

# Reconciling Privacy and Media Ethics in India: A Rights-Based Analysis in the Age of Data Protection

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## ABSTRACT:

“The liberty of the press is indeed essential to the nature of a free state: but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matters when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity.”<sup>1</sup>

Supreme Court of India in a decision said that right to privacy is basic right, enshrined by the Constitution of India. Nine judge’s bench of the apex court gave a verdict on August 24 2018 In Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors. (2015) <sup>2</sup>. The following points from the Supreme Court judgment will make it comprehensible:

1. Privacy emerges first and foremost from Article 21 of the Constitution of India from right to life and individual liberty. Elements of privacy appears in variable contexts from dignity documented and few by the fundamental rights restricted in Part III of Constitution. **2.** The Supreme Court judgment recognized the existence of a constitutional right of privacy but didn’t made amendments in the Constitution nor did it directed to law making bodies.
2. According to Supreme Court’s decision, privacy secures self-esteem and dignity of human being. Privacy caters those values on which the Right of life, liberty and freedom are guaranteed also privacy works with person’s entitlements and their wellbeing which assimilate at the groundwork of liberty.<sup>3</sup>
3. Privacy includes securing individual’s personal life, the sanctity of family life, marriage, home, sex life and emotion sharing. Safeguarding and preserving individual’s life, independence recognizes the ability of the human being to control essential or crucial features of his or her life.
4. Privacy does not end when a human being is at public place, by being in public place doesn’t postulates that privacy has come to an end, even as the valid expectation of privacy may vary from the recreational zone to the secluded zone and from the structured to the public arena.<sup>151</sup> Privacy is attached to the person since it is enjoyable by a person at times when he wishes to, and it is also an

<sup>1</sup> Blackstone, William. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. Chicago: University of Chicago Press, 1979.

<sup>2</sup> Justice K S Puttaswamy (Retd.) and Anr. V. Union of India and Ors. WRIT PETITION (CIVIL) NO 494 OF 2012 decided on 24 August, 2018.

<sup>3</sup> Pareesh Virmani, Vallabha Gulati, Prachi Bhati: “Aadhar Act: A Jurisprudential conundrum that entails invasiveness and breaches of privacy”: *Asia Pacific Law & Policy Review* Volume 4(Annual)-July 2008

indispensable facet of the human nature as in few things a person is not comfortable and he or she wants to keep things in privacy.. **6. Can state law encroach upon privacy?** The enactment of Digital Personal Data Protection Act, 2023 represents India's legislative response to these challenges. While the Act introduces principles such as lawful processing, consent, purpose limitation, and accountability, its application to journalistic activities remains contested. Thus, the central inquiry of this Paper is: **How can Indian constitutional law reconcile media freedom with the evolving right to privacy in the age of data protection?**

**KEYWORDS:** Right to Privacy, Freedom of Press . Justice K.S. Puttaswamy v. Union of India , Article 21 (Constitution of India), Digital Personal Data Protection Act, 2023

## 1. GENERAL PURVIEW

**“The media does play a vital role in our democracy, and if we cannot depend on journalistic ethics, the nation's in trouble.” ~ David Alan Brat<sup>4</sup>**

In India's democratic structure, apart from the legislature, executive and judicial independence are considered as three crucial pillars of a democratic nation every citizen also needs freedom of speech, articulation and variance in expression which is why the Media has been called the fourth pillar of democracy. An Independent, free and unbiased media is considered as so imperial as it can uphold the rights and different voices of the public and help the people and country in many different ways. Article 19(1)(a) of the Indian Constitution guarantees, among other things, journalistic freedom. In this context, —media might mean many different things, such as traditional print media, online video and audio content, news outlets, and e-publications. The freedom of expression, speech and information, have all been most strongly supported by the media.

However, today, it appears that when covering and stirring up controversy on any subject, the media fails to exercise the prudent control that it is expected to have, especially in strata's where it that assert and profess to be governed by the rule of law. What about its negative impacts, there are many issues which the media is violating on the pretext of giving information, just to gain TRP (Television rating point) media persons act as hawkers and vultures and often invade the privacy of people in media glare. By stipulating that no form of communication, whether it be verbal, written, or visual, may violate any laws enacted by the legislature and enforced by the executive branch. In cases when the media, whether online or in print, overstepped its bounds, the courts would step in to prevent the media from violating people's fundamental rights.

Moreover, via investigative reporting, the media and its reporting and broadcasting network has been violating and infringing the right to privacy of an individual.

However, this freedom is not absolute. It coexists with competing constitutional values, particularly the right to life and personal liberty under Article 21, which has been judicially expanded to include the right to privacy. The landmark decision in Justice K.S. Puttaswamy v. Union of India transformed privacy into a constitutionally protected fundamental right.<sup>2</sup>

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<sup>4</sup> Interview given by Congressman Dave Brat to MSNBC ,<https://www.politico.com/blogs/media/2014/06/dave-brat-doesnt-like-the-media-191107>

The Court clarified that privacy is intrinsic to dignity, autonomy, and liberty. It encompasses informational privacy, bodily integrity, and decisional autonomy.<sup>3</sup> Importantly, privacy is not extinguished in public spaces; rather, it adapts based on reasonable expectations.

In the contemporary digital ecosystem, media operations are no longer confined to print or television. The rise of digital platforms, algorithmic dissemination, and data-driven journalism has intensified concerns regarding unauthorized data exposure, profiling, and surveillance. The enactment of Digital Personal Data Protection Act, 2023 marks a legislative acknowledgment of informational privacy. Yet, its interface with journalistic practices remains underdeveloped.

Thus, the central tension emerges: **how to reconcile media freedom with the expanding contours of privacy and data protection in India.**

## 2. MEDIA IMPOSED VICTIMIZATION VIS-A-VIS ACCUSED RIGHTS

The criminal justice system is under great threat from media trials because they may result in real prejudice against the rule of law and possibly deprive the person accused of a fair and impartial trial. Any inquiry can be hampered by a parallel media probe that puts excessive and unreasonable pressure on the officials conducting it. The legal process is completely violated when the media goes out of its way to act as a judge, try the case, and pass judgment on the accused before the court has even had a chance to rule.

The media trial poses an issue since it doesn't strike a balance between —freedom of the press and —the right of the accused to a fair trial. The accused's rights must be respected as well, and this freedom must not be exploited to subvert the mechanism for delivering justice by sensationalizing and distorting the truth. The assurance of a fair and impartial trial is crucial for carrying out justice. The justice system's stability and public trust in the justice system would be at stake if there was any level of bias or injustice in a criminal trial.

Media trials tend to trample the presumption of innocence of the accused by accusing him or her in front of all the public through creating a notion that he was wrong. The common law system use —Presumption of the accused as innocent until he has been proved to be guilty beyond reasonable doubt but what media does is that it ruins the innocent character of the accused in front of everybody by showing every activity of his or her past acts, which impinges on the character of the accused on the mind of judges. Therefore, an individual's right to a fair trial is crucial for the efficient administration of justice in a democracy. When an accused person is denied a fair trial, the victim, society, and the accused all suffer injustice.

In addition, there are still a lot of unanswered questions. Firstly, of all, are journalists and the media qualified to cover an investigation in the manner that they do? The majority of journalists lack adequate training and legal knowledge. For example, the media's definitive assessment of the accused's guilt sometimes equates with the accused's admission of guilt—even if it has been disclosed to the police authorities. This demonstrates the media's lack of understanding of fundamental legal concepts. The *Bhartiya Sakshya Adhiniyam*<sup>5</sup>, specifically forbids confessions made to the police from being admitted into evidence. Thus, in the eyes of the general public, anything that is legally inadmissible becomes sufficient to cast the accused in a negative light. It is hard to locate even a single news outlet that mentions the part in their stories, much less one that explains the reasoning behind such inadmissibility.<sup>6</sup>

<sup>5</sup> S.23 *Bhartiya Sakshya Adhiniyam*, 2023

<sup>6</sup> Furqan Ahmad, 'Human Rights Perspective of Media Trial', (2009) 1 *Asia Law Quarterly* 47-48

### 3. MEDIA TRIAL AND RIGHT TO PRIVACY OF ACCUSED

The accused's right to privacy is one impact of media trials that has brought tremendous impact on the lives of accused. The notion of privacy is protected by Article 17 of the I.C.C.P.R.<sup>7</sup> and Article 12 of the U.D.H.R.<sup>8</sup>, and India has ratified a number of international treaties, including the U.D.H.R. and I.C.C.P.R. that guarantees the right to a "fair trial." Articles 21, 22 and 20 of the Indian Constitution contain these laws and are part of the country's legal system. In the same way freedom of the press is also protected by several international charters, including the U.D.H.R., E.C.H.R. and I.C.C.P.R., just as the right to a fair trial. These charters also include explicit obligations on the press to use caution when distributing information. Right to fair trial as certain elements like open public hearing in criminal cases, an impartial judge and lawyer, right to hear both sides hearing, presumption of innocence of accused until declared guilty by the court, right to privacy of certain factors of accused and others<sup>9</sup>. Article 11 of UDHR and Article 14 of ICCPR affirms the principle of presumption of innocence of the accused and it says—everyone charged with a criminal offense shall have the right to be presumed innocent until proven guilty according to law. Similar provisions can be found in other regional instruments also in Article 7 of African Charter on Human Rights<sup>10</sup>.

The actor Sushant Singh Rajput's case, which received extensive media attention, resulted in violations of both the victim's and the accused's basic rights to privacy. In a separate investigation into the actor's death, the media released information about his health history as well as various details about the suspect, including his bank account information and transactions, a large number of personal messages, pictures, and videos of various other people, regardless of their the case<sup>11</sup>. Similar events occurred in the deaths of Arushi Talwar (2008) and Sheena Bora death case (2015), in which both the accused and the victims were subjected to relentless media scrutiny and all of their intimate details, many of which were even unrelated to the case, were made public.

#### Digital Amplification and Data Exposure

In the contemporary context, media trials are exacerbated by digital technologies. Personal data—including call records, financial transactions, and private communications—is frequently leaked and disseminated.

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<sup>7</sup> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.; Everyone has the right to the protection of the law against such interference or attacks.

<sup>8</sup> Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.; Everyone shall be free to leave any country, including his own.; The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.; No one shall be arbitrarily deprived of the right to enter his own country

<sup>9</sup> The Right to a Fair Trial: Part I \_From Investigation to Trial', Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, PROFESSIONAL TRAINING SERIES No. 9, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS IN COOPERATION WITH THE INTERNATIONAL BAR ASSOCIATION, (UN 2003)

<sup>10</sup> Every individual shall have the right to have his cause heard. This comprises:

- (a) The right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
- (b) The right to be presumed innocent until proven guilty by a competent tribunal;
- (c) The right to defence, including the right to be defended by counsel of his choice;
- (d) The right to be tried within a reasonable time by an impartial court of tribunal.

<sup>11</sup> Sushant Singh Rajput, \_Bank Account Details out. ED to Probe Rhea #039;s Personal Expenses Paid by Actor' (*India Today*, August 1, 2020) <<https://www.indiatoday.in/movies/celebrities/story/sushant-singh-rajput-s-bank-account-details-out-ed-to-probe-rhea-s-personal-expenses-paid-by-actor-1706685-2020-08-01>>

Such practices raise serious concerns under data protection principles:

- **Purpose limitation:** Data collected for investigation is used for media sensationalism
- **Data minimization:** Excessive disclosure beyond necessity
- **Consent:** Absence of informed consent

#### 4. DATA PROTECTION AND MEDIA: EMERGING INTERFACE

The relationship between data protection law and media freedom represents one of the most complex constitutional intersections in contemporary India. With the transition from traditional journalism to data-driven and algorithmically amplified media ecosystems, the nature of privacy violations has fundamentally transformed. Media institutions are no longer mere disseminators of information—they are **active processors, aggregators, and distributors of personal data**, thereby bringing them squarely within the ambit of modern data protection regimes.

##### 4.1 From Informational Privacy to Data Governance

The recognition of informational privacy in Justice K.S. Puttaswamy v. Union of India marked a paradigmatic shift in Indian constitutional law. The Supreme Court emphasized that individuals possess the right to control dissemination of personal information, especially in digital contexts.

This principle directly intersects with media practices in the following ways:

- Collection of personal data during investigations
- Storage and archival of sensitive information
- Dissemination through broadcast, digital platforms, and social media
- Republishing and algorithmic resurfacing of old content

Thus, **data protection is no longer a peripheral concern but a central regulatory framework governing media conduct.**

##### 4.2 Media as Data Fiduciaries under Indian Law

The Digital Personal Data Protection Act, 2023 introduces the concept of a “Data Fiduciary,” defined as any entity that determines the purpose and means of processing personal data.

Media organizations—particularly digital news platforms—fit within this definition because they:

- Decide what personal data to publish
- Determine how long it remains accessible
- Control the context in which data is presented

##### Implications

1. **Duty of Care:** Media must process personal data responsibly, ensuring fairness and transparency.
2. **Purpose Limitation:** Data collected for one purpose (e.g., investigation) should not be repurposed for sensationalism.
3. **Data Minimization:** Only relevant information should be disclosed.

However, the Act provides **conditional exemptions for journalistic purposes**, creating a tension between accountability and freedom of the press.

##### 4.3 The Problem of “Public Interest” Exception

One of the most contentious issues in this interface is the ambiguous scope of “public interest.” Media organizations often justify intrusive reporting on the grounds of:

- Public curiosity
- Transparency
- Accountability

However, **public interest** ≠ **public curiosity**.

#### **Doctrinal Concerns**

- Absence of a statutory definition of public interest in Indian data protection law
- Risk of overbroad interpretation by media houses
- Lack of independent oversight to evaluate such claims

Comparatively, under the GDPR, journalistic exemptions are narrowly tailored and subject to balancing tests. India lacks such structured safeguards.

#### **4.4 Digital Media, Big Data, and Surveillance Journalism**

Modern journalism increasingly relies on **data analytics, AI tools, and surveillance technologies**. This gives rise to what scholars term “surveillance journalism.”

#### **Key Practices**

- Data scraping from social media platforms
- Use of leaked databases
- Profiling individuals based on digital footprints
- Geo-location tracking and metadata analysis

While such techniques may enhance investigative journalism, they also:

- Violate consent norms
- Enable mass privacy breaches
- Create long-term reputational harm due to digital permanence

#### **4.5 The Permanence Problem: Right to Be Forgotten**

One of the most critical challenges in the media-data interface is **digital permanence**. Once published online, personal information:

- Remains searchable indefinitely
- Can be replicated across platforms
- May re-emerge through algorithms

This has led to the recognition of the “Right to Be Forgotten” in Indian jurisprudence (though still evolving).

#### **Conflict with Media**

- Media argues archival integrity and historical record
- Individuals seek erasure to protect dignity and privacy

Balancing these interests remains unresolved in Indian law.

#### **4.6 Sensitive Personal Data and Media Ethics**

Certain categories of data require heightened protection:

- Health records
- Sexual orientation
- Financial information
- Personal communications

In high-profile cases like Sushant Singh Rajput, media disclosure of medical and psychological details raised serious ethical and legal concerns.

#### **Data Protection Perspective**

Such disclosures may violate:

- Consent requirements
- Data minimization principles

- Protection of sensitive personal data

Even if not explicitly prohibited, they undermine the constitutional guarantee of dignity.

#### 4.7 Comparative Perspective: GDPR and Journalism

Under the EU's GDPR:

- Article 85 provides exemptions for journalistic purposes
- However, such exemptions must balance privacy rights

##### Key Safeguards

- Independent data protection authorities
- Strict penalties for violations
- Clear guidelines on proportionality

India's framework lacks comparable institutional strength, making enforcement inconsistent.

### 5. DEFAMATION, REPUTATION, AND PRIVACY (DETAILED ANALYSIS)

The relationship between defamation, reputation, and privacy occupies a central position in constitutional and media law discourse in India. While these concepts originate from distinct legal traditions—defamation from tort and criminal law, and privacy from constitutional jurisprudence—they increasingly intersect in the digital age, particularly in the context of media reporting and data dissemination.

#### A. Conceptual Foundations

##### (i) Reputation as a Constitutional Value

The Indian Supreme Court has consistently held that **reputation is an integral facet of the right to life and personal liberty under Article 21**. In *Subramanian Swamy v. Union of India*, the Court upheld the constitutionality of criminal defamation and emphasized that the right to reputation is a component of human dignity.<sup>1</sup>

Reputation, therefore, is not merely a social construct but a **constitutionally protected interest**, closely linked to an individual's identity, autonomy, and standing in society.

##### (ii) Defamation: Legal Framework

Defamation in India exists in both:

- **Civil law (tort):** providing damages for reputational harm
- **Criminal law:** under Sections 499–500 of the Indian Penal Code

To establish defamation, the following elements must generally be satisfied:

1. A false statement
2. Publication to a third party
3. Harm to reputation

Truth, when made for public good, acts as a defense.<sup>2</sup>

##### (iii) Privacy: A Distinct Yet Overlapping Right

Privacy, as recognized in *Justice K.S. Puttaswamy v. Union of India*, protects:

- Personal autonomy
- Informational control
- Emotional and psychological integrity<sup>3</sup>

Unlike defamation, privacy violations do not require falsity. Even **truthful disclosures** may infringe privacy if they expose intimate or sensitive aspects of an individual's life without justification.

#### B. Data Protection Perspective on Reputation and Privacy

The emergence of data protection law reframes the discussion:

Under the Digital Personal Data Protection Act, 2023:

- Personal data must be processed lawfully and fairly
- Sensitive data requires higher safeguards
- Individuals have rights over their data

#### **Implications for Media**

- Unauthorized publication of personal data may violate statutory obligations
- Even non-defamatory content can attract liability if it breaches data protection principles

Thus, **data protection law expands the scope of reputational harm beyond traditional defamation.**

## **6. CONCLUSION**

The apparent conflict between media freedom and the right to privacy is often framed as a binary opposition; however, such a characterization is conceptually flawed. In constitutional theory, particularly within the Indian framework, rights are rarely absolute and are instead designed to coexist through **principled balancing**. The tension between Article 19(1)(a) (freedom of speech and expression) and Article 21 (right to life, dignity, and privacy) is therefore not a zero-sum contest but a **dynamic process of reconciliation grounded in constitutional morality**.

The jurisprudential evolution culminating in Justice K.S. Puttaswamy v. Union of India fundamentally reshaped this discourse by elevating privacy to the status of a fundamental right. Privacy is no longer a residual or derivative interest; it is now recognized as intrinsic to dignity, autonomy, and identity. This recognition imposes **positive and negative obligations**—not only on the State but also, increasingly, on non-state actors such as media institutions that wield significant informational power.

At the same time, the indispensability of media in a democratic society cannot be overstated. A free press serves as a watchdog, a forum for debate, and a mechanism for accountability. It enables transparency, exposes corruption, and facilitates informed citizen participation. Curtailing media freedom indiscriminately would therefore risk weakening democratic governance itself.

Yet, the contemporary media landscape—particularly in its digital incarnation—has introduced new challenges that traditional legal frameworks are ill-equipped to address. The convergence of journalism with data analytics, real-time dissemination, and algorithmic amplification has transformed the scale, speed, and impact of information flows. In this environment, **privacy violations are no longer isolated incidents but systemic risks**, capable of causing irreversible harm to individuals' reputations, dignity, and psychological well-being.

The enactment of Digital Personal Data Protection Act, 2023 signals an important shift toward recognizing informational privacy as a regulatory concern. However, the law's interface with media practices remains underdeveloped, particularly with respect to journalistic exemptions and accountability mechanisms. This lacuna underscores the need for a more nuanced and integrated legal approach.

#### **Final Reflection**

The future of Indian democracy in the digital age will depend significantly on how effectively it navigates this delicate balance. If media freedom is left unchecked, it risks degenerating into sensationalism and intrusion. Conversely, if privacy is overemphasized without regard to public interest, it may stifle transparency and democratic discourse.

The objective, therefore, is not to privilege one right over another but to create a coherent ecosystem where both can coexist meaningfully. This requires a synthesis of constitutional doctrine, legislative reform, institutional innovation, and ethical commitment.



In essence, the reconciliation of media freedom and privacy represents a broader constitutional project—one that seeks to uphold human dignity in an age of information excess. Achieving this balance is not merely a legal necessity but a democratic imperative.