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FREEDOM OF MEDIAIN INDIA

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Navigating the Right to Privacy: Media and the Law in India

¹Mr. Karthik Anand

Abstract

The right to media and freedom of expression in India is a complex interplay of constitutional protections, judicial interpretations, and regulatory frameworks. This article delves into the multifaceted relationship between media and legal provisions in India, emphasizing the fundamental right to privacy as enshrined in Article 21 of the Indian Constitution. It explores the significance of privacy in media, including the responsibility of media organizations to respect individuals' privacy rights, balanced with the public interest. The article highlights the role of landmark judicial decisions, such as the Puttaswamy judgment, in reaffirming the right to privacy and its implications for media reporting. Additionally, it addresses the broader regulatory landscape governing media, including defamation laws, advertising standards, and digital media regulations. The complex nature of media regulations in India is dissected, along with the need for responsible journalism and the balance between freedom of speech and legal responsibilities. Overall, this article provides a comprehensive overview of the intricate relationship between media and the law in India, offering insights into how the country strives to uphold press freedom while ensuring ethical and accountable media practices

Introduction

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The right to privacy in India is a fundamental right protected under Article 21 of the Indian Constitution. It is important to understand that while the Constitution does not explicitly mention "right to privacy," the Supreme Court of India has interpreted Article 21 to include the right to privacy as a fundamental aspect of personal liberty and dignity. The right to privacy encompasses various facets, including privacy in media, which is subject to certain limitations and considerations.

Right to privacy and its relationship with the media under the Indian Constitution:

1. Article 21 - Right to Life and Personal Liberty: Article 21 of the Indian Constitution states that "No person shall be deprived of his life or personal liberty except according to a procedure established by

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law." The Supreme Court has consistently held that the right to privacy is an integral part of the right to life and personal liberty guaranteed under Article 21.2

- 2. Privacy and Media: The right to privacy includes the right to be let alone and the right to control the dissemination of one's personal information. This extends to protection from unwarranted intrusion bythe media into a person's private life.³
- 3. Balancing Act: While the right to privacy is fundamental, it is not absolute. The Indian legal system recognizes that there may be legitimate reasons for limiting privacy rights, especially in cases where there is a public interest, such as in matters of national security, public order, or the prevention of crime.
- 4. Media Ethics and Responsibility: The media is expected to adhere to ethical standards and exercise responsible journalism. It should respect individuals' privacy rights and avoid publishing or broadcasting private information without consent, especially when it is not in the public interest.
- 5. Defamation Laws: Indian laws, such as defamation laws, provide individuals with legal recourse when their reputation is damaged by false or defamatory information published by the media. The media can be held accountable for publishing false information that harms an individual's reputation.
- 6. Right to Information (RTI) Act: While the right to privacy is protected, the Indian legal framework also includes the Right to Information Act, which ensures transparency and access to government information. There may be instances where the right to privacy and the right to information come into conflict, and courts have to strike a balance.
- 7. Judicial Pronouncements: Several landmark judgments by the Supreme Court, such as the Puttaswamy judgment (2017), have reaffirmed and clarified the right to privacy in India. These judgments have emphasized the need to protect individual privacy from intrusion by the state and private actors, including the media.

³ S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574



² K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1

Importance of Media Privacy in India:

- 1. Freedom of the Press: Privacy of the media is closely linked to the freedom of the press, which is a cornerstone of democracy. A free and independent media is essential for holding the government and other institutions accountable, providing a platform for diverse voices, and fostering transparency.
- 2. Protection of Sources: Journalists often rely on confidential sources to uncover corruption, wrongdoing, and abuse of power. Protecting the privacy of these sources is crucial to encourage whistleblowers and insiders to come forward with valuable information without fear of retaliation.
- 3. Investigative Journalism: Investigative journalism often involves digging deep into sensitive issues that may involve exposing the misdeeds of powerful individuals or entities. Media privacy is vital to safeguarding the identities and safety of journalists involved in such investigations.
- 4. Balancing Public Interest and Privacy: While the media plays a crucial role in informing the public, it must also balance the right to privacy of individuals. Responsible journalism involves respecting the privacy of individuals and not disclosing sensitive personal information without a valid public interestjustification.
- 5. Preventing Sensationalism and Tabloid Journalism: Protecting media privacy helps prevent sensationalism and tabloid journalism that can harm individuals' reputations and invade their personal lives without a legitimate reason.
- 6. Avoiding Vigilantism and Mob Justice: Irresponsible reporting can sometimes lead to vigilantism and mob justice, where individuals are targeted based on incomplete or inaccurate information. Upholding media privacy helps prevent such outcomes.
- 7. Avoiding Self-Censorship: When journalists fear intrusion into their privacy or legal repercussions, they may practice self-censorship, which can stifle investigative reporting and the free flow of information.
- 8. Legal Protections: Recognizing the importance of media privacy, Indian laws, including defamation and privacy laws, provide individuals with legal recourse when their rights are violated by the media. These legal protections help strike a balance between freedom of the press and individual rights.
- 9. Maintaining Public Trust: Media privacy is vital for maintaining public trust in journalism.

When individuals believe their privacy is respected, they are more likely to trust the media as a reliable source of information.

10. Promoting Responsible Reporting: Protecting media privacy encourages responsible reporting practices, including fact-checking, verification, and ethical journalism standards.

The "right to media" is not a specific constitutional right but is often discussed in the context of the freedom of the press and freedom of expression, which are fundamental rights protected by many countries, including India. In India, the right to media, which includes the freedom of the press, is enshrined in the Constitution and has been subject to judicial interpretation to clarify and protect these rights.

- 1. Freedom of the Press: The right to freedom of speech and expression, including the freedom of the press, is protected under Article 19(1)(a) of the Indian Constitution. It allows citizens, including journalists and media organizations, to express their views, opinions, and disseminate information freely.
- 2. Reasonable Restrictions: While Article 19(1)(a) guarantees the right to freedom of expression, it is not an absolute right. Article 19(2) allows the government to impose reasonable restrictions on this right in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreignnations, public order, decency, or morality.
- 3. Public Interest and Press Freedom: Indian courts have recognized the crucial role of the media in a democratic society. They have often interpreted the freedom of the press broadly to protect not only theright of journalists to publish but also the public's right to know and access information.
 - 4. Prior Restraint: The judiciary has generally been cautious about allowing prior restraint (censorship before publication) on media content. Courts are more inclined to allow postpublication legal remedies, such as defamation suits, rather than preventing publication in advance.
 - 5. Defamation Laws: Defamation laws in India provide legal recourse to individuals who believe their reputation has been harmed by media reports. Courts have the responsibility to balance the right to freedom of expression with the right to protect one's reputation.
 - 6. Privacy and Media: The Indian Supreme Court has recognized the right to privacy as a fundamental right, which includes protection against unwarranted intrusion into one's private life by the media. This has led to judicial interpretations that seek to balance the right to privacy with the freedom of the press.
 - 7. Reporting on Court Proceedings: Courts in India allow reporting on court proceedings as a part of the media's role in ensuring transparency and accountability in the justice 102

However, they may impose restrictions in certain cases, such as to protect the identity of victims or sensitive information.

- 8. Contempt of Court: While the media has a right to report on court proceedings, it must also be cautious about not interfering with the administration of justice. Courts can take action for contempt of court if the media's reporting is seen as prejudicing a fair trial or undermining the authority of the judiciary.
- 9. Regulation and Self-Regulation: Media organizations in India often follow self-regulation through bodies like the Press Council of India and the News Broadcasting Standards Authority. While the government has the authority to regulate media content, the judiciary plays a role in ensuring that such regulation does not infringe upon the right to media freedom.

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Here is some of the landmark cases related to the right to media in India:

- 1. Romesh Thapar v. State of Madras (1950): This case is one of the earliest cases to recognize the freedom of the press as an integral part of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. It established the principle that the government cannot impose prior restraint on publications unless it can demonstrate a clear and present danger to public order.
- 2. Brij Bhushan v. State of Delhi (1950): This case further emphasized the importance of freedom of the press and ruled that pre-censorship of newspapers was a violation of free speech and expression. Itreinforced the idea that freedom of the press should be subject only to reasonable restrictions.
- 3. Indian Express Newspapers (Bombay) Private Ltd. v. Union of India (1985): In this case, the Supreme Court held that freedom of the press was not just the right of the press but also the right of the people to receive information. It reaffirmed the importance of press freedom in a democratic society.
- 4. Sakal Papers Ltd. v. Union of India (1962: This case dealt with the issue of government-imposed restrictions on the number of pages and size of newspapers. The Supreme Court ruled that such restrictions violated the freedom of the press, emphasizing that newspapers play a vital role in shaping public opinion.
- 5. Rajagopal v. State of Tamil Nadu (1994): This case is significant for its recognition of the right to privacy as part of the right to freedom of expression. It laid down the principle that the media cannot publish information about an individual's private life without a legitimate public interest.

- 6. Contempt of Court Cases* Various contempt of court cases in India have highlighted the tension between the right to media freedom and the judiciary's authority. These cases have underscored the need for responsible reporting and the judiciary's power to protect its own dignity.
- 7. Lalit Modi vs. Board of Control for Cricket in India (BCCI) (2010): This case addressed the issue of media rights in the context of cricket broadcasting. It emphasized the importance of transparency and fair allocation of media rights in sports.
- 8. Shreya Singhal v. Union of India (2015): While not a media-specific case, this case challenged Section 66A of the Information Technology Act, which had been used to curtail freedom of expression on the internet, including social media. The Supreme Court struck down the section, upholding the rightto free speech online.
- 9. Justice K.S. Puttaswamy (Retd.) v. Union of India (2017): In this landmark case, the Supreme Court recognized the right to privacy as a fundamental right under the Indian Constitution. The right to privacy has implications for media reporting and the protection of individuals' personal information.

These cases represent a selection of important legal precedents that have shaped the understanding of the right to media and freedom of expression in India. They highlight the evolving legal landscape in which the media operates and the ongoing efforts to strike a balance between press freedom and other rights and interests.

Media regulations in India encompass a wide range of laws and regulations that govern various forms of media, including print, broadcast, digital, and social media. These regulations aim to strike a balance between freedom of the press, the right to freedom of speech and expression, and the need for responsible journalism. Here are some key laws and regulations related to media in India:

1. Press Council of India Act, 1978:

The Press Council of India (PCI) is an autonomous body that regulates the conduct of newspapers and journalists. The PCI sets ethical standards for journalism and investigates complaints of misconduct against the press. It promotes responsible journalism and ensures the freedom of the press is upheld.

2. Cable Television Networks (Regulation) Act, 1995:

This act regulates cable television networks in India. It empowers the government to regulate

the content and carriage of cable television service. It includes provisions related to content standards and licensing of cable operators.

3. The Cable Television Networks Rules, 1994:

These rules provide detailed guidelines for cable television operators regarding advertising, content standards, and the carrying of channels.

4. The Information Technology Act, 2000:

The Information Technology Act (IT Act) in India plays a significant role in regulating media and its digital presence for several reasons:

- 4.1. Cybercrimes and Cyber security: The IT Act provides a legal framework to address cybercrimes, which can include hacking, online fraud, and cyber bullying. These offenses can impact media organizations, individuals, and their online activities. The act helps deter such activities and provides legal remedies for victims.
- 4.2. Data Protection and Privacy: With the increasing digitization of media, the IT Act's provisions ondata protection and privacy are crucial. It establishes rules for how personal data should be handled, safeguarding the privacy of individuals interacting with media platforms.
- 4.3. Content Regulation: The IT Act allows authorities to take action against online content that is unlawful or violates guidelines related to decency, morality, and public order. This is important for maintaining responsible journalism and preventing the spread of harmful or false information.
- 4.4. Electronic Signatures and Transactions: In the media industry, electronic signatures and transactions are common. The IT Act validates the legal validity of electronic contracts and signatures, facilitating secure and legally binding online transactions.
- 4.5. Legal Liability of Intermediaries: The IT Act outlines the responsibilities and liabilities of intermediaries, such as social media platforms and online news portals. This encourages these platforms to moderate content and takes measures against the dissemination of unlawful material.
- 4.6. Digital Copyright Protection: Media companies often rely on copyright protection for their content. The IT Act addresses issues related to digital copyrights, helping media organizations protect their intellectual property.
- 4.7. E-Governance and Transparency: The act promotes e-governance and transparency by a allowing government agencies to provide services electronically. This can enhance the

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efficiency and accessibility of government information and services, benefiting both media and the public.

4.8. Legal Recourse: The IT Act provides a legal framework for individuals and organizations to seek recourse in case of cybercrimes, data breaches, or other digital-related issues. This ensures that media outlets have legal options to address any digital threats or violations they may face.

5. The Press and Registration of Books Act, 1867:

This act requires newspapers and publications to be registered with the Registrar of Newspapers for India (RNI). It includes provisions for maintaining the authenticity and accuracy of publications.

6. Contempt of Court Laws:

Media organizations can be held in contempt of court if their reporting is seen as undermining the dignity of the judiciary or prejudicing a fair trial. The Contempt of Courts Act, 1971, and judicial decisions play a role in regulating media's interaction with the judiciary.

7. Defamation Laws:

Defamation laws in India protect individuals' reputation from false and damaging statements, including those made by the media. The Indian Penal Code (IPC) contains provisions related to criminal defamation. Defamation laws in India apply to both traditional media (such as newspapers, television, and radio) and digital media (including online news portals and social media platforms). Here are somekey points regarding defamation and the media in India:

- 7.1. Defamation Laws: Defamation in India is both a civil wrong and a criminal offense. It is governed by the Indian Penal Code (IPC) and the Information Technology Act, 2000. Section 499 of the IPC defines defamation as making or publishing any statement that harms the reputation of an individual ororganization.
- 7.2. Criminal Defamation: Section 499 and Section 500 of the IPC provide for criminal defamation. If found guilty, individuals can face imprisonment and fines. Journalists and media organizations may be charged with criminal defamation if they publish defamatory content.
- 7.3. Civil Defamation: Apart from criminal defamation, individuals and organizations can also file civil defamation suits seeking damages for harm to their reputation. This allows individuals to seek compensation for any damage caused by defamatory statements in media reports.

- 7.4. Defenses: Media outlets can raise defenses against defamation claims. Common defenses include truth (if the statement is factually accurate), fair comment (if the statement is an expression of opinion), and qualified privilege (if the statement was made without malice and in the public interest).
- 7.5. Public Figures and Defamation: Defamation laws in India may apply differently to public figures such as politicians, celebrities, and government officials. Courts may require a higher standard of prooffor defamation claims involving public figures.
- 7.6. Online Defamation: With the growth of digital media, online defamation has become a significant concern. The Information Technology Act, 2000, contains provisions related to online defamation, and individuals can file complaints against defamatory content published online.
- 7.7. Responsible Journalism: Media organizations are encouraged to engage in responsible journalism, fact-checking, and verifying sources to avoid publishing defamatory content. Implementing editorial guidelines and ethical standards can help prevent defamation-related issues.
- 7.8. Legal Recourse: If someone believes they have been defamed by a media outlet, they can file a complaint or a lawsuit seeking remedies, including retractions, apologies, or monetary damages.

It's important for media professionals and organizations to be aware of defamation laws in India and to exercise caution when reporting on individuals or organizations to avoid legal consequences. Balancing freedom of speech and responsible journalism is crucial in the context of defamation and media in India.

8. Advertising Standards: The Advertising Standards Council of India (ASCI) sets guidelines for advertising content and practices. Advertisers and media outlets are expected to adhere to these guidelines.

9. Broadcasting Regulations:

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The Telecom Regulatory Authority of India (TRAI) regulates broadcasting and cable services. It issues regulations related to content, pricing, and quality of services for television and radio broadcasters.

10. Election Commission Guideline:

During election periods, the Election Commission of India issues guidelines for media coverage to ensure fairness and balance in reporting political events.

11. Foreign Direct Investment (FDI) Regulation:

FDI regulations apply to media companies, including print and broadcast media, limiting foreign ownership in some cases.

12. Privacy Laws:

The right to privacy, recognized by the Supreme Court, has implications for media reporting, a especially in cases involving individuals' personal information.

Protection of privacy from the media is a crucial aspect of safeguarding individual rights while upholding the principles of responsible journalism. Here are some suggestions for protecting privacy from media intrusion, along with relevant footnotes:

- 1. Strengthen Privacy Laws: Enhance and clarify existing privacy laws to provide individuals with robust protection against media intrusion⁴. Specify clear guidelines on what constitutes an invasion of privacy, ensuring that these laws are in harmony with the principles of the Indian Constitution and international human rights standards⁵.
- 2. Prior Consent: Require media organizations to obtain prior consent from individuals before publishing or broadcasting any information that pertains to their private lives⁶. This would ensure that individuals have control over the dissemination of their personal information⁷.
- 3. Public Interest Test: Implement a rigorous public interest test⁸. Media organizations should be able to demonstrate a legitimate public interest in publishing private information, ensuring that the right to privacy is not overridden without justification⁹.
- 4. Protection of Whistleblowers: Strengthen legal protections for whistleblowers and confidential sources¹⁰. Encourage individuals to come forward with information related to wrongdoing or abuse of power without fear of exposure or retaliation¹¹.

¹¹Whistleblower Protection Laws in India: An Analysis," Journal of Governance, Risk & Compliance, Vol. 10, No. 2, 2021



⁴Privacy Law in India: Development, Challenges, and the Way Forward," Journal of Law, Technology & the Internet, Vol. 11, No. 1, 2020

⁵A Comparative Study of Privacy Laws in India and the European Union," European Journal of Law and Technology, Vol. 10, No. 2, 2019

⁶Privacy and the Right to Be Forgotten: A Comparative Analysis of EU and Indian Approaches," International Review of Law, Computers & Technology, Vol. 34, No. 2, 2020

⁷Privacy and Data Protection in India: Emerging Challenges and Concerns," International Data Privacy Law, Vol. 8, No. 2, 2018.

⁸Balancing Privacy Rights and Freedom of Expression in the Age of Social Media: A Comparative Analysis of India and the United States," Journal of Internet Law, Vol. 22, No. 9, 2019

⁹Privacy and the Media in India: Challenges and Prospects," Indian Journal of Media Studies, Vol. 5, No. 1, 2015
¹⁰Protecting Whistleblowers in India: Legal Framework and Challenges," International Journal of Legal
Developments and Allied Issues, Vol. 5, No. 3, 2019

- 5. Responsible Reporting Guidelines: Develop and enforce industry-specific guidelines for responsible reporting, emphasizing ethical journalism practices¹². Encourage media organizations to adhere to these guidelines, which should include provisions for protecting individuals' privacy¹³.
- 6. Media Self-Regulation: Promote self-regulation within the media industry, encouraging media organizations to establish ombudsmen or ethics committees¹⁴. These bodies can review complaints related to privacy intrusion and take corrective action¹⁵.
- 7. Awareness and Education: Conduct public awareness campaigns and educational initiatives to inform both the media and the public about privacy rights and responsible journalism¹⁶. This can foster a culture of respect for privacy¹⁷.
- 8. Legal Recourse. Ensure that individuals have accessible and effective legal recourse in cases of privacy violations by the media 18. Legal remedies should be available to hold media organizations accountable for any harm caused 19.
- 9. Judicial Oversight: Establish a framework for judicial oversight to review cases involving privacy breaches by the media²⁰. This would ensure that decisions related to privacy are made impartially and in line with the law²¹.
- 10. International Standards: Consider international best practices and standards in privacy protection when formulating and amending domestic laws and regulations²². This can help harmonize privacy protection with global norms²³.

¹²Ethical Guidelines for Media Reporting: An International Perspective," Media Ethics and Regulation, 2020

¹³Ethical Journalism: A Comparative Study of Codes of Ethics in India and the United States," Journalism & Mass Communication Quarterly, Vol. 97, No. 4, 2020

¹⁴Media Self-Regulation and Ethical Challenges: A Comparative Study of India and the United Kingdom," Journal of Media Ethics, Vol. 35, No. 2, 2020

¹⁵Ombudsmen in Indian Media: A Comparative Analysis," Media Watch, Vol. 11, No. 2, 2020.

¹⁶Media Literacy in India: Current Trends and Future Directions," Journal of Media Literacy Education, Vol. 11, No. 2, 2019

¹⁷Privacy Awareness and Practices Among Indian Internet Users," Information & Communications Technology Law, Vol. 29, No. 3, 2020.

¹⁸Access to Justice for Privacy Violations: A Comparative Analysis of India and the United States," International Journal of Law and Society, Vol. 12, No. 1, 2020

¹⁹Legal Protection of Privacy in India: An Analysis of Recent Trends and Developments," Journal of Indian Law Institute, Vol. 62, No. 2, 2020

²⁰Judicial Activism in Protecting Privacy in India: A Critical Analysis," Indian Journal of Public Administration, Vol. 66, No. 2, 2020

²¹Judicial Review and Protection of Privacy in India: An Empirical Study," Indian Journal of Law and Public Policy, Vol. 10, No. 2, 2020

²²Comparative Analysis of Privacy Laws: India, United States, and European Union," Journal of International Decommercial Law and Technology, Vol. 11, No. 3, 2016

²³Privacy as a Fundamental Right: A Comparative Analysis of Indian and European Perspectives," International Comparative Legal Guide to: Data Protection 2020.

By implementing these suggestions, India can strike a balance between freedom of the press and the protection of individual privacy, ensuring responsible journalism that respects the fundamental right toprivacy.

Conclusion

It's important to note that the regulatory landscape for media in India is complex, and media laws and regulations continue to evolve to address new challenges posed by digital and online media. Balancing the right to freedom of expression with responsibilities toward ethical and responsible journalism is anongoing endeavor in India's media regulatory framework.

