

# Privacy and Media Intrusion: Subtle Compatibility

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## Abstract

In the present era, the most appealing way to transmit ideas that appeals to both the visual and the aural senses is undoubtedly media. It is fourth estate of government fulfilling the purpose of Art 19(1) (a) of Constitution.

These days' media has often infringed right to privacy, predominantly electronic media after coming into picture the 24hrs news channels which make stories or show less important news as BREAKING NEWS to feed the gossip for hungry viewers or the play child of budding journalists to gain recognition, recent e.g. dual murder case of the Arushi-Hemraj in Noida.

Sting operation which is an 'illegitimate journalistic tool' has degenerated into cheap entertainment as frequently carried out to increase TRP ratings or to 'interest the public' rather than 'public interest'.

Undoubtedly, privacy is under siege but lawmakers have not shown scant concern as law of privacy relegated to a penumbral status, still not recognised as inherent fundamental right. With more technical advancement it's becoming easy to peep into bedrooms of others and individual has protection from state intervention but what about person infringing one's privacy right sitting miles away in foreign land. These questions have not been addressed by legislature and even the new ITA seems obsolete.

The law of privacy is much like a jigsaw puzzle with some pieces missing; it is generally hard to discern a meaningful pattern. But it is time our lawmakers should enact appropriate laws to protect privacy rather than laws that license intrusion into private affairs. Media is an organ of great power and responsibility. It has done commendable jobs like in Jessica Lal case. Thus it is expected that it continues to help in getting justice and does not run in the rat race for popularity and profits.

**Keywords:** Media, media ethics, privacy, Right to privacy, media privacy, Freedom of Media & Press, fundamental right, laws.

## 1. Introduction

In the present era, the most appealing way to transmit ideas that appeals to both the visual and the aural senses is undoubtedly media. It is fourth estate of government fulfilling the purpose of Art 19(1) (a) of Constitution.

TODAY, the major challenges being faced by the electronic media are credibility, commitment, professionalism and media ethics. There are certain issues which involve the society as well as the media, making both of them interdependent on each other. Media is not only a mirror to show what all is happening in the society or express once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of regional, national and international agenda. It also looks into the society in all its manifestation with penetrating eyes, reflect noble ideas and expose social evils and help in their eradication. The pivotal role of the media is its ability to mobilize the thinking process of millions. But in recent times despite all of these duties which media has to perform, there is no credibility to what media does.

A written word or image on the television screen has a great impact on the viewers and listeners. But today, the stark reality is that media has lost it ways, often infringed right to privacy and

become more of an entertainment package. Nowadays, many newspapers and magazines indulge in biased projection and distorted interpretation of news. Further electronic media after coming into picture the 24hrs news channels make stories or show less important news as BREAKING NEWS to feed the gossip hungry viewers or the play child of budding generalists to gain recognition. Sting operation which is an 'illegitimate journalistic tool' has degenerated into cheap entertainment as frequently carried out to increase TRP ratings or to 'interest the public' rather than 'public interest'.

Undoubtedly, privacy is under siege but lawmakers have not shown scant concern as law of privacy relegated to a penumbral status, still not recognized as inherent fundamental right. With more technical advancement it's becoming easy to peep into bedrooms of others and individual has protection from state intervention but what about person infringing one's privacy right sitting miles away in foreign land. These questions have not been addressed by legislature and even the new ITA seems obsolete.

The law of privacy is much like a jigsaw puzzle with some pieces missing; it is generally hard to discern a meaningful pattern. Therefore this paper deals with the role of media and individual privacy. It also consider the tentative efforts made by the Indian judiciary to protect individual privacy in India by invoking generic concepts like "right to life" and highlight the absence of a privacy model and need to enact appropriate laws to protect privacy rather than laws that license intrusion into private affairs. Media is an organ of great power and responsibility. It has done commendable jobs like in Jessica Lal case. Thus it is expected that it continues to help in getting justice and does not run in the rat race for popularity and profits.

*"Freedom of Press is an Article of Faith with us, sanctified by our Constitution, validated by four decades of freedom and indispensable to our future as a Nation."*

- Prime Minister Rajiv Gandhi

**Keywords:** Media, media ethics, privacy, Right to privacy, media privacy, Freedom of Media & Press, fundamental right, laws.

## A Glance at The Concept of Privacy

*"Every Dutch man's house is his castle."*

Right to privacy is a violable human right. It is natural need of an individual to establish individual boundaries with almost perfect seclusion, ability of an individual or group to seclude them or information about themselves and thereby reveal them selectively. The term privacy is sometimes related to anonymity, the wish to remain unnoticed or unidentified in the public realm. It is considered as rightful claim of the individual to determine the extent to which he wishes to share of himself with others and his control over the time, place and circumstances to communicate with others.

The concept of privacy has intertwined with itself the three broad concept i.e. intimacy, identity and autonomy, which are basic amenities of any individual in the society. It is through these principles; any society is diverted from the egalitarian to an

individual space of any person. Privacy turns out not to be a single interest, but rather has several dimensions:

- **Privacy of the person** - Sometimes referred to as 'bodily privacy'. This is concerned with the integrity of the individual's body. Issues include compulsory immunization, blood transfusion without consent, compulsory provision of samples of body fluids and body tissue, and compulsory sterilization;
- **Privacy of personal behavior** - This relates to all aspects of behavior, but especially to sensitive matters, such as sexual preferences and habits, political activities and religious practices, both in private and in public places. It includes what is sometimes referred to as 'media privacy';
- **Privacy of personal communications** - Individuals claim an interest in being able to communicate among them, using various media, without routine monitoring of their communications by other persons or organizations. This includes what is sometimes referred to as 'interception privacy'; and
- **Privacy of personal data** - Individuals claim that data about themselves should not be automatically available to other individuals and organizations, and that, even where data is possessed by another party, the individual must be able to exercise a substantial degree of control over that data and its use. This is sometimes referred to as 'data privacy' and 'information privacy'.

There is a fundamental belief that under the privacy laws every person has a right to restrict his private life or others are bound to respect one's private life, unless it's repugnant to any moral, public or legal norms. The right also involves right to make choices and decisions. It is a simple right which says right to be left alone, even the government and the state are barred to violate such right without reasonable cause. Under the Indian law it is not stated as the fundamental right under part-III of constitution, but the said right is an essential ingredient of personal liberty. The concept of privacy is also documented by the UN Declaration of Human rights, the International Covenant on Civil and Political Rights and in many other international and regional treaties. It has been aptly observed, "In one sense, all human rights are aspects of the right to privacy."

## 2. Right to Privacy & Freedom of Press : Two sides of the same coin

The freedom of Speech and Expression enshrined in Art 19(1) of the Indian Constitution is considered as the soul of any democracy. It is a natural right which every citizen acquires on his birth. Every citizen has this right and it includes right to hold opinion without interference and seek, receive and impart information on any ideas any media and regardless of frontiers. It enable the public to keep a constant vigil over the structure and working of the state and also enables the people to demand positive action on the part of Government and to work in betterment of the society.

Freedom of Media & Press is not a virtue in itself. It is not expressively part of constitution but embedded under the constitution through judicial pronouncements and through experience of other countries. It is an acknowledgement fact that the freedom of speech and expression as provided under Art 19(1) (a) is not absolute, Art 19(2) lays down the restrictions on

this right preventing it from becoming weapon to exploit or to gain various commercial gains. Patanjali Shastri, J. in A.K. Gopalan's case, observed, "man as a rational being desires to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals".

In the present day society it is inevitable to strike a proper balance between right to freedom of press and right to privacy. With the unprecedented growth of media and technology there is certain and eminent threat to one's privacy. Advances in computer technology and telecommunications have dramatically increased the amount of information that can be stored, retrieved, accessed and collated almost instantaneously.

Media has often infringed this Right to Privacy particularly the electronic media after mushrooming of 24hrs. News channels which has resulted in 'cut throat' competition. Every channel is trying to beat its competition at all costs. To gain popularity TV journalism is getting into a different track of journalism, such as: C-4 (cricket, cinema, crime & celebrity) journalism, Page-3 journalism, yellow journalism etc. For instance, the Shilpa-Gere drama and Rakhi Sawant-Mika Singh controversy being telecast to feed the gossip hungry viewers.

In the recent dual murder case in – Noida i.e., the Arushi- Hemraj murder case, an innocent 14yr old teenager was brutally murdered in her house in Noida in May 2008. The media was updating the viewers with the recent developments in the case in fact it shown personal e-mails of Arushi to her parents, family videos, photographs, letters on television with thousands of people watching it and making their life public. The media crossed all its limits causing mental harassment to Arushi's family. Further in the case of Gudhiya's marriage, TV channel spotted an opportunity in her plight and able to fetch good TRP ratings. A Gudhiya is a faceless image that needs to be 'imaginatively' packaged for mass entertainment and leads to private lives being fed for couch potatoes. Zee in its pursuit of profits has failed to adhere to the norms of civil behaviour. The channel deserves to be condemned.

These days' media also conduct trials in order to give chance to be seen and heard to accused, their families, witnesses, lawyers, doctors, etc to present their side of the story. In Rahul Mahajan's case, Zaro the young man who claimed to have procured drugs from Mahajan presented on national television before surrendering to the police and for the television channel, it was coup over other channels and sent the TRPs soaring.

Why should ordinary incidents of crime be dramatized in such illustrious manner, which does not add anything in substance to any information of the viewer except perverting the brains and most of the times influencing people in a negative way and inspiring more crimes in the society. Why can't they make crime reports interesting with information that can help the viewer in some way identifying some grey areas and take precaution?

Finally a Parliamentary committee has recommended setting up of statutory regulations for the media after the detailed live coverage by television channels of 'Operation Black Tornado' by the security forces against Mumbai terror strike. The committee perceives that the live footage shown by TV channels to the

viewers could also have been used by the terrorists to boost their defence. A lot of criticism was made for the way media was reporting the Mumbai terror attack. Chief Justice of India KG Balakrishnan asked the media to be more responsible and not to pose hurdles for security forces.

The media thrives on hyping the issues which is a market requirement. To survive TV channels need advertisements, this directly connects it to the market of consumerism. When journalism was in its initial stage, it was a mission. But it has now turned into a profession. Management has become predominant in the profession. Earlier, it was the editor who was managing the news or the newspaper's stand on an issue and the management was only concerned with the financial aspect. Now, the times have changed. Everything is being moulded according to market requirements. That's why the editorial department is becoming weaker day by day and the manager is in control.

In such conditions freedom of speech is at the risk of being misused by the media houses. Yet we cannot afford putting regulations on Press, as the Press is said to be the fourth pillar of the society. As in the case of terror strike in Mumbai we saw the solidarity and mass protests against the strike because of the media's effort. We expect the media to treat information of sensitive nature carefully and endeavor to ensure that the interest of nation and lives of security men and hostages is not jeopardized by live telecast.

### 3. Judicial Trends in India Relating to The Concept of Individual

In India the right to privacy gained recognition mainly through judicial activism. It is not fundamental right but still an essential ingredient of fundamental right. The right is incorporated under Art 21 through various judicial pronouncements. However, elements of this right, as traditionally contained in the common law and in criminal law, are recognised by Indian courts. These include the principles of nuisance, trespass, harassment, defamation, malicious falsehood and breach of confidence. In addition, several pieces of discrete legislation also recognise this right: for example, the Children Act 1960, which prohibits the publication of names and other particulars of children involved in proceedings under the Act; the Hindu Marriage Act 1955, which imposes similar restrictions on the publication of reports concerning proceedings of matrimonial disputes; and the Copyright Act 1957, which prohibits the unauthorised publication of certain documents, photographs, etc. The Code of Criminal Procedure, 1973, also permits restrictions to be imposed on the publication of reports concerning certain legal proceedings, e.g. rape trials.

Under the Indian Constitution, Article 21 of the Indian Constitution is a fairly innocuous provision in itself i.e. "No person shall be deprived of his life or personal liberty except according to procedure established by law". However, the above provision has been deemed to include within its ambit, inter-alia, the Right to Privacy – "The Right to be left alone" – as the Supreme Court termed it. The concept of right to privacy finds its genesis in the case of Gobind v. State of Madhya Pradesh wherein the Supreme Court of India in its ruling, cited the Preamble of the Constitution of India which is designed to "assure the dignity of the individual". The landmark judgement of R. Rajgopal v. State

of TN is a watershed in the development of the Indian law of privacy in India; it was held that the right to privacy is implicit in the right to life and liberty guaranteed to a citizen under Art. 21 of the Constitution, a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters. None can publish (meaning "make known to the public") anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical, unless they are part of public records. However, the Supreme Court made the above observations in the context of search and surveillance orders, be that as it may, admittedly the Court made its first foray in evolving the concept of Right to Privacy, which in any event would necessarily have to go through a process of case-by-case development.

#### Privacy under various laws:

##### Law of Tort

The Right to Privacy is further encompassed in the field of Torts. The tort of Defamation involves the right of every person to have his reputation preserved inviolate. It protects an individual's estimation in the view of the society and its defences are 'truth' and 'privilege', which protect the competing right of freedom of speech. Essentially, under the law of torts, defamation involves a balance of competing interests. The only concession for an action, which involves infringement of right to privacy, would be for reasons of, prevention of crime, disorder, or protection of health and morals or protection of rights and freedom of others.

##### The Information Technology Act, 2000

The Information Technology Act, 2000 is not data or privacy protection legislation per se. It does not lay down any specific data protection or privacy principles. The Information Technology Act, 2000 is a generic legislation, which articulates on range of themes, like digital signatures, public key infrastructure, e-governance, cyber contraventions, cyber offences and confidentiality and privacy. It suffers from a one Act syndrome.

In fact the Information Technology Act, 2000 deals with the issue of data protection and privacy in a piecemeal fashion. There is no an actual legal framework in the form of Data Protection Authority, data quality and proportionality, data transparency etc. which properly addresses and covers data protection issues. Even if the new proposed amendments to the Information Technology Act, 2000 were adopted but it still lacks the intent which other countries or the European directives provides and garners their technological laws vis-a-vis the privacy rights.

##### The Cable Television Network Rules, 1994

It prohibits carrying of any programme in the cable service which offends against good taste or decency; contains anything obscene, defamatory, false and suggestive innuendos and half-truths; and is not suitable for unrestricted public exhibition.

##### Need for a Privacy Statute

There exists in India an impending need to frame a model statute which safeguards the Right to Privacy of an individual. It's evident that despite the presence of adequate non-mandatory, ethical arguments and precedents established by the Supreme Court of India; in the absence of an explicit privacy statute, the right to privacy remains a de facto right, enforced through a

circutious mode of reasoning and derived from an expansive interpretation of either Constitutional law or Tort law.

The urgency for such a statute is augmented by the absence of any existing regulation which monitors the handling of private information's or safeguards the Right to Privacy of individuals who have disclosed personal information under pressure. The rise of the internet constitutes a significant change in the nature of 'publication', given its ability to deliver material from anywhere in the world, possibly anonymously authored, and largely unregulated. The possibilities opened up by the internet also might mean increases in intrusion into privacy arising from the ability of any user to post material on to the internet in one form or another (e.g. website, bulletin board, e-mail) without any ethical, moral or regulatory hindrance.

## 4. Sting Operation

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence not to attack upon his honour and reputation. Everyone has the right to protection of law against such interference or attack."*

#### -Article 12 of Universal Declaration of Human Rights

WHEN reporters of tehelka.com masqueraded as arms dealers and secretly filmed their 'transactions' on the sale of a fictitious product to the Defence Ministry in 2001, their act was defended widely as one that was in the larger public interest as it exposed corruption in a key organ of the government entrusted with the country's security.

A Sting Operation is an operation designed to catch a person committing a crime by means of deception. A complicated confidence game planned and executed with great care. The word "sting" derives its origin from American usage to mean a police undercover operation designed to ensnare criminals. In more refined terms, it can be called Investigative Journalism or Undercover Journalism.

Investigative journalism contributes to democratic governance and its role can be understood in keeping with the Fourth Estate model of the press. According to this model, the press should make government accountable by publishing information about matters of public interest even if such information reveals abuses or crimes perpetrated by those in authority. It is linked to the logic of checks and balances in democratic systems and monitoring the performance of democratic institutions which includes governmental bodies, civic organizations and publicly held corporations.

If journalism is committed to democratic accountability, then the question that needs to be asked is whether the public benefits as a result of investigative reports. Whose interest does investigative journalism serve by publishing a given story? Does the press fulfill its social responsibility in revealing wrongdoing? Whose interests are being affected? Whose rights are being invaded? Is the issue at stake a matter of legitimate public interest? Or is individual privacy being invaded when no crucial public issue is at stake?

It is valid point that at a certain point all Sting Operations do

violate Right to Privacy in some degree because during a Sting Operation, the person being filmed is not aware of the presence of a hidden camera. This means that he does not consent to be filmed, without which, in ordinary course, no one has the right to film anyone. However, it may be argued that a illegal act being committed by a public servant during his office hours and in abuse of spirit of his office are not worthy of protection under Right to Privacy law. Besides, what a public servant does while discharging his duty is in public domain. In such cases, public interest does seem to weigh heavier compared to Right to Privacy. If a person has no duty towards general public, his morality questionable conduct is not open to public scrutiny unless he violates the law by such conduct.

Sting Operations are generally carried out to trap the corrupt, the underworld dons and spies. They are also undertaken to establish adultery. Sting Operation can also be useful in the arrest of terrorists and anti-national elements. The spy camera of media caught 11 M.L.A.s accepting bribe for asking question in the parliament. When the media gets all the evidence against the corrupt and the wrongdoer and their aim is public interest, why do media not file a case in court and submit these as proof? It was found that Sting Operations are a good way to get evidences for exposing things and submitting these in court. It is a way of helping law, as media is the fourth estate of governance. But it was found that Sting Operations are a good way to get evidences for exposing things and submitting these in court. It is a way of helping law, as media is the fourth estate of governance. Therefore TV channels must not use material relating to a person's personal or private affairs or which invades an individual's privacy unless there is an identifiable public interest reason for the material to be broadcast.

Nowadays, one of the basic reasons to carry out Sting Operation is to increase TRP ratings or to 'interest the public' rather than 'public interest' for e.g. channel's third story, telecast on March 13 and 17, was the most controversial as it exposed the "casting couch" (a euphemism for aspiring actors finding roles in film or television in return for sexual favours) in Hindi cinema. It featured its reporter, Ruchi, who approached Hindi film villain Shakti Kapoor and television host Aman Verma as an aspiring actor and sought their help to secure suitable roles. Hence the 17th Law Commission in its 200th report has made recommendations to the centre to enact a law to prevent the media from interfering with the privacy rights of the individuals.

But there can be no consensus on the ethics of sting operations when the methods and objectives of each operation vary so vastly. Codes of ethics, despite some merits, do not offer clear-cut solutions that can be applied in all cases. Most analysts agree that journalists must remain sensitive to issues such as fairness, balance, and accuracy. Reporters continuously need to ask ethical questions throughout different stages of the investigations, and be ready to justify their decisions to their editors, colleagues, and the public. They need to be sensitive to whose interests are being affected, and operate according to professional standards.

Thus under Indian law, the extent to which a person can claim a right to privacy is dependant on his public status. A person who welcomes media interest in his life will not be able to claim a right to privacy as easily as a 'private individual'. Further, in the

absence of any 'public issue', the publication of material that invades the privacy of any individual can invite an action for damages.

## 5. Conclusion

Media is not only a mirror to show what all is happening in the society, it also acts as an instrument of social change. Its job is to inform and educate the society and act as a medium of communication between the various organs of the society and masses. A written word or image on the television screen has a great impact on the viewers and listeners. But today, the stark reality is that media has lost it ways and become more of an entertainment package. The media power is increasing day by day, but with this increase it is losing all its credibility. After independence, Indian media grew in stature and hailed over the world as a shining example of free press.

The Indian media today is largely acting irresponsibly and is not serving the Indian people in its struggle against poverty, unemployment, etc as it should. Instead, its main aim seems to have become to make money for some people and/or manipulate peoples' minds in the wrong direction, away from the real issue facing the people. The sad truth is that today in India there is total discontent between the mass media and the mass reality for e.g. there were 512 accredited journalists covering the Lakme India Fashion Week, there were only 6 journalists to cover the suicides in Vidharbha.

Is this responsible way for the media to function? Should the media turn a Nelson's eye to the harsh economic realities in which over 75% of our people are living and concentrate on some 'Potempkin villages' where all is glamour and show biz? Is the Indian media not behaving like Queen Marie Antoinette who, when told that the people did not have bread, said that they should eat cakes? To say that times have changed and with the change in times reportorial behaviour is bound to change and is making a mockery of journalism. The fall in standards is there for all to see and it needs to be arrested before journalism is seen not as an honourable profession but as a commercial venture where the bully, the pusher and shove comes out the winner. Recent events must serve as an eye-opener. At this point of time media can make or mar reputations, build bridges of understanding or cause tensions and hatred among various section of the society.

Further half a century has passed since India framed its Constitution and still the Constitution does not recognize privacy as an inherent fundamental right. The concept of privacy as a fundamental right first evolved in the sixties in the case of *Kharak Singh v. State of Uttar Pradesh* The Court held that the Right to Privacy is an integral part of the Right to Life. But with no clear cut laws, it remains in the grey area. Thus, under Article 21 of the Constitution of India, an encroachment upon one's privacy can be only shielded if the transgressor is the state and not a private entity. If the offender is a private individual then there is no effective remedy except in tort where one can claim damages for intruding in his privacy and no more as this right to privacy is only applicable against state action and does not include within its ambit the breach of privacy by private individuals. Tort itself falls in the grey area.

With the advancement of technology, hidden cameras have become crucial tools in the operations of the paparazzi. But today, the use of hidden camera provides no effective remedy against the same to the affected persons. The IT Act 2000 does not touch the issue of breach of privacy in the electronic medium. Thus, we see that the more technically equipped we become, the easier it has become to peep into the bedroom of others. Though an individual has protection from state intervention but what protection can an individual claim against a person who is infringing one's right to privacy sitting miles away, probably in some other country. These are some questions which have not yet been addressed by any of the statutes and require a lot of thinking to be done by the legislators of the country as has already been done by other countries. The law needs to be amended so as to include therein specific provisions relating to the right of privacy of the individuals in the context of the electronic medium and for providing an effective remedy so that affected parties get substantial justice. Justice and fairness are the cardinal principles a free media should adhere to. Irresponsible and salacious reporting can only convince viewers that television channels need regulation and control, despite the viewer ratings these channels might be banking on. Media has also played crucial role like in highlighting women's issues and helping ameliorate their plight has been amply recognized. A large number of television serials on women such as 'Stree; kab kyo aur kaise; shakti' and several others have focused on issues like child marriages, pregnancy tests, dowry deaths, broken marriages, widow remarriage, discrimination against women at the workplace and numerous other issues. Further the Gangajal operation which was conducted by The Indian Express; provide a lesson in crucial contribution that journalistic research can make in creating public awareness of human rights. The incident became a national scandal leading to suspension of 14 policemen as they blinded 33 criminals in Bhagalpur jail using acid.

When The Indian Express brought the issue into national focus, the Supreme Court accepted it as a writ petition. It must however be recognized that media is a tremendous force in today's world. National and global issues are affected, influenced and shaped by media outputs. Involvement of media in development is in two ways: to help remove illiteracy and improve prosperity. All the other allied tasks are by-products of media inputs and media consumption by masses and they contribute to the welfare of the nation and the happiness of its people. Any nation or organization, which ignores media power, does so at its own peril.

Finally, I would like to conclude by quoting Mahatma Gandhi:

*"One of the objects of a newspaper is to understand the popular feeling and give expression to it, another is to arouse among the people certain desirable sentiments, and the third is the fearlessness to expose popular defects."*

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