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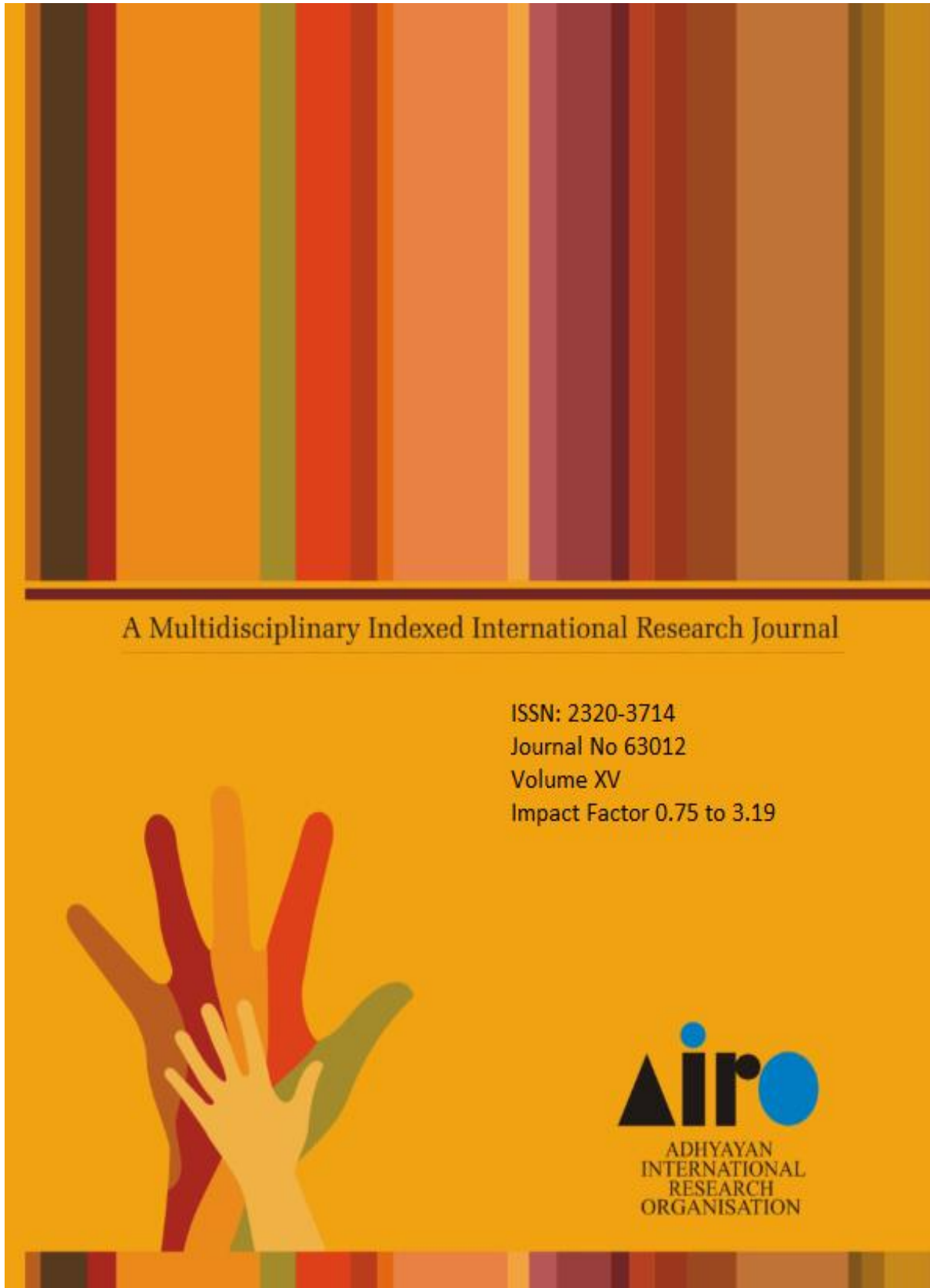
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## **MEDIA, PRIVACY AND DEFAMATION IN INDIA**

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Media, the mirror of the modern world, revolutionised the 21<sup>st</sup> century. Each and every information is at our finger tips by the touch of an icon on i- pad or i- phone. So in these technological rays, privacy is burning. The development of technological jurisprudence is the only solution for privacy protection.

Black's Law Dictionary defines privacy as "right to be let alone; the right of a person to be free from unwarranted publicity; and the right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned". Though it is true that the Indian Constitution does not explicitly guarantee this right as a fundamental right certainly the right to privacy or, the right to be left alone, should be accepted as an individual right. The courts' treatment of this right is a matter of paramount importance because of growing invasions of this right in areas that remained away from the purview of courts. Even the traditional media to modern media, privacy is under great threat in spite of all penal and statutory protection which is discussed below.

### **1. Privacy and International Covenants**

According to the United Nations Universal Declaration of Human Rights of 1948, "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation." The European Convention of Human Rights of 1950 provides that "[e]veryone has the right to respect for his private and family life, his home and his correspondence." Thus there appears to be worldwide consensus about the importance of privacy.<sup>1</sup>

Article 12: Universal Declaration of Human Rights (1948) : "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Art.8: European

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<sup>1</sup>Daniel J. Solove,(2008), Understanding Privacy , Harvard University Press  
Cambridge, Massachusetts London, England,P.3&4



Convention on Human Rights: "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 except such as is in accordance with 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 protection of health or morals or the protection of the rights and freedoms of others."

Article 12: Universal Declaration of Human Rights (1948) : "No one shall be subject to arbitrary or unlawful interference with the privacy, family and human or correspondence, nor to lawful on his honour or reputation, Everyone has the right against the protection of law against such interference or attacks.

## 2. Constitutional and Judicial protection of privacy in India

Article 21 of the Indian Constitution lay down that no person shall be deprived of his life or personal liberty except according to procedure established by law.

It is to be remembered that the press has no right to intrude into the private matters of an individual unless it is a matter of public interest and moreover not by a mere whim.<sup>2</sup>

In liberal democracy like India ,citizens have right to talk on telephone or send e-mail , watch television ,and surf the Internet without government interference .T he government have compelling reasons

, such as legitimate defence and national security consideration to monitor and intercept communications. One would necessarily assume that the basis for such an expectation rests on some conception on of a right to privacy for all persons. Surprisingly however, the constitutional basis for right to privacy in India is not clear.<sup>3</sup> Various Supreme Court decisions have contradicted each other on whether the constitution actually embodies a fundamental right to privacy. In 1954, the eight judge bench of Supreme Court held in *M.P.Sharma v Satish Chandra*<sup>4</sup>, that there was no right to privacy .This view was affirmed in *Kharak Singh v State of U.P.*<sup>5</sup> by a six judge Bench .Subsequently , however three –judge Bench in *Gobind v State of Madhya Pradesh*<sup>6</sup> ruled that a right to privacy might be located among the un-enumerated fundamental rights. Moreover, in a more recent decision, *R Rajagopal v State of Tamil Nadu*<sup>7</sup>, are a true reminiscence of the limits of freedom of press with respect to the right to privacy. "A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. No one can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position

<sup>2</sup> See Art 21 of Indian Constitution.

<sup>3</sup> .Vikram Raghav, (2007), Communication Law in India, Lexis Nexis, Butterworth ,Wadhwa, p.136.

<sup>4</sup> AIR 1954 SC 300.

<sup>5</sup> .AIR 1963 SC 1295.

<sup>6</sup> .AIR 1975 SC 1378.

<sup>7</sup> AIR 1995 SC 264.

may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.”

.In *R M Malkani v State of Maharashtra*<sup>8</sup>, the telephone conversation was tapped by the police authorities which lead to the conviction of the accused as it was the violation of his right to privacy. The Supreme Court declined this argument, but emphasised the importance of protecting citizen’s telephone conversations<sup>9</sup>. In *People Union for Civil Liberties v Union Of India*<sup>10</sup> Supreme court frowned upon the practice of u authorised telephone tapping, which it declared infringed on right to privacy in telephonic conversations. The court formulated guidelines for the government to adopt if wanted or to monitor or intercept telephonic conversation in future. These guidelines were incorporated in the Telegraph Rules.<sup>11</sup>

### 3. Privacy protection under Penal Statute in India-

Defamation is the communication of a false statement that harms the reputation of an individual person, business, product, group, government, religion, or nation.<sup>12</sup> Under common law, to constitute defamation, a claim must generally be false and have been made to someone

<sup>8</sup> AIR 1973 SC 157.

<sup>9</sup> Ibid, at paragraph 35.

<sup>10</sup> AIR 1997 SC 568.

<sup>11</sup> . Vikram Raghava, 2007, Communication Law in India, Lexis Nexis, Butterworth, Wadhwa, p.137.

<sup>12</sup> LeRoy Miller, Roger (2011). Business Law Today: The Essentials. United States: South-Western Cengage Learning. p. 127.



other than the person defamed.<sup>13</sup> Some common jurisdictions also distinguish between spoken defamation, called slander, and defamation in other media such as printed words or images, called libel.<sup>14</sup>

Defamation is an exception to the right to freedom of speech and expression<sup>15</sup> in the Constitution. It is further elaborated in s.499 Of Indian Penal Code 1860. It states any speech, text or other visible representation made by a person, with the belief that such may explicitly or implicitly harm m the reputation of another person- constitutes defamation<sup>16</sup>.

<sup>13</sup> .Id at p.115.

<sup>14</sup> . Linda L. Edwards, J. Stanley Edwards, Patricia Kirtley Wells, *Tort Law for Legal Assistants*, Cengage Learning, 2008, p. 390.

<sup>15</sup> Art.19 (1)(a) of Indian Constitution.

<sup>16</sup> . 499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person. Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.—No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

S Jindal Steel and Power Ltd Jindal v The State<sup>17</sup> The law of defamation considered all citizens equally in this regard. Publishing houses were in no different position than that from an individual. Media was also subject to the same rules as were applicable to others and no special rights or privileges were granted to them under the law. Journalists rather had a greater responsibility to guard against false statements for the simple reason that their utterances had a far larger reach and impact than the utterance of an individual and they were more likely to be believed by ignorant people.

#### **4. Press Council of India and Right to Privacy<sup>18</sup>.**

The sixth norm of Journalistic conduct issued by the Press Council of India is Right to privacy. The Press shall not intrude or invade the privacy of individual, unless outweighed by a genuine public interest, not being prurient or morbid curiosity. So, however, that once a matter become matter of public record, the right to privacy no longer subsists and it legitimate subject. While reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published. Minor children and infants who are the offspring of sexual

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<sup>17</sup> Reported on 13 Nov 2014

<sup>18</sup> Refer 6<sup>th</sup> norm of Press Council of India



abuse or 'forcible marriage' or illicit sexual union shall not be identified or photographed.

#### **The Seventh norm of Press Council of India Act<sup>19</sup>**

Right to Privacy is an inviolable human right. However, the degree of privacy differs from person to person and from situation to situation. The public person who functions under public gaze as an emissary of the public cannot expect to be afforded the same degree of privacy as a private person. The interviews/articles or arguments pertaining to public persons which border on events that are in public knowledge, if reported correctly, cannot be termed as intrusion into private life. There is a very thin line between public and private life and public persons should not to be too thick skinned to criticism

The family of public figures are not valid journalistic subject, more so if its reporting covers the minors. If "public interest" overrides the minor's right to privacy it will be proper to seek prior consent of the parents.

When the individual concerned himself or herself reveals facts about private life before a large gathering then the shield of privacy should be deemed to be abandoned by the individual.

#### **Eighth norm of Press Council of India Act<sup>20</sup>**

The Press shall not tape-record anyone's conversation without that person's

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<sup>19</sup> .Refer norm 7 of Press Council of India.

<sup>20</sup> Refer norm 8 of Press Council of India

knowledge or consent, except where the recording is necessary to protect the journalist in a legal action, or for other compelling good reason. The Press shall, prior to publication, delete offensive epithets used during such conversation<sup>21</sup>. The PCI is statutorily empowered to take *suo motu* cognizance or entertain complaints against newspapers and journalists accused of violating standards of journalistic ethics or offending public taste and censure. It may summon witnesses and take evidence under oath, and issue warnings and admonish the newspaper, news agency, editor or journalist.

### 5. Privacy under Broadcasting Authority of India<sup>22</sup>

At present, the NBA has principles of self-regulation and a code of ethics. The regulations also provide for a complaint mechanism to the News Broadcasting Standards Authority (NBSA). Since the NBSA is not a statutory body, the scope of its regulation is limited as being restricted only to members. At present, the NBA has principles of self-regulation and a code of ethics. The regulations also provide for a complaint mechanism to the NBSA. More over the Broadcasting Authority of India Act contained detailed provision for regulating the licensing of programmes which are to be aired, with strict regard to privacy<sup>23</sup>. Even though it has all the powers if civil court in India, the scope of its regulation is limited as being restricted only to members.

<sup>21</sup> Press Council of India, Norms of Journalistic Conduct, Report 2010, pp 12-15.

<sup>22</sup> Refer Broadcasting Authority of India Act, 1995

<sup>23</sup> S. 6 to 10 Of Broadcasting India Authority Act



### 6. Privacy Protection under Contempt of Court Act 1965.

Media cross the demarcating line of control which resulted invasion on functions of other organs of democracy especially judiciary. Unfair and inaccurate reporting of pending cases adversely affects the criminal justice administration in India. The remedy against such an act is the S. 2 Of Contempt of Court Act 1972<sup>24</sup>.. The Contempt Of Court Act defines, contempt as both civil and criminal.. In *M.P. Lohia v. State of West Bengal*<sup>25</sup> the

<sup>24</sup>.S.2 of Contempt of Courts Act 1972 states that ) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalizes, or tends to scandalize, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

(d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

<sup>25</sup> (2005) 2 SCC 686

Supreme Court strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the Courts. *“No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.”*

Freedom of press has always been regarded as an essential pre-requisite of a democratic form of government. It is said that without freedom of press truth cannot be attained. The freedom of press is a part of freedom of speech and expression enshrined under Art 19(1)(a) of the constitution. The freedom of press is regarded as “the mother of all liberties” in a democratic society. Further the importance and necessity of having a free press in a democratic constitution like ours was immensely stressed in several judgements of supreme court.<sup>26</sup> The case of Indian express newspapers v Union of India<sup>27</sup> is one such judgement. Again in another case express Newspapers Pvt Ltd v Union of India<sup>28</sup> Justice A.P Sen.

<sup>26</sup> Rai Bahadur G.K Roy (2013) Revised by H.K Saharai, Law relating to press and seditious, Universal Law publishing, Newdelhi, p.22.

<sup>27</sup> AIR 1986 SC 515.

<sup>28</sup> AIR 1986 SC 872.



described the right to freedom of the Press as a pillar of individual liberty which has been unfailingly guarded by the courts.<sup>29</sup>

Among the varied class of contemners, the editors, publishers and printers of newspapers frequently fall foul of the law. When the editors forget their duty and commit contempt of court, their motives. However laudable cannot save them from conviction.<sup>30</sup>

## **7. Privacy under Information Technology Act 2000**

Information Technology Act provides for both civil liability and criminal penalty for a number of specifically proscribed activities involving use of a computer — many of which impinge on privacy directly or indirectly. The Act provides for the civil remedy of “damages by way of compensation” for damages caused by any of the actions intruding the privacy of individuals. In addition anyone who “dishonestly” and “fraudulently” does any of the specified acts is liable to be punished with imprisonment for a term of up to three years or with a fine which may extend to five lakh rupees, or with both.

<sup>29</sup> .In re Harijai singh AIR 1997 SC 73.

<sup>30</sup> Rai Bahadur G.K Roy (2013) Revised by H.K Saharai, Law relating to press and seditious, Universal Law publishing, Newdelhi, p.22.

Moreover Information Technology Act is not a fruitful legislation to meet the present legal viruses. So an immediate and effective anti-virus is required to regulate the modern technological issues in communication without infringing the freedom of press.

In India, the right to privacy is not a positive right. It came only in the event of a violation. The law on privacy in India has mainly evolved through judicial intervention. It has failed to keep pace with the technological advancement and the burgeoning of the 24/7 media news channels. The prevalent right to privacy is easily compromised for other competing rights of 'public good', 'public interest' and 'State security', much of what constitutes public interest or what is private is left to the discretion of the media<sup>31</sup>.



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<sup>31</sup> Sonal Makhij, Privacy & Media Law, The center for Internet and the Society, Retrieved from <http://cis-india.org/internet-governance/blog/privacy/privacy-media-law>