

**INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND  
EXPLORATION**

---

**Volume 2| Issue 2**

---

**2024**

## BALANCING FREEDOM OF SPEECH AND RIGHT TO PRIVACY: NAVIGATING MEDIA ETHICS AND LEGAL FRAMEWORKS

*Jayashre E.*

*3<sup>rd</sup> Year BBA LL.B (H) Student of Christ (Deemed to be University)*

### ABSTRACT

The connection between the right to privacy and the freedom of media is a subtle and is continuously evolving within democratic societies. This analysis deals into the inherent human right to privacy, as enshrined in Article 21, and its delicate coexistence with the essential freedom of media. While the latter is pivotal for a functioning democracy, the media's duty is to disseminate information freely, thus shaping public opinion and ensuring transparency. Its potential for misuse has raised concerns, particularly in instances where personal information is published without serving the public interest. <sup>1</sup>The dilemma lies in striking a harmonious equilibrium between these rights. The purpose of this study is to understand whether the conflict between the two rights exists in reality. If so, whether a balance can be brought between the two opposing rights. This study also looks into the possible intervention of either of the right with the other. The methods used to acquire the information are secondary sources and case laws that confirm the conflict that is existing. The core lies in harmonizing these rights, where the media maintains its ethical responsibility of accurate reporting, and legal frameworks regulate these boundaries. This study addresses this conflict's significance in safeguarding individual rights and the media's societal responsibilities, advocating for a harmonious coexistence. Balancing these rights requires a delicate approach. Clear legal frameworks are needed to define the boundaries of privacy and public interest, guiding media practices and mitigating potential abuses. Ethical considerations within media organizations are essential to ensure responsible reporting that respects individual privacy while fulfilling the media's vital role.

---

<sup>1</sup> *Scope of journalism in India: The Role of Media in shaping public opinion and democracy 2023: LNCT Group (2023) LNCT.* Available at: <https://lnct.ac.in/scope-of-journalism-in-india-the-role-of-media/> (Accessed: 22 October 2023).

**KEY WORDS:** Conflict, Privacy, Media, Public Interest, Restrictions.

---

## 1. RIGHT TO PRIVACY

The importance of privacy has come into play with the development of technology. The provision and the term is not new. Its origin can be traced back to the times of Mahabharata and Ramayana. For example, it can be seen Kautilya's Arthshashtra laid down a procedure to stop the leakage of information regarding the state policy. Still, his policies did not mention individual privacy. His policy's reference can be seen in British India's legislation. While in Ramayana, it cannot be exactly seen as privacy, women were not allowed to be seen by other men except their husbands in those times.<sup>2</sup>

The aim of any privacy law should be protecting the personal information of any individual or preventing the use of any information given in a fraudulent or unauthorized way. The present Information and Technology Act of 2000 states that there will be a penalty imposed on any breach of confidentiality and privacy.<sup>3</sup> However, the I.T. Act does not define what privacy is. Thus arrives the problem of interpreting the word, since the word 'privacy' is subjective and the data that must be considered personal may vary from person to person.

Black Law Dictionary defines privacy as the right to be let alone, the right of a person to be free from any unwarranted publicity, and the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned.<sup>4</sup>

## 2. DEVELOPMENT OF RIGHT TO PRIVACY

The right to privacy is not explicitly mentioned in part 3 of the Constitution, which states the fundamental rights. The judiciary, through its interpretation of the right to life and personal liberty, includes the right to privacy. The right to privacy has been interpreted through various cases. In the case of *M.P Sharma and Others v Satish Chandra*,<sup>5</sup> a company concealed the malpractices present in the company to its shareholders by presenting the shareholders with false data. The

---

<sup>2</sup> Goyal, Gaurav, and Ravinder Kumar. *The Right to Privacy in India: Concept and Evolution* 10. Partridge Publishing India, 2016. Accessed 7 August 2023.

<sup>3</sup> Information and Technology Act 2000, ACT NO. 21 OF 2000

<sup>4</sup> (No date) *Right to privacy and social media - RGNUL student research review (RSRR)*. Available at: <https://www.rsrr.in/2018/10/27/right-to-privacy-and-social-media> (Accessed: 22 October 2023).

<sup>5</sup> *M.P Sharma and Others v Satish Chandra* 1954 AIR 300

question in the court of law was whether the government's power to search and seize was violating right to privacy. The eight-judge bench held that the right to privacy is not a fundamental right; thus, the search and seizure is mandatory.<sup>6</sup>

Later, in 1962, in the case of *Kharak Singh v State of Uttar Pradesh*,<sup>7</sup> the police would often visit Kharak Singh's house at night, waking him from sleep. Thus, he filed a petition in front of the court of law that his fundamental right, which included the right to live with dignity was violated. The court held that the right to life could only be restricted by law and not by any executive body. However, when considering right to privacy being violated, it was not accepted because it was not a fundamental right at the time. In this case, the court also realized that fundamental rights are not meant to be read as it is and did not accommodate right to privacy. The court also stated that the fundamental rights should be seen in a broader way in the upcoming cases. The court accepted the dissenting opinion given by Justice Subbha Rao.

In the case of *Gobind v State of M.P. and Anr*,<sup>8</sup> from 1975, Madhya Pradesh came up with a regulation under which the suspect's name would be registered and kept under constant surveillance. According to this legislation, Gobind, a habitual offender, was paid regular visits by the police. Thus, the petitioner filed a petition for violation of privacy. However, the court declined the petition on the basis that the right to privacy is not mentioned explicitly.

In the year 1997, in the case of *PUCL v Union of India*,<sup>9</sup> the court held that tapping someone's phone without following the due process of law was held as an infringement of the right to privacy.<sup>10</sup> Later came the landmark judgment from *Justice K.S Puttaswamy and Anr v Union of India*,<sup>11</sup> where a writ petition and Right to privacy was identified as a integral part of right to life and liberty under Art 21. However, the court declined the petition because the Constitution does not mention the right to privacy explicitly.

The right to privacy as a fundamental right was given more importance in the Aadhar card case, where Justice K.S Puttaswamy filed a petition stating that the Aadhar project violated the right to privacy. The petition challenged the project, stating that the government aimed at a surveillance

---

<sup>6</sup> "Right to Privacy: Court in Review *Supreme Court Observer*, December 3, 2021 <https://www.scobserver.in/journal/right-to-privacy-court-in-review/>. (Accessed 7 August 2023.)

<sup>7</sup> *Kharak Singh v State of Uttar Pradesh* 1963 AIR 1295

<sup>8</sup> *Gobind v State of MP and Anr* AIR 1975 SC 1378

<sup>9</sup> *PUCL v Union of India* AIR 1997 SC 568

<sup>10</sup> (No date a) *Right to privacy and social media - RGNUL student research review (RSRR)*. Available at: <https://www.rsrr.in/2018/10/27/right-to-privacy-and-social-media> (Accessed: 26 October 2023).

<sup>11</sup> *Justice K.S Puttaswamy and Anr v. Union of India* (2017) 10 SCC 1

state invading people's privacy. Though the bench held the validity of the Aadhar card, the nine-judge bench unanimously agreed that the right to privacy is a part of the citizen's fundamental rights and should be interpreted under Art 21 of the Constitution.

### 3. RIGHT TO PRIVACY AND INTERNATIONAL LAW

International law also recognizes the right to privacy.<sup>12</sup> Under the United Nations Declaration of Human Rights, Art 12 states, "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."<sup>13</sup>

Art 17 of the International Covenant on Civil and Political Rights 1966 states that "No one shall be subjected the arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation and everyone has the right to protection of the law against such interference or attacks."<sup>14</sup>

Many other conventions also derive the definition of privacy along the lines of the definition laid down by the UDHR and ICCPR. India has signed both the above conventions, but specialized legislation that deals with privacy is not present in India. Even though there is no specialized legislation dealing with the right to privacy, a Data Protection Bill was approved by the President in August 2023.

### 4. FREEDOM OF MEDIA

Indian Constitution does not have an explicit provision for freedom of media. Dr. B.R Ambedkar once said, "The Press has no individual advantages which are not to be presented or which are not to be employed by the citizen in his function. The director of the press or the administrator is all residents, and therefore, when they want to write in the newspaper, they are simply practicing the right to appear. In my experience, consequently, no special notice is important for the independence of the press at all".<sup>15</sup> It can be understood from this statement that individuals are the ones contributing to media content so there might not be a necessity to explicitly outline media

---

<sup>12</sup> (No date a) *International standards | ohchr*. Available at: <https://www.ohchr.org/en/special-procedures/sr-privacy/international-standards> (Accessed: 22 October 2023).

<sup>13</sup> *Universal declaration of human rights* (no date) *United Nations*. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed: 26 October 2023).

<sup>14</sup> (No date) *International Covenant on Civil and Political Rights | Ohchr*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Accessed: 26 October 2023).

<sup>15</sup> *Indian Express Newspapers v. Union Of India*, (1985) 1 SCC 641.

freedom in the Constitution. For this reason, freedom of media has always been interpreted under Art 21 of the Constitution, which provides for the right to freedom of speech and expression. This freedom is not absolute and has its limitations and restrictions.<sup>16</sup>

Pre-independence India did not have any statute governing the freedom of media. In the case of *Channing Arnold v. King Emperor*, observed that "the freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length the subject may go so also may the journalist, but apart from statute law, his privilege is no other and no other and no higher."<sup>17</sup> The range of his assertions, his criticisms, or his comments is as wide as, and no wider than, that of any other subject".<sup>18</sup> Freedom of media also acquired its importance before the pre-independence era as a part of the freedom struggle, and gradually, it was incorporated into the Constitution as a part of fundamental rights.

In the case of *Ramesh Thapar v. State of Madras*,<sup>19</sup> an order restricted the issuance of a weekly magazine in certain parts of Madras. The court held that citizens are guaranteed freedom of speech and expression, and if a weekly magazine is being restricted it consequently restrict the right to freedom of speech and expression. It also held that Art 19 (2), which places restrictions on freedom of speech and expression on the basis of public safety and maintaining public order, is only imposed in case of the state's security.

In the case of *Brij Bhushan v State of Delhi*,<sup>20</sup> the petitioner filed a writ petition on the ground of violation of freedom of speech and expression after the commissioner had ordered the newspaper to submit their content that will be published for scrutiny after the newspaper has been publishing highly controversial matter which has the potential cause public disorder. Regarding the case of *Ramesh Thapar v. State of Madras*, the court held that public safety means the state's security. It held that restrictions can be imposed only if there is a threat to the state. It was also held that nothing less than a threat to the state could impose restrictions on the media. Due to this the order of the court dismissed the order by the commissioner.

---

<sup>16</sup> Bhasin v. Union of India (2022) Global Freedom of Expression. Available at: <https://globalfreedomofexpression.columbia.edu/cases/bhasin-v-union-of-india/> (Accessed: 26 October 2023).

<sup>17</sup> Channing Arnold v. The Emperor (1914) 16 BOMLR 544

<sup>18</sup> Sadual, Manoj K. "Freedom of Press in Indian Constitution: A Brief Analysis." International Journal of Applied Research, 2015, <<https://www.allresearchjournal.com/archives/2015/vol1issue8/PartD/1-7-160-775.pdf>>(accessed 22 August 2023)

<sup>19</sup> Ramesh Thapar v. State of Madras AIR 1950 SC 124t

<sup>20</sup> Brij Bhushan v. State of Delhi (1950) SCR 605

Since the government was unhappy with the above decisions, Art 10(2) was amended by adding the word 'reasonable' to the article so that restrictions could be placed on the right. This was further amended through the Constitution (16<sup>th</sup> Amendment) Act of 1963 added 'the sovereignty and integrity of India' through which they can impose restrictions on the right to freedom of speech and expression. The present Art 19(2) provides for the following reasonable restrictions.

- Security of the state.
- Friendly relations with foreign states.
- Public order.
- Decency or morality.
- Contempt of court.
- Defamation.
- Incitement to an offense.
- Sovereignty and integrity of India.<sup>21</sup>

## 5. FREEDOM OF MEDIA V. RIGHT TO PRIVACY

Freedom of media is guaranteed under Art 19. The right to freedom of speech and expression, and the right to privacy is guaranteed under Art 21, the right to life. In the present era, there are many news channels and newspapers. Apart from the print media and news channels, there is also boom in social media. With all these information centers, abundant information is circulating in the society. Much of this information is at the cost of someone else's privacy. Thus, there is a conflict between the right to privacy and freedom of media.

Right to life and freedom of speech and expression are first-generation rights; thus, priority cannot be given one above the other. In the case of *Justice K.S Puttaswamy v. Union of India*, the court laid down instances in which the Right to privacy of an individual can be breached, and they are:

- i. There must be a law that enables them to do so.
- ii. There should also be a legitimate state aim, and apart from a legitimate state aim, there must be a justifiable reason behind collecting and storing an individual's personal data.<sup>22</sup>

In the case of media infringing on an individual's privacy, though they are not the state actors mentioned, they have the right to freedom of media under Art 21 of the Constitution. The question

---

<sup>21</sup> Art 19(2), Indian Constituion

<sup>22</sup> Justice K.S Puttaswamy and Anr v. Union of India (2017) 10 SCC 1

of breaching privacy comes in the second condition of whether the information published by the media is for the purpose of national security. Even though sometimes the word 'privacy' tends to be confused with 'anonymity,' both have the common understanding of restricting others from accessing an individual's personal information. But they operate in different ways. Privacy means to withhold information from others, whereas anonymity means hiding the details of the possessor of such information.<sup>23</sup> Often, it is the privacy that is being violated by the media, which may affect the reputation of an individual.

In the case of *Indian Express v. Union of India*, the court analyzed two different fundamental rights the media possess:

- Freedom to practice any profession or carry on any business.
- Freedom of speech and expression

The court analyzed that when it comes to Freedom of speech and expression, Freedom has been provided to the media for four purposes.

- i. It helps the individual to attain self-fulfilment
- ii. It assists in the discovery of truth.
- iii. It strengthens the capacity of an individual in participating in decision making.
- iv. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.<sup>24</sup>

The state has provided the media with such powers to discover the truth and provide the readers or viewers with information. The media has been very helpful in providing justice to many people through media trials, unraveling the truths. For example, in the case of Ruchika Girhotra, the Inspector General of the police sexually harassed a 14-year-old girl. Still, when she filed a complaint, the police threatened her and her family, eventually leading to her suicide. But, nineteen years later, through the evidence the media acquired and provided, the accused was acquitted.<sup>25</sup>

---

<sup>23</sup> *What are the differences between anonymity and privacy? - read more* (no date) *skiff.com*. Available at: <https://skiff.com/blog/protect-privacy-anonymity-online> (Accessed: 22 October 2023).

<sup>24</sup> *Indian Express v. Union of India* 1985 SCR (2) 287

<sup>25</sup> Sudhanshu Ranjan, 'Media and Judiciary : Revitalization of Democracy' (2015) 57/3 JILI <<https://www.jstor.org/stable/44782789>> (accessed 24 August 2023)

Though the media have been helpful in discovering the truth, the information they have published has violated individuals' privacy and exploited their freedom of speech and expression.

In the case of *R. Rajagopal v. State of Tamil Nadu*,<sup>26</sup> the accused was found guilty of 6 murders and stated his relationship with the police officers in his memoirs. Still, the court held that the publication of such information is restricted due to the potential threat of breaching the privacy of the petitioner. It is said that for the need of TRP and under the disguise of public interest, the media breaches privacy by releasing bank details, social circles, and other information that do not constitute public interest.

Media trial is one potential example where the media violates the privacy of an individual, affecting the reputation. During these media trials, the media declares an individual as a criminal based on their opinion or evidence whose authenticity is yet to be proved. One such case is *Jasleen Kaur v. Sarvjeet Singh*.<sup>27</sup> This case involved a media trial after a person was accused of sexual harassment over a Facebook post, and the media before the court could enquire into the matter quoted him as a 'pervert,' 'Delhi Ka Darinde,' etc. The Delhi High Court declared him innocent, but his reputation was already tarnished through the media trials.

The court called out Mr. Arnab Goswami for calling a person "accused" before the trial court or the Delhi police filed a charge sheet for murder.<sup>28</sup>

In this context, it can be asserted that while defamation can be considered a reasonable restriction on freedom of speech, a crucial criterion for its classification as defamation is that the information in question must be demonstrably false. In this case, the personal information that has been revealed affects an individual's privacy. The right to live with dignity has a direct connection with reputation.

Media is the fourth pillar of democracy, allowing them to establish the public interest; thus, Freedom of media has been bought under Art 19, freedom of speech and expression. India has the News Broadcasting Association, an independent body regulating the media. It provides for the code of conduct that has to be upheld by the media, for example, maintaining neutrality, not

---

<sup>26</sup> *R Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632

<sup>27</sup> Stela Dey, 'Delhi Biker, Accused of Molestation in 2015 at Signal, Gets Clean Chit' (*NDTV.com*, 30 October, 2019) <<https://www.ndtv.com/delhi-news/sarvjeet-singh-bedi-accused-of-molestation-in-2015-by-jasleen-kaur-at-traffic-signal-acquitted-2124784>> accessed 19 November, 2021

<sup>28</sup> Siddhant Krishna Jaiswal, Media Houses : Misuse of Press Freedom and its Effects, 2.2 JCLJ (2022) 206

expressing opinion, and other moral conduct. But there are no punishments in case of violation of these codes.<sup>29</sup>

The Press Council of India is a statutory body that regulates the conduct of media, but they have limitations that restrict them from punishing in case of violation.<sup>30</sup> The highest recovery of the individual who has been harmed is an apology note from the newspaper. However, the wrongdoer is paying no compensation to the victim, and the apology note is published in a small tabloid in the corner of the newspaper. This does not affect the newspaper in any way, nor does this punishment act as any deterrence to any future act. The Cable Television Networks (Regulation Act) 1995,<sup>31</sup> regulated only general issues like nudity, morality, public order, etc., but the drawback is that no private remedy provides for a victim.

Regarding the Constitution of India, Art 21 guarantees the right to privacy. But, one of the drawbacks of this provision is that there is no definition of privacy. Privacy is subjective; thus, there is a need to define privacy in the context of the judiciary. The need to define privacy is because the broad understanding of privacy is 'to be left alone,' but this would mean physical privacy. But privacy also includes their personal information, which might harm their reputation if leaked.

The Indian Constitution provides reasonable restriction for Freedom of speech and expression under Art 19(2) but it is irrelevant to the right to privacy. For example, in public order, some information is personal and does not serve any purpose to the public. Defamation requires for publishing of a false statement, but a true statement like personal information, which, if published, can also harm reputation. Thus, there is a need differentiate two fundamental rights.

## 6. HOHFELD ANALYSIS

Wesley Newcomb Hohfeld earned a degree from the University of California and served as Harvard Law School's editor of the Harvard Law Review. He was the author of the book 'Fundamental Legal Conception as Applied in Judicial Reasoning and Other Legal Essays.' The Hohfeld Analysis states eight jural relations, and they are divided into jural opposites and jural correlatives. These eight jural relations are interlinked as jural co-relatives and jural opposites.

---

<sup>29</sup> *Id*

<sup>30</sup> *Regulation of media in India - A brief overview (2023) PRS Legislative Research*. Available at: <https://prsindia.org/theprsblog/regulation-of-media-in-india-a-brief-overview?page=46&per-page=1> (Accessed: 22 October 2023).

<sup>31</sup> The Cable Network (Regulations) Act 1995 ACT NO. 7 OF 1995

Jural opposites are the legal positions that deny each other. Whereas, Jural co-relatives are the legal positions where one jural relation leads to another. It can be said that in case of jural opposites a single person cannot have a 'right' and 'no right' at the same time. In the case of jural co-relative a person possessing a 'right' will lead to a 'duty' owed by the other.

|                 |           |           |            |           |
|-----------------|-----------|-----------|------------|-----------|
| Jural opposites | Rights    | Privilege | Power      | Immunity  |
|                 | No rights | Duty      | Disability | Liability |

|                    |       |           |           |                        |
|--------------------|-------|-----------|-----------|------------------------|
| Jural correlatives | Right | Privilege | Power     | Immunity <sup>32</sup> |
|                    | Duty  | No rights | Liability | Disability             |

The Hohfeld Analysis states that a right is not absolute and imposes an obligation on others. Thus, when an individual possesses a right to privacy, others are not obligated to violate this right. But when it comes to media, they have freedom of speech and expression, allowing them to publish freely except with few restrictions for national security, public order, morality, etc. But since the media has privilege, it does not owe any 'duty', and others have 'no right' against it since they are jural correlatives. This supplements to prove that there is an existing conflict between the right to privacy and freedom of media.

## 7. LEGAL PRECEDENTS AND INTERNATIONAL PRESPECTIVES

Indian Constitution has provided protection for an individual's reputation but also protects the freedom of media. Defamation necessitates the inclusion of the plaintiff's identity in the statement, thereby enabling the reader to discern and identify the plaintiff. In cases of libelous statements, even if a statement doesn't explicitly mention the individual but causes harm to that person, they can still pursue legal action. Another essential is that the information has to be published. Many-a-times, the media takes 'truth' or 'fair comment'. In the case of truth as a defense, it can be used

<sup>32</sup> (No date) *An analysis of Hohfeld - core*. Available at: <https://core.ac.uk/download/pdf/217208134.pdf> (Accessed: 22 October 2023).

in civil cases and not in criminal proceedings. In case of fair comment, the defendant must establish it was fair.<sup>33</sup>

The law also prohibits the identity of victims of rape from being anonymous and the identity of witnesses whose life are under threat by providing them with in-camera proceedings.

The 200<sup>th</sup> Law Commission Report stated that the Supreme Court identified publishing materials against the accused may affect the trial by influencing the judges' decisions. Thus, such materials published by the media after a charge sheet has been filled would lead to contempt of court under Sec 3(2) of the Contempt of Courts Act to avoid influencing the judgments of the judges.<sup>34</sup> In the case of *Saibal Kumar v. B.K. Sen*,<sup>35</sup> the court held that parallel investigation by the media and publishing the same must be restricted when the trial is underway because of the potential cause of interfering in the justice delivery system. Contrary to the previous judgment, was the case of *Saroj Iyer v. Maharashtra Medical (Council) Of Indian Medicine*.<sup>36</sup> The court held that the media has the right to attend the court proceedings and publish an honest report about the proceedings without adding any personal opinion or their personal investigation.

But these restrictions do not restrict the media from misusing their freedom. Like in the case of the late Andhra Pradesh Chief Minister's death, an online tabloid published that it was not an accident but a plan by the Ambani Brothers, but the tabloid failed to substantiate reasons for the same. The police arrested the concerned persons, but the harm was already done, leading to huge amount of loss to the Reliance Industries.<sup>37</sup> Since the electronic media, along with the print media, the information being published has started to travel rapidly, it has the potential to damage the reputation of the concerned faster.

From the international perspective, the European Convention and the Human Rights Act of 1998, based on the cases, stated that freedom of speech would be given priority over privacy. If any of the claimants argue for a balance of such rights, then they would have the burden of proof on the claimant to establish the facts for asserting priority to be placed on privacy.<sup>38</sup> The English courts,

---

<sup>33</sup> Gifty Oomen, "Right to Privacy and Freedom of Press - Conflicts and Challenges", School of Legal Studies, Cochin University of Science and Technology, 25 January, 2012, pp 125-126

<sup>34</sup> *Id pp 132*

<sup>35</sup> *Saibal Kumar v. B.K Sen* A .I .R. 1961 S .C 633.

<sup>36</sup> *Saroj Iyer v. Maharashtra Medical (Council) of Indian Medicine*, A.I.R. 2002 Bom .95.

<sup>37</sup> "Ambanis behind YSR Death?" *The New Indian Express* ,(Cochin) dt. 8/1/2010, p. 1.

<sup>38</sup> (No date) *F XPRESSION and the IGH T to reputation human rights in conflict - corte idh*. Available at: <https://www.corteidh.or.cr/tablas/r29311.pdf> (Accessed: 22 October 2023).

however, hold an argument against the European Convention and the Human Rights Act by stating that both the Right to privacy and Freedom of speech should go hand in hand since they are equally important.<sup>39</sup> Still, sometimes, it also depends on the facts of the case. The English court in the case of *Campbell v MGN Ltd*, the judge stated that freedom of speech and the right to privacy are important.<sup>40</sup> But since the right to expression has been expressed, and privacy is on the lower pedestal, privacy is the heart of liberty. It is essential for the development of the individual.

We could solve the issue of conflicting rights by first distinguishing whether a piece of information being published is distinguished from individual privacy. A legal framework should be established in the case of media trials or investigative journalism so that there is an authenticity of the news being published. The court has the maxim 'innocent until proven guilty' for a reason. This maxim was established due to the fundamental right under Art 21, which is the right to live with dignity. Still, the media, by publishing half-baked information or announcing the verdict even before the person is proven guilty without verifying the source or the information, harms the reputation of the person by violating the right to privacy. But in a number of circumstances, the media have brought the truth to the people by providing justice to an individual or by upholding the democracy of the state. However, there is a need to address both rights separately to understand their characters and the extent to which each right should be given. If privacy is to be defined, then the media would have a clear distinction where their freedom ends.

## 8. JURISPRUDENCE

At present, the state does not have any restrictions or a distinction between where a person's privacy ends and the freedom of media begins. In his work 'The Morality of Freedom,' Joseph Raz states that a person may have a right only if some aspect of well-being is sufficiently important to justify holding another individual under a duty.<sup>41</sup> Thus, it can be inferred that when the state provides freedom of media, it is not only for their interest but also for other's interests. Thus, the media has a duty not to interfere with the privacy of other individuals. Raz also stated that the idea of rights is discriminating, and acknowledges that rights can be conflicting.

The utilitarianism principle tries to resolve this conflict. In this case, the priority can be provided by looking at the suffering the stakeholder of such a right would experience. So, suppose the harm

---

<sup>39</sup> Gifty Oomen, "Right to Privacy and Freedom of Press - Conflicts and Challenges", School of Legal Studies, Cochin University of Science and Technology, 25 January, 2012, pp 237

<sup>40</sup> *Campbell v. MGN Limited* [2004] U.K.H.L.22.

<sup>41</sup> Waldron, Jeremy. "Rights in Conflict." *Ethics* 99, no. 3 (1989): 503–19. <http://www.jstor.org/stable/2380863>. (accessed on 29 August 2023)

caused by violating an individual's privacy is proportionately higher than the happiness acquired by exercising the freedom of media. In that case, restrictions must be placed on the freedom of media.

The view of Raz has been opposed by Robert Nozick in his work 'Anarchy, State and Utopia.' According to him, rights are to be viewed as 'side restraints on morally permissible behavior', and there is an agent relation with rights where the holder of such rights is known as the agent. In his work, he states that people hold an idea of moral constraints, which measure how much of their rights can be violated by others, and this constraint consists of catastrophic events.<sup>42</sup> Thus, it can be inferred that restraints can be placed on a right only if it leads to a destructive event, and unless such a situation arises, restraints cannot be placed on freedom of media.

## 9. CONCLUSION

The right to privacy, guaranteed under Art 21, is a human right inherently vested with humans; thus, this right cannot be violated. On the other hand, there is freedom of media, which was provided to protect the sovereign. But, since there is no restriction placed on the media houses, there is a misuse of this freedom, and there has been a breach of individual privacy by publishing personal information, which has the potential to harm the individual's reputation. E.g., media trials that publish the journalists' parallel investigation, which sometimes consists of biased opinions. Media has to act as a tool to state the facts to the public and serve the public interest. The media breaches privacy when it publishes information that does not serve the public interest and affects reputation. Separate legislation on privacy has a wider scope, laying down what constitutes personal and public information and what can be published. A clear distinction between the rights would lay down where one right and the other end.

---

<sup>42</sup> Richard A. Posner, "Utilitarianism, Economics, and Legal Theory," *Journal of Legal Studies* 8, no. 1 (January 1979): 103-140 (accessed on 21 August 2023)