



The press and right to privacy

Dr. Virender Sindhu

Assistant Professor, UILMS, MDU, Gurugram, Haryana, India

Introduction

The right to privacy received international recognition as early in 1948 when Article 12 of the Universal Declaration of Human Right declared:

“No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right of the protection of the law against such interference or attack.”

Privacy, where recognized as a legal right, is primarily intended to protect a person's right to seclusion. Thomas Cooley, the reputed father of the term ‘right of privacy’, simply spoke of the right to be left alone. And this was also the concept of a famous Article published in 1890 in volume four of the Harvard Law Review ^[1]. According to Professor Alan Westin, the term means “the state of solitude or small group intimacy ^[2].” Though the impetus for recognizing privacy as a specific legal right of the individual has been continuing for about a century, in no country has such right been so far incorporated in any national Constitution or Statute.

Thus, the ambit of this right differs in the various countries, resting on common law or judicial pronouncements upon other fundamental rights guaranteed by the Constitution or fragmentary legislation, and that this ambit is necessarily nebulous and vague. The right to privacy of an individual may be invaded by the State or by another private individual or individuals, including the press or other mass media of communication.

However, privacy arises in different circumstances. It is concerned with the publication of private affairs, e.g., details of illness or disease of a person, affairs of a couple honeymoon, or photograph of a film actress taking a sun-bath. Thus, we find that in the discharge of its functions, the press may quite often intrude on the rights of others. A press claiming to investigate and publish matters in the public interest will definitely intrude into individual's privacy, violate his confidence and affect his reputation ^[3]. Such intrusions are permitted either with the consent of the person affected, or in the pursuit or some legitimate freedom of the person making the intrusion ^[4]. The press as a private body is expected to function within these limitations

Since the press has different and unreliable level of performance it is not entitled to claim status of a public institution which should enjoy greater power and protection to protect its prestige and functioning validity. According to Dhavan, its claim for increased protection would be greatly

assisted if it could show that it serves the public at large and not sectional social, political or economic interests ^[5].

Therefore, it is essential that proper balance is struck between the citizen's right to privacy and the public's right to information or the role of the media. However, in India, there is no specific provision in the Constitution guaranteeing the right to privacy though the Supreme Court has held that the said right is an essential ingredient of personal liberty ^[6].

But in a recent case *Rajagopal v. State of T.N* ^[7], the Supreme Court has held, the right of privacy has a two-fold source: (a) Common Law, and (b) Constitutional Law :

(a) **Common Law:** Under this head, the English common law of Torts and a private action for damages for unlawful invasion of privacy, or defamation applies. To such action, the Printer and Publisher, of a journal, magazine or book may be liable if he publishes, for advertising or non-advertising purposes, any matter concerning the private life of a citizen, e.g., his family, marriage, procreation, motherhood, child-bearing, education, without such person's consent, subject to the following exceptions :

- (i) When the publication is based upon public records, including court records, because the right of privacy no longer subsists once a matter becomes a matter of public record.
- (ii) When the offending publication relates to the acts and conduct relevant to the discharge of the official duties of a public servant, unless the publication is proved to be false or actuated by malice or reckless disregard for truth ^[8].

(b) **Constitutional Law:** The right to privacy regarding one's private life is implicit in the fundamental right to life and liberty which is guaranteed by Article 21 of the Constitution ^[9], which includes a right “to be let alone.

The Constitution right to privacy following from Article 21 is, however, to be read together with the constitutional right of the press under Article 19(1)(a), to publish any matter of public interest, subject of course, to the restrictions imposed by the State under Article 19(2) ^[10].

In other words, the individual right of privacy under Article 21 is to be balanced with the competing freedom of the press under article 19(1)(a), which of course, is available against the State ^[11]. Hence, the State cannot impose any prior restraint upon the Freedom of the Press on the ground that the relevant publication would offend the privacy of an individual or

would defame a public official; the remedy in all such cases would be for the aggrieved person under the appropriate law offending matter is published^[12].

Finally, it may mention that, in the United Kingdom, under the existing law an action for damages for intrusion into the private affairs of a person or his right to seclusion or solitude would not be maintainable unless the alleged intrusion could be brought under the requirements of any of the recognized categories of torts^[13], such as trespass to property^[14]; trespass to person; nuisance; defamation^[15]; or breach of confidence^[16]; or the infringement of copyright. But Courts in the United Kingdom have so far refused to recognize the invasion of privacy as an independent tort^[17]. On the other hand American Courts have extended the right to privacy from the realm of private law into constitutional law, and recognized the protection of this right as a legitimate public interest for restricting the freedom of expression^[18]. According to Dean William L. Prosser, the American writer, whose exposition of the tort is generally accepted, the law of privacy really embraces four different kinds of invasion of four different interests of the plaintiff, “which are tied together by the common name, but otherwise have almost nothing is common” apart from the fact that they interfere with the right to be let alone^[19].

According to William, these four different torts are: First and foremost form of action relates to the publication about private affairs of the plaintiff, which are offensive or embarrassing in nature; Secondly intrusion upon the plaintiff’s seclusion or so solitude, or into private affairs; The third aspect relates to appropriation, for defendant’s advantages, of the plaintiff’s name or likeness; lastly publicity which places the plaintiff in a false light in the public eye^[20]. The position is the same even in the United Kingdom where the press sometimes gives wide publicity to a private information regardless of the means adopted for obtaining such information. According to Street, the Law in America, relating to privacy, is more advanced than that in the United Kingdom. Street makes a strong case of widening the common law on this subject, with reference to a number of invasions of privacy would be actionable in the United States, but not in England^[21].

References

1. Samuel D. Warden and Louis D. Brandeis, *The Right to Privacy*, 4 H.L.R., 1890, 193.
2. *Privacy and Freedom* at, 1967, 7.
3. See, e.g., in Chapter IV *infra*, under the caption Contempt of Court, where Section 327(2) of the Cr. P.C. prohibit publication of proceedings relating to the trial stage to protect the rape victim’s privacy; *Naresh v. State of Maharashtra*, AIR 1967 SC 1 at 10.
4. Dhavan Rajeev, *Only The Good News*, (1987) at 399.
5. *Id.* at pp. 400-401.
6. *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295.
7. (1994) 6 SCC 632 (Para 9).
8. *Id.* (Para 26).
9. Article 21 reads: “Protection of Life and Personal Liberty. No. Person shall be deprived of his life or personal liberty except according to procedure established by law.”
10. *Id.* (Para 21).
11. *Id.* (Paras 21-22).

12. *Id.* (Paras 56, 68, 84, 135); *Sitaram v. State of U.P.*, AIR 1979 SC 45 (Para 29).
13. Report of the Committee on Privacy, (1972) Cmnd. 5012 (Paras 651-53).
14. *Ibid.*
15. *Tolly v. Fry and Sons*, (1931) A.C. 333 (H.L.).
16. *Francome v. Mirror Newspapers*, (1984) 2 All ER 408 (CA).
17. See Street, *Freedom, the Individual and the Law*, (1967) at pp. 256–58.
18. *Bread v. City of Alexandria*, (1951) 341 U.S. 622; *Hynes v. Oradell*, (1976) 425 US 510.
19. Prosser L. William, “Privacy”, 48 *California Law Review* (1960) 383 at p. 389.
20. *Ibid.*
21. *Ibid.*