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**INVASION OF RIGHT TO PRIVACY BY VISUAL MEDIA- NEED FOR
REGULATION**

Introduction

The word privacy has its origins from a Latin word “privates”. It is defined as the potential of an individual or a group to hide themselves from attention. Different cultures and individuals have different scopes and meanings of the term “privacy.” When a person says that something is private to them, it means that the thing which is private to them is sensitive to them. Such things may or may not be private to any other individual, but they are to the person concerned. Privacy protects an individual’s right to live freely and without any cause of concern. Right to privacy is the most important of rights which are given to individuals. As per the Constitution of India, it is recognised as a fundamental right. Right to privacy is given in the constitution in Article 19, and Article 21. These articles are, namely, right to freedom and the right to life. Article 19 (1) (a) gives all citizens of India the right to express themselves and speak what they want (with reasonable restrictions). It is this right only, which has given rise to the media. The media plays the role of a watchdog for the society. It attempts to bring to notice whatever is happening around the world to its consumers, that is, us. The media revolution, which started from around 2000 till now, has been pretty much unprecedented. After relying on the media’s reports of grave violations of human rights, the judiciary has taken suo moto cognizance of many issues and delivered justice to all. The media is a way through which one can express their feelings,

views and opinions. Due to this, it is very much responsible for making the opinions of people on topics of national, regional and international topics of matter. The media has its importance in the fact that it mobilises public opinion and also, it brings forward the matter of injustice. Since our judicial system has many loopholes, many rich and powerful people go without any damage. In such cases, the media is of relevance. But, of course, this freedom of the media has its downsides too. The freedom which the media has, it needs to be exercised with reasonable restrictions, as any other freedom which is given under the constitution. Media has a duty which needs to be followed: that of respecting the privacy of individuals. Any person, who is subject to the media has their whole life put in the media and judged by the people. Every individual has been guaranteed a right to privacy under the constitution, and the media should abide by that. The publisher of a newspaper magazine, journal or books can be made liable for the damages if they publish any such matter which concerns the private life of a citizen, such as his marriage, family, parenthood etc. without the consent of the individual. This is subject to following exceptions.

1. If the publication which the author has made, is taken from public records. This is because since the records have become public, they are no longer private.
2. If the publication is related to conduct and duties which are of relevance to the discharge of the duties which are assigned to a public servant, unless it is proved that the publication is false or it is an attempt at malice or it is a careless disregard for the truth.

Role of the Judiciary

The judiciary has been active in cases which involve the right to privacy and free speech. In *Romesh Thappar v. State of Madras*,¹ an important principle was laid down by the Supreme Court that Article 19 clause (2) can authorise the state to impose certain restrictions upon the freedom to speak freely only on some grounds which are laid down in order to make a law void if it cannot be shown that the law is related to the specified grounds. But the recognition which was given to the right to privacy in India has come from *Kharak Singh v. State of Uttar Pradesh*² in which it was observed by the Supreme Court that it is true that the right to privacy has not

¹ *Romesh Thappar v. State of Madras*, 1950 SCR 594

² *Kharak Singh v. State of U.P.*, (1964) 1 SCR 332

been expressly declared as a fundamental right, but this right is very important, and hence it should be taken and added into the concept of personal liberty. The mentioning of this case needs another case, since this case was partially overruled by *K.S. Puttaswamy v. Union of India*³.

In this case, it was ruled that the right to privacy constitutes fundamental rights and hence, cannot be violated. This was ruled by a Nine-judge Constitutional Bench of the Supreme Court. It was declared that the right to privacy is a part of the right to life and personal liberty which is given in Article 21. It thus partially overruled the observations which were given in the case of *Kharak Singh*. In *Ram Jethmalani v. Union of India*⁴, it was held that the right to privacy was an essential part of the right to life. The court said that the right to privacy was a value of the constitution which was cherished by all. It also said that human beings should be allowed freedom that is free of any public scrutiny, unless and until the people act in a manner which is unlawful. In *R. Rajagopal v. State of Tamil Nadu*⁵, the same point was noted that the right to privacy is an essential part of the right to life and personal liberty. In this case, a person was given the death penalty for the murders he had committed. Also, he wrote that he had some good connections with a handful of police officers in his autobiography. The Supreme Court in this case told that it was his freedom to speak whatever he wanted to, but, he wrote that without the consent of the other people. If these people were not aware at all that the accused had put their names in his autobiography, then the accused was in clear violation of the privacy rights of the people. This was because the information which was mentioned in the autobiography was critical in nature, and could defame a person's reputation in the minds of right thinking people. In *State of Maharashtra v. Rajendra Jawanmal Gandhi*⁶, the Supreme Court observed that there was a procedure which was established by the law itself which governed the doings of a trial of an individual who was an accused in a case. Thus, a media trial, or public anger over the ruling would be obstructing the rule of law. This may very well lead to justice being not carried out. A person of high stature, such as a judge, needs to not see such media trials and just follow what is written in the rule of law. If the judge was to find the accused guilty on any counts of offence, then the judge needs to see what sentence should be awarded to the person, as per the provisions which are written down in the law. In *Rajendra Sail v. Madhya Pradesh High Court Bar*

³ *K.S. Puttaswamy (Privacy-9J.) v. Union of India*, (2017) 10 SCC 1

⁴ *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1

⁵ *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632

⁶ *State of Maharashtra v. Rajendra Jawanmal Gandhi*, (1997) 8 SCC 386

*Association & Others*⁷, the Supreme Court was of the view that for a society to function fully and for the rule of law, a press which is free of any shackles and a judiciary which can work without any fear are both needed and therefore, need to be protected. Since both the media and the judiciary's aims are one and the same i.e., to deliver the truth and justice, therefore they both need to maintain a balance between themselves.

The RTI Act, 2005 made sure that now the citizens could obtain information which was of public nature. This Act led to the emergence of media's right to freedom of speech and expression. In *Raj Narain Singh v. State of U.P.*⁸, the Supreme Court was of the view that Article 19 (1) (a) of the Constitution not only guaranteed the freedom of speech and expression, but also guarantees the right of the public to get information which is of public interest.

This article also included the press's freedom. Thus, it gives the right to the media to find information and circulate it in a professional manner. In another case, *Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal*⁹ the Supreme Court was of the view that the freedom which was given to free speech and expression included the right to find information and to circulate it in the public sphere.

Privacy under International Organisations and Conventions

As per Article 12, Universal Declaration of Human Rights, 1948¹⁰, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks." This means that nobody's privacy will be interfered with and there shall be no attacks on any person's life, body, reputation and honour. If such attacks occur, then everyone can claim protection which is prescribed under the law.

⁷ *Rajendra Sail v. M.P. High Court Bar Ass ...*, (2005) 6 SCC 109

⁸ *Raj Narain Singh v. State of U.P.*, (2009) 10 SCC 362

⁹ *Secy., Ministry of Information & Broadca ...*, (1995) 2 SCC 161

¹⁰ SFLC.IN, *Right to Privacy Under UDHR and ICCPR*, PrivacyBytes, (September 29, 2021, 15:43 PM), [Right to Privacy under UDHR and ICCPR \(sflc.in\)](https://www.privacybytes.com/Right-to-Privacy-under-UDHR-and-ICCPR/)

There are articles under the Convention on the Rights of the Child¹¹. One such article is Article 16. This makes it thus that people such as young adults and children have the same right to privacy, which an adult has. This is to mean that these children and young adults have the right to a family life which is private. This means that nobody can ask them about their family and what is happening in their family. They also have the right to be alone, or be in their own private space. This applies to institutions also. They also have the simple and basic right to keep their emails and calls private. This means that nobody can ask them to check for their emails and calls. However, if the emails are of such nature that they can be a threat to the national security, then this right is terminated.



When is an attack on the right to privacy acceptable?

When information about a person which is private to that person is published and made public record, then it can be called as acceptable. We can say that to not constitute an offence against someone's right to privacy, it needs to be for the public good. The public interest or good would win when a person's right to privacy is in the way of a public good which is higher than that individual's right to privacy. However, when the matter of media comes, it becomes a priority that the information which has been shown should be for the public interest and not for defamation purposes. To give an example, recently, the mysterious death of Shri Mahant Narendra Giri had occurred. The media came swarming like flies, and on every channel, it could be seen that Giri was lying down peacefully, and the camera was showing his body and his face. The media does not have the least human decency not to show the body on the camera. On every channel, the headlines was this only, and on every channel, the body was shown. It was a gross violation of privacy and it needs to be addressed.

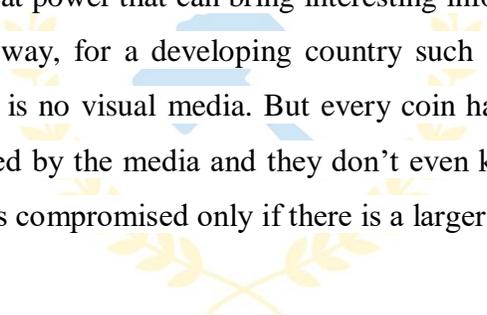
Need for uniformity

¹¹ *UNCRC Simplified Articles*, Children & Young People's Commissioner Scotland, (September 29, 2021, 15:56 PM), UNCRC Article 16 - I have the right to keep some things private - The Children and Young People's Commissioner Scotland (cypcs.org.uk)

Article 19 (1) (a), that is, the freedom to express oneself freely, and speak freely gave rise to the press's freedom. An individual's right to privacy was given life by the right to life and personal liberty. Uniformity is needed among these two rights. People fall prey to the trap of the visual media, and due to this, their reputation loses. Also, many people are changing their mentality to read those gossips and reports which are of troublesome nature.

Conclusion

In future, the right to privacy which every individual has is going to become so very much important. The media is a great power that can bring interesting information in the public sphere, and is important in its own way, for a developing country such as ours. We cannot begin to imagine a world where there is no visual media. But every coin has two sides. There are many people who are being defamed by the media and they don't even know it. It should be that any individual's right to privacy is compromised only if there is a larger public interest at stake.



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