



Privacy as a concept of Law

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ABSTRACT

Privacy as a concept of law is yet to be realized by the Indian government. Though India has been a founder member of the UN, it has failed to include privacy in the constitution in the light of the importance given to press freedom. Press was at a lower pedestal in comparison to privacy as an inalienable right, in the UN Declaration of Human Rights 1948. Today when one finds press freedom overstepping in all directions, it is time to rethink this matter at the constitutional level and include it as a separate individual fundamental right.

KEYWORDS: Privacy, press, UN, India, Constitution, inalienable right.

Privacy means the private pursuits of a person which encompasses his right to be free from intrusion or publicity. It means to be out of the public eye while enjoying the little joys of life with his or her family. It is an integral part of a person's personality and therefore difficult to define its boundaries in legal terms. It is in fact similar to his shadow. In a civilized society no one can imagine to have a life without privacy. But in social life one is forced to compromise on the scope and on the extent of this right for other reasons. Each of us has given up a considerable part of our privacy to participate in the so called democratic governance. Therefore when you gain something from someone, you are bound to loose something in return. In our contract oriented society, every benefit or facility has a price on it and in most cases it is privacy. For many benefits, e.g. to get a ration card or a credit card or anything from the government or private company, we have to give details of our family and bank. This information can in turn reap profits for the company if given to agencies who give it to market oriented companies for marketing their products. An information which is thus given in trust now becomes public. This is simply one instance in which for a collective right of the society to get benefit, privacy, an individual right is sacrificed. Privacy is bought so low in this market oriented world as people do not realize the cost they have paid till they are put in a situation where they suddenly feel de-robbed of all privacy and made a product marketed by someone they do not even know. This is the cost one pays to have a democratic government, if proper checks and balances are not formulated as and when needed.

Privacy therefore becomes a very difficult concept to be defined. One may say he believes in privacy but still agree to have a CCTV installed in offices or allow his credit card to be shown or give personal data to get a bank account or allow wire tapping or allow press reporters to enter homes with cameras. All this is done on the pretext that social interests or as we state in legal terms 'public interest' is more important than individual interest. The government is supposed to protect the privacy rights but they constitute the largest agency collecting huge amounts of data of its citizens for the issuance of social benefits, and this data somehow finds its way to outsourcing agencies, and the whole matter comes in the public domain. Police are also supposed to be protectors of individuals but they also on the pretext of the larger right called 'public interest' invade our homes even during the sleep or night hours. The most unregulated invasion of privacy takes place through the media against which the society is supposed to keep mum as they are kept under a deception that media is people speaking for themselves. Today, invasion of privacy includes a wide range of behavioral attitudes from different sections of the society. Due to the technological developments it becomes very difficult to detect as to from which direction intrusion is coming. It is not possible to deal with each and every aspect of invasion into privacy. Therefore this thesis will limit its scope of study to invasion of privacy by the media.

The mass media has been said to be the most frequently accused agency, responsible for the invasion of privacy. They have been in the past elevated to the position of the Fourth Pillar of the democratic government after legislature, judiciary and executive. This upliftment at the hands of the legislature and judiciary has been largely responsible for this unprecedented growth in their confidence to bypass all barriers under the pretext of public interest. The man's very existence has been made public, ruled by the laws of his government. Though civilization

is known as the process of setting man free from man.

Freedoms of press means freedom to present, publish, broadcast, circulate and transmit through any media, news to the masses. This has won freedom for ideas, people and nations throughout the world. It has been through a long battle that this freedom, which eventually emerged victorious in democratic countries. This is explicit from its adaptation in the First amendment of the American Constitution in 1791 which stated that "The Congress shall make no law ...abridging the freedom of speech or of the press..."

A free press stands in different positions of enlightening, informing, mediating, discussing, evaluating on behalf of the people and of the government. It is termed as a *via media* to get ideas across the huge table of power and vote bank.

In a democratic polity, responsible and mature media is essential to build up the nation. The function of free speech under our system of governance is to invite diverse opinions. It may indeed best serve its purpose when it induces a condition of unrest, which creates dissatisfaction with conditions as they are, or even stir the people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.

Along with the democracy attaining maturity the mass media should also mature by being more informative and responsible to build up a mature thinking society. But this did not happen because as the media became powerful being the only repository of information to the public, other interests crept into its fabric. These interests came under the guise of competition, commercialization, politics and power lobbying of the government. The aftermath of all these are dilution of ethics, morality and even disrespect for individual privacy and freedom. As a result any fact, situation, or a person can become a commercial product for the media to entertain people with gossip, which the press wanted people to know about. This has caused the present fear which has been expressed by the people through various discussions on TV channels, newspapers, seminars with a view to bring in a curb on this unbridled freedom of press. As stated in the article published by the famous Warren and Brandeis as early as in 1890 'that Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of the home... private devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house tops'. The press is overstepping in every direction the obvious bounds of propriety and of decency.'

Therefore it is in this stressed world that a man is further subjected to invasion of his private moments. This privacy in private places or public places when not on duty is essential and a subject of great relevance not only in the field of law but also through an eye of a sociologist and a psychologist. The sociologist only enumerates the problems while the psychologist deals with the after effect of it on the psychology of a person. Law and law givers have the greatest responsibility as they have to alienate the problem and legislate on it. The positive efforts of the law giver has greater dimension compared to the other two agents of correction. This aspect was the motivating factor to undertake this study work.

Our government has not given enough thought to this right to privacy. This concept has never risen in any of the discussions. Though the Supreme Court has mentioned this as part of article 21 of the Constitution of India, which protects right to life and personal liberty, privacy as a concept as recognized in UN Declaration 1948, as a distinct right, is not recognized in India. The law has always been on the lines of common law principles in reference to decency, morality, dignity and defamation which are way old concepts. These concepts have long been replaced in the country of its origin, where with the advent of the Human Rights Act of 1998, UK has recognized the concept of privacy in home and outside. Though the concept of breach of trust and confidence, defamation are still used there, it has all brought under the

ambit of the Act of 1998. Along with this the mature press that they have is regulated strongly by the UK government. Even the Courts are responsible enough not to reveal the names of the accused and victims till the case is finally disposed of and thereby the interests of the parties are protected. None of these protections are prevailing in India. We have an absolutely free press, regulated by a Press Council of India, which is dominated by press persons and protected by politicians. The judicial attitude is also not encouraging to the help less individual against the violations by the press. Judicial strictures generally fall on deaf ears. All this cumulates to make a single man isolated in his huge world of rights.

REFERENCES

1 Constitution of America. 2 Warren and Brandeis, 'The Right to Privacy', 4 Harv L. Rev 193.