
ETHICAL JOURNALISM VIS-À-VIS THE RIGHT TO PRIVACY

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ABSTRACT

With the advent of the digital revolution and increased technological warfare, the world has transformed into a global village. This has led to the abundant use of social and digital media platforms. However, the rising usage of digital media is accompanied by worries about privacy and ethics. These privacy concerns can have serious professional, personal, and security consequences. Individual privacy safeguards in this domain are lacking, resulting in unethical and unpleasant actions that result in privacy and security breaches, particularly for the most vulnerable users. In the last decade, news has become extensively marketed, and it is frequently laced with political fiction when presented during prime time on television. Crucial information vis-à-vis WhatsApp chats and sensitive personal information is being shared on public platforms by the investigating agencies, which affects an individual's privacy. The fact that such sensualisation is made to increasingly captivate viewership, the endeavour to keep such viewers interested has led to abuse and invasion of privacy. The essential values of journalism are in jeopardy as doctored disputes, rather than facts, take centre stage on news platforms. The news used to offer facts, but that model has changed to the point where news is supplied to average viewers to fabricate or alter their opinions and discard their rationality. This is similar to waterboarding specific material, where the viewer's impartiality is steadily suffocated as they succumb to the narrative of the material they are presented. Such tampered arguments, dishonest reporting, and highly sensualized versions of news represent a serious threat to Indian democracy.

Keywords: Privacy, Digital, Media, Ethics, Values

INTRODUCTION

The choices and effects of global and local stakeholders in a highly dynamic ecological system shape the world today. The repercussions, so to speak, are frequently ensnared in the shape of political ideologies and agendas, all with the goal of establishing a favourable vantage point for society's powerful strata. News, or rather the disclosure of facts, plays a critical function in the picture since it serves as a medium for dictating public opinion and a tool for monitoring society as a whole with its various components, big and small, global and local. The evolution of societies into *Laissez-Faire* States has emanated greater discussions upon life, rights and liberties which demand a unilateral acceptance as well as adherence of any established institution entrusted with public awareness through the broadcasting of “the News”.

Yet one might observe, the idealism of news especially in its deliverance, has in time lost its previously glorified sanctity and accountability through the last decade. This trend goes beyond the local perception of news through a very global trend. To a context-specific to India, which had a very liberal approach towards media narratives has witnessed a rising rate of transformation towards more radical narratives. This change is more differentiable in broadcasted (mainstream television) media than the printed media.

Journalism as a study exists to govern the various facets and ethical dilemmas that so exist in the due course, from generation till the broadcasting of events to the general public. It prioritizes accountability, factual correspondence and above all general public discretion, which in fact are the key factors that ideally should govern the news broadcasting, as an ideal tool to facilitate democracy. While the medium of news exists as a tool; as any tool in existence it is more often than not, utilised in contravention to its true purpose. The study of Journalism thus exists to ensure integrity and uphold the Public benefit at large.

Media houses today on television can be seen adhering to case sensitive and politically motivated talks which often strike at the very core aspects of individual privacy and autonomy. A tool for democracy has now become an all too convenient whip, for the political ringmasters in a Circus of various political, social and emotional stunts without having an ounce of consideration on the impact of such personal information being shared on the public domain. Right to privacy has undergone tremendous conceptual change ranging from a right to be left alone to being branched out as a multi-faceted right which included spatial, decisional, bodily and informational privacy. This is indeed unbecoming to the true spirit of democracy where

the right to know has to be balanced out with the intrinsic right to privacy of an individual, as idealized by the freedom fighters in relation to the spirit of constitutionalism as entrusted to us by our constitution-makers. The rampant diversion from facts and inclusion of theatrics in the delivery of news has contributed to an increasing toxic trend of sensationalization of news. Material facts are often disregarded while primetime shows feature repressive political debates between “experts” on material issues which often result into chaos as the participants fail to maintain decorum and often resort to profanity and disparagement. The hosts can be seen fuelling such deviation from discourse as targeted acts for manipulating the viewer opinions. Thus, the problem subsists first and foremost, as an ethical and moral conundrum.

FREEDOM OF PRESS AND CONSTITUTIONAL RAMIFICATIONS:

Article 19 (1)(a) of the Constitution recognizes the fundamental right to speech and expression which confides within itself the right to know. Freedom of expression has four broad special purposes to serve, inter alia, helps individual to attain self-fulfilment, assists in the discovery of truth, its strengthens the capacity of an individual in participating in decision-making and provides a reasonable balance between stability and social change.

The Supreme Court of India has categorically recognised this right through various judicial pronouncements. The progress of the right to information began with press pleas seeking enforcement of the right to freedom of speech and expression, such as questioning governmental orders for newsprint control, bans on paper distribution, and so on. The concept of the public's right to know evolved as a result of these cases.

Freedom of press and expression is indispensable in a democracy. Justice Patanjali Sastri in the landmark judgment of *Romesh Thappar v. State of Madras*¹ observed that “*Freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education for the proper functioning of the process of popular government, is possible*”.

The landmark case on freedom of the press in India was *Bennett Coleman and Co. v. Union of India*,² the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art. 19 (1) (a). In *Indian Express Newspapers (Bombay) Pvt. Ltd. vs India* where the court remarked, “*The basic purpose of freedom of speech and*

¹ AIR 1950 SC 124

² AIR 1973 SC 106

expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know."

In *Prabhu Dutt v. Union of India*³ the Supreme Court observed that the right to know news and information regarding administration of the government is included in the right to freedom of press. But this right is not absolute and restrictions be imposed on it in the interest of the society and the individual from which the press obtains the information.

At this juncture, the dissenting opinion of Justice Fazl Ali in the case of *A.K. Gopalan* becomes crucial wherein he reflected on the fact that fundamental rights are not isolated silos, i.e. they cannot exist in isolation of each other. This further means that fundamental rights are interdependent on each other and for the satisfaction of one right the restrictions of other rights can also apply. Article 19 (1)(a) is closely related to Article 21, i.e. the right to life. Right to life is intrinsic to the existence of any other right under Part III.

On this note, the right to information entailed under freedom of speech and expression (Article 19(1)(a)) on one hand, and right to privacy entailed under right to life (Article 21) on the other hand, have to be balanced against each other. The Right to Information Act, 2005 aims to ensure that no one puts on a facade of safety or privacy with the intention to protect himself against the disclosure of data which can be mandated through RTI.

In instances wherein there may be a dispute concerning whether or not the data needs to be protected under Section 8(1)(j) of the Right to Information Act, 2005 or not, the applicant will have to satisfy the Public Information Officer that the data is for public interest and its disclosure will benefit the public as a whole. However, the extent of such disclosure of personal information under the above section is unclear.

In the landmark judge's asset case, *CPIO, Supreme Court of India v. Subhash Chandra Agarwal*,⁴ the court recognised "*the tension between the right to information and the right to privacy, especially, with respect to public persons*". The case arose from an application filed by a citizen who was seeking information under the RTI Act on whether judges of high courts and Supreme Court were filing asset declarations in accordance with full resolution of the Supreme Court.

³ AIR 1982 SC 6

⁴ W.P. (C) 288/2009

The court held that information concerning private individuals held by public authority falls within the ambit of the RTI Act. It remarked that whereas public persons are entitled to privacy like private persons, the privacy afforded to private individuals is greater than that afforded to those in public authority, especially in certain circumstances.

The observations are as follows,

“A private citizen's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes — public servants and private individuals, is to be viewed from this perspective. The nature of restriction on the right to privacy is therefore, of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake.”

A right to information renders citizens access to information about the functioning of the state and the right to privacy provides citizens the control over their personal information. They collectively endeavour to establish the balance between the citizen and the state which in turn becomes quintessential for good governance. The principle of indivisibility of fundamental rights requires that both rights carry equal weight. Neither one can trump over another. In the case of *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*⁵, it was observed that the public interest must be considered while balancing the right to privacy and right to information with the purpose and the nexus principles.

PRIVACY PRINCIPLES AND MEDIA

The right to privacy is regarded as the most sacred right in the twenty-first century, and it is concerned with the dignity and liberty of individuals. Privacy can be defined as a spatial concept in which there is the least amount of interference from the outside world and the person is left alone in his personal space with absolute autonomy in terms of body and property. The importance of privacy in a welfare state can be seen from two perspectives: the first is with regard to “State Conduct,” and the second is with regard to protecting citizens' civil rights in circumstances where the state exceeds its lawmaking power for public good. At this outset,

⁵ (2012) 13 SCC 61

achieving harmony out of the constant struggle for balancing the right of the individual with that of the right of the state, seems distant.

The coherence of privacy as a concept traces its legendary evolution through philosophical connotations which pondered upon as to what exactly is involved in privacy in order to define and defend it. These labors were necessary in order to comprehend the content that should be understood to inhere in that concept. Initially, the idea of “privacy” was loosely construed as there was an absence of multiple dimensions attached to the very notion. Tracing the historical perspectives of privacy would conceptualize to the effect that the individuals to have full protection over their person and property. The common law granted remedy vis-à-vis physical interference with life and property. This goes on to mean that the property of the individual will be secured in his lands and his castle, thus avoiding official intrusions, for example trespass, defamation, unreasonable search and seizure, etc. With the advent of growth of civil societies, revolutions in respect of social contract, the need for qualified protection of these “so-called” rights were felt, which resulted into men and women demanding and securing these rights and liberties.

Owing to the massive breakthrough of technology, tussle for absolute power, easy availability and accessibility of information, employing defensive and protection mechanisms, rapid development of digital media, the essence of individual intimate security vis-à-vis free and independent speech, easy accessibility and availability of information, privacy as a concept and also as a matter of right has been jeopardized.

The nature and scope of privacy has been broadened and transformed from a singular subject matter encompassing only person and property, to a pluralistic interpretation which now includes various dimensions of privacy as a right. The timeline tracing down the rudimentary level of privacy, ranges from mere bodily protection to censoring of sensitive personal information about self. Information is power, the more precise information about the person, higher is the level of surveillance and control. In the wake of internet and advancement of technological warfare, there is a constant tussle between what a person is willing to share when he/she has nothing to hide, and his/her personal data sovereignty.

Post the historic pronouncement of K.S. Puttaswamy, right to privacy has been explicitly declared to be a part of fundamental right under Article 21. Being an inalienable right, privacy is equated to natural right which existed way before being declared as a fundamental right.

Privacy included the realm of protection of medical as well as informational data, sensitive to human personality. Hinting upon the positive and negative connotations of privacy, the 9 judge bench in the Puttaswamy judgement, eloquently emphasised on the security and protection of data vis-à-vis the procedure/methodology of collection, consent issues (voluntary and not mere colourably), purpose limitation, access information, duration for storage, disclosure, security, openness, and accountability. The deliberation of the bench highlighted the need for a robust data protection regime for effective protection of data, covering various dimensions of privacy infringement, including informational privacy.

In 2010, the media reported that Sunanda Pushkar, a close friend of the Minister of State for External Affairs, Shashi Tharoor, holds a significant holding in the IPL Kochi team. The media exposure led to the exit of Shashi Tharoor from the government. While the media's questioning of Pushkar's holdings was legitimate, the media's reporting on her past relationships and how she dressed had no bearing on public interest or accountability.⁶ The media accused Pushkar of playing proxy for Tharoor in the Rs. 70 crore sweat equity deal. Much of the media attention focussed on her personal life, as opposed to, how she attained such a large stake in the IPL Kochi team. It minutely analysed her successes and failures, questioned her ability and accused her of having unbridled ambition and greed for money and power.⁷

If one was to consider the rules of privacy set by the court in the judges assets' case much of the personal information published by the media on Tharoor and Pushkar, failed to shed light on the IPL holdings or the establishment of the nexus between the IPL holdings and the government involvement.

The media can use the tests established by the court in determining whether personal information about a public authority may be shared under the RTI Act while reporting on public officials. If personal information divulged by the media does not shed light on the performance of a public official, which would be of public interest, then the information revealed violates the standards of privacy. Personal details which have no bearing on public resources or interests should not be published.

⁶ PTI, Media just turned me into a 'slut' in IPL row: Sunanda Pushkar, 23/04/2010 Available at http://articles.timesofindia.indiatimes.com/2010-04-23/india/28149154_1_sunanda-pushkar-shashi-tharoor-ipl-kochi [Last accessed 12/05/2021].

⁷ Vrinda Gopinath, "Got A Girl, Named Sue", 26/04/2010 Available at <http://www.outlookindia.com/article.aspx?265098> [Last accessed 12/05/2021]

The media coverage of the Bombay terror attacks displayed the same lack of restraint, where the minutest details of a person's last communication with his/her family were repeatedly printed in the media. None of the information presented by the media revealed anything new about the terror attack or emphasised the gravity of the attack.

Section 228A of the Indian Penal Code makes disclosure of the identity of a rape victim punishable. In the recent Aarushi Talwar murder case and the rape of an international student studying at the Tata Institute of Social Sciences (TISS) the media frenzy compromised the privacy of the TISS victim and besmirched the character of the dead person.⁸ In the TISS case, the media did not reveal the name of the girl, but revealed the name of the university and the course she was pursuing, which is in violation of the PCI norms. In addition to revealing names of individuals, the PCI norms expressly states that visual representation in moments of personal grief should be avoided. In the Aarushi murder case, the media repeatedly violated this norm.

In the TRP scam that followed the leak of whatsapp chats between Republic TV's Arnab Goswami and ex- Broadcasting and Research Council (BARC) CEO Partho Dasgupta, the media played a significant role in furnishing and broadcasting the entire 500 page chat on television without even a slightest consideration to the privacy of the both the individuals. With complete disregard to the Bombay High Court's final verdict which revolved around the fact that the chats were a friendly banter between two persons, nevertheless, the manner in which such chats were constantly shown on television and particular messages being highlighted, says a lot about the deliberate attempt to infringe the privacy principles on both the individuals.

ETHICS AND MEDIA

The media is considered to be a two side's weapon. An accountable media can lift the nation to heights by providing a sturdy support for its development and an unaccountable media can causes disarray in the society.

The Press Council of India (PCI) functions as a statutory and quasi-judicial body, was established by an Act of Parliament. It functions as a "watchdog of the press, for the press and

⁸ Kumar, Vinod, "Raped American student's drink not spiked in our bar," 16.04.09 Available at <http://www.mid-day.com/news/2009/apr/160409-Mumbai-News-Raped-American-student-date-drug-CafeXO-Tata-Institute-of-Social-Sciences.htm>, Anon, "Party pics boomerangon TISS rape victim" , 04 .05.09, Available at <http://www.mumbaimirror.com/index.aspx?page=article&id=15&contentid=2009050420090504031227495d8b4e80f> [Last Accessed April 20,2011].

by the press". Unless it is required to safeguard a journalist in a legal action or for "other compelling reasons," the PCI standards provide that the press should not tape-record chats without the person's express agreement or awareness. The journalist is free to decide what makes a compelling reason.

News Broadcasting Standard Authority (NBSA) is a self-governing, non-governmental body, it oversees the news channels. It has issued a "*Code of Ethics and Broadcasting Standards*" for its member news channels who had voluntarily pledged to follow it. It receives complaints of violation of technical norms against member TV news channels and decides after hearing all the sides.

In addition, to the above Act, the News Broadcasting Standard Authority (NBSA) was set up in 2008 as a self-regulatory body by News Broadcasters Association. The primary objective of the NBSA is to receive complaints on broadcasts. The NBSA has drafted a Code of Ethics and Broadcasting Standards governing broadcasters and television journalists. The Code of Ethics⁹ provides guiding principles relating to privacy and sting operations that broadcasters should follow.

With respect to privacy, the Code directs channels not to intrude into the private lives of individuals unless there is a "clearly established larger and identifiable public interest for such a broadcast." Any information on the private lives of persons should be "*warranted in public interest.*"

Similarly, for sting operations, the Code directs that they should be used as "a last resort" by news channels and should be guided by larger public interest. They should be used to gather conclusive evidence of criminality and should not edit/alter visuals to misrepresent truth.

CONCLUSION

With India being a nation that pre-dominantly upholds the fundamental rights of its citizens, vis-à-vis right to privacy, right to information and right to broadcast, there exists reasonable restrictions on the exercise of those rights concerning security, integrity, national policy, etc. The Indian Constitution provides all citizens the right to free expression, which our Supreme Court has generously read to include not just the freedom of the press, but also the right of the

⁹http://www.nbanewdelhi.com/assets/uploads/pdf/1_CODE_OF_ETHICS_BROADCASTING_STANDARDS_1_4_081.pdf

citizen to be educated about topics of public importance and concern. The fourth pillar of democracy, the media, is also known as the defender of the constitution and the promoter of harmony in society. With the advent of electronic media, the dissemination of news and vital information can be exchanged to the people at large and proper dissemination has the ultimate power to influence minds and provide relevant outlook towards a particular subject matter. With the interference of the media within the personal spheres of the people, it has become important to draw the line and set boundaries considering the extent of such intrusion. Several attempts have been made by the law makers to make these news channels adhere to ethical journalism consisting of standards inter alia impartiality and objectivity in reporting, ensuring neutrality, reporting crimes so as to not glorify them, depiction of violence against children, etc. . However, while drawing the balance between both the above mentioned rights, it shall be kept in mid that none of the rights are being compromised. The primary premise followed by news outlets is that intrusion into private places, records, transcripts, telephone conversations, and any other material will only be done when necessary in the public interest. Further, the term “public interest” is of a wider connotation and is subjective in nature. The Code of ethics formulated by NSBA provides that the defence of the concept of privacy, cannot be misunderstood as a restriction of access, and this extends to everyone, including popular figures and celebrities. Therefore, careful scrutiny has to be made before such broadcast considering the moral values and ethics involved therein.