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INVASION OF PRIVACY RIGHTS BY VISUAL MEDIA **– A NEED FOR REGULATION**

AUTHORED BY - SOUJANYA MAHESH CHINNIKATTI

ABSTRACT

The ubiquity of visual media in the digital age has ushered in unprecedented challenges to individual privacy rights. With the proliferation of smartphones, social media platforms, and surveillance technologies, the boundaries between public and private spheres have become increasingly blurred. This paper examines how visual media invades privacy rights and underscores the urgent need for regulatory measures to address these concerns.

Keywords: Visual media, Privacy rights, Regulation, Surveillance technologies, social media, Digital age, Privacy invasion, public sphere, Private sphere, Smartphone

INTRODUCTION

In the current digital era, the infringement of privacy rights by visual media has become a pressing issue. People's privacy is becoming more open to invasion thanks to the widespread use of smartphones, security cameras, social media, and digital content-sharing platforms. This invasion of privacy can take many different forms, such as unauthorized photography or videography or the public disclosure of personal information, and it has significant effects on people, relationships, and society at large. This visual media invasion of privacy raises several moral, legal, and societal concerns. It raises concerns about the limitations of private space, consent, and how technology affects how we perceive privacy. In this context, it is crucial to examine how visual media violates our privacy rights, its effects, and the steps that must be taken to shield people from such invasions. In terms of his privacy, man enjoys freedom. When there is unwarranted attention, he will feel ashamed. He knows what information should and shouldn't be made public. He always prioritizes preventing others from learning personal information. The desire to hold onto lead from others or a chosen group that one considers intimate is typically referred to when the word "privacy" is used. However, it is very challenging to comprehend the components or contents of privacy rights. Since its viewpoint is subjective, it is impossible to

define privacy rights universally. It changed over time, from society to society and place to place. This introduction lays the groundwork for a deeper exploration of the complex issues surrounding the violation of privacy rights by visual media, illuminating the difficulties and complexities it presents as well as potential remedies and safety measures that could be put in place to alleviate these worries. As we navigate the twenty-first century's shifting media and technological landscape, it is critical to acknowledge and address this issue. Visual media's invasion of privacy can have various detrimental effects on people. Distress, embarrassment, and humiliation may result from it. Additionally, it can harm a person's reputation and make it challenging to get a job or a place to live technological advancement.

The Meaning and Concept of Privacy

Privacy is one of the crucial facets of every individual. Psychologists and sociologists alike concur that people have an inalienable right to privacy. According to their right to privacy, people must be able to manage their data, control it, and manage their matters largely without being bothered by others. Secrecy is additionally central to our democratic ideals. A person is interested in safeguarding his or her privacy since maintaining one's privacy promotes self-determination, dignity, and individual liberty and eventually encourages a more active and engaged citizenry. A key idea in the human rights framework is the right to privacy. Since the dawn of human history, privacy has been a part of everyday life.³ A freeman's property was protected in some way by the Anglo-Saxon legal system of the Middle Ages and by German tribal law. Property damage was also compensated for, as was insult.⁴ Of course, the individual prefers to be free from intrusion and access from others, and they anticipate that their space, possessions, body, and Personal data must be protected from unauthorized access. People want their privacy naturally, encompassing private information, property, and physical security. Individuals enjoy that trespassing shall not affect their person, property, or premises. Nevertheless, the idea and degree of privacy may vary depending on the society.

Definition of the term Privacy

Different legal encyclopedias also consider the definition of the term 'privacy'. Privacy originates from the Latin words "Privatus" and "privo," meaning deprive.¹

Black's Law Dictionary directly defines the term 'right of privacy' as an individual's right "to be free from unwarranted publicity. It is a general and common term that comprises many inherent

¹ Ali Alibeigi, *Right to Privacy, A Complicated Concept to Review*, SSRN Electronic Journal · January 2019, pp 10

rights like liberty. These rights are protecting citizens against the government.²

Oxford Dictionaries also defined privacy as “a state in which one is not observed or disturbed by other people” and “the state of being free from public attention.”³

The concept developed by Warren and Brandies

The term privacy right attained widespread attention when Samuel Warren and Louis Brandies authored an article titled ‘Right to Privacy’ in 1890 in Harvard Law Journal⁶. They argued for the remedy for an invasion of privacy mainly under the tort law. The authors adopted the concept put by Justice Cooley as the ‘right to be let alone.’ They grounded this concept on the principles of human dignity and inviolable personality. The following are the main features of privacy they developed.

1. The right to privacy does not prohibit any publication of matter which is of public or general interest.
2. The right to privacy does not prohibit the communication to others.
3. The right to privacy is recognized not based on the right to property or copyright but based on the right to protect the individual's inviolate personality, i.e., an injury to one's feelings or honor.⁴

Privacy in Visual Media

The media has permeated practically every aspect of our lives, enabling us to stay connected to our local and worldwide communities. Social media platforms are the most widely used these days. These have emerged as the go-to platforms for information sharing, particularly regarding pressing social issues. They are now considered an essential information source, particularly for the younger population. As such, they have a striking effect on developing minds. Media has a significant influence on us since it has ingrained itself into the lives of all people in the modern world. There are both advantages and disadvantages to this. The most significant benefit is the easiest and least expensive way to obtain information. Within seconds, we receive data from all over the world. Additionally, social media allows us to stay in touch with friends and family who may live far away from us. From the very proximity of our homes, keeping in touch with our loved ones and the wider world fosters a sense of connectedness.

² Ibid

³ Ibid

⁴ Warren & Brandies, *Right to Privacy*, 4 HAR.L.REV.193(1890).

Impact of media on the right to privacy

The media significantly and intricately impact the right to privacy. On the one hand, the media is an essential instrument for accountability, transparency, and information sharing. It is crucial in exposing wrongdoings, abusing power by the government, and defending free speech. But this ability can also have two drawbacks. Media organizations, particularly tabloids and paparazzi, are notorious for violating people's privacy by disclosing private information about people—often celebrities—without permission. This invasion of privacy can take the form of prying into personal correspondence, private photos, or intrusive surveillance. The rise of social media has made things even more complicated. It has made distinguishing between private and public lives harder because people willingly disclose personal information that both bad actors and media outlets can use.

In essence, social media is an online communication tool. Its primary objective when it first started was to establish a global virtual family network. The leading social media platforms include Facebook, Instagram, and WhatsApp. Before the 1990s arrived, the users of these social networking sites were at peace. At that point, cybercrime emerged. It may surprise you to learn that we are the ones who divulge personal information online. We expose a lot of personal data, whether on purpose or not. Joining Facebook, Instagram, Amazon Prime, and other services can help. One-third of internet users acknowledge that they do not know their personal information is online. A wealth of online cyberinformation has become accessible. It has been observed that the younger generation is most vulnerable to these kinds of cybercrimes. This is because they typically see no harm in disclosing their private information. Their immaturity, which these criminal minds can readily detect, makes this significant. The admission by Twitter, one of the biggest social networking sites that they have combed through all of their users' contacts to obtain additional information about them is startling. Facebook is another example of this, making contrasting claims about who it is.

LEGAL REGIME FOR PROTECTING PRIVACY RIGHTS

The origins of the current legal and statutory framework safeguarding privacy can be found in England's Justices of the Peace Act of 1361, which made it possible to apprehend people who were spying on or listening in on others. Many nations created distinct safeguards for personal information in the centuries that followed. The Swedish Parliament 1776 passed the Access to Public Records Act, requiring all publicly owned information to be utilized for appropriate

reasons²⁵. France forbade the release of private information and imposed severe penalties on offenders in 1858²⁶. The Criminal Code of Norway forbade the disclosure of details about "personal or domestic affairs" in 1889. The concept of privacy and a flurry of global legislative activity spurred by the exponential growth of computational technologies and other telecom and information systems developed the modern privacy jurisprudence in the latter half of the 1960s automation, including telecoms and audio-video equipment. Many nations considered introducing new IT systems a challenge that the current legal system could not address. Consequently, during the 1970s, many Western countries proactively passed laws and offered privacy guidelines to uphold the right to privacy.

The first comprehensive legislation in Europe was passed nationally in Sweden's Data Act of 1973, while the first Data Protection Act was passed in the West German Land of Hesse in 1970. Throughout the UK, private members were introduced late in the 1960s. In the early 1970s, most sophisticated Western countries had laws. Furthermore, many U.S. states, provinces, West Germany, and Canada have also enacted privacy legislation. Several of these relate to all personal data systems, but some are only available to specific groups, like the government or computerized or automated systems. To attain a certain level of uniformity in the incredibly diverse strategies of the European Economic Community.

International conventions

A fundamental human right, privacy is based on individual liberty, freedom, and dignity. Not only do religious texts, scriptures, and cultures support it, but many constitutions, international treaties and conventions, and domestic laws from the modern era have granted it the status of an unalienable human right. It is safeguarded in The International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, as well as in numerous other regional and international human rights agreements. Almost every nation has a constitution that guarantees the right to privacy. If nothing else, these rights to communication secrecy and the inviolability of one's home are among the provisions. Most recently drafted constitutions contain particular rights to access and manage private data.

Similar language is used in Article 17 of the International Covenant on Civil and Political Rights (ICCPR 1966, The Concept of Privacy Article 17). Article 8 of the 1950 European Convention on Human Rights states: "Right to respect for the phrase "Everyone has the right to respect for

his private and family life" his residence, his family, and his correspondence. There won't be any public intervention authority with the exercise of this right except for what is permitted by law and is essential in a democratic society for the sake of public safety, national security, or the nation's economic health to keep chaos and criminality at bay, for the defense of one's morals or health, or the protection.

Right to privacy- Constitutional Perspective

A basic and dynamic idea, the right to privacy is protected by the constitutions of many nations. Although the details may differ from country to country, most governments recognize the right to privacy as an essential human right. The Fourth Amendment's protection against unjustified searches and seizures and the Fourteenth Amendment's due process clause, for instance, imply the right to privacy in the United States even though it is not expressly stated in the Constitution. Many nations abide by the Universal Declaration of Human Rights, which includes the right to privacy as one of its core principles. The Indian legal system was not prepared to grant the right to privacy constitutional status. Consequently, the Indian Constitution does not explicitly or implicitly recognize the right to privacy. This could be because there isn't overuse of modern technologies, as is the case right now. The initial Indian court rulings demonstrate that the judiciary hesitated to acknowledge the right to privacy as a fundamental freedom. From a constitutional standpoint, the right to privacy is not unqualified and needs to be weighed against other societal interests like law enforcement and national security. Courts are essential in achieving this balance between protecting individual rights and permitting lawful government action when required. The constitutional framework offers a foundation for discussing how the media affects people's right to privacy, establishing limits on what the media can reveal, and defending individual privacy rights against the constantly changing threats posed by media and technology advancements.

A series of cases were struck down in one landmark judgement of *Justice K. Puttaswamy v. Union of India*.⁵ the nine judges' bench of the Supreme Court of India examined the viability of declaring the right to privacy⁴⁴as a constitutional right. The court re-examined the constitutional foundations of the right to life and personal liberty. The court observed that constitutional freedom must be interpreted in the context of challenges to social order and a global information-based society. Privacy protections in constitutions frequently cover a person's physical space,

⁵ WP no 494(2012) ;(2017) 10 SCC 1; 2017 SC 4161

personal information, and autonomy, among other areas of their life. These safeguards include the freedom from unjustified government interference to make private decisions regarding one's body, family, and intimate relationships. Over time, the meaning and implementation of the right to privacy have changed, particularly in light of new technical developments like the internet and surveillance tools.

Freedom of visual media

The freedom enjoyed by print media also extends to the visual media. No visual media was available during the early days of communication; only print media was. Visual media is a relatively new invention. Consequently, historically, Visual media freedom is essentially the same as print media freedom. The standard definition of freedom is the ability to exercise one's powers of action without external restriction or control and with whatever tools or resources necessary to act. The word "freedom" has a negative connotation: the lack of outside interference that could limit or repress—positively, having the capacity to act and accomplish the goals that define one's freedom last. Press freedom originated from libertarianism in England in 1688. In England, freedom of the press is safeguarded and constrained by the fact that what is allowed is forbidden. The freedom to communicate without regard to distance is a component of the right to freedom of expression. Visual media, such as radio, television, social media, etc., are now considered the most efficient exchange of ideas. Most people rely on visual media to obtain information on current affairs issues and other information on the net. Every idea and opinion that can be communicated to others is included in the right. It is more ingrained in every nation than any other right. The party that when freedom is not guaranteed to people, the state cannot function of expression and speech.

Social media and privacy-related laws

Indian laws on social media and privacy are inadequate. In this regard, the Indian legislature and judiciary have fallen short of expectations in drafting laws. Laws and regulations have been passed, but they are primarily about defamation.

In *Kharak Singh v State of Uttar Pradesh*,⁶ it was held that listening in on phones is a privacy violation. By extending this logic, it is conceivable to conclude that WhatsApp's post-update information sharing with Facebook violates its users' privacy.

⁶ AIR 1963 SC 1295.

The Information and Technology Act of 2000. In this act, privacy is understood in a very traditional and liberal sense. When someone intentionally sends images of their intimate areas without that person's consent, Section 66E of this act is broken. Section 79 of this act makes no mention of social media. This section clarifies that Twitter, Facebook, and other social media platforms will not be held accountable for the actions of an individual who uploads or posts anything disparaging about another person. Beyond this, the article makes no mention of social media whatsoever. One idea worth considering is the increasing prevalence of meme culture in this context. It is reasonable to classify memes featuring well-known people with disparaging remarks and comparisons as an infringement on their privacy; such incidents must be checked out.

Online intermediaries, including social media platforms, are further required by the Information Technology (Intermediaries Guidelines) Rules of 2011 to remove objectionable content within a specified timeframe after receiving a complaint. The Personal Data Protection Bill sought to control the processing of personal data and possibly impose data protection obligations on social media companies.

Media freedom – As a cluster of rights

Instead of being a single, independent right, media freedom is a collection of related rights that work together to maintain a free and independent media. The advancement of democracy, openness, and the defense of individual liberties depend on these rights. Many rights fall within the ambit of media freedom, such as freedom of expression, freedom of the press, access to information, digital freedom, right to reply, and right to dissent.

The right to circulate information was also held as a media right in the case of *Romesh Thapper v. The State of Madras*⁷. The constitutionality of the Madras Maintenance of Public Order Act, 1949 was contested because it violated Article 19(1) (a). The weekly English journal Cross Roads was outlawed by the Act in the State of Madras for guaranteeing public safety and upholding public order. The court determined that the challenged act was invalid by majority decision because it infringed upon the fundamental freedom of speech and communication.

⁷ AIR 1950 SC 124: 1950 SCR 594

In *Kedar Nath Singh v. State of Bihar*⁸ the court clarified that the rights of media also include the criticism of public authorities on reasonable limits, and criticism against the government can't be said as misconduct.

In *Bennett Coleman & Co. v. Union of India*⁹ the government was given the authority to choose the area for advertisements by the Newspaper (Price and Page) Act of 1956. Additionally, it had been stated that the media ought to have the authority to choose the issues with pages and distribution. If not, there would be a direct influence on media freedom.

Right Privacy and Right to Information- A Challenge to Media

In democratic societies, finding a balance between the rights to information and privacy is a constant challenge that the media must navigate. The following are some of the main obstacles that these media rights present. The freedom of information is a non-absolute right, just like any other. Stated differently, the legislation about the right to information does not permit an individual or the media to obtain information by violating the rights of others. Information disclosure may occasionally run afoul of third parties' rights or interests. Given that the right to information is a component of the freedom of expression and speech, The same limitations apply to the former, which, as stipulated, are used to release speech and expression in the Constitution's Art. 19(2). While the right to information demands access to information that may be of public interest, the right to privacy emphasizes protecting people's private and intimate details. The media frequently finds itself in the middle, trying to protect people's right to privacy while also investigating and reporting on issues of public interest. Media outlets occasionally have to delve into people's personal lives, including public figures, to conduct investigative journalism and report on delicate subjects. Charges of invasion of privacy may result from this, particularly if private information is disclosed without authorization. The media's quest for information may clash with national security concerns. Media organizations may face accusations of endangering national security when they publish confidential or sensitive material, which can present moral and legal challenges.

The legal structures that oversee the rights to information and privacy can differ significantly between nations. The interpretations and standards of various jurisdictions can vary, which makes

⁸ AIR 1950 SC 124

⁹ (1972) 2 SCC 788

it difficult for international media to negotiate these complications. Rapid technological development has facilitated information collection and dissemination for governments and the media. This technology may threaten the right to privacy, and discussions regarding data collection and monitoring are ongoing.

There may also be conflicts between privacy rights and the need to frequently protect sources who supply essential information in exchange for anonymity. Although media organizations are crucial for keeping governments and other influential organizations responsible, their actions are occasionally criticized for allegedly violating people's privacy when pursuing stories of public interest. For international media outlets, the legal framework governing these rights varies from one jurisdiction to the next, adding yet another level of complexity.

ANALYSIS

In the digital age, the violation of privacy rights by visual media has grown in importance, demanding a comprehensive and well-balanced regulatory framework. The ability to instantly capture and share moments through visual media, such as photography and videography, has enabled people to blur the boundaries between public and private spaces. While there are many advantages to this technological advancement, there are also severe worries about it invading people's privacy without permission. There are various reasons why a solid regulatory strategy is necessary.

First and foremost, regulations are necessary to set precise limits on permissible photography and sharing practices. When recording or taking pictures of people in places where reasonable expectations of privacy exist, like homes, hospitals, or places of worship, these regulations may call for their express consent. Regulations can establish a barrier against intrusive activities and support the idea that people have a legitimate expectation of privacy in specific situations by defining these private zones.

Second, laws support striking a balance between the right to privacy and the freedom of speech. By clearly defining the conditions that justify the public interest or legitimate reporting over an individual's right to privacy, they can provide journalists and content creators with legal guidelines. Finding this balance between upholding an individual's autonomy and dignity and safeguarding the public's right to information is crucial. Furthermore, laws can address problems

that have grown more common in the digital age, like harassment, stalking, and the illegal sharing of private visual content. Legislation outlawing actions such as "revenge porn" and "upskirting" can provide victims protection and legal recourse while discouraging people from participating in these destructive behaviors.

Regulations also provide legal redress for people whose rights to privacy are infringed by unapproved visual media. These laws give victims the right to pursue justice and damages for the harm that illegal invasions of their privacy have caused. Although these regulations are necessary, it is also critical that they change to reflect evolving cultural norms and technological developments. Limitations must remain relevant and efficient in tackling new issues in light of how visual media constantly changes and how that affects individual privacy.

FINDINGS/ SUGGESTIONS

The researcher in the paper has found a growing concern regarding the invasion of privacy rights by visual media, mainly due to the widespread use of smartphones and social media platforms. Individuals are increasingly at risk of having their private moments, personal information, and intimate details captured and shared without their consent. Existing legal frameworks may not adequately address the nuances and challenges presented by visual media's invasion of privacy. Laws that were designed in a pre-digital era often lag behind technological advancements. The increasing pervasiveness of visual media has blurred the lines between public and private domains. People may be photographed or videotaped in circumstances where they have a right to privacy, raising concerns about unauthorized access. Legal restrictions are necessary, but using visual media responsibly also requires increased awareness of and adherence to ethical issues. Responsible and ethical practices should be taught to individuals, media professionals, and content creators.

Suggestions:

The following are the suggestions:

- **Comprehensive Privacy Legislation:** Governments should consider passing extensive privacy laws dealing with how visual media violates people's right to privacy. This law should specify what can be photographed and shared without permission, considering the situation, the area, and possible risks.

- Media Ethics Training: Training and guidelines on media ethics should be made available to media organizations, content creators, and journalists. They should emphasize the significance of protecting people's privacy when covering topics of public interest. These rules ought to adapt to new standards and technological advancements.
- Adaptation to Technology: Laws should change and keep up with emerging technologies. This might entail dealing with fresh difficulties from social media and developing technologies.
- Public Awareness Campaigns: Organizations and governments should conduct public awareness campaigns to inform people of their rights and obligations regarding visual media. These initiatives can encourage privacy, respect, and responsible use.

CONCLUSION

To conclude, visual media's infringement of privacy rights highlights the urgent need for thoughtful, flexible laws that balance individual liberty, freedom of free speech, and responsible technology use. Private moments, personal information, and intimate details are more vulnerable to unwanted intrusion in this environment due to the widespread use of smartphones and the pervasive influence of social media. This phenomenon calls into question the conventional lines dividing public and private areas, raising ethical and legal issues that must be considered to preserve people's autonomy and dignity and the findings show that current legal frameworks frequently fail to adequately address the complex issues raised by the invasion of privacy in visual media. There are often legal voids and uncertainty due to these laws' inability to adjust to the dynamic and changing digital environment. More awareness and adherence to responsible practices are also required by the ethical considerations surrounding the use of visual media, particularly in journalism and content creation. Achieving a balance between safeguarding individuals' privacy and upholding the public's right to information and transparency is crucial. Campaigns for public awareness can be significant in informing the public about their rights and obligations concerning visual media. The regulation of privacy rights is not only necessary in this digital age, where visual media has become an essential part of our lives, but it also reflects our commitment to upholding individual security, autonomy, and dignity. We must all work together to ensure that the ethical and legal frameworks we use today can adapt to visual media's new threats to individual privacy.

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