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The Clash of Rights: Privacy and Freedom Speech

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Abstract
In contemporary legal and social discourse, the right to privacy and the freedom of expression often finds themselves in a precarious balance. This article delves into the intricate relationship between these two fundamental rights, exploring their origins, legal frameworks, and the tensions that arise when they intersect. Through a detailed examination of landmark cases and legislation from various jurisdictions, we uncover how courts and lawmakers navigate these competing interests. The article also considers the role of technology and media in exacerbating or mitigating conflicts between privacy and free speech. Ultimately, we aim to provide a comprehensive understanding of how a balance can be struck, ensuring both rights are respected in a manner that upholds democratic values and individual freedoms.

Keywords: Privacy, freedom of expression, free speech, constitution, landmark cases

Introduction
In the modern era, the concept of privacy has evolved into a multifaceted and rapidly changing notion that intersects with various aspects of human rights, particularly the right to freedom of expression. Privacy, once considered merely a personal concern, now encompasses a broad spectrum of issues, ranging from data protection and digital footprints to surveillance and personal autonomy. This evolution is driven by technological advancements, societal shifts, and the growing recognition of privacy as a fundamental human right.

As technology continues to advance at an unprecedented pace, the boundaries of privacy are constantly being redefined. The digital age has introduced new dimensions to privacy, where personal information can be easily collected, shared, and exploited. Social media platforms, search engines, and various online services have become integral to our daily lives, but they also pose significant challenges to maintaining individual privacy. In this context, privacy is not only about protecting personal data but also about controlling one's digital identity and presence.

Moreover, privacy is intrinsically linked to the right to freedom of expression. While the right to privacy ensures individuals can control their personal information and maintain their dignity, the right to freedom of expression guarantees the ability to communicate ideas and opinions without interference. However, these rights can often come into conflict. For instance, the publication of private information in the public interest can infringe on individual privacy, while excessive protection of privacy can stifle free speech and the free flow of information.

This article explores the multidimensional and dynamic nature of privacy as it relates to freedom of expression. By examining key legal frameworks, landmark cases, and the impact of technological advancements, we aim to shed light on how these two fundamental rights can coexist and be balanced. Through a nuanced understanding of privacy in the digital age, we seek to address the challenges and opportunities that arise in safeguarding both individual autonomy and the collective right to free expression.

Privacy is a multidimensional and rapidly changing concept. The right of individuals to be free from highly offensive publicity concerning their private lives is a precious right enunciated in the most significant documents of the world.

Article 12 of the Universal Declaration of Human Rights (1948) states:

> "No one should be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks".

Similarly, Art.8 of the European Convention on Human Rights (1953) guarantees the right to privacy, thus:

> "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others".

It is said that, the right to privacy as a separate human right and as a distinct aspect of human dignity, was articulated first in an article written by Charles Warren and Louis Brandies (Press Council of India, 20th Annual Report, 1998-99). The general right or privacy as such does not find a place in any law of the country. It has not been mentioned anywhere in the Constitution of USA, yet its Supreme Court has held it to be a fundamental right emanating from the totality of the Constitutional scheme. Thomas Cooley, an American scholar a century back coined the term "right to privacy", for him it means "the right to be let alone". According to Professor Alan Westin (1967), the privacy means "the state of solitude or small group intimacy". In the judicial pronouncements in Olmstead V. United States (1927) [9], Griswold V. Connecticut and Jane Roe V. Henry Wade (1973) of USA [4], noted principles were laid down such as privacy-dignity claims deserve to be examined with utmost care when an important countervailing interest must be considered in the context of other rights and values concerning individuals; the right to privacy though an independent right emanated from other fundamental rights, is not absolute which needs to find its limitations through the process of case by case development.

Further in Melvin V. Reid (1931) [7], the Court held that, the breach of privacy based on the unwarranted disclosure neither of private facts, which had no news-worthiness nor of legitimate public concern, was a valid ground of offence. In the famous Cox Broadcasting Corporation V. Martin Cohn (1975) [1], the Court held that the Constitutional law may super-impose exceptions on breach of privacy or disclosure of embarrassing private facts if the event is noteworthy or is of legitimate public concern. The public's right to know overrules the private individual's desire for seclusion.

Even in UK, many attempts have been made to set precise parameters to this post World War I phenomenon. The Younger Committee on Privacy (1972) found it difficult to define the expression 'privacy'. It found that the old definition formulated, of privacy being "the right to be let alone" was unrealistic and means different things to different people and changes significantly over relatively short periods. The Royal Commission agreed the views of the Committee on Privacy and expected a draft bill for limiting the right of newspapers to publish documents given to them in confidence. In 1976, the Press Council of UK issued guidelines to editors regarding the publication of stories about the private lives of individuals. Later the recent Calcutt Committee in UP on Privacy and related matters in its report (June 1990) accepted the possibility of producing a precise definition of some aspects of privacy with statutory sanctions against unwarranted invasions of privacy and unauthorized intrusions by unscrupulous media men. Following the death of Princess Diana, UK outlined the tougher privacy codes even including a ban on photographs of people in restaurants and churches. The Press Complaints Commission of UK demanded a new code by the self-regulating body, which includes national newspaper editors, after pursuing paparazzi photographers were accused of contributing to Diana's death in a car crash in Paris.

There is no concrete provision available in the Indian Constitution, nor any statute recognizing the right to privacy. There is a school of thought, which holds that the right to privacy is a fundamental right integral to the personal liberty guaranteed by Art.21 of the Indian Constitution. Two important decisions of the Supreme Court contributed for the development of the law of privacy in India. In Karak Singh V. State of UP (1964) [6], Justice Subba Rao held the observation:

> "It is true our Constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingradient of personal liberty. Every democratic country sanctifies domestic life; it is expected to give him rest, physical happiness, peace of mind and security. In the last resort a person's house where he lives with his family is his 'castle'. It is his rampart against encroachments on his personal liberty….. Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy".

In another case Govind V, State of Madhya Pradesh (1975) [2], the question, whether the right to privacy, had itself become a fundamental right, was examined in detail by Justice KK Mathew. In his words:

> "Even assuming that the right to personal liberty…… and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize, a fundamental right, we do not think the right is absolute".

Further, in State of Maharashtra V Prabhakar Pandurang (1986) [13], the petitioner was detained in jail under the Preventive Detention Act. He wrote a scientific book in prison and sought permission from the government to send it to his wife for publication. The government refused permission. The Supreme Court held that this is an infringement of his personal liberty and freedom of expression, as the restriction not authorized by the Preventive Detention Act.

In R Rajagopal V, State of Tamil Nadu (Auto Shanker Case, 1994) [12], the Supreme Court has again held that, the right to privacy guaranteed by Art.21 of the Indian Constitution. In this case the editor and the associate editor of the Tamil Magazine "Nakkheeran" published from Madras moved the Supreme Court to restrain the government officials from interfering with their right to publish autobiography of a

convicted prisoner. Auto Shanker had written his autobiography in jail, which depicted his close relationship with some of the Police Officials who were partners in several crimes. This made the I.G. of Prisons to write a letter to the intending publisher not to publish the matter. This case raised interesting questions. The Court held that the State or its officials have no authority in law to impose prior restraint on publication of defamatory matter. The public officials can take action only after the publication if it is found to be false. In Mr. 'X' V Hospital 'Z' (1995) [8], the Supreme Court has held that the although the right to privacy is a fundamental right under Art.21 of the Constitution, but it is not an absolute right and restrictions can be imposed on it for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

In a historic judgment in People's Union for Civil Liberties V. Union of India (1997) [11], popularly known as 'Phone Tapping Case', the Supreme Court held that telephone tapping is a serious invasion of all individual's right to privacy which is part of the right to "life and personal liberty" enshrined under Art.21 of the Indian Constitution and it should not be resorted to unless there is public emergency or interest of public safety requires. The petition was filed by the People's Union of Civil Liberties, a voluntary organization, in the wake of the report on 'Tapping of Politicians Phones' by the Central Bureau of Investigation (CBI).

The changing technological advancements into the intrusion of individual's privacy had forced the Second Press Commission to sum up the developments relevant to the concept of privacy. Before the action of the Second Press Commission into the matter, the Law Commission of India in its 42nd Report (1971) observed that, it is not advisable to have a comprehensive legislation to deal with all aspects of invasion of privacy, as it is still in a rudimentary state. Pursuant to the recommendations of the Law Commission, the Indian Penal Code (Amendment) Bill 1978 was passed by the Rajya Sabha and lapsed due to the dissolution of Lok Sabha. The Bill proposed for the insertion of Sections 490, 491, 492 in the IPC. This was endorsed by the Second Press Commission, as well. There is enormous growth of complex administration of the government to focus upon every aspect of life of its citizens and the drastic changes took place in the technological revolution to make man's house no longer sacrosanct and inviolate. After examining the question of privacy in the context of the press, the Commission concluded "press should not be unduly inhibited in performing its important function of giving news in the public interest as distinct from news that may pander to prurient or morbid curiosity. But a correct balance has to be struck between the citizen's claims to privacy and the public's right to information. The Press council should be interested with the responsibility of looking into complaints of invasion of privacy and of monitoring the performance of the press in this regard. To this end, Section 13 (2) of the Press Council Act 1978 may be suitably amended, by adding the words "including respect for privacy". In the amended form the section 13 would read:

(2) The Council may, in furtherance of its objects, perform the following functions namely:

© to ensure on the part of newspapers, news agencies and journalists, the maintenance of high standards of public taste including respect of privacy and foster a due sense of both the rights and responsibilities of citizenship.

The Press Council of India has time and again been required to consider complaints of breach of privacy by the press, of individuals and the public figures in particular. While the press has claimed its right to bring before the public the matters involving its right to bring before the public the matters involving public interest, the public figures have counter-claimed their right to conduct certain private activities away from the public gaze. The issue of privacy assumed importance in the wake of an incident held in October, 1996 when media men surrounded the house of a leader of Bahujana Samaj Party. As a result, the Council formulated guidelines to achieve a balance between the right to privacy of the public persons and the right of the press to have access to information of public interest and importance. These norms are not permissible unless outweighed by genuine overriding public interests, not being a prurient or morbid curiosity.

The Calcutt Committee on Privacy and Related Matters in UK failed to devise a simple criterion of intrusion into individual's privacy. All people are entitled to expect the same degree of privacy. But necessarily, a distinction has to be drawn between public figures and for other people. Nevertheless, a public figure should not be required to surrender his right to privacy over every aspect of life when he takes up public office or pursues a career, which brings into the public eyes.

The American Courts have described a public figure as a private person, who, by his purposeful activities, thrusts his personality into the vortex of an important public controversy; he is in a position of prominence capable of influencing public issues, events and policy and having access to the media for propagating and countering criticism of his views and activities.

It has been held in the International Conference of the World Association of Press Councils 1998, that privacy has three competing institutional values like an individual's right to privacy, freedom of the press and the people's right to know about public figures. A reconciliation of all the three can build up a criterion to decide the breach of privacy.

The Press Council of India, in its guidelines made it very clear that the public persons who function under public gaze as an emissary/representative of the public cannot expect to be afforded the same degree of privacy as a private person. His acts and conduct as are of public interest (public interest being distinct and separate from 'of interest to the public') even if conducted in private may be brought to public knowledge through medium of the press. The press has to ensure that the information about such acts and conduct of public interest of the public person is obtained through fair means, is properly verified and then reported accurately (Press Council of India, 20th Annual Report, 1998-99: 60).

The recent Tehelka Dotcom Issue aroused many legal and ethical questions. The offer of bribe constituted the inducement for obtaining information, which is genuinely the unfair means used, to intrude the right to privacy. The offer of bribe and other malign inducements make the other party too as accomplices. The legal justification mooted being privacy is no justification to perpetuate crime. Privacy is also subjected to restrictions. The Calcutt Committee of UK recommended strongly that entering private property without the consent of the lawful occupant, with intent to

obtain the personal information with a view to its publication and placing a surveillance device on private property without the consent of the lawful occupant and taking a photograph or recording of the voice of an individual who is on private property without consent are criminal offences. In Tehelka issue consent is not seemed to have been taken from the aggrieved party. It is a clandestine activity with obscure motive and the whole issue is politically motivated towards destabilization of the system and misrepresentation of facts.

The Supreme Court of India, in its landmark judgment in the case of Justice KS Puttaswamy (Retd.) vs. Union of India (2017) [5], recognized the right to privacy as a fundamental right under Article 21 of the Indian Constitution. This ruling set the stage for a more robust legal framework to protect individual privacy in the digital age, including on social media platforms.

There is a conflict between the right to publish and the right to privacy. Yet both are equally precious in a free society. While commercial exploitation of the private lives of public figures and of lesser fry can help step up sales of publications, but a balance is to be struck between the two rights.

Conclusion

The right to freedom of speech and expression vis-à-vis freedom of press, though considered as a very valuable right, the guarantee is in qualified terms and is not an absolute right. Restrictions are imposed on the exercise of this right in the larger interests of the society. The object of these restrictions is to strike a balance between the right guaranteed under Art. 19 (1) (a) and the social interests enumerated under Art. 19 (2). These restrictions are not prohibitory in nature but only permissive in character.

The judicial perception on permissible restrictions reveals that Supreme Court has liberally interpreted the right guaranteed by Art.19 (1) (a) and added new dimensions to the right. Such a liberal interpretation is all the more required particularly with respect to press on the account of its pervasive impact and the Indian Courts are especially sensitive in cases relating to press freedom.

The modern technological developments have created increasing Constitutional problems in the area of the mass media. Therefore, the task of the Indian legal system to resolve the conflict between media freedom and social control is very difficult. On the account of the instant appeal of mass media and with the strict social and moral standards prevalent in the Indian society, media must necessarily be subjected to certain strict standards of regulation. In the following Chapters, an attempt has been made to examine the legislations and regulations enacted in both the pre-colonial and post-independence periods and to evaluate the impact of press as a potential medium and to analyze how the ethical standards are to be applied.

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