PAPARAZZI AND FRAGILE MERCHANDISE: PUBLIC INTEREST AND RIGHT TO PRIVACY OF PUBLIC FIGURES

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Abstract- Invasion upon privacy is increasingly becoming the array of the day. It has therefore become a topic of great apprehension. Human insist to keep things, which are private, away from the community gawk. There is a right to live, but is there a right to privacy? If there is, what is the scope and restrictions of this right? What do we do about it in case there is breach thereof? Though it is true that the Indian Constitution does not overtly 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. It also assumes importance because of frequent violation of this right by the State on grounds which are not bona fide. The research paper discusses the concept of right to privacy with reference to A.21 of Indian Constitution and rights of privacy of public figures

Keywords- Privacy, Paparazzi, Public figures and privacy, Article 21 of Indian Constitution

I. INTRODUCTION

Before we had a developed legal system, in earlier days an illegitimate invasion of privacy was recognized as tort. Such act would be deemed to be a wrongful under the wrongs of trespass or assault. It is known that the concept of right to privacy as a unique concept was firstly accepted in the field of tort law. The term ‘tort’ means a twisted or crooked act of a person for which appropriate remedy is an action under civil law. Under the tort law, it gave right to cause of action for a remedy in damages. In India though the right to privacy is not specifically guaranteed, the concept is not new and does give rise to legal action. As such, the right to privacy is protected under two distinct laws, viz. private law and public law. Private law talks about the general rules of privacy that are provided under tort law and Public law talks about the constitutional acknowledgment given to the right of privacy which aims to protect personal privacy against unauthorized government incursion. [1]

Right to privacy is the most fundamental right accepted by any civilized nation. Simply stated, the term privacy means the capacity of a person to prevent others from access to the information about oneself. Privacy can simply be defined as the right to be left alone [2]. As per the Blacks Dictionary, the term Privacy means: ‘right of a person and the person’s property to be free from unwarranted public scrutiny and exposure’. It also focuses upon an ability of the person to reveal the information only to one to whom he trusts and has a confidence that he would not depart with the same without his permission. As a matter of legal right, it involves a discussion, as to what extent and what kind privacy right is to be protected by law. Privacy as a right has changed by leaps and bounds in recent times. [3]

II. CONCEPT OF RIGHT TO PRIVACY

The term ‘privacy’ has been used often in ordinary language yet there is no single definition of the term. It has its roots in broad historical and sociological discussions. Aristotle’s was the first to distinguish between public sphere of politics/political activity, and the private/domestic sphere, as two distinct facets of life. The public/private distinction is also sometimes taken to refer to the appropriate realm of governmental authority as opposed to the realm reserved for self-regulation, along the lines described by John Stuart Mill in his essay, On Liberty. Privacy can refer to a sphere separate from government, a domain inappropriate for governmental interference, forbidden views and knowledge, solitude, or restricted access, to list just a few. [4]

The very first instance of the concept of the right to privacy was first found in the renowned article written by Charles Warren and Louis D. Brandies titled [5]: ‘Right to Privacy’. [6] It is worth mentioning that though US Constitution does not mention any thing specifically about right to privacy, the same is the outcome of the interpretation of the 3rd and 4th amendments of Bill of Rights.
Though right to privacy is not of recent origin, its recognition as one of the fundamental rights, took a long time for recognition. If we try to search reason for its delayed recognition we can see that in many cases the invasion of privacy involve the use of new technology such as telephone wiretaps, microphones, mini video cameras etc. Before the discovery of such technology, it was difficult for a person to collect the most private information as that amount long labour-intensive process and it was not so easy task to harm large number of victims. Interviews and commercial transactions were the only probable mode for collecting personal data. On the other hand one can be rest assured that those conversations in private could not be heard by other people. Unfortunately, today in the era of technological revolution invasion on the right of privacy of any person has become a relatively easy task. Even, storing of such information in paper format in files (in disorganized manner) was a troublesome task and that made it difficult to use the information to harm victims. [7]

The famous phrase, the right "to be let alone" has a long history. As far back as 1834, the U.S. Supreme Court in Wheaton v. Peters[8] mentioned that a "defendant asks nothing — wants nothing, but to be let alone until it can be shown that he has violated the rights of another." The phrase, "the right to be let alone", also appears in a law textbook.[9] as corresponding to the duty "not to inflict an injury", for example, by battery. This argument was expanded by Warren and Brandeis. Brandeis used the phrase "the right to be let alone" in his famous dissent in Olmstead v. U.S. [10], the first wiretapping case heard by the U.S. Supreme Court. [11] The "right to be let alone" is the tersest definition of the right to privacy. This phrase has come to be associated with preventing invasions of the private sphere by the government. [12]

Probably the same view was laid down by the New York Court of Appeals in Roberson v. Rochester Folding Co. [13] in defining the right to privacy: “...the claim that a man has the right to pass through this world if he wills, without having his picture published….or his eccentricities commented upon either in handbills, circulars, catalogues, periodicals or newspapers…”

As far as Indian law on privacy is concerned, the concept of right to privacy can be traced out in the ancient text of Hindus. If one look at the ‘Hitopadesh’, it says that certain matters pertaining to worship, sex and family rituals/matters must not be disclosed. [14] This concept of privacy was discussed elaborately for the first time in the landmark case popularly known as Fundamental Rights case of Kharak Singh v. State of UP [15] and later on the same was re-affirmed in the case of R. Rajagopala v. State of Tamil Nadu, [16] which is popularly known as Auto Shankar case. [17] As with United States, Indian Constitution also nowhere lays down the right to privacy. It was not until it came by way of judicial interpretation in landmark case of Kharak Sing wherein the domiciliary visits of police were considered as unlawful. Again, in Auto Shankar’s case the right to privacy was reaffirmed and was interpreted to extend all spheres of life, both private and public. In the present context though since the ‘due process’ clause had already been read into Indian Constitution[18] the right to privacy is well established in Indian Jurisprudence.

III. PRIVACY RIGHTS OF PUBLIC FIGURES

What we have understood about right to privacy is more about the ‘private’ rights of the individual. However, there is still one another aspect of this right to privacy, which is unclear, not much discussed, out of public domain and uncertain, which needs clear explanation and calls for apt interpretation.

One of the undisturbed aspects of the right to privacy as given in law of tort by way of exception is that, the same may be violated with impunity if it pertains to a ‘public figure’ or ‘public personality’. The Indian Supreme Court has also approved this view in the Auto Shankar’s case. On a superficial reading the same has a clear, and unyielding interpretation, but there is a fine print, the criticism of the Supreme Court which would help use to understand the concept in its true spirit; “…that since the life of law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism.”[19]

IV. THE DISSIMILARITY

It must be understood that values and concepts of morality change with the people, nation and time. And the same change is expected by the people from the media. To start with an example, the private lives of John F. Kennedy and Jawaharlal Nehru were once treated as forbidden by the media. The reason was, people did not want that their heroes should be diminished in stature. But today’s Americans would never have excused their press if it had not worked overtime to expose the peccadillos of Gary Hart, a presidential aspirant [20]. All over the world there is an exceptional line that runs through the understandings of the right to privacy. It says that the right to privacy of a private person is different than the right to privacy of public person and thus it cannot be put
on the same footing. Thus there are different laws for the Common Man and a different law for the Political Superior/ King. The question here arises is that does public figures have anything like private as they are public figures?

To understand the meaning of the phrase public figure [21] let us take a look at certain judgments. In New York Times v. Sullivan [22] the United States Supreme Court held that a ‘public figure’ is; “Those persons who are not public officials are, involved in which the public has justified and important interest and included artist, athletes, business people, dilettantes, anyone who is famous or infamous because of who is or what he has done”.

Quite a similar view was taken in case of William’s v Trust Company of Georgia[23], wherein it was observed: “Those who by reason of their notoriety of their achievements or their vigor and success with which they seek the public’s attention are properly classified as public figures…”[24]

After long dawn, the Indian Supreme Court has reaffirmed the said views in case of R Rajgopal v State of Tamil Nadu [25].- “The principle of the said decision has been held applicable to ‘public figure’ as well. This is for the reason that public figures like public officials often play an influential role in ordering society. It has been held as a class, the public figures have, as the public officials have access to mass media communication both to influence the policy and counter the criticism of their views and activities. On this basis it has been held that the citizen has a legitimate and substantial interest in conduct of such persons and that the freedom of the press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events.’[26]

United States Supreme Court has taken a similar view in case of Time Inc. v. Hill [27], wherein the court while citing the of New York in Warren E Sphan v. Julian Messener[28] laid down:
“One of the clearest exceptions to the statutory prohibitions is the rule that a public figure, whether he is by choice or involuntarily, is subject to the often searching beam of publicity and that, in balance with the legitimate public interest, the law affords his privacy little protection”.

While the United States Supreme Court is much clear about its distinction between public officials and public figures/personalities, Indian Supreme Court has gone much far to bring into its sweep public officials also [29].

It must not be out of phrase to mention that time and again it has been accepted by the Supreme Court that public interest is a vague and unclear term and undoubtedly in this context the statement holds the strongest ground. In India heroes are created overnight and there is no reason to deny for the same. Mere fact that instances of the private life of the person is published, such publication of the information cannot in any way contribute to the enhancement of ‘public interest’ or even for arguments sake the ‘public life’ of such persons [30]. Yet there are people who are reluctantly hauled into the revered ‘black chair’ because of certain unequivocal situations that compelled them to come into the ambit of a public figure. The United States Supreme Court has taken a stand that such persons would nevertheless be ‘public figures’ [31].

In this light the facts of Time Inc v. Hill [32] are worth reading. This case concerned a Life magazine article describing a Broadway play about the ordeal of a family trapped in their own house by escaped convicts. The magazine claimed that the play described events that had actually happened to the Hill family, which had in fact been held hostage several years before by escaped prisoners. The article was inaccurate in several no defamatory but nevertheless deeply disturbing respects. Members of the Hill family sued for invasion of privacy under a New York statute. The Supreme Court's opinion in Hill built upon the 1964 decision of New York Times Co. v. Sullivan, in which the Court had held that plaintiffs who were public officials could not recover damages for defamation unless they could demonstrate that the defamation had been published with actual malice, “that is, with knowledge that it was false or with reckless disregard of whether it was false or not”.

In Time, Inc. v. Hill the Court extended the application of the actual malice rule to actions alleging that a plaintiff's privacy had been invaded by “false reports of matters of public interest”. In 1974 the Court held in Gertz v. Robert I. Welch, Inc. that private plaintiffs did not have to prove actual malice to recover damages for defamation suits, even if the publication at issue concerned matters of public interest. Since then, the courts have divided over the question of whether Gertz put limits on the holding in Time or whether defendants in false light privacy actions should receive greater constitutional protection than defendants in defamation actions [33].
Looking at the issue from the other side of the fence, and Indian actress Shabana Azmi said: “Rajesh Khanna once mentioned that it was mediocre for a celebrity to talk in terms of a private life. But I now realize there must be some limits.” Speaking about the case she and her husband, Javed Akhtar, had filed against Stardust magazine for an article it had written on their private lives, the actress said she could understand if a journalist wrote something nasty out of dislike for a celebrity. “But the tone of that article and its vicious and belligerent nature made it clear to me that it had been written with the sole purpose of creating a scandal. I would have hated myself if I had not challenged the imputations in it. The article catered to the basest instincts in people and was the worst possible degradation of journalism” [34]. Azmi is, however, clear that there should be no shackles on the press. “But along with freedom comes responsibility. The intention of a journalist, when he probes personal lives, is very important. I would also not give a clean chit to the public. People cannot demand information for vicarious pleasure” [35].

Yet, another simple example would be life of many of the Gujarat riot victims. As they stood up approached the Supreme Court for transfer of their cases, and raised their voice against the unfairness of the trial that has been plunge upon them, there is no doubt that they have become ‘public figures’ as per the definition of the various Courts. In such case would any one call it legitimate in plastering their already stressed life all on the claim of ‘public interest’?

However, this does not mean that any kind speech about a public figure is protected from liability of damage by way of defamation. In New York Times Co. v. Sullivan,[36] the Courts have time and again said that a public figure may hold a spokesman liable for the damage to reputation caused by publication of defamatory statements provided it was made, “With knowledge that it was false or with reckless disregard of whether it was false or not.” Unfortunately there are no parameters as what would be ‘false and in reckless disregard of the truth’; so much of the matter remains unresolved.

The Indian Supreme Court in case of R Rajgopal v. State of Tamil Nadu[37] has also carved out certain exception to this ‘public figure rule’ in the following words., “The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including Court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interest of this rule, viz. a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being published in press/media.”[38]

The classification made by the Indian Constitution is pretty valid as this does permit the enactment of special laws for women and children under Article 15(4). However, those who are not benefited by this exception, their fate remains in despair.

It is submitted that today media has become a money making business. The rolling stories that become the chat of town for one or two days are the most preferred ones, even if it is at the cost of private life of an individual. It is apt to quote what Justice Holmes in 1919 referred to as a ‘market of free trade of ideas’. In such desolate conditions, should these unfortunate victims be left to their fate in the success game of media tycoons? To put it worst, should it be understood, that they have simply waived their right to privacy because these people have entered the scope of ‘public figures’. However, this assumption would create a grave legal betrayal, as the Indian Constitution does not permit the waiving of a Fundamental Right, and the right to privacy has been accepted as a Fundamental Right.

The Supreme Court in Basheshar Nath v. C.I.T. [39] has said that none of the fundamental rights under the Constitution can be waived. The same view has been reaffirmed in the landmark case of Olga Tellis v. Bombay Municipal Corporation [40] wherein the Court said that there cannot be any estoppel against the Constitution, the paramount law of the land, and that a person cannot waive any of the Fundamental Rights conferred upon him by the Constitution in Part III, by any of act of his.

V. CONCLUSION

It is worth mentioning here that an article in the Yale Law Journal was published under the title: “The Wages of a Crying Wolf: A Comment on Roe v. Wade which was in furtherance of the United States Supreme Court judgment in case of Roe v. Wade[41]. In that that article it was observed that: “There is nothing to prevent one from using the word privacy to mean freedom to live one’s life without governmental interference. But the court obviously does not so use the term. Nor could it, for such a right is at stake in every case.”
Every person, irrespective of the fact, that it is private figure or public figure, is and should be entitled to a ‘right of privacy’, as it is the foremost right that a person is born with and the same must be cherished on the ground of ‘legal necessity’. If the same is not cosseted and cherished then the fate will be that as Chief Justice Subba Rao opined in Kharak Sing’s case, [42]

“…his entire life as made into an open-book and every activity of his was closely observed and followed…The whole country is his jail.”

REFERENCES

[5] “The Right to Privacy” was written after an incident in 1883. Warren felt his and his family’s privacy had been invaded when a newspaper article was published stating the details of the ceremony and listing the prestigious guests at his wedding to the daughter of Thomas F. Bayard, a U.S. Senator and former candidate for President. See, http://lawbrain.com/wiki/Right_to_Privacy, access on 5/10/12
[6] 4 Harv L.R. 163 (1890)
[8] 33 U.S. 591, 634 (1834)
[11] And subsequently Wolf v. Colorado, wherein Chief Justice Frankfurter observed: “The security of one’s privacy against arbitrary intrusion by the police…is basic to a free society. It is therefore implicit in the “concept of ordered liberty” and as such enforceable against the states under the Due Process Clause”
[12] Ibid 6
[13] 171 N.Y. 538, at page 544
[16] AIR 1995 SC 264
[17] Prior to these cases, in the case of Govind v. State of UP the right to privacy was discussed in a vague sense. Then came case of Maneka Gandhi and again them after case of R Rajagopal., wherein the concept got more crystallized.
[18] Sunil Batra v. Delhi Administration, AIR 1979 SC 1643
[21] In United States law, public figure is a term applied in the context of defamation actions (slapp and slander) as well as invasion of privacy. A public figure (such as a politician, celebrity, or business leader) cannot base a lawsuit on incorrect harmful statements unless there is proof that the writer or publisher acted with actual malice (knowledge of falsity or reckless disregard for the truth). The burden of proof in defamation actions is higher in the case of a public figure.
[22] 376 US 254 (1964)
[23] 230 SE 2d 45
[26] Supra, at 11, at p. 274
[28] 260 NYS 2d 451, at p.545
[29] One would have to concede though this extension would in no way override the privileges that re vested in members of parliament under Article 105 and Article 195 of the Indian Constitution.
[30] An apt example would be the interviews that were conducted by R.Gopal, the editor of the Tamil magazine ‘Nakkeeran’ with India’s own Robin Hood, Veerappan. The authors do admit that all events that happen under the blur of the lights and cameras that beam such ‘superstars’ into the comforts of our television sets are undoubtedly not matters of ‘private interest’ alone. It is a path that has been chosen by them and they chose not to back off from this path. It is the life they live, for it is the life they chose.
[31] In Rosenbloom v. Metromedia Inc. the court said: “If a life they live, for it is the life they chose.
[32] 403 US 29 (1917)
[34] Ibid 16
[35] Ibid
[36] Supra at 17
[37] 1994 6 SCC 632
[38] Supra at fn. 11, at p.276
[39] AIR 1959 SC 149
[41] 410 US 113 (1973) a case that dealt with abortion laws and the violation of the right to privacy.
[42] Supra fn. 2