty one of the Constitution and therefore the personal liberty of a personal. The court, therefore, has taken the correct to privacy not as an absolute right, however as a restricted right to be thought-about on a case to case basis. it's the exceptions to the correct to privacy, like 'public interest', that area unit of specific interest to the current paper.

² 1994) 6 S.C.C. 632.

³ AIR 1997 SC 568.

⁴ AIR 1997 SC 568.

⁵ AIR 1295, 1964 SCR (1) 332

International convention on Right of Privacy

Internationally the right to privacy has been protected during a number of conventions. For instance, the Universal Declaration of Human Rights, 1948 (UDHR) under Article 12 provides that: "No one shall be subjected to arbitrary interference together with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the proper to the protection of the law against such interference or attacks." The 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 make sure 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"⁶. Thus, ensuring that States enact laws to guard individual's right to privacy. India has ratified the above conventions. The ratification of the Conventions mandates the State to require steps to enact laws to guard its citizens. Although, right activists have periodically demanded that the State take adequate measures to guard human rights of the vulnerable in society, the proper to privacy has received little attention. Similarly, Article 16 of the Convention on the Rights of the kid (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 an equivalent . India does have safeguards in situ to guard identity of minors, especially, juveniles and victims of abuse. However, there are exceptions when the law on privacy doesn't apply even just in case of a minor. The right to privacy, therefore, isn't an absolute right and doesn't apply uniformly to all or any situations and every one class of persons. For instance, privacy with reference to a particular class of persons, sort of a person publicly authority, affords different protection as against private individuals.

Judicial Interpretation on Right to Privacy

In case of a representative of the general public, like a public person, the proper to privacy afforded to them isn't of an equivalent degree as that to a personal person. The Press Council of India (PCI) has laid down Norms of Journalistic Conduct, which address the difficulty of privacy. The PCI Norms of Journalistic Conduct, recognizes privacy as an inviolable right, but adds a caveat; that the degree

⁶ *International Covenant on Civil and Political Rights, Part III Art. 17. Available at: <http://www2.ohchr.org/english/law/ccpr.htm> [Last accessed 20/04/2011].*

of privacy depends on circumstances and therefore the person concerned. The character of protection, therefore, afforded to the 2 classes — public servants and personal individuals, is to be viewed from this attitude. The nature of restriction on the proper to privacy is therefore, of a special order; within the case of personal individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection is often lower, counting on what's at stake." In testing whether certain information falls within the purview of the RTI Act, the court said one should consider the subsequent three tests: whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case; whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and, whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources. Would this rule hold true for information on relatives/ friends of public persons? The rule is that, unless, private information on relatives/friends of public person's impacts public interest and accountability, the knowledge shouldn't be revealed. In 2010, the media reported that Sunanda Pushkar, an in depth friend of the Minister of State for External Affairs, Shashi Tharoor, holds a big holding within the IPL Kochi team. The media exposure led to the exit of Shashi Tharoor from the govt. While the media's questioning of Pushkar's holdings was legitimate, the media's reporting on her past relationships and the way she dressed had no pertaining to public interest or accountability⁷.The media accused Pushkar of playing proxy for Tharoor within the Rs. 70 crore sweat equity deals. Much of the media attention focused on her personal life, as against, how she attained such an outsized stake within the IPL Kochi team. It minutely analyzed her successes and failures, questioned her ability and accused her of getting unbridled ambition and greed for money and power⁸.If one was to think about the principles of privacy set by the court within the judges assets' case much of the private information published by the media on Tharoor and Pushkar, did not shed light on the IPL holdings or the establishment of the nexus between the IPL holdings and therefore the government involvement. The tests delineated by the court in considering what personal information regarding a public authority could also be shared under the RTI Act, are often adopted by the media when reporting on public officials. If personal information divulged by the media doesn't shed light on the performance of a public official, which might be of public interest, then the

⁷ Abhishek Dubey (2011). *Indian Premier League Story*. Pearson Education India. pp. 34-. [ISBN 978-81-317-5800-7](#).

⁸ PTI, *Media just turned me into a 'slut' in IPL row: Sunanda Pushkar*, 23/04/2010 Available at <http://articles.timesofindia.indiatimes.com/2010-04-23/india/28149154>

knowledge revealed violates the standards of privacy. Personal details which haven't any pertaining to public resources or interests shouldn't be published. The media coverage of the Bombay terror attacks displayed the same lack of restraint, where the minutest details of a person's last communication with his/her family were repeatedly printed in the media. None of the knowledge presented by the media revealed anything new about the fear attack or emphasized the gravity of the attack. A senior journalist, who talked off the record and reported on the Mumbai terror attacks, agreed that the media overstepped their limits within the Mumbai terror attacks. As per her, violation of privacy takes place at two stages: the primary time, once you overstep your boundaries and ask an issue you ought to not have, and the second, when you publish that information. Reflecting on her ten years of reporting experience, she said, "Often once you are covering a tragedy, there's little time to reflect on your reporting. Besides, if you, on account of violating someone's privacy, choose to not report a story, some competing paper would surely carry that story. You would need to defend your decision to not report the story to your boss." The competitiveness of reporting and getting a story before your competitor, she agreed makes even the most seasoned journalists ruthless sometimes. Besides, although PCI norms exist, not many read the PCI norms or recall the journalistic ethics once they are reporting on the sector. The PCI Norms reiterate 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." The well accepted rule, however, is that once a matter or information comes in the public domain, it no longer falls within the sphere of the private. The media has failed to make the distinction between what is warranted invasion of privacy and what constitutes as an unwarranted invasion of privacy. For instance, identity of a rape or kidnap victim that would further cause discrimination is often revealed by the media.

Media Trial & Media Discrimination

The PCI norms lay down the rules for reporting cases and avoiding trial by media. The PCI warns journalists to not give excessive publicity to victims, witnesses, suspects and accused as that amounts to invasion of privacy. Similarly, the identification of witnesses may endanger the lives of witnesses and force them to show hostile. Zaheera Sheikh, who was a key witness within the Gujarat Best Bakery case, was a victim of excessive media coverage and sympathy. Her turning hostile invited equal amount of media speculation and wrath. Her excessive media exposure possibly endangered her life. Instead, of focusing on the shortage of a witness protection program within the country, the

media focused on the twists and turns of the case and therefore the 19year old's conflicting statements. The right of the suspect or the accused to privacy is recognized by the PCI to protect against the trial by media.

Swati Deshpande, a Senior Assistant Editor (Law) at the days of India, Mumbai, observes that, "As an honest journalist one will always have more information than required, but whether you publish that information or exercise restraint is up to you." during a span of 11 years of court reporting, as per her, there are instances when she has exercised the option of not reporting certain information that would be defamatory and can't be attributed. If an allegation is formed during a court room, but isn't supported by evidence or facts, then it's advisable that it's dropped from the report. "In the Bar Dancers' case which was before the Bombay supreme court, the petition made allegations of all types against certain ministers. I didn't report that, although I could have justified it by saying it's a part of the petition, and that i was just doing my job. The allegation was neither backed by facts nor was it of public interest. As a rule one should report on undisputed facts. Then again, with court reporting one is treading on safer grounds, as against other beats." "In cases of rape when facts are a part of the judgment, you report facts that are relevant to the judgment or offer you an insight on why the court took a certain view and add value to the copy. One should avoid a situation where facts revealed are offensive or reveal the identity of the victim. The past history of both the victim and therefore the accused shouldn't be reported."

She admitted, that "Media reporting often gives the impression that the accused has committed the crime or the media through its independent investigation wing has found a specific fact. When actually, it's relied entirely on the knowledge given by the police and did not question or verify the facts by an independent source. The result's that the majority crime reporting is one-sided, because the knowledge received from the police is never questioned."

As per her, to a particular degree the publication of Tata–Radia conversations did violate Tata's privacy. "Media must question itself before printing on how the knowledge is of public interest. Of course, as a journalist you are doing not want to lose out on an honest story, but there must be gate keeping, which is usually absent in most of the media today."

In the Bofors pay-off case⁹the Supreme Court of Delhi, observed that, "The fairness of trial is of paramount importance as without such protection there would be trial by media which no civilized

⁹ *Crl.Misc.(Main) 3938/2003*

society can and should tolerate. The functions of the court in the civilized society cannot be usurped by any other authority¹⁰.” It further criticized the trend of police or the CBI holding a press conference for the media when investigation of a criminal offense remains ongoing. The court agreed that media awareness creates awareness of the crime, but the proper to fair trial is as valuable because the right to information and freedom of communication. The 200th report of the Law Commission addressed the difficulty of Trial by media: Free Speech vs Fair Trial under Criminal Procedure. The report, focused on the pre-judicial coverage of a criminal offense, accused and suspects, and the way it impacts the administration of justice. The Contempt of Courts Act, under section 2 defines contempt of court as: "...the publication, (whether by words, spoken or written or by signs, or by visible representations, or otherwise), of any matter or the doing of the other act whatsoever which

(i) Prejudices or interferes or tends to interfere with the due course of any judicial proceedings; (ii) interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any manner."Section 3(1) of the Act exempts any publication and distribution of publication, "if the publisher had no reasonable grounds for believing that the proceeding was pending". In the event, the person is unaware of the pendency, any publication (whether by words spoken or written or signs or visible representations) interferes or tends to interfere with or obstructs "the course of justice in reference to any civil or criminal proceeding pending at the time of publication, if at that point he had no reasonable grounds for believing that the proceeding was pending." The report emphasizes that publications during the pre-trial stage by the media could affect the rights of the accused. An evaluation of the accused's character is probably going to affect or prejudice a good trial.

Conclusion

The right to privacy in India has did not acquire the status of an absolute right. The right as compared to other competing rights, like, the proper to freedom of speech & expression, the proper of the State to impose restrictions on account of safety and security of the State, and therefore the right to information, is definitely relinquished. The exceptions to the proper to privacy, such as, overriding public interest, safety and security of the State, apply in most countries. Nonetheless, because the paper demonstrates, unwarranted invasion of privacy by the media is widespread. For instance, in the

¹⁰ *Ibid.*

UK, Sweden, France and Netherlands, the proper to photograph an individual or retouching of any picture is prohibited unlike, in India where press photographers do not expressly seek consent of the person being photographed, if he/she is during a public space. In France, not only is that the publication of data is prohibited on account of the proper to privacy, but the tactic during which the knowledge is procured also falls within the purview of the proper to privacy and will be violative. This includes information or photograph taken in both public and personal spaces. Privacy within public spaces is recognized, especially, “where there is reasonable expectation of privacy.” The Indian norms or code of ethics in journalism fail to make such a distinction between public and private space. Nor do the rules impose any restrictions on photographing a private without seeking express consent of the individual.

The Indian media violates privacy in day-to-day reporting, like overlooking the difficulty of privacy to satisfy morbid curiosity. The PCI norms prohibit such reporting, unless it's outweighed by ‘genuine overriding public interest’. Almost all the above countries prohibit publication of details that might hurt the emotions of the victim or his/her family. Unlike the United Kingdom, where the PCC can pass desist orders, in India the family and/or relatives of the victims are hounded by the media. In India, the proper to privacy isn't a positive right. It comes into effect only within the event of a violation. The law on privacy in India has primarily evolved through judicial intervention. It has did not keep step with the technological advancement and therefore the burgeoning of the 24/7 media news channels. The prevalent right to privacy is definitely compromised for other competing rights of ‘public good’, ‘public interest’ and ‘State security’, much of what constitutes public interest or what's private is left to the discretion of the media.