

Press Freedom and Right to Privacy Conflicts and Challenges

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ABSTRACT:

The conflict inherent in balancing freedom of the press and the right to privacy invariably presents some controversial legal issues. In addressing the legal dilemmas posed by the se competing interests, an in-depth analysis of the conceptual value of these two equally important rights becomes a preliminary starting point. Privacy is a human right recognised by the United Nations (UN). It is difficult to define succinctly and precisely what this right entails. Privacy has a dual aspect—it is concerned with information or personal data and the extent to which that is shared with other parties. The understanding of privacy has been shaped by technologies available at the time, starting from literacy, to book keeping to newspapers, and the current times we live in, the Internet. The Internet and the advent of mass data collection and retention have reshaped the concept of privacy in the modern world.

INTRODUCTION:

Enhancing the status of press freedom is central to UNESCO’s mandate to promote the free flow of ideas by word and image, as a vehicle for advancing peace and fostering dialogue. Freedom of expression is both a fundamental human right in itself and an enabler of all other rights. Article 19 of the Universal Declaration of Human Rights, the right includes the “freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The Article 19 framework requires specific roles by duty-bearers. Foremost is the commitment of governments to the rule of law through a transparent and well-functioning legal framework and system in conformity with international norms.¹

The focus on the concept of media freedom emphasizes the importance of examining the role of the state, primarily the relevant legal and statutory environment. This requires the

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¹World Trends in Freedom of Expression and Media Development Global Report 2017/2018
<http://unesdoc.unesco.org/images/0026/002610/261065e.pdf>

protection of media freedom both in law and in practice. Media freedom includes the existence and implementation of freedom of information and transparency laws, and the absence of disproportionate restrictions for speech, such as exist in the form of criminal (as distinct from civil) defamation laws. This concept of media freedom covers whether media are censored or banned and blocked; and whether other laws are used against media and people producing journalism in order to arbitrarily restrict freedom of expression—that is in ways or for purposes not sanctioned by international standards. Media independence designates the functioning of media institutions (including the significance of regulation and/or self-regulation) in terms of which editorial independence is (or, is not) the primary logic informing content production according to professional journalistic ethics and protocols. Independence is characterized as freedom from outside political or commercial interference. However, it highlights not just the absence of such pressures, but also the value to society of voluntary subscription to professional journalistic ethics, such as verification, source confidentiality where necessary, fairness and public interest. Of particular interest is the professional autonomy of those who produce journalism, and of the regulatory and/or self-regulatory bodies that affect this. Media-related NGOs and journalism training institutions are part of the wider ecology of independence. The degree to which there is media and information literacy, with public appreciation of press freedom and trust in news media, is also a factor in assessing independence. Low levels of media literacy and trust, combined with efforts to de-legitimize media, can affect the very norm of independence.

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...”²

The right of privacy is clearly a vital element in any system of individual rights. Essentially it is designed to support the individual, to protect the core of individuality, in the relations of the individual to the collective society. As such it is designed to mark out a sphere

² Constitution of America; <https://dyuthi.cusat.ac.in/xmlui/bitstream/handle/purl/3770/Dyuthi-T1732.pdf?sequence=1>

or zone in which the collective may not intrude upon the individual will. It thus differs from time to time, and from society to society, depending on where the line is drawn between individual autonomy and collective obligation.³ Professor ***Bloustein*** has described the role of privacy in maintaining autonomy: The man who is compelled to live every minute of his life among others and whose every need, thought, fancy or gratification is subject to public scrutiny, has been deprived of his individuality and human dignity. Such an individual merge with the mass. His opinions, being public, tend never to be different; his aspirations, being known, tend always to be conventionally accepted ones; his feelings, being openly exhibited, tend to lose their quality of unique personal warmth and to become the feelings of every man. Such a being, although sentient, is fungible; he is not an individual.⁴

CONSTITUTIONAL FOUNDATION OF FREEDOM RELATED TO THE PRESS

The means of freedom related to press is ‘the right of free expression extended to media publications. This is designed to uphold the independence and diversity of opinions and voices of the Media’ (Oxford Dictionary). Democracy successful and ensure a safe future for it in the absence of freedom related to thought, press, vigilant public opinion and eternal vigilance. It has been said, he is the price of liberty. The mass media, the press and platform are the means to educate the people and keep them vigilant about their liberties inherent in a democracy and established their hegemony. The Editor of illustrated weekly of Bombay ***S. Khushwant singh*** said ‘No dictator in the world can tolerate freedom of thought, expression and press’.

As independence, the Constitution of India has defined the ‘freedom of speech and expression’ as a fundamental Right under Article-19 (1) (a). There is no special provision in the fundamental rights on the freedom of press, however it’s enclosed within the freedom of speech and expression. The supreme court, on ***Sakal papers Private Limited Verses union of India***, stated that the right to propagate one’s idea was inherent in the concept of freedom of the speech and expression and that for the purpose of propagating his ideas every citizen had rights to publish them, to disseminate them and to circulate them (Balraj (1973). Press freedom is granted by the constitution; but not as a separate entity or special privilege. Freedom of speech and expression were incorporated by the individual rights. Our governments have

³http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3789&context=fss_papers

⁴ Human Dignity, supra note 4, at 1003;

http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3789&context=fss_papers

preferable press freedom to the connected with social, fundamental responsibilities and also the obligation to report objectively.

Freedoms of the press follow from Article 19 (1) of the Constitution. India has a written constitution which guarantees certain fundamental rights as specified in Part III of the Constitution. Of these Article 19 (1) (a) relates to freedom of speech and expression, subject to the restrictions which may be imposed by the state under cl. (2) of that Article, which has to be read along with cl. (1) (a). Several conclusions follow from the fact that there is no separate guarantee of freedom of the press in India that it must be derived from Article 19 (1) (a) of the constitution. Universal Declaration of Human Rights provides freedom of expression in its Article 19, The International Covenant on Civil and Political Rights (Article 19), American Convention of Human Rights (Article 13), The African Charter on Human and People's Rights (Article 9), and also the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 10). Press freedom provides the oxygen in a climate of a healthy democracy. It is a matter of common experience that the press can do will and perform its professional work. Smoothly if it operates in the open and competitive information market and does not itself suffocate or corrupt the process of collecting, selecting and presenting the news objective and truthfully. This expression mentions to the right of the state to maintain its own existence, i.e., the right of self-protection. It has a dual aspect, external and internal. The principles laid down in the American decisions should be applicable in India, unless the contrary is indicated. From the external standpoint, it means that the State may impose restrictions on the freedom of the press in so far as it is necessary to protect itself from external aggression, e.g., by prohibiting and punishing any publication which interferes with the war efforts of the nation, such as inciting resistance to the participation by the state in war or recruitment or conscription for the Defence Forces, undermining their confidence disclosing war measures or movements which may help the enemy, inciting curtailment of production of goods necessary for action of war.⁵

USING RTI TO PROMOTE PRIVACY

In many countries, RTI laws are a primary tool used by privacy advocates to identify abuses and to campaign effectively against them. In the United States, groups such as the

⁵<http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2023%20Issue1/Version-2/D2301023136.pdf> by Arun Pratap & Prof. A.R. Dangwal

American Civil Liberties Union, the Electronic Privacy Information Centre, and the Electronic Frontier Foundation routinely use the U.S. FOIA and state laws to demand government records on new and existing government programs (communications surveillance, body scanners, and spying on groups) and use the records to campaign against those programs and proposals.⁶

CONCLUSION:

Media the responsible fourth pillar of democracy, which is considered to be an ardent protector of democracy in the past decades, has today come under severe criticism. The fundamental reason for this change is their irresponsibility towards the interest of the public. Democracies want people to work towards achieving its goal of government of the people, by the people and for the people. It is suggested that the effective way to bring protection for privacy is to bring in the above suggested Constitutional amendments and to also enact an exclusive legislation on privacy. Press very rarely listens to their inner voice; rather the market rules the show. Therefore, when ethics starts deteriorating, protection has to come up in the shape of Right to Privacy Act. This Act should envisage the protection of Privacy. 'Privacy' as suggested to be codified, includes private life, self-respect, dignity, status of an individual in the society. It is difficult to understand the concept of privacy unless and until one is deprived of it and made a commercial product marketed at the whims and fancies of a third party, which is the media. Media having lost its first loyalty, the responsibility towards people to build a mature nation- to market politics and lobbying objected towards commercial gains and power has no right to claim absolute immunity from its wrongs.

REFERENCES:

1. Calland, Richard, and Alison Tilley, eds. 2002. *The Right to Know, the Right to Live: Access to Information & Socio-economic Justice*. Cape Town, South Africa: Open Democracy Advice Centre.
2. The Madrid Principles on the Relationship between the Media and
3. Judicial Independence 1994. *The International Covenant on Civil and Political Rights*,

⁶See EPIC v. DHS (Suspension of Body Scanner Program), http://epic.org/privacy/body_scanners/epic_v_dhs_suspension_of_body.html; EFF (2010); and public FOIA documents on spying in Washington, released by the American Civil Liberties Union, <http://www.aclu-wa.org/public-docUment>;



4. Annual Report of Press Council of India 2008-09.
5. Swati Deshpande, 'Media and Law –A Reporter's Handbook', AMIC India and UNESCO (2006).
6. <http://creativecommons.org/licenses/by-nc-sa/2.5/in/>. (victimization of children by press).
7. https://www.iprs.si/fileadmin/user_upload/Pdf/Publikacije_ostalih_pooblascencev/Right_to_Information_and_Privacy_banisar.pdf
8. <http://unesdoc.unesco.org/images/0026/002610/261065e.pdf>
9. <http://shodhganga.inflibnet.ac.in/bitstream/10603/5873/5/05-introduction.pdf>
10. <http://iclrq.in/editions/apr/12.pdf>