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## IMPACT OF DIGITAL MEDIA ON PRIVACY RIGHTS

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### ABSTRACT

The rapid improvement and increase in digital media have transformed the way it used to work which has raised various concerns about the privacy of the users as almost all the things that a person does are digitally connected through various devices like phones or computers. This research article reviews the interaction between digital media and privacy rights provided to people while considering the challenges faced in protecting the privacy of a person in the phase of technological advancement. In India, the right to privacy came to light after the case of *K.S Puttaswamy v. Union of India (2017)*. This article also reviews the conflict between the right to freedom of speech and expression given under Article 19(1)(a) of the Constitution of India, particularly in the case of media, including issues like media trials and unauthorized intervention of media into the private life of a person in the name of freedom of speech and expression.

This article reviews the challenges of digital media which include data collection, cyberattacks, and misuse of personal information on social media. Existing legal frameworks like The Information Technology Act, 2000 and the proposed Data protection bill with the role of the Indian Judiciary are also discussed in this research article with various case references.

### KEYWORDS

Digital Media, Privacy Rights, Article 21, Article 19, Media Trails, Freedom of speech and expression.

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## INTRODUCTION

The right to privacy is the fundamental right granted under Article 21 of the constitution of India though it is not specifically written about the right to privacy under Article 21 and the right to privacy comes under the right to life and personal liberty, the Supreme Court through various judgment stated that the right to privacy is a fundamental right and is a part of Article 21, one of the landmark case is the case of *K.S. Puttaswamy v. Union of India (2017)*, in this case the court recognized the right to privacy and declared that this right is constitutionally protected. But in the recent phase, we can see that this right is getting challenged as increases in the digital era.

Although the technologies provide easy access to the data and information somewhere it is also challenging our privacy rights through intervention in ongoing cases, media trails, and misuse of personal information.

The present law somehow fails to protect the right to privacy of the citizens of India, as The Information Technology Act, 2000 addresses some of the issues of privacy but it also does not cover all the data breaches and misuse of technologies. The main reason behind this can be the speed through which the technologies are being developed our laws are not able to match that. Till the time a punishment for any misuse of technology is determined till then a new technology is there in the field which is the main loophole. This research article explores the impact of digital media on privacy rights by analyzing the laws, judicial proceedings, and challenges faced by the technologies.

## RIGHT TO PRIVACY

As users are increasing on the digital platform the collection of data by companies is increasing and at that same pace the data breaches and misuse of that data are also increasing, A quote was said by Catherine Butler “*Privacy on the Internet? That’s an oxymoron.*”, This shows that the growth of digital technology is affecting the individual’s privacy in the modern time.

In recognition of the increasing challenges, the Indian government has initiated the drafting of a comprehensive data protection bill which is inspired by global standards like the European Union's GDPR. This proposal aims to create a framework to address issues related to consent, and the rights of individuals over their data.

The main problem with the right to privacy is that it only exists when it is violated and the judgment delivered by the courts is the only way to grow this right. There is a quote from Russian American writer and philosopher Ayn Rand that is "*Civilization is the progress toward a society of privacy. The savage's whole existence is public, ruled by the laws of his tribe. Civilization is the process of setting man free from men.*" This quote tells us that privacy is not only a legal right but an important element of the freedom of individuals and social processes.

Various ways through which privacy can be protected are:

- 1) Use of a secure search engine.
- 2) Always clear the cookies of the site accessed.
- 3) Deactivating the password save feature because it can be misused by someone else.
- 4) Before clicking on any link, the link and domain should be double-checked as it can be a phishing link.

There are various challenges in the modern age while protecting privacy these are:

- 1) The data collection by the companies even without the user's full consent and awareness. Then these data are used by the companies for targeted advertisement and other purposes.
- 2) Whenever a cyberattack happens it leads to data breaches and also leads to expose sensitive information of the users like financial or social information.
- 3) Internet users usually share their personal information on the Internet intentionally or unintentionally which leads to issues like cyberbullying, theft, and security breaches.
- 4) There is a new trend of deepfake technology which is now leading to the creation of fabricated audio and videos and it is also raising concerns about the authenticity of the information.

## LEGAL PROTECTION AVAILABLE FOR THE RIGHT TO PRIVACY

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The constitution of India, judicial precedents, and various other statutes provided lots of legal protection to the right to privacy. Under the Indian Constitution, Article 21 provides protection for the right to privacy.

Previously protection for privacy was provided through the Information Technology Act, 2000, The laws made it compulsory for organizations to adopt reasonable security practices and obtain consent before processing any sensitive data. However, there were various loopholes in the laws due to which there was a need for particular privacy laws. In response to that need the government initiated the drafting of the Digital Personal Data Protection Act 2023 which includes various legal frameworks like the establishment of the Data Protection Board of India to address the raising issues and complaints and granting individuals certain rights such as access, correction, and grievance redressal.

The judiciary through various landmark judgments had also helped in shaping the right to privacy. It also imposed limitations on the media trails through various rulings, The court through various judgments stated that freedom of speech and expression should not be misused by the media in the name of freedom of media.

Both the Information Technology Act as well as the Digital Personal Data Protection Act have provided certain remedies and protection for privacy as the Information Technology Act provides civil penalties for negligence in protecting sensitive personal data as given under Section 43A of the Information Technology Act and the Digital Personal Data Protection Act also attracts monetary fines which can be seen under The Schedule of the act.

Also Under Section 18 of the Digital Personal Data Protection Act a board namely the Data Protection Board of India is established which marks great progress from the government of India in safeguarding the right to privacy.

Some of the other privacy protection regulations available are:

- 1) The Juvenile Justice (Care and Protection of Children) Act, states that the media should not disclose the name, addresses, or schools of the juveniles.

- 2) Article 40 of the United Nations Convention on the Rights of the Child states that the privacy of the child accused of infringing penal law should be protected at all stages of the proceedings.
- 3) Section 228A of the IPC prohibits the disclosure of the identity of rape victims and also declares it as a punishable offense.
- 4) Section 5 of the Cable Television Networks (Regulation) Act, 1995 states that no program can be transmitted on any cable service that contains obscene, defamatory, deliberate, false, sensitive, or half information.
- 5) There are various international rights available for privacy such as Article 12 of the Universal Declaration of Human Rights, 1948 states that no one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, It also declares privacy as a fundamental right.

### **BALANCE BETWEEN RIGHT TO PRIVACY AND FREEDOM OF SPEECH AND EXPRESSION**

Both the right to privacy and freedom of speech and expression a fundamental right under the Constitution of India. It happens only a few times that these fundamental rights conflict with each other and one of those times is we can see during the practice of digital media. Freedom of speech and expression and the right to privacy are two sides of a coin and both of them are important. It is us only who provide our personal information online by granting permissions to the apps and websites even without checking the terms and conditions properly.

Privacy is seen to be an important part of personal liberty as it guarantees every citizen security from unwanted interference from others ensures a personal space and protects their personal information.

Article 19(1)(a) of the Constitution of India provides the right to freedom of speech and expression as a fundamental right similar to the right to privacy. This freedom of speech and expression provides a broader meaning and provides freedom to various entities one of which is media.

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The media plays a dual role in the context of both of the rights that is in the context of freedom of speech and expression they provide the public with important pieces of information and enhance the knowledge of the citizens but at the same time, it is the duty of the media to not cross the line of the privacy and not to interfere in the personal life of a person. Even though the media enjoys the freedom of speech and expression it must respect the privacy of one's life.

## ROLE OF INDIAN JUDICIARY IN RIGHT TO PRIVACY

In the constitution of India, it is nowhere mentioned about the right to privacy, it is the Indian Judiciary that recognized it as a fundamental right under Article 21 of the Indian Constitution through various landmark judgments.

In the case of *Kharak Singh v. State of Uttar Pradesh (1962)* the Supreme Court acknowledged the importance of the right to privacy though it was not recognized as the fundamental right at that time.<sup>2</sup>

The main phase where the right to privacy came into the light was the case of *K.S Puttaswamy v. Union of India (2017)*, Which became the turning point for the right to privacy and in this case, the supreme court declared the right to privacy as the fundamental right protected under the Indian Constitution's Article 21. The court held that privacy is an essential part of personal liberty and dignity but it was also cleared by the court that there are still certain reasonable restrictions.<sup>3</sup>

But similarly to the right to privacy right to freedom of speech and expression is also a fundamental right under Article 19(1)(a) of the Constitution of India which is also exercised by the press and media, The court through various judgments balanced the right of media so it can not intervene with the privacy rights provided to the citizens of India.

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<sup>2</sup> Kharak Singh v. State of U.P., AIR 1963 SC 1295

<sup>3</sup> K.S. Puttaswamy (Aadhaar-5J.) v. Union of India, (2019) 1 SCC 1

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The question of freedom of the press versus the right to privacy of citizens was raised in the case of *R. Rajagopal v. State of Tamil Nadu (1994)*, It was held that the right to privacy also grants the right to live alone and no one can publish anything about someone without their consent. This case has shown a balance between the right to privacy and the right to freedom of speech and expression.<sup>4</sup>

In the case of *Labour liberation Front v. The State of Andhra Pradesh, (2004)* once an incident highlighting any prominent person or place take place the media starts taking action over it and makes their own assumption and decision over the case which also influences other people and due to that peer pressure, it becomes difficult for the courts to examine the matter and give a fair judgment, This thing is also called media trail.<sup>5</sup>

In the case of *Titan Industries Ltd. vs M/S Ramkumar Jewelers, (2012)* the court stated that when the identity of a famous personality is used in an advertisement without the consent of the person, The issue is not that people shouldn't sell their identities, but rather that well-known people should have the authority to decide how, when, and where their identities are used.

The Indian Judiciary has taken various steps in recognizing the privacy rights of the citizen but still striking a balance between privacy and other rights is a challenge.

## **FREEDOM OF SPEECH AND EXPRESSION**

According to Article 19(1)(a) of the Constitution, the right to free speech and expression is a fundamental right. It guarantees every citizen the right to express and speak freely and the same is used by the press and media as their fundamental right however this is subject to certain reasonable restrictions.

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<sup>4</sup> R. Rajagopal v. State of T.N., (1994) 6 SCC 632

<sup>5</sup> Labour Liberation Front v. State of A.P., 2004 SCC OnLine AP 1040

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In the case of *Printers (Mysore) Ltd. vs Asstt. Commercial Tax Officer, (1994)* the Supreme Court recognized the freedom of the press, it was held that freedom of the press is a part of freedom of speech and expression even though it is not mentioned in the constitution.<sup>6</sup>

But as time changes and technologies came into action and the phase of digital media started this same right was getting misused by the media and started to conflict with the right to privacy, The court in various judgments like in the case of *R. Rajagopal v. State of Tamil Nadu (1994)* and *Printers (Mysore) Ltd. vs Asstt. Commercial Tax Officer, (1994)* the court observed the interference of media in the privacy rights of the citizens, it was observed that the media does not only interfere with the privacy rights but also violates it.

That's why although the right to freedom of speech and expression is a fundamental right it must be used responsibly and within the specified limits, A balanced approach should be taken by the media and should not approach the working of the court or should not affect someone's personal life.

## THE ROLE OF MEDIA

The Indian media is an important pillar of democracy in India which influences and shapes the thinking and public opinion. It also works as the watchdog of democracy and keeps an eye on the workings of the government. Providing news, and information helps the citizens to stay informed. The media provides easy access to all the information at a minimal cost and information from all over the world, but sometimes while providing the information in the favour of the public interest the media enters into the private space of the individual, As there is a quote “*with great power comes great responsibilities*” so it is the duty of the media to take the responsibilities and respect the private space of the person. In the case of *Printers (Mysore) Ltd. v. CTO, (1994)* it was stated by the court that Article 19(1)(a) of the constitution states that all the citizens have right to freedom

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<sup>6</sup> *Printers (Mysore) Ltd. v. CTO, (1994) 2 SCC 434*



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of speech and expression although it is not specifically mentioned about freedom of press but still freedom of press is recognized as an essential part of freedom of speech and expression.<sup>7</sup> Thus through various judgments, it can be clearly seen that freedom of the press is a part of freedom of speech and expression.

While the media is an important part of the country some of the actions it performs are sometimes a concern, one of the concerns is the Media Trail, which is an event or case where the media start to give judgment over a certain popular case and started deciding who is write or who, The media trail also creates pressure over the advocates to not take the cases of accused and force the accuse to get the punishment without proper trail which is also the violation of the principle of natural justice which states that every person has right to being heard it was also highlighted in the case of *Labour liberation Front v. The State of Andhra Pradesh, (2004)* and it was shown how media interfere in the court proceedings which create pressure on the court, and all the allegations during the media trail are mostly assumptions which can lead to defamation of the party or also even can lead to threat to personal safety which infringes the right of the person.

Sometimes media performs various actions like sting operations and displays all the information that they gather which breaches someone's privacy and also can be harmful to them. Media and press also have their internal sources in various fields who provide them with internal information and in case of any prominent case, media display some of the secrets that become a threat to the public and give an advantage to the accused.

In this era of digital media violation of privacy is increasing day by day. However the case of *Shreya Singhal v. Union of India (2015)* the case has highlighted the need for media regulations, If we go through Section 79 of the Information and Technology Act, 2000 we will find that it talks about the social media intermediaries like Instagram, twitter and says that they will not be held liable for the act of the person who uploads anything derogatory about someone else, but in the

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<sup>7</sup> Printers (Mysore) Ltd. v. CTO, (1994) 2 SCC 434

case of *Shreya Singhal v. Union of India* (2015) it was held by the court that Section 79 of the Information and Technology Act, 2000 is valid but it is interpreted in such a way that the intermediaries must act quickly to remove the harmful content if they get a order from the court or on being notified by the appropriate government authorities.

To give protection to privacy a robust data protection framework is required to prevent the misuse of the exercise of freedom of the press, The courts have emphasized the principle of proportionality, which means that media has the right to report but it should be done in such a manner that does not harm individual's privacy.

## CONCLUSION

The very fast evolution of digital media has caused various challenges to the privacy of a person and their privacy rights. In this research article the role of media, privacy rights, challenges to privacy rights due to digital media, and the role of the judiciary in making a balance between the right to privacy and freedom of speech and expression are discussed through various case laws and statutes, Landmark case laws like the *K.S. Puttaswamy v. Union of India* and *R. Rajagopal v. State of Tamil Nadu* are also discussed which had brought light on the right to privacy. Although even the judiciary is working well in protecting the right to privacy still we need a particular law to protect the privacy rights of the citizens.

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