CHAPTER 3

MEDIA FREEDOM AND RIGHT TO PRIVACY
IN INDIA- CONSTITUTIONAL PROTECTION
AND JUDICIAL RESPONSE

Justice Holmes reflects, “A marketplace of ideas where free trade and competition in ideas ensure the discovery of truth, required that individuals be ever vigilant against attempts to check the expression of the ideas that they loathe.”¹ 'Freedom' means absence of control, interference or restriction. Hence, the expression 'freedom of the Press' means the right to print and publish without any interference from the State or any public authority. But, as will be seen presently, this freedom, like other freedom, cannot be absolute but is subject to well-known exceptions acknowledged in the public interest, which in India are enumerated in Art. 19 of the Constitution.

With the invention of printing during the 15th century, in Europe obstacles were set up in order to prevent the new invention from influencing public opinion through the free circulation of news and ideas. In the English-speaking world, Henry VIII introduced press licensing in 1536.² Printers and writers were the first to fight for the simple right to print and the press in England. Newspapers and gazettes became part of the English political spectrum with the setting up of modern political institutions in the 17th century. Parliament gradually gave up enforcing

¹ Whitney v. California, (1927) 274 US 357.
the Licensing Act as from 1679, and it was finally abolished in 1694.\(^3\)
Newspapers no longer needed state approval and no longer needed
authorization to be published, a major landmark in this respect; England
can be seen as the cradle of press freedom.

It was in the United States that the freedom of press registered its
latest triumph when it was incorporated into the Constitutional Bill of
Rights in 1791 through the first Amendment. However, the exact ambit of
this right has been subject of much debate in United States. The framers
of the US Constitution understood the right as it has been understood in
Britain. Lord Mansfield’s statement that “the liberty of the press consists
in printing without previous licence, subject to the consequences of law\(^4\)”
is one of the earliest known definitions of law.

In India, freedom of ‘expression’ is guaranteed by Art. 19(1) (a) of
the Constitution, and it has been held by our Supreme Court\(^5\) that freedom
of the press is included in that wider guarantee. Since constitutionality of
the legislation relating to press can be challenged in India it is useful to
know the basic historic principles on which the demand for freedom of
press is based. It becomes important in India when all individual rights
are set to background in the zeal for establishing a welfare and socialist
state.

3.1 Freedom of Press as a part of Freedom to Speech and
Expression-

Freedom of the Press is included in the wider freedom of speech
and expression which is guaranteed under Article 19 (1) (a) of the
Constitution. Here freedom of expression is taken to mean the freedom to

\(^3\) Id.

\(^4\) R. v. Dean of Asaph, (1784) 3TR 428.

express not only one's own views but also the views of others, to propagate, circulate and defend them by any means including printing. But since the freedom of expression is not an absolute freedom and is subject to clause (2) of Article 19, laws may be passed imposing reasonable restrictions on the freedom of the press in the interests of the security of the State, the sovereignty and integrity of India, friendly relations with foreign states, public order, decency or morality, or for the prevention of contempt of court, defamation or incitement to an offence. As the constitution seeks to strike a balance between individual liberty and social control, absolute individual rights cannot be guaranteed. This right is therefore limited by the Constitution by conferring upon the State the power to impose, by its laws, reasonable restriction as may be necessary in the larger interest of the community. Thus the media takes its role as the Fourth Estate, the watchdog and conscience keeper of the nation and shaper of public opinion very seriously and functions with a high level of freedom.⁶

3.1.1 Contents of Freedom of the Press –

Since freedom of expression includes the freedom to propagate one's own views as well as of others⁷ and to communicate them to others, it follow that the freedom of the Press includes the right (subject only to such restrictions, imposed by the State, as are constitutionally permissible)-

(a) To print and publish news⁸ (i.e., the actual facts of contemporary history), and views.⁹


(b) Such views or opinions may be those of the editor or author but also those of other people, printed under his direction.\textsuperscript{10}

(c) To distribute or circulate such printed matter to any other party.\textsuperscript{11}

(d) The freedom extends to the discussion and publication of views relating to \textit{all issues} about which information is needed to enable the members of society to cope with the exigencies of the period,\textsuperscript{12} and is not necessarily confined to ‘political’ or ‘public’ affairs.\textsuperscript{13}

(e) It includes the right to comment on public affairs\textsuperscript{14} and to criticize public men and measures\textsuperscript{15} and to criticize the Government, including its defence policy and the conduct of the Armed Forces,\textsuperscript{16} without prejudice to the national security,\textsuperscript{17} e.g., by inciting insubordination, disloyalty or refusal of duty in the Armed Forces.\textsuperscript{18} This right to criticize the Government is reserved, in India, by Expls. 2-3 to s. 124A, I.P.C.

\textsuperscript{11} Ibid.
\textsuperscript{13} Bennett Coleman v. Union of India, AIR 1973 S.C. 106 (130): Casebook (I), 249 (para. 43).
\textsuperscript{14} Bennett Coleman v. State of J.K., (1975) Cr. L. J. 211 (paras. 12, 17)
\textsuperscript{17} Gravel v. U.S., (1972) 408 U.S. 606.
(f) A corresponding right to collect the information\(^{19}\) relating to public affair or the right of access to the sources of such information.\(^{20}\)

This does not mean, however, that the Press has a constitutional right of special access to information which is not available to the public generally;\(^{21}\) nor has the Government any affirmative duty to make available to journalists sources of information not available to the public generally.\(^{22}\)

A corollary of the right to publish must be the right to gather news. News must not be unnecessarily cut off at its source, for without freedom to acquire information the right to publish would be impermissibly compromised.\(^{23}\)

(g) The right of the Press to collect information from diverse and antagonistic sources, on a competitive basis, free from any monopolistic control from the Government.\(^{24}\)

(h) The freedom not to publish any news, article, correspondence or any other matter,\(^{25}\) nor to include anything at dictates of any authority. In


short, it must have the freedom to evolve a plan for carrying on of its activities, as regards the matter to be published, the class of readers it should address, the price and so on. An instance as to how the freedom of the Press may be impaired by a Government directive to publish a matter directed by the Government or its agency is offered by a Canadian case.\textsuperscript{26} The Province of Alberta sought to pass a Bill which authorized the Chairman of the Social Credit Board to compel, under pain of penalty, to publish any statement furnished by the Chairman relating any policy of the Government, for the purpose of furnishing correct information to the public. On a reference as to its constitutional validity, the Supreme Court of Canada held the relevant provision of the Bill to be unconstitutional on the ground, \textit{inter alia}, that it constituted an interference with the right of every Canadian citizen “to be informed through sources independent of the Government concerning matters of public interest”, for free discussion, which right was exercised through the Press, and which constituted the very foundation of democracy. The Legislature could exercise some degree of \textit{regulation} over a newspaper but “the limit is reached when the legislation effects such a curtailment of the exercise of the right of public discussion substantially interfere with the working of the parliamentary institution of Canada ....”\textsuperscript{27}

(i) The right to refuse any advertisement, including a Government advertisement.\textsuperscript{28} If, however, a newspaper accepts Government

\textsuperscript{26} Ref. Re. \textit{Alberta Statutes}, (1938) 2 D.L.R. 81 (Can.)

\textsuperscript{27} Id.

\textsuperscript{28} Thayer, \textit{Legal Control of the Press} (1962), pp. 152, 720 \textit{et seq.}, The converse of this right is the right not to be discriminated against in the matter of supply of Government advertisements in every newspaper. This rests on the assumption that advertisements in the modern world constitute the sustenance of every newspaper [\textit{Sakal Newspapers v. Union of India}, (1962) 3 S.C.R. 842 (861-2); \textit{Bennett Coleman v. Union of India}, AIR 1973 S.C. 106 (125-6).]
advertisement, it would be bound to abide by the terms and conditions of the contract or law relating to such contracts.

(j) Freedom of choice in the matter of employment or non-employment of the necessary means of exercising the freedom of expression, including employment in the editorial force.  

(k) Immunity from any tax specially imposed on the Press or on advertisements in a newspaper which was calculated to limit its circulation. 

3.1.2 Amplitude of the Freedom of Circulation-

Freedom to circulate extends not merely to the matter which the Press is entitled to circulate but also to the volume of circulation. In short, it is both qualitative and quantitative. 

(a) So far as the freedom as to the matter to be published is concerned, it has been established in India (following the U.S. precedents) that the object of the guarantee of freedom of the Press is to prevent public authorities from assuming the guardianship of the public mind.  

Subject, therefore, to constitutional and valid statutory limitations, every newspaper possess the right to publish anything it likes, unfettered either by prior restraint or subsequent punishment in any form. The freedom of the Press is hampered if the editorial policy of a newspaper is controlled or influenced either by the State or by private persons. Parties or

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29 Express Newspapers v. Union of India, Casebook (I), 207 (para. 3 (e)).
33 Express Newspapers v. Union of India, Casebook (I), 07 (para. 36 (e)).
financiers whose only object is to secure their respective interests irrespective of the public interest in the dissemination of information and ideas from competing sources, provided, of course, it is not unlawful. The right to distribute any kind of printed matter without previous licence extends to circulars, handbills, or literature of any kind.\textsuperscript{35}

(b) The freedom of a newspaper or other publication, from the aspect of the volume of circulation, means that

(i) it is entitled to propagate its ideas and views and reach any class and number of readers as it chooses, subject, of course, to constitutionally permissible restrictions,\textsuperscript{36} and

(ii) to print and publish any number of pages it chooses.

This freedom would be undermined by any excessive burden imposed on the Press which narrows its scope of dissemination of information\textsuperscript{37} or renders it so uneconomical as to ultimately compel it to seek Government aid, which would obviously destroy its freedom.

The foregoing freedom would, thus, be affected by any law or statute action-

(i) Which fixes a maximum number of pages which a newspaper would be entitled to print.\textsuperscript{38}

(ii) Which prohibits a newspaper to publish a Supplement (in excess of the maximum number of pages fixed for it)\textsuperscript{39} or a new edition without

\begin{itemize}
\item \textsuperscript{34} Bennett Coleman \textit{v. Union of India}, AIR 1973 S.C. 106: Casebook (I), 249 (paras. 40, 42-3).
\item \textsuperscript{35} Lovell \textit{v. Griffin}, (1938) 303 U.S. 444.
\item \textsuperscript{36} Sakal papers \textit{v. Union of India}, (1962) S.C.R. 842 (855).
\item \textsuperscript{37} Express Newspapers \textit{v. Union of India}, Casebook (I), 207 (para. 36 (e)).
\item \textsuperscript{38} Sakal papers \textit{v. Union of India}, (1962) 3 S.C.R. 842 (855).
\item \textsuperscript{39} Id.
\end{itemize}
permission of the Government, - to be granted or refused, at its unfettered discretion.

In *Bennett Coleman’s case*,\(^{41}\) the newsprint policy of the Government was struck down on this ground:

“The newsprint policy which permits newspapers to increase circulation by reducing the number of pages, page, area and periodicity them to increase the number of pages, page, area and periodicity by reducing circulation. These restrictions constrict the newspapers in adjusting their page number and circulation.”\(^{42}\)

(iii) Which fixes a *minimum* price which a newspaper must charge, according to the number of pages which it is entitled to publish under that law, i.e., by laying down a price-scale varying with the number of pages printed.

(iv) Which reduces the space for advertisement; because if the space for advertisement is reduced, earning will decline, and if the price has to be raised, that would affect circulation.\(^{43}\)

Government making a discriminatory distribution of its own advertisements,- patronising those who support the Government and depriving those who criticize.\(^{44}\)

\(^{40}\) *Express Newspapers v. Union of India*, Casebook (I), 207 (para. 36(e)).

\(^{41}\) *Bennett Coleman v. Union of India*, AIR 1973 S.C. 106: Casebook (I), 249 (paras. 40, 42-3).

\(^{42}\) *Id.*

\(^{43}\) *Id*

\(^{44}\) The converse of this right is the right not to be discriminated against in the matter of supply of Government advertisements in every newspaper. This rests on the assumption that advertisements in the modern world constitute the sustenance of every newspaper [*Sakal Newspapers v. Union of India*, (1962) 3 S.C.R. 842 (861-2); *Bennett Coleman v. Union of India*, AIR 1973 S.C. 106 (125-6).]
(c) The freedom to circulate the printed matter, whether it is a newspaper, pamphlet\textsuperscript{45} or handbill, includes the right to distribute it to other persons in any legitimate manner,\textsuperscript{46} subject, of course, to regulations by the State, in the interests of protecting streets and public places from littering or obstruction of traffic;\textsuperscript{47} or the right of a householder to protect the privacy of his home,\textsuperscript{48} from disturbance and unwanted communications.\textsuperscript{49}

But, because the Press, as such, is not entitled to any special privilege to which other citizens are not entitled, freedom of the Press does not include the following:

(f) Immunity from the general laws of the land, which are applicable to the Press, without being discriminatory,\textsuperscript{50} e.g., laws relating to industrial relations;\textsuperscript{51} conditions of service of its employees,\textsuperscript{52} such as minimum wages,\textsuperscript{53} hours of employment; laws against monopolies and restrictive trade practices.\textsuperscript{54}


\textsuperscript{46} Martin v. Struthers, (1943) 319 U.S. 141.


\textsuperscript{48} Breard v. Alexandria, (1951) 341 U.S. 622.


\textsuperscript{50} Oklahoma Press Publishing Co. v. Walling, (1945) 327 U.S. 186 (194).


\textsuperscript{52} Express Newspapers v. Union of India, AIR 1958 S.C. 578 (614); Casebook (I), 207 (paras. 42-3; 61-2; 84).

\textsuperscript{53} Express Newspapers v. Union of India, AIR 1958 S.C. 578 (614); Casebook (I), 207 (paras. 42-3; 61-2; 84).

The Press cannot, accordingly, claim immunity from labour legislation for the amelioration of journalists or workmen engaged by the Press, because its impact on the circulation of the newspaper is not direct.

The position, however, would be different if the burden imposed on the Press is excessive and directly endangers its existence or circulation, e.g., if such law, in fixing the wage structure, ignores the capacity of the industry to pay; \(^{55}\) or provides for payment of gratuity to a workman who has voluntarily resigned. \(^{56}\)

(ii) Similar is the position of general legislation to control the economic activities of the Press against monopolies or unfair trade practices. The Press is not immune from such legislation, because the Press has a business aspect, which must be subject to reasonable restrictions imposed under Art. 19 (6) of our Constitution.

But where the impugned law is not a general legislation for the control of monopolies or unfair competition, but merely seeks to curtail the circulation of a section of newspapers in the name of control of monopoly \(^{57}\) for unfair competition, \(^{58}\) it must be struck down as an unreasonable restriction under Art. 19 (2).

(iii) In general law, criminal law does not acknowledge any special immunity or protection in favour of the press.

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\(^{55}\) Express Newspapers \textit{v.} Union of India, AIR 1958 S.C. 578 (614); Casebook (I), 207 (paras. 42-3; 61-2; 84).

\(^{56}\) Id.

\(^{57}\) Bennett Coleman \textit{v.} Union of India, Caseboof (1), 249 (paras. 43-44); P. T. I. \textit{v.} Union of India, A. 1974 S.C. 1014.

\(^{58}\) Sakal Newspapers, Casebook (I), 238 (paras. 29-31).
(iv) The state is not debarred from exercising any of its legitimate powers, so long as the impact of such legislation is not directly to affect the circulation or other aspect of the freedom of press.\footnote{Express Newspapers v. Union of India; Casebook (I), 207 (paras. 38-39).}

\section*{3.1.3 Constitution Protection to the Freedom of Press and Judicial Response-}

The foregoing propositions arrived at by the American Supreme Court were summarized as follows by our Supreme Court and held to be applicable in the interpretation of freedom of the Press in India\footnote{Express Newspapers v. Union of India, (1959) S.C.R. 12 (121,124): Casebook (I), 207 (paras. 34, 36)} as derived from Art. 19(1) (a) of the Constitution:

(a) The freedom of the press rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public;

(b) Such freedom is the foundation of free Government of a free people;

(c) The purpose of such a guarantee is to prevent public authorities from assuming the guardianship of the public mind; and

(d) Freedom of the press involves freedom of employment or non-employment of the necessary means of exercising this right or in other words, freedom from restriction in respect of employment in the editorial force.\footnote{Id.}

The Constitution of India guarantees certain fundamental rights under Part III of the Constitution. Art 19 (1) (a) relates to freedom of
speech and expression that is subject to the restrictions under cl. (2) of the Art.

There is no separate provision guaranteeing the freedom of the Press, as in countries like the U.S.A. But our Supreme Court has held that there was no need to mention freedom of the Press separately, because it is already included in the guarantee of ‘freedom of expression,’ which comprehends not only the liberty to propagate one’s own views but also the right to print matters which have either been borrowed from someone else or are printed under the direction of that person. It also includes the liberty of publication and circulation.

Several conclusions follow from the fact that there is no separate guarantee of freedom of the Press in India and that it must be derived from Art. 19(1) (a) of the Constitution.

The Press stands on the same footing as any other citizen and cannot claim any privilege as such as distinct from those of any other citizen. Conversely the Press cannot be subjected to any special restrictions which could not be imposed on any private citizen.

Since the guarantee under Art. 19 (1) (a) is confined to ‘citizens’, a non citizen running a press, is not entitled to the benefit of the liberty of the Press.

A company, even though incorporated in India, would not be entitled to complain of any invasion of freedom of expression or of the

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Press, ‘citizenship’ under our Constitution is confined to natural persons. Where a newspaper company is incorporated in India, its Indian shareholders, may challenge the constitutionality of law which infringes the freedom of expression. Even a reader of newspaper is entitled to challenge constitutionality of a law which reduced or was likely to reduce the circulation of the newspaper by curtailing its size or space available for advertisement or by fixing a minimum price for the number of pages to be printed.

3.1.4 Justification for the Control over Freedom of Press by the State-

When the danger to such countervailing public interests assumes a serious dimension, the State would be justified in curtailing or controlling the freedom of the Press. Freedom of the Press cannot, therefore, mean an uncontrolled license for or immunity to every possible use of language.\(^6^6\) The freedom of Press, in India cannot be absolute, but must be subject to restriction which may be imposed by the State.

3.1.5 Abuse of the Right to Freedom of Press-

Every human institution is liable to be abused, and every liberty is left unbridled, has the tendency to become a licence. The need for controlling the Press, apart from any emergency, arises out of this danger of the freedom of the Press being abused. In India the Court’s role in balancing the two competing public interest is reserved in the Constitution itself, in form of reasonable expressions.\(^6^7\)

\(^6^6\) *Santokh Singh v. Delhi Administration*, AIR 1973 SC 1091 (para 8).

\(^6^7\) Cl. (2)-(6) of Art. 19.
3.2 Right to Privacy and Indian Judiciary-

In any country, judiciary plays the important role of interpreting and applying the law & adjudicating upon controversies between one citizen & another & between citizen & the state. It is the function of the courts to maintain rule of law in a country and to assure that the government runs according to law. In a country with a written Constitution, courts have the additional function of safeguarding the supremacy of the Constitution by interpreting & applying its provision and keeping all authorities within the constitutional framework. In India, in addition to the above, the judiciary also has the significant function of protecting & enforcing the fundamental Rights of the people guaranteed to them by the constitution.\textsuperscript{68} Justice Untwalia has compared the judiciary to a “watching tower above all the big structures of the other limbs of the state” from which it keeps a watch likes sentinel on the functions of the other limbs of the state as to whether they are working in accordance with the law & the Constitution, the Constitution being Supreme.\textsuperscript{69}

In India, though right to privacy is not explicitly mentioned in the Constitution, it is interpreted by the Supreme Court to be implied in the Article 21 (right to life) of the Indian Constitution. This has been repeatedly reiterated in a number of cases such as \textit{Kharak Singh v. State of Uttar Pradesh} (1963)\textsuperscript{70}, \textit{Gobind v. State of Madhya Pradesh} (1975)\textsuperscript{71}, \textit{R. Rajgopal v. State of Tamilnadu} (1994)\textsuperscript{72} and \textit{Peoples Union of Civil Liberties s. the Union of India} (1997)\textsuperscript{73} (telephone tapping case) etc. The Apex Court acknowledged the privacy infringements in these cases. This

\textsuperscript{68} M.P. Jain, \textit{Indian Constitution Law}, (Wadhwa, Nagpur, V ed., 2003) at p.224

\textsuperscript{69} \textit{Union of India v. Sankal Chand Himmatlal Seth}, AIR 1977 SC, 2328.

\textsuperscript{70} AIR 1963 SC 1295.

\textsuperscript{71} (1975) 2 SCC 148.

\textsuperscript{72} “Auto Shankar” case, (1994) 6 SCC 632.

\textsuperscript{73} (1997) 1 SCC 301.
right can be discussed under the following provisions of Indian Constitution.

3.2.1 Right to Life and Personal Liberty-

Art.21 lays down that no person shall be deprived of life and personal liberty except according to 'procedure established by law'. The question of interpretation of words 'procedure established by law' arose in famous Gopalan case\(^{74}\) where the validity of the Preventive Detention Act, 1950 was challenged. The question was whether Art.21 envisaged any procedure laid down by a law enacted by a legislature or whether the procedure should be fair and reasonable. On the behalf of Gopalan an attempt was made to persuade the S.C. to hold that the court could adjudicate upon the reasonableness of the Preventive Detention Act or for that matter, any law depriving a person of his personal liberty. Three pronged arguments were developed for this purpose; first, the world 'law' incorporates principles of natural justice so that law depriving the life and personal liberty must incorporate the principles of natural justice. Second, the reasonableness of the preventive law ought to be judged under Art.19 and third, the 'procedure established by law' includes the American concept of "procedural due process." However, the S.C. rejected all these arguments.

3.3 A New Dimension of Right to Life-

Supreme Court gave a new dynamic dimension to Art.21 and it was with this decision the court started laying down a new constitutional jurisprudence. Art.21 has characterized as 'the procedural magna carta protective of life and liberty'. For long, life and personal liberty occupied a back seat in India as accent was placed on property right. However, this situation has changed now. Maneka Gandhi's case\(^{75}\) has brought the

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Fundamental right of life and personal liberty into prominence; it is now regarded as the heart of Fundamental rights.

The expression 'life' in Art.21 has been interpreted by S.C. rather liberally and broadly. Over time, court has been given an expansive interpretation to 'life'. The court has often quoted the following observation of FIELD, J., in *Munn v. Illinois*, an American case: "By the term 'life' as here used something more is meant than mere animal existence. Inhibition against its deprivation extends to all those limbs faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg ..."

The concept of "right to life and personal liberty" guaranteed under Art. 21 of the Constitution would include the "right to live with dignity". Right to privacy is not clearly pointed out in Art.21 but the Supreme Court has articulated the same by way of judicial explanation the concept of privacy as fundamental right first evolved in 1964 in the case of *Kharak Singh v. State of U..P*. The Supreme Court for the first time held that there is a right to privacy implicit in the Indian Constitution under Art.21. In this case, Supreme Court struck down Regulation, which authorized detention as being unconstitutional but up held the other provisions of surveillance under that Regulation. The appellant was being harassed by police under Regulation 236(b) of Police Regulation, which permits domiciliary visits at night. The Supreme Court held that the Regulation 236 is un constitutional and violative of Art.21. It concluded that the Art.21 of constitution includes "right to privacy" as a part of right to "protection of life and personal liberty". The Court equated 'personal liberty' with 'privacy', and observed, that "the concept of liberty in Art.21 was comprehensive enough to include privacy and that a person's house,

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76 94 U.S. 113 (1877).
77 AIR 1963 SC 1295.
where he lives with family is his 'castle' and that nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy'.

*Gobind v. State of M.P.*\(^{78}\) is another case on domiciliary visits. The Supreme Court laid down that "...privacy-dignity claim deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test..." 

In *State v. Charulata Joshi*\(^{79}\) the Supreme Court held that "the constitutional right to freedom of speech and expression conferred by Art.19 (1) (a) of the constitution which includes the freedom of the press is not an absolute right.

"The press must first obtain the willingness of the person sought to be interviewed and no court can pass any order if the person to be interviewed expresses his unwillingness".

In *R. Rajagopal v. State of Tamil Nadu*\(^{80}\) The Supreme Court held that the petitioners have a right to publish what they allege to be the life-story-autobiography of Auto Shankar insofar as it appears from the public records, even without his consent or authorization. However, if they go beyond that and publish his life story, they may be invading his right to privacy, and then they will be liable for the consequences in accordance with law. Similarly, State or its official cannot prevent or restrain the said publication. It stated that "A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.

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\(^{78}\) (1975) 2 SCC 148.


\(^{80}\) "Auto Shankar" case, (1994) 6 SCC 632.
None can publish anything concerning the above matters without his consent—whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages....." In People's Union for Civil Liberties (PUCL) v. Union of India 81, the Supreme Court held that the telephone tapping by Government under S. 5(2) of Telegraph Act, 1885 amounts infraction of Art. 21 of Constitution of India. Right to privacy is a part of the right to 'life' and 'personal liberty' enshrined under Art. 21 of the Constitution. The said right cannot be curtailed "except according to procedure established by law'.

In Mr. 'X' v. Hospital "Z"82 for the first time the Supreme Court articulated on sensitive data related to health. In this case, the appellant's blood test was conducted at the respondent's hospital and he was found to be HIV (+). His marriage, which was already settled, was called off after this revelation. Several people including the members of his family and those belonging to their community came to know of his HIV (+) status and was ostracized by the community. He approached the National Commission against the respondent hospital claiming damages from them for disclosing information about his health, which, by norms of ethics, according to him, ought to have been kept confidential. The National Commission summarily dismissed his complaint. Consequently, he moved the Supreme Court by way of an appeal.

The appellant argued that the principle of 'duty of care' as applicable to persons in medical profession also included the duty to maintain confidentially and that since the respondents violated this duty, they were liable to pay damages. "Right of privacy may, apart from contract, also arise out of particular specific relationship, which may be

81 (1997) 1 SCC 301.
commercial, matrimonial, or even political. Doctor-patient relationship, though basically commercial, is professionally, a matter of confidence and, therefore, doctors are morally and ethically bound to maintain confidentiality". It however, held that although it was the basic principle of jurisprudence that 'every Right has a correlative Duty and every Duty has a correlative Right', the rule was not absolute and was 'subject to certain exceptions' in the sense that 'a person may have a Right' but there may not be correlative Duty, and the instant case fell within exceptions.

The court observed that even the Code of Medical Ethics carved out an exception to the rule of confidentiality and permitted the disclosure in certain circumstances 'under which public interest would override the duty of confidentiality' particularly where there is 'an immediate or future health risk to other'. According to the court, the 'right to confidentiality, if any, vested in the appellant was not enforceable in the present situation, as the proposed marriage carried with it the health risk from being infected with the communicable disease from which the appellant suffered.

As regards the argument of the appellant that his right to privacy had been infringed by the respondents by disclosing that he was HIV (+) and, therefore, they were liable in damages, the Supreme Court observed that as one of the basic human rights, the right of privacy was not treated as absolute and was 'subject to such action as may be lawfully taken for the prevention of crime or disorder or protection of health or morals or protection of rights and freedom of others".

**District Registrar and Collector v. Canara Bank**\(^\text{83}\), it was held, that "exclusion of illegitimate intrusions into privacy depends on the nature of the right being asserted and the way in which it is brought into play; it is

\(^{83}\) (2005) 1 SCC 496: AIR 2005 SC 186
at this point that the context becomes crucial, to inform substantive judgment. If these factors are relevant for defining the right to privacy, they are quite relevant whenever there is invasion of that right by way of searches and seizures at the instance of the State". If one follows the judgments given by the Hon'ble Supreme court, three themes emerged-

1. That the individual's right to privacy exists and unlawful invasion of privacy would make the "offender" liable for the consequences in accordance with law;

2. That there is constitutional recognition given to the right of privacy which protects personal privacy against unlawful government invasion;

3. That the person's "right to be let alone" is not an absolute right and may be lawful restricted for the prevention of crime, disorder or protection of health or morals or protection of right and freedom of others.

The right to privacy has been read into Art.21 with the expansive interpretation of the 'personal liberty' by the Supreme Court, but this right is not an absolute right and, if there were conflict between fundamental rights of the two parties, that right which advances the public morality will prevail.

3.4 Object of Art.21-

3.4.1 Protection of Personal Liberty –

The object of Art.21 is to prevent encroachment upon personal liberty by the Executive save in accordance with the law, and in conformity with the provisions there.\textsuperscript{84}

1. Before a person is deprived of his life or personal liberty, the procedure established by law must be strictly followed and must not be departed from to the disadvantage of the person affected.\(^{85}\)

2. Prior to the decision in 1978 in *Maneka's case*\(^ {86}\) Art.21 was construed narrowly only as a guarantee against executive action unsupported by law.\(^ {87}\) However, *Maneka's*\(^ {88}\) case opened up a new dimension & laid down that it imposed a limitation upon law making as well.\(^ {89}\) Namely that, while prescribing a procedure for depriving a person of his life or personal liberty, it must prescribe procedure which is reasonable fair & just.\(^ {90}\)

3. In each case where a person complains of the deprivation of his life or personal liberty the court, in the exercise of its constitutional power of judicial review, has to decide whether there is a law authorising such deprivation & whether in the given case, the procedure prescribed by such law is reasonable, fair & just, & not arbitrary, whimsical & fanciful.\(^ {91}\)

### 3.4.2 Nature & Scope of Article 21-

1. The words except according to procedure established by law suggest that Art.21 does not apply where a person is detained by a private individual and not by or under authority of the state; no fundamental right

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\(^{86}\) *Maneka Gandhi v. UOI*, AIR 1978 SC 597

\(^{87}\) A.K. Gopalan, *Id.*

\(^{88}\) *Id.*

\(^{89}\) *Fransis Coralie v. UT Delhi Administrator*, AIR 1981 SC 746 (Para 3.)

\(^{90}\) *Id.*

\(^{91}\) *Id.*
is infringement when the detention complained of is by a private individual. Art. 32 also cannot be involved in such a case.\textsuperscript{92}

2. Enjoyment of a quality life by the people is the essence of the guaranteed right under Art. 21 of the constitution.\textsuperscript{93}

3. But the protection of the Article external to all person not merely citizens\textsuperscript{94} including even person under imprisonment.\textsuperscript{95}

4. It also applies to preventive detention under Art.22.

4. Art.21 does not refer only to the necessity to comply with the procedural requirements, put also to substantive right of a citizen. It aims as preventive measures as used us payment of compensation in case human rights of a citizen are cribbed.\textsuperscript{96}

5. Art 21 of the constitution provides for a safeguard in such a manner directing that FIR should be sent to the conversed court within a period of 24 hours.\textsuperscript{97}

\subsection*{3.4.3 Meaning of Life –}

The expression ‘life’ in Art.21 has been interpreted by the Supreme Court rather liberally and broadly. Over time, the Court has been giving an expansive interpretation to ‘life’. The court has offices quoted the

\textsuperscript{92} Vidya Verma (Smt.) v. Shivnarayan Verma (Dr.), 1955(2) SCR 983, but a petition under Art.226 would lie.

\textsuperscript{93} Hinch Lal Tiwari v. Kamla Devi, (2001) SCC 49 6, J01(Para 13)

\textsuperscript{94} Chairman, Railway Board v. Chandrima Das, (2000) 2SCC 465 (Para’s 27 & 28)


following observation of FIELD, J., in *Munn v. Illinois*[^98], an American Case:

“By the term ‘Life’ as here used something more is meant than mere animal existence. The inhabitation against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provisions equally prohibit the mutilation of the body by the amputation of an arm or leg........[^99] Bhagwati, J. has observed in *Frantis Coralie*[^100]: “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expression oneself in diverse forms, freely moving about and mixing and coming with fellow human beings.”

In *P. Rathinan v. Union of India*[^101]: the Supreme Court has defined life as,

“The right to live with human dignity and the same does not connote continued drudgery. It takes within its fold some of the graces of civilization which makes life worth living and that the expanded concept of life would mean the tradition culture and heritage of person concerned.”

Another shade of right to life unfold in the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed[^102].

The Supreme Court has stated in *R.M. Malkani v. State of Maharashtra*[^103] with reference to Art 21, that the telephonic conversation

[^98]: 94 U.S.113 (1877).
[^100]: Ibid.
[^101]: AIR 1994 SC 1844.
[^102]: Id.
[^103]: Id.
of an innocent citizen would be protected by courts against wrongful or high handed interference by tapping of the conversation by the police. The protection is not for the guilty against the efforts of the police to vindicate the law.

3.4.3.1 Personal Liberty-

The expression ‘personal liberty’ used in Art 21 has also been given a liberal interpretation. It does not mean merely the liberty of the body i.e. freedom from physical restraint or freedom from confinement within the bounds of a prison. In other words, it means not only freedom from arrest or detention, from false imprisonment or wrongful confinement, but means much more than that. The term ‘personal liberty is not used in a narrow sense but has been used in Art 21 as a compensations term to include within it all those variety of rights of a person which go to make up the personal liberty of a man.104

At the outset the term ‘personal liberty’ was interpreted to exclude the rights those mentioned in Art 19.5 this view was expressed in Kharak Singh105 that while Art 19(1) dealt with particular species or attributes of that freedom, ‘personal liberty’ in Art 21 would take in and comprise the residue. This was the projection of ‘Gopalan’106 approach of keeping Art 21 separate from Art 19. Nevertheless the court gave quite a broad dimension to the term ‘personal liberty’ used in Art 21. The court ruled that the term ‘personal liberty’ is used as a compendious term to include within itself all the varieties of rights, which go to make up the ‘personal liberties. For example, the Supreme Court held in Kharak Singh107 that

104 A.K. Gopalan; Kharak Singh.Id.
105 Id.
106 Id.
107 Id.
while night domiciliary visits by the police (involving intrusion into his residence, knocking at his door and disturbing his sleep and ordinary comfort) constitute an infringement of personal liberty of an individual enshrined in Art 21, secret picketing of the house by the police or shadowing of his movements do not fall under Art 21, but under Art 19(1) (d). 6

But the minority view expressed by SUBBA RAO J, adopted a much wider concept of personal liberty. He observed,

“No doubt the expression ‘personal liberty’ is a comprehensive one and the right to move freely is an attribute of personal liberty, it is said that the freedom to move freely is carved out of personal liberty, and therefore, the expression ‘personal liberty’ in Art 21 excludes that attribute. In our view, this is not a correct approached. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another. The fundamental right to life and personal liberty have many attributes and some of them are found in Article. 19. If a person’s fundamental right under Art. 21 is infringed, the state can rely upon a law to sustain the active, but that cannot be a complete answer unless the said law satisfies the test laid down must satisfy that both the fundamental rights are not infringed by showing that there is a law that it does not amount to a reasonable restriction within the constitution.”

In the course of time the view of SUBBA RAO J; has become the accepted view. 108 “The expression, personal liberty in Art.21 of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article

19. In *Francis Coralie*\(^{10}\) upholding the right of a defence to have interviews with her friends and family members. BHAGWATI, J. held that the personal liberty includes rights to socialise with family members and friends as well as to have interviews with her friends.\(^{11}\)

In *Satwant Singh v. A.P.O*\(^{12}\), the right to travel abroad was held to be an aspect of ‘personal liberty’ of an individual and therefore person can be deprived of his right to travel expect according to the procedure established by law. Since a passport is essential for the enjoyment of that right of that right, denial of a passport amounts to deprivation of personal liberty. Hence, a passport for travel cannot be denied except according to procedure established by law.\(^{13}\)

In civil litigation, e.g., to decide the question of paternity of a child, no party can be compelled by the court to undergo medical examination or blood group test against his will in the absence of any statutory permission for the purpose. No adverse inference can be drawn against him from his refusal to undergo any such test. Otherwise, it amounts to violation of his personal liberty guaranteed by Art. 21.\(^{14}\)

### 3.4.3.2 Meaning of Law-

The word ‘law’ in Art 21 means an enacted law as well as other species of law. It *A.K. Roy v. Union of India*\(^{15}\) then was question whether the word ‘law in Art 21 includes an ordinance’. It was in context to the National Security Ordinance, 1980. The Supreme Court held that an

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\(^{10}\) *Maneka Gandhi.*

\(^{11}\) *Francis Coralie v. Union Territory of Delhi,* AIR 1981 SC 746.

\(^{12}\) M.P. Jain, p 1091.

\(^{13}\) *Ibid.*


ordinance is as much law as an Act passed by a legislative and is subject to the Dome restrictions. The power of Supreme Court & High Court under Articles 145 & 225, respectively come under the preview of ‘law’.

In *M.S.M. Sharma v. Shri Krishnan Sinha* the rules made by House of the State Legislature under Art.208 have been as laying down procedure ‘law’ for purposes of Art. 21. Art 21 applies to the area of legislative privileges and thus a person cannot be imprisoned for breach of privilege of a legislature except in accordance with the procedure established by law. Regulations made under the Police Act fall under Art. 21. But departmental instructions made without any statutory authority, and not having the force of law, do not constitute ‘law’ for the purpose of Art. 21 and they cannot validly put restraints on the individual’s personal liberty.

3.4.3.3 Procedure Established by Law-

Authority of law would be lacking where the procedure prescribed by law has not been followed or conditions laid down for the exercise of power have been exceeded, and Courts have emphasised the necessity of strictly followed the procedure established by law before a person could be deprived of his personal liberty. It is now established after *Maneka Gandhi* that ‘procedure for purposes of Art. 21 have to be reasonable, fair and just. The expression “procedure established by law” extends both to substantive as well as procedural law. A procedure not fulfilling these attributes is no procedure at all in the eyes of Art.21.

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The procedure of putting up poor person in prison for failure to pay his debts\textsuperscript{120} is violative of Art. 21,

“Unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims of his means.........”\textsuperscript{121} In the instant case, the judgment debtor had failed to repay their debts and, consequently, their property was attached. In addition, a warrant for their arrest and detention in civil prison was also issued. The Supreme Court ruled that the procedure of putting a person in prison to recover debts violated Art. 21\textsuperscript{122}

The vast power conferred on the public and military officers, held the Court, could not be regarded as ‘arbitrary’ or in other words ‘unjust, unfair and unreasonable.’ There are sufficient safeguards postulated to ensure proper exercise of power, e.g. first they are must be declared as ‘disturbed’ ; S.144, Cr. P.C., must be in force; only so much force must be used as necessary in the circumstances of the situation; if it is feasible to give warning then the warning must be given before firing\textsuperscript{123}

\textbf{3.4.4 Administration of Justice and Article 21-}

Administration of criminal justice is a State matter. Fortunately, by reinterpreting Art 21 in \textit{Maneka Gandhi}\textsuperscript{124}, and by giving up the sterile approach of \textit{Gopalanc}, the Supreme Court has found a potent tool to seek to improve matters, and fill the vacuum arising from governmental inaction and apathy to undertake reform, in the area of criminal justice.

\textsuperscript{120} Order 21, rule 27 and Sec.51 of Civil Procedure Code.
\textsuperscript{121} Jolly George Varghese v. Bank of Cochin, AIR 1980 SC 470.
\textsuperscript{122} Ibid, M.P. Jain at p.1092.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
The Court has now been seeking to humanise and liberalise the administration of criminal justice.\footnote{125} 

*Maneka Gandhi v. Union of India*\footnote{126} is a landmark case of the post-emergency period. This case shows how liberal tendencies have influenced the Supreme Court in the matter of interpreting fundamental rights, particularly, Art. 21. A great transformation has come about in the judicial attitude towards the protection of personal liberty after the traumatic experiences of the emergency during 1975-77 when personal liberty had reached its nadir.\footnote{127} This case showed that Art. As interpreted in *Gopalan* could not play any role in providing any protection against any harsh law seeking to deprive a person of his life or personal liberty. In fact this case has acted as a catalytic agent for transformation of the judicial view on art. 21.\footnote{128} In the words of Dicey\footnote{129}, “The right to personal liberty as understood in England means in substance a person’s right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.” In *Leversidge v. Anderson*\footnote{130} LORD ATKIN said that it is for a person directing imprisonment to justify his act.\footnote{131}

Personal liberty is however, increasingly seen as not being confined to freedom from physical restraint. Modern methods of surveillance
enable telephone calls to be intercepted or private conversation to be overheard.\textsuperscript{132}

Since \textit{Maneka Gandhi}\textsuperscript{133}, the Supreme Court has shown great sensitivity to the protection of personal liberty. The court has reinterpreted Art 21 and particularly over the ruled \textit{Gopalan}\textsuperscript{134} in \textit{Maneka Gandhi} which can be regarded as a highly creative judicial pronouncement on the part of the Supreme Court. Not only has that, since \textit{Maneka}\textsuperscript{135}, the Supreme Court given to Art. 21, broader and broader interpretation so as to imply many more Fundamental Rights. In the Course of time, Art. 21 has proved to be a very fruitful source of the rights of the people. \textsuperscript{136}

Art. 21 which had lain dormant for nearly three decades had been brought to life by \textit{Maneka}\textsuperscript{137}. Art. 21 have now assumed a “highly activist magnitude”. For long, life and personal liberty occupied a back seat in India as accent was placed on property rights,\textsuperscript{138} but the situation has changed now. \textit{Maneka}\textsuperscript{139} has brought the Fundamental Right of life and personal liberty into prominence; it is now regarded as the heart of Fundamental Rights.\textsuperscript{140}

\textbf{3.4.5 Different Facets of Right to Life and Personal Liberty-}

Right to life and personal liberty so broadly interpreted by the Supreme Court that it is now known as Human Rights Jurisprudence. It

\textsuperscript{132} \textit{Ibid}, Hood and Philips at p. 533.
\textsuperscript{133} \textit{Id}.
\textsuperscript{134} \textit{Id}.
\textsuperscript{135} \textit{Id}.
\textsuperscript{136} M.P. Jain At p. 1085
\textsuperscript{137} \textit{Id}.
\textsuperscript{139} \textit{Id}.
\textsuperscript{140} M.P. Jain at p. 1087.
folds in its robe almost every aspect of life which makes it worth living. Not only the persons who are free but also the persons who are prisoners are assured certain guarantees by the liberal interpretations of this very Article. We can discuss it through different angles-

### 3.4.6 Rights of Arrested Persons/Prisoners-

**A** **In Case of Arrest**-

The guidelines issued by the Supreme Court in the case of *Joginder Singh v. State of U.P.*[^141], emphasized that arrest can cause incalculable harm to a person’s reputation and self esteem. Arrest should be made not merely on suspicion but after a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of the complaint and a reasonable belief as to the person’s complicity and as to need to effect arrest. The arrested person has right to inform his relative or friend about his arrest, place of detention, to consult lawyer etc.[^142] The rules emerging from decisions such as *Joginder Singh*,[^143] and *D.K. Basu v. State of West Bengal*,[^144] have been enacted in Sec. 50-A of Cr. P. C.[^145]

[^141]: AIR 1994 SC 1349.
[^142]: M.P. Jain at p. 1097.
[^144]: (1997) 1 SCC 260.
[^145]: Inserted in the Code of Criminal Procedure by Act 25 of 2005 effecting from 23-6-2006. Sec. 50-A enacts thus-

"(1) Every police officer or other person making any arrest under this Code shall forth with give th3 information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as maybe disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-sec.(1) as soon as he brought to the police station."
(B) *Speedy and Fair Trial*-

Fair trial is beneficial both to the accused as well as the society. A conviction resulting from an unfair trial is contrary to our concept of justice. Right to fair trial in a criminal prosecution is enshrined in Art.21 because the procedure also must be fair. Speedy trial has been recognized by the Supreme Court to be implicit in the spectrum of Art. 21. Quick justice is now regarded as *sine qua non* of Art. 21. Supreme Court has observed:

"The concept of speedy trial is read into Art.21. As an essential part of the Fundamental Right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, enquiry, trial, appeal, and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be arrested."\(^{147}\)

*Hussainara (II)*,\(^{148}\) the Supreme Court has emphasised that financial constraints and priorities in expenditure would not enable the Government to avoid its duty to ensure speedy trial to the accused. Supreme Court lamented, “It is a crying shame upon our ad judiciary

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\(^{148}\) *Hussainara v. Home Secretary, Bihar (II)*, AIR 1979 SC 1369.
system which keeps men in jail for years on end without a trial.\textsuperscript{149} The S.C. has reiterated in \textit{Abdul Rehman Antuley v. R.S. Naik}\textsuperscript{150} that there is a right to speedy trial of the case pending against him. But there can be no time limit within which a trial must be completed.

“It is, thus, the obligation of the state or the complainant, as the case may be, to prove with the case with reasonable promptitude.”\textsuperscript{151} Long pre-trial confinement is also very grievous aspect of the present-day administration of criminal justice. The poor persons have to languish in prisons waiting trial for their offences.\textsuperscript{152} The Supreme Court has declared that after the ‘dynamite’ interpretation of Art. 21 in \textit{Maneka Gandhi}\textsuperscript{153}, there is little doubt that any procedure which keeps such large numbers by people behind bars without trial so long cannot possibly be regarded as “reasonable, just and fair” so as to be confronting with Art. 21. It is necessary that enacted by the legislature and as administrated by the counts must radically change its approach to pre-trial, detention and ensure ‘reasonable, just and fair’ procedure which has creative connotations after \textit{Maneka Gandhi}’s cases.\textsuperscript{154} The Supreme Court has diagnosed the root cause for long pre-trial incarceration to be the present day unsatisfactory and irrational rules for bail which insist merely on financial security from the accused and their sureties. The court has characterized the system of bail in India as ‘antiquated’. It is oppressive and weighted against the poor. The court has made the constructive suggestion to change legal provision for bail so that these provisions need

\textsuperscript{150} AIR 1992 SC 1701.
\textsuperscript{151} See M.P.Jain \textit{P.1097}.
\textsuperscript{153} \textit{Id.}
no longer based merely financial sureties but, that other factor should also be taken into account so that the poor can get their release from the prison pending their trial.\textsuperscript{155}

Right to appeal, legal aid, hand cuffing of under trials etc. Other issues which received attention of the judiciary & it delivered famous and valuable judgement for issues relating to criminal justice system.\textsuperscript{156}

\textbf{3.4.7 Right against Custodial Violence-}

Custodial violence is the dirty patch on the robe of criminal justice system. The incidents of brutal police behaviours towards persons detained on suspicion of having committed crimes is evidence of the mindset of the police based on the borrowed, archaic and outdated police system which British followed in Ireland and not in their own country i.e. Britain. Describing police torture as ‘disastrous to our human rights awareness and humanist constitutional order’, the Supreme Court has held the state responsible for remedying the situation. If it is found that the police has ill-treated a detenu, they would be entitled to monetary compensation under Art 21.\textsuperscript{157} Inspite of the constitutional and statutory provisions aimed at safeguarding personal liberty and life of a person (Art 21 & 22), “growing incidence of torture and deaths in police custody has been a disturbing factor.” The Court has asserted, “The prevision right guaranteed by Art 21 of the Constitution of India cannot be denied to convicts, under trials, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.”\textsuperscript{158}

\textsuperscript{155} Amendment in Criminal Procedure Code.


\textsuperscript{158} AIR 1997 SC 610 at 618, as quoted by M.P. Jain at \textit{Page 1119}. 
The Supreme Court has taken up the matter to award the compensation of custodial violence or death in writs.

3.4.8 Life worth Living-

Apart from improving the administration of criminal justice, the Supreme Court has used Art.21. in a very creative manner to improve to quality of life and to imply there from a bundle of rights for the people. A big step was taken by the court in expanding the scope of Art. 21 when it argued that ‘life’ in Art.21 does not mean merely ‘animal existence’ but living with ‘human dignity’. The Court has thus given very extensive parameters to Art.21

“But the question which arises is whether the right to life is limited on to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it, viz, the bare necessities of life such as adequate nutrition clothing and shelter over the head and facilities for reading, writing & expressing oneself in diverse form, freely moving about and mixing and mingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country but it must, in any view if the mater, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.”

The expression of right to life, on live and vibrant screen, is displayed by the broad interpretation of the Supreme Court. Important ones are discussed below-

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159 Francis Coralie v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 at 753, as quoted by M.P. Jain at p 1121.

160 Ibid.
1. Right to food, water and decent environment, education, medical care and shelter.\(^{161}\)

2. Right to live with human dignity as characterized by the Supreme Court in *Bandhva Mukti Morcha*.\(^ {162}\) Art. 21 as the heart of fundamental rights. Rape is violative of right to life which including right to live with human right\(^ {163}\)

3. Right to reputation is a facet of the right to life of a citizen under Art.21 of the Constitution. In case any authority, in the law, traverses into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. In such circumstances right of the principles of natural justice before being adversely connected upon by a Commission of Inquiry, statutory recognised and violation of the same will have to bear the scrutiny of judicial review.\(^{164}\)

4. Right to Livelihood- To begin with, the Supreme Court took the view that the right to life in Art. 21 would not include livelihood\(^{165}\). The Supreme Court reiterated this preposition in several cases even in the post- *Maneka* era.\(^ {166}\)But later on, the Court while defining the word ‘life’ in art. 21 in a broad and expansive manner, hold that ‘the right to life’ guaranteed by Art. 21 includes ‘the right to livelihood’.\(^ {167}\) The court has


\(^{162}\) Bandhwa Mukti Morcha v. Union of India.


\(^{165}\) Re Sant Ram , AIR 1960 SC 932 (before Maneka Gandhi).


\(^{167}\) Board of Trustees of the port of Bombay v. Dilip Kumar K. Nandkarni, AIR 1983 SC 109.
argued in *Olga Tellis*, a case by pavement dwellers to resist eviction from their habitat by the Municipal Corporation of Bombay, that the right to livelihood is born out of the right to life, as no person can live without the means of livelihood. In *Sadan Singh*, Supreme Court held that hawkers have a Fundamental Right under Art. 19 (1) (g) to carry on trade or business of their choice although they cannot be permitted to carry on their trade on every road in a city.

5. Right to medical Care- In *Parmanand Katara v. Union of India* the Supreme court has considered a very serious problem existing in medico-legal case (such as an accident) the doctors usually refuse to give immediate medical and pending the completions of legal formalities. Once life is lost, status quo ante cannot be restored. It is the duty of the doctors to preserve life whether the concerned person is a criminal or an innocent person.

6. Right to Education also held to be included in right to life. The Court accepted that the constitution does not expressly guarantee the right to education as such as a fundamental right. But, reading cumulatively Art 21 along with The Directive Principles contained in Arts 38, 39(a), 41 & 45, the court optioned that “it becomes clear that the framers of the Constitution made it obligatory for the state to provide education for its citizens.”

7. Right to information and community participation for protection of environment and human health is also a right, which flows from Art 21 of

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170 AIR 1989 SC 2039.
171 See also *Paschim Banga Ket Mazdoor Samity v. State of West Bengal* AIR 1996 SC 2426.
the Constitution.\textsuperscript{173} The public in general has a right to know the circumstances under which their elected representatives got the outlets and/or dealership distributorship.\textsuperscript{174} There is also a strong link between Art 21 and the right to know particularly where “secret govt. decisions may affect health, life and livelihood.”\textsuperscript{175}

3.4.9 Death Sentence and Right to Life-

The question of constitutional validity of death sentence has been raised before the Supreme Court several times vis \textit{-}a \textit{vis} Arts 14, 19 \& 21. Art 19 deals with several freedoms but not directly with freedom to live. It was argued in \textit{Jagmohan}\textsuperscript{176} that the right to live is basic to the enjoyment of all these freedoms and therefore, freedom to live could not be denied by a law unless it is reasonable and in public interest. The court is response to this argument to be correct, S. 302, I.P.C. which prescribes death sentence for murder passes this test. The law commission in its 35\textsuperscript{th} report has also favoured retaining the death sentence in India and, therefore, it is difficult to say the capital sentences as such is unreasonable not in public interest. Adequate procedural safeguards have been provided to the accused under the criminal Procedure Code.\textsuperscript{177} The S.C. again upheld the constitutional validity of the death penalty in \textit{Rajendra Prasad v. State of U.P.}\textsuperscript{178} In \textit{Machhi Singh v. State of Punjab}\textsuperscript{179} the Supreme Court has emphasized that death penalty need not be inflicted

\begin{footnotesize}
\textsuperscript{177} M.P. Jain, at p. 1109.
\textsuperscript{179} AIR 1983 SC 947.
\end{footnotesize}
except in the “gravest of cases of extreme culpability” and that “life imprisonment is the rule and the death sentence is an exception.”

3.4.9.1. Delay in Execution-

Prolonged delay in the execution of death sentence is dehumanizing and deprives a person of his life is an unjust, unfair and unreasonable way so as to offend Art 21\textsuperscript{180} two years would make in unreasonable to execute death sentence. Although in case of \textit{Triyenviben v. State of Gujarat}\textsuperscript{181} the Supreme Court held,

“Under long delay in execution of the sentence of death will entitle the condemned person to approach this court under Art 32 but this court will only examine the nature of delay caused and circumstances ensured after sentence which finally confirmed by judicial process and will have no jurisdiction to reopen the conclusions reached by the judicial process and will have no jurisdiction to reopen the conclusions reached by the court while finally maintaining the sentence of death. This Court, however, may consider the question of inordinate delay in the light of all the circumstances of the case to decide whether the execution of sentence should be carried out or should be altered into imprisonment for life. No fixed period of delay could be held to make the sentence of death in executable and to this extent \textit{Vatheeswaran’s} case cannot be said to lay down the correct law and to the extent stands overruled.”

3.4.10 Right to Damages -

The State must be held responsible for the unlawful acts of its officers and it must repair the damage done to the citizens by its officers for violating their indefeasible fundamental rights of personal liberty without any authority of law in an absolutely high handed right

\textsuperscript{180} \textit{Vatheeswaran v. State of Tamil Nadu}, AIR 1983 SC 361(2).

\textsuperscript{181} AIR 1989 SC 1335.
guaranteed under Art 21, is alleged, the amount of compensation cannot be arbitrary or unreasonable even under public law.\footnote{Dilip S. Dahanakar v. Kotak Mahindra Co. Ltd, (2007) 6 SCC 528, 545 (Para 41) as quoted by D.D. Basu at P. 386.}

In a precedent setting judgment, \textit{Rudal Shah v. State of Bihar}\footnote{AIR 1983 SC 1086.} the Supreme Court in a writ petition under Art. 32 awarded Rs. 35000 as compensation against the state of Bihar to petitioner because he was kept in jail for 14 years after he had been acquitted by a criminal court. In a number of cases, the Supreme Court has awarded damages to the person who has been detained illegally by the government or for death in police custody.\footnote{Sanjib Sanyal v. State of Assam, AIR 1992 SC 1960; Inder Singh v. State of Punjab, AIR 1995 SC 312.} In \textit{Bhim Singh}\footnote{Bhim singh v. State of Jammu and Kashmir, AIR 1986 SC 494.} the SC awarded compensation to the petitioner for his illegal detention in police custody without authority of law which was held to violative of his rights under Article 21.

\textbf{3.4.11 Right to Live in Healthy Environment-}

The expansive interpretation of ‘life’ in Art 21 has held to be the salutary development of an environmental jurisprudence in India. In this context, the Supreme Court has performed a yeoman service by taking cognizance, in a number of cases, of various environmental problems and giving necessary directions to the administration. On the question of relationship between ecology and Art21, the thinking of the court is that since the right to life is a Fundamental Right under Art 21, and since the right to life connotes ‘quality of life’, a person has a right to the enjoyment of pollution free water and air to enjoy life fully.\footnote{M.P. Jain at p 1137. See Subhash Kumar v. State of Bihar, AIR 1991 S.C. 4205 A.P. Pollution Control Board v. M.V. Nayudu, AIR 1999 S.C. 812, M.C. Mehta v..}
3.5 Right to Privacy under Indian Constitution–

There are certain kinds of individual conduct over which government should have no control at all.\textsuperscript{187} John Stuart Mill in ‘On Liberty’ provides the classic statement of this philosophy-

“The sole end for which mankind are warranted individually or collectively, in interfering with the liberty of action of any of their number is self protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because in the opinion of others, to do so would be wise or even right. These are good reasons for remonstrating with him, or reasoning with him or persuading him, or in treating him, but not for compelling him or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to someone else. The only part of the conduct of anyone for which he is amenable to society is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself his own body and mind, the individual is sovereign.”\textsuperscript{188}

The philosophy of to ‘let the person alone’ or ‘autonomy’ become the ground for different pronouncements by the courts in declaring privacy as a right- Constitutional, Legal or otherwise. The Courts in

\textsuperscript{187} If Privacy is Considered as Autonomy, See William Cohen & David J. Danielski, Constitutional Law- Civil Liberty & Individual Rights, (Foundation Press, New York, IV ed, 1997) at Page 847.

\textsuperscript{188} Emphases supplied.
different legal system had adjudicated on their point. The line and length followed by Indian Judiciary can be gathered by the Indian Supreme Court on Right to Privacy.

3.5.1 Right against Surveillance-

The constitution does not grant in specific and express terms any right to privacy as such. Right to privacy is not enumerated as a fundamental right in the Constitution. However, such a right has been called by the Supreme Court from Art 21 and several other provision of state policy. For the first time, as early as 1963 in Kharak Singh v. State of Uttar Pradesh a question was raised whether the right to privacy could be implied from the existing Fundamental Rights, such as, Art 19(1)(d), 19(1)(e) and 21. The majority of the judges participating in the decision said of the right to privacy that ‘our Constitution does not in terms confer any like constitutional guarantee.’

On the other hand, the majority opinion Subba Rao J. was in favour of inferring the right to privacy from the expression ‘Personal Liberty’ in Art 21.

“Further, the right to personal liberty takes is not only a right to be free from restrictions placed on his movement, but also free from encroachments on his private life. It is true our constitution does not expressly declare a right to privacy as a fundamental right, but the said right is an essential ingredient of personal liberty. Every democratic country satisfies domestic life...”

However, police surveillance of a person by domiciliary visits was held void.

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189 See M.P. Jain at p.1133.
190 AIR 1963 S.C. 1295.
191 Ibid. Kharak Singh.
“it is expected to give him rest, physical happiness, peace of mind and security. In the last resort, a person’s house where he lives with his family is his “castle”, it is. This report against encroachment on his personal liberty...... Indeed nothing is more deleterious to man’s physical happiness and health than a calculated interference with his privacy.”192

*Gobind v. State of M.P.*193 is another case in which Supreme Court undertook a more elaborate appraisal of the right to privacy. In this case the court considered the ‘Constitutional validity of a regulation which provided for surveillance by way of several measures indicated in the said regulation. The court upheld the regulation as not violative of Art 21 as it was ‘procedure established by law.’ However court accepted a limited Fundamental Right to privacy “as an emanation”, from Art 19(a), (d) and 21. This right is not, however absolute and reasonable restrictions can be put on this under Art 19(5). MATHEW, J., observed-

“The right to privacy in any event will necessarily have to go through a process of case by case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterise as “fundamental right, we do not think that the right is absolute.”

3.5.2 Right to Safeguard the Privacy of his own-

Explaining the right to privacy in *R. Rajagopal v. State of Tamil Naidu*,194 the court held that it is the right to be let alone and a citizen has the right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. No one can publish anything converging the above matters

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192 See also Frankfurter J., in (1948) 338 US 25.
without his consent whether truthful or otherwise and whether laudatory or critical. Exception may be made if a person voluntarily thrusts himself into a controversy or any of these matters becomes part of public records or relates to an action of a public official concerning the discharge of his official duty.¹⁹⁵

3.5.3. Right to Autonomy of Reproduction-

No human right is more basic than our right to reproductive freedom. And no human right is so gravely threatened. The late Supreme Court Justice Louis Brandeis once wrote that “the greatest dangers to liberty lurk in insidious encroachment by men of zeal—well meaning, but without understanding.” In an American Case, Roe v. Wade¹⁹⁶, the US Supreme Court has observed,

“Although the Constitution of the USA does not explicitly mention any right to privacy. The U.S. Supreme Court recognizes that a right of personal privacy or a guarantee of certain areas or zones of privacy, does exist under the constitution, and that the roots of that right may be found in the First Amendment, in the Fourth and Fifth Amendments, in the pen numbers of the Bill of Rights, in the Ninth Amendment, and in the concept of liberty guaranteed by the First section of the XIV Amendment and that the “right to privacy’s not absolute.”

The Supreme Court in India has taken into consideration the U.S. position as well as Art 8 of the European Convention on Human Rights which defines the Right to privacy.¹⁹⁷

¹⁹⁶ 410 US 113.
¹⁹⁷ M.P. Jain, at p 1133.
The right to “reproductive autonomy” is also one of the aspects of right to privacy. The right to use contraceptives, the right of a woman to abort, all these fall within the ambit of the right to privacy.

“The right to make a decision about reproduction is essentially a very personal decision either on the part of a man or woman. Necessarily, such a right includes the right not to reproduce. The intension of the state into such a decision making process of a individual is scrutinised by the constitutional courts puts in this country and in America with great care.”\(^{198}\)

In *Suchita Srivastava and Anr. v. Chandigarh Administrative*\(^{199}\), it was held that woman’s right to make reproductive choices is also a dimension of ‘Personal Liberty’ as under stood under Art 21 of the constitution of India. It is important to recognize that productive choices can be exercised to procreate as well as to abstain from procreating the crucial consideration is that a woman’s right to privacy, dignity and bodily integrity should be respected.\(^{200}\)

### 3.5.4 Right against Sexual Harassment at Workplace-

Right against sexual harassment at workplace interpreted under Art 21, is another step of the Indian Judiciary in direction to ensure the rights

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In *Skinner v. Oklahoma*, 316 U.S. 539 (1942) the U.S. Supreme Court Justice DOGLAS, “this case touches a sensitive and important area of human rights. Oklahoma (Oklahoma’s Habitual Criminal Sterilization Act) deprives certain individuals of a right which is basic to perpetuation of a race the right to have offering.... we are dealing here with legislation which involves one of the basic civil rights of man. See also *Griswold v. Connecticut*, 381 U.S. 479 (1965) where in U.S. Supreme Court held that forbidding the use of contraceptives is repulsive to the nation of privacy surrounding the marriage relationship.  

\(^{199}\) *Nari Niketan Case*, AIR 2010 SC 235.  

\(^{200}\) Para 11.
and dignity of working women. In *Visakha v. State of Rajasthan*\(^{201}\) the Supreme Court has declared sexual harassment of a woman at her place of work as amounting to violation of rights of gender equality and right to life and liberty which is clear violation of Arts 14, 15 and 21 of the Constitution.\(^{202}\) In the absence of any domestic law relating to sexual harassment in India, the Supreme Court has itself laid down under Art 32 some directions for prevention of such harassment.\(^{203}\) The *Visakha* ruling has been reiterated by the Supreme Court in *Apparel Export Promotion Council v. A.K. Chopra*\(^{204}\) where the court has observed-

“There is no gain saying that each incident of sexual harassment; at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty the two most precious fundamental rights guaranteed by the constitution of India….. In our opinion, the contents of the fundamental rights guaranteed in our constitution are of sufficient aptitude to encompass all facts of gender equality, including prevention of sexual harassment and abuse and the courts are under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work is compatible with the dignity and honour of a female and needs to be eliminated…..”\(^{205}\)

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\(^{201}\) AIR 1997 SC 3011.

\(^{202}\) In *Vishaka* S.C. issued broad guidelines against sexual harassment at workplace. Justice J.S. Verma the architect of this judgment very recently passed away. He has also played significant role in committee on sexual offences.

\(^{203}\) The bill against sexual harassment at workplace has been passed by the Parliament and got the assent of the President on April 23, 1913, namely, The Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal Act), 2013.

\(^{204}\) AIR 1999 SC 625.

\(^{205}\) M.P. Jain at p 1132.
3.5.5 Right of the Women of Decency and Dignity-

It is a basic right of a female to be treated with decency and proper dignity and the search of a woman by a person other than a female officer is violative of it.\textsuperscript{206} No woman can be arrested after sunset and before sunrise and without female police officer until the arresting officer is satisfied with reasons to be recorded that the delay in arrest would impede the course of investigation.\textsuperscript{207} Rape has been held to be violation of Right to life under Art 21. Supreme Court observed,

“Rape is a crime not only against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against human rights and is violative of victim’s most cherished right, namely. Right to life which includes right to live with human dignity contained in Art 21.”\textsuperscript{208}

The trial of rape is said to be worse than the crime itself.\textsuperscript{209} Apathy of investigation officers\textsuperscript{210}, doctors and advocates leads the victim and his

\begin{footnotes}
\item \textsuperscript{208} Bodhisatha Gautam v. Subhra Chakraborty, AIR 1996 SC 922; (1996) 1 SCC 490.
\item \textsuperscript{209} The researcher would like to share an incident in this relation, while attending Refresher Course for career advancement, held by Himachal Pradesh University in the year 2007, we attended a lecture by one lady judge of Himachal Pradesh High Court only. She shared her views about a seminar/workshop she attended; in some western country .She told that there was a discussion over the low conviction rate in rape cases and what were the causes behind. The coordinator told them to share their sexual experiences with their partners, with their group. She said that she felt embarrassed and made her objection that ‘we (Indians) are very conservative and do not share such type of things with someone’. At this the coordinator replied that if we cannot share our legal and acceptable sexual relationship with someone then how could we think that the rape victim could successfully narrate the incident. So the
\end{footnotes}
family members to trauma.211 The two finger test to check the habit of prosecutrix to sexual intercourse to determine the factor of consent in rape cases was held violative of privacy and dignity on victim.212

after rape proceedings become serious trauma for rape victim apart from rape itself. Rape is a unique crime in our society because of the stigma attached to it and the extreme psychological and physical harm caused by it. Good public policy recognizes this and gives the victim, not the media the choice of revealing her identity.


212 Supreme Court has held that the two-finger test on a rape victim violates her right to privacy, and asked the government to provide better medical procedures to confirm sexual assault. A bench of Justices B S Chauhan and F M I Kalifulla said even if the report of the two-finger test is affirmative, it cannot give rise to presumption of consent on part of a rape victim. "Undoubtedly, the two-finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent," the bench said. The two-finger test entails medical inspection of the female hymen. Referring to various international covenants, the judges said rape survivors are entitled to legal recourse that does not violate their physical or mental integrity and dignity. "Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with gender-based violence." “The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with her privacy," the bench said. Keeping in mind the International Covenant on Economic, Social, and Cultural Rights 1966 and the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, the apex court
In a case, Supreme Court of India ensured the Right to Privacy of woman of even easy virtue and no one can invade her privacy. A police inspector visited the house of one Banubai in uniform and demanded to have sexual intercourse with her. On refusing he tried to have her by force. She raised a hue and cry. When he was prosecuted he told the court that she was a lady of easy virtue and therefore her evidence was not to be relied. The court rejected the argument of the appellant and held him liable for violating her right to privacy of under Art 21 of the constitution.213

In Surjit Singh Thind v. Kanwaljit Kaur214 the High Court of Punjab & Haryana held that allowing medical examination of a woman for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Art 21 of the constitution. On a petition for a decree of nullity of marriage filed by a wife on the ground of non-consummation of marriage because of impotency of husband, the husband had taken the defence that the marriage was consummated and he was not impotent. In order to prove that the wife was not virgin the husband filled an application for her medical examination. The court held that allowing the medical examination of a woman’s virginity violates her right to privacy under Art 21 of the constitution.215

said, rape survivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity. "They are also entitled to medical procedures conducted in a manner that respects their right to consent," it said. Available on http://www.indianexpress.com/news/twofinger-test-violates-rape-victims-right-to-privacy-supreme-court/1117816/ New Delhi, updated on May 19, 2013, 12:42 hrs.

Right to privacy would preclude such questions to be put to female candidates as modesty and self-respect may preclude an answer.\textsuperscript{216} In this case, the LIC had a column in its policy form for person to be insured to disclose the date of last menstruation in case such person is female. This was objected and amounted to violation of right to privacy by the court.

In \textit{Kaleidscoe (India (P) Ltd.) v. Phoolan Devi}\textsuperscript{217} the trial judge restrained the exhibition of controversial film, ‘Bandit Queen’ in India and abroad, that it violates the right to privacy of Phoolan Devi and the same was confirmed by the Delhi H.C.

\textbf{3.5.6 Non Disclosure of the Identity of Rape Victim-}

Courts have also shown the tendency to refrain from revealing, even in judicial decisions, the identity of the victims of rape. In the case of \textit{State of Punjab v. Ramdev Singh}\textsuperscript{218}, Supreme Court stated,

“Printing or publishing name of any matter which may make known the identity of any person against whom an offence under section 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by High Court or Supreme Court, But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court or lower court, the name of the victim should not be indicated, we have chosen to describe her as ‘victim’, in the judgment.”

\textsuperscript{216} \textit{Neera Mathur v. LIC}, AIR 1992 SC 264 [Para 28(2)] 6SCC 632.

\textsuperscript{217} AIR 1995 Delhi 316, ILR 1996 Delhi 586.

\textsuperscript{218} AIR 2004 SC 1290.
3.5.7. Right to Medical Privacy

In *Mr. X v. Hospital 'Z'*\(^{219}\) the Supreme Court has held that although the 'right to privacy' is a fundamental right under Art 21 of the constitution but it is not an absolute right and restrictions can be imposed on it for the prevention of crime, disorder or protection of health or moods or protection of right and freedom of other. In this case the appellant after obtaining the degree of M.B.B.S. in 1987 joined the Nagaland State Medical and Health Service as Assistant Surgeon Grade I. A government servant was suffering from some disease. He was advised to go to the 'Z' hospital at Madras. The appellant was directed by the government of Nagaland to accompany the said patient to Madras for treatment. For the treatment of disease, the patient needed blood. The appellant was asked by the doctors to donate blood for the patient. When his blood samples were taken it was found HIV positive. In the meantime, the appellant settled his marriage with one Miss 'Y'. But the marriage was called off on the ground that the appellant found HIV (+). The appellant filed a writ petition in the High Court of Bombay for damages against the respondent on the ground that the information violated his right to privacy as it required to be secret under medical ethics and there the respondents are liable for damages. The court held that although the right to privacy is a fundamental right under Art 21, built is not an absolute right and restrictions can be imposed on it. When the patient was found to be HIV (+) the disclosure by the doctor was not violative of either the rule of confidentiality or the patient’s right to privacy as the lady with whom the patient was likely to be married was saved by such disclosure. As right to life include right to lead healthy life so as to enjoy all the faculties of the Human body in their prime condition. Moreover, where there is a clash or two fundamental rights as in the instant case, namely the patient’s right to privacy as part of right to life and his would be wife’s right to lead a

\(^{219}\) AIR 1995 SC 495.
healthy life which is her fundamental right under Art 21, the right which would advance the public morality or public interest would alone enforced through the process of Court.\textsuperscript{220}

The right to privacy in Art 21 will have to give way to count orders for medical examination in cases of divorce or nullity or marriage as such grounds as unsound of mind, impotency etc.\textsuperscript{221}

In \textit{P.A. Anbu Anandan}\textsuperscript{222} the question before, the court was as to whether there had been a consummation of marriage. Following \textit{Gautam Kundu v. State of west Bengal}\textsuperscript{223}, it was held that the court cannot compel a person for compulsory medical examination of a party against his wish.

In \textit{Smt. Nigamma and another}\textsuperscript{224} it was observed, “21 Right to personal liberty is also very important. To compel a person to undergo or to submit himself or herself to medical examination of his blood test or the like without his consent or against his wish, tantamount to interference with his fundamental rights to life or liberty particularly even when there is no provision either in the Code of Civil Procedure or the Evidence Act or any other law which may be said to authorize the court to compel a person to undergo such a medical test as blood group test or the like against his wish and to create doubts about the chastity of a woman or create doubt about the man’s paternity. It will amount to nothing but interference with the right of Personal Liberty.”

In \textit{M. Vijaya v. The Chairman, Singareni Collieries and ors}\textsuperscript{225}, the court, upon a detailed discussion of the competing rights of a private

\textsuperscript{222} AIR 1999 Mad 232.
\textsuperscript{223} AIR 1993 SC 2295.
\textsuperscript{224} AIR 2000 Kant 50.
\textsuperscript{225} AIR 2001 AP 502.
party and public right with reference to right privacy of a person suspected of suffering from AIDS, held,

“There is an apparent conflict between the right to privacy of a person suspected of HIV not to submit himself forcibly for medical examination and the power and duty of the state to identify HIV infected persons for the purpose of stopping further transmission of the virus. In the interests of the general public, it is necessary for the state to identify HIV positive cases and any action taken in this regard cannot be termed as unconstitutional as under Art 47\textsuperscript{226} of the constitution the state was under an obligation to take all steps for the improvement of the public health. A law designed to achieve this object, is fair & reasonable in our opinion will not be in breach of Art 21 of the constitution of India.”

3.5.8 Right to Privacy and Telephone Tapping-

Right to Privacy includes telephonic conversation. Therefore, telephone tapping amounts to its violation unless it is permitted under procedure established by law.\textsuperscript{227} The court has ruled in the instant case that the right to privacy “is a part of the right to ‘life’ and ‘personal liberty’ enshrined in the constitution. Once the facts in a given case constitute a right to privacy, Art 21 is attracted and the said right could not be curtailed “expect according to procedure established by law.” The court ruled further that “telephone conversation is an important fat of a man’s private life.” The right to hold a telephone conversation in the privacy of one’s home or office without interference can certainly be claimed as “right to privacy”. Conversations on the phone are often of an intimate and confidential character…. tapping of telephone is a serious

\textsuperscript{226} Nari Niketan Case, Ibid.

\textsuperscript{227} PUCL v. Union of India (1997) 1 SCC 301: AIR 1997 SC 568.
invasion of privacy." The telephone tapping would interact Art 21 unless it is permitted under the procedure established by law.\textsuperscript{228}

However telephone tapping is permissible in India under section 5(2) of the Telegraph Act, 1885. The court has held that this section is constitutionally valid. This section lays down the circumstances and the grounds when an order for tapping of a telephone may be passed.\textsuperscript{229} On the analysis of section 5(2), the court has concluded that the first step in occurrence of any public emergency or the existence of any public safety interest. Thereafter, the competent authority under section 5(2) is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient on the grounds mentioned under art 19(2).\textsuperscript{230} The court has itself filled the gap of just and fair procedure by issuing procedural directions for exercise of power under section 5(2) of the Telegraph Act 1885.

The Law does not determine what the privacy is, but only what situation of privacy will be afforded legal protection.\textsuperscript{231}

In the Judgment of S.C. in \textit{Amar Singh v. Union of India},\textsuperscript{232} Amar Singh, a politician had challenged the “authorised” tapping of his phone connection and in The interim had obtained had obtained a “gag order” restraining the media that had obtained access to the conversations from publishing them. Rather than vindicate Mr. Singh’s right to privacy or the right to free speech of the press, the judgement is premised on two

\textsuperscript{228} See Amar Singh’s Case (add).
\textsuperscript{229} \textit{Hukum Chand Shyamalal v. Union of India}, AIR 1976 SC 789, 793: (1976) 2 SCC 128.
\textsuperscript{230} (i) Sovereignty and integrity of India;
(ii) The security of the state;
(iii) Friendly relations with foreign state;
(iv) Public order; or
(v) For preventing incitement to the commission of an offence.
\textsuperscript{231} Hyman Gross, "\textit{The Concept of Privacy}" (1967)42 NYULRev.36
\textsuperscript{232} (2011) 7 SCC 90.
procedural grounds. Firstly, that any person who makes an affidavit in court must state the full facts that he know to be true and point out the sources of his Information, secondly, that no person must come to the court with unclean hands. The S.C. in this case ingeniously & rightly refused to go into the said issues in view of petitioner not having come to the court to lay down the law on the subject; it was lost due to the misdeeds of the petitioner himself during the proceedings.\(^{233}\)

3.5.9 Right to Information and Privacy-

Democratic societies undoubtedly have to guarantee the right to access to public information; it is also true that such society’s legal regimes must safeguard the individual’s right to privacy. Both these rights are often found at the same ‘regulatory level’. It is interesting to note that paradoxically, the right to privacy recognized as a fundamental right by our Supreme Court, has found articulation- by way of a safeguard, though limited, against information disclosure under the Information Act\(^{234}\).

3.5.9.1 Personal Information cannot be disclosed under RTI\(^{235}\)-

This Act is in complete sensitization of interest of government as well as interest of individual in respect of right to privacy. In India, in absence of specific legislation on privacy, privacy right has evolved through the interpretive process. The right to privacy flows from Article 21 of the Constitution. As held in Neera’s case\(^{236}\) that the demand for personal information violates the provision of right to privacy envisaged

\(^{233}\) Rishika Taneja, and Sidharth Kumar, “Towards a Robust Right to Privacy in India”, 2012 8 SCC (J), J-13-J-18

\(^{234}\) The Right to Information Act, 2005.


in Art. 21 of the Constitution. The right to privacy is part of Art. 21.\textsuperscript{237} The same view was also held in \textit{Peoples Union of Civil Liberties} case.\textsuperscript{238} The importance of right to privacy has been enshrined in Section 8 (1) (j) of the RTI Act, 2005 that right to privacy cannot be hampered. To achieve this purpose, the Information Act outlines a clear list of matters that cannot be made public. There are two types of information seen as exceptions to access: the first usually refers to those matters limited to the state in protection of general public good. The second class of information with State or its agencies is personal data of both citizens and artificial or juristic entities, like corporations. Individual’s personal data is protected by the laws to access to confidentiality and by privacy rights.

In \textit{Nagesh Ganesh Patil S. v. Public Information Offices, SBI,Bandra, Mumbai},\textsuperscript{239} the CPIO denied the information to appellant under section 8 (1) (j) of the Right to Information Act 2005, being as personal information, causing unwarranted invasion of privacy and it was felt that the information about the particulars of the handicapped children proposed by the bank employees as legal heirs for getting family pensions is fiduciary in nature under section 8(1) (e) of the RTI Act.

In \textit{C.P.I. O., Supreme Court of India v. Subhash Chandra Agarwai}\textsuperscript{240} Supreme Court held that the privacy rights, by virtue of section (1) (j) of the RTI Act whenever asserted would prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests personal information about a public servant, such as asset declaration made by him- a distinction must be made between the personal data inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task

\textsuperscript{238} \textit{Peoples Union of Civil Liberties v. Union of India}, AIR 1997 SC 568.
\textsuperscript{239} RTIR II (2013) 9 (CIC).
\textsuperscript{240} 111 (2009) CLT 481.
appears to be easy: but is in practice, not so, having regard to the
dynamics inherent in the conflict. If public access to the personal data
containing details, like photographs of public servants, personal
particulars is requested the balancing exercise, necessarily dependent and
evolving on a case by case basis, would take into account of many factors
and would require examination, having regard to circumstances of each
case.

In a decision of Delhi High Court,\textsuperscript{241} it observed while interpreting
the ambit and scope of right to Information\textsuperscript{242} in relation to right to
privacy under Art 21 that there is exemption from disclosing the
information about sexual disorder by the General Secretary of a NGO, and
held that information as to sexual disorder, DNA test between a Govt.
officer and his surrogate mother, name of his mother and surrogate step
mother is beyond perception of decency and in fact, an invasion into an-
other man’s privacy that is sacrosanct facet of Art 21 of the constitution.
Personal information sought that has no nexus with a public activity or
interest, cannot be provided.\textsuperscript{243}

Here is a recent case in which, giving privilege to the right to
privacy, the Nagpur bench of Bombay High Court ruled that personal
information, which serves no public interest, can’t be disclosed under the
Right to Information Act,2005.\textsuperscript{244} In the given case, respondent Suresh
Kumar Patil has sought personal information of ten employees working in
Mahatransco through an application dated June 6, 2011. He demanded
confidential documents like annual performance appraisal and job
description of these employees.\textsuperscript{245} The High Court held that such disclosure

\textsuperscript{241} Paardarshita Public Welfare Foundation v. UOI and ors., AIR 2011 Del 82.
\textsuperscript{242} Sec 8CA(j)
\textsuperscript{243} Para 11,13.
\textsuperscript{244} Legal News & Views vol. 26: No. 12: December 2012 at p. 39.
\textsuperscript{245} Ibid.
is unwarranted. Referring to Sec. 8(1) (j) of the RTI Act, the court observed that disclosure of personal information, which has no relation with the larger public interest, causes unnecessary intrusion in the individual’s private realm. “Unless the central or the state information commissioner finds that such disclosure is justified for larger public interest, no personal information must be supplied with,” the court stated. It also relied on an unreported apex court judgment of his year, which held that every individual is entitled to right to privacy and such disclosure without reasonable grounds of public interest, violates the right of the individual.\textsuperscript{246} Accordingly, the High Court quashed and set aside the order of state information officer while allowing prayers of the petitioners—public information officer and general manager of Mahatransco.\textsuperscript{247}

3.5.10 Details of Bank Accounts and Right to Privacy-

\textit{In Ramjethmalani v. Union of India}\textsuperscript{248} S.C held “That details of bank account of individuals, without establishment of \textit{prima facie} grounds to accuse them of wrong doing, would be a violation of their rights to privacy. Details of bank accounts can be used by those who want to harass, or otherwise cause damage, to individuals.\textsuperscript{249} “Right to Privacy is an integral part of right to life. This is a cherished constitutional value and it is important that human beings be allowed domain of freedom that are free of public scrutiny unless they act in an unlawful manner the notion of fundamental rights, such as a right to privacy as part of right to life is not merely that the state is enjoyed from derogating from them. It also includes the responsibility of the state to uphold them against the

\textsuperscript{246} Emphasis supplied.
\textsuperscript{247} Times of India, 9/11/12.
\textsuperscript{248} Indian Kanoon - http://indiankanoon.org/doc/1232445/ 2011 SC.
\textsuperscript{249} Para 77.
actions of others in the society, even in the context of exercise of fundamental rights by those others.\textsuperscript{250}

3.5.11 Right to Privacy and Sexual Autonomy-

In \textit{Naz foundation v. Govt. of NCT of Delhi,}\textsuperscript{251} while referring \textit{Kharak}\textsuperscript{252} Singh, \textit{Gobind}\textsuperscript{253}, \textit{Kanara Bank}\textsuperscript{254}, \textit{PUCL,}\textsuperscript{255} Delhi H.C. stressed the right to privacy as part of right to life and Personal Liberty under Art 21 of the constitution. Going further, quoting BLACKMUN J. dissenting judge.\textsuperscript{256}

“Right to let alone” should be seen not simply as a negative right to occupy a private space free from government intrusion, but as a right to get on with your life, your personality and make fundamental decisions about your intimate relations without penalization. .......It, in expressing one’s sexuality, one act consensually and without harming the other, invasion of that precinct will be a breach of privacy.”

Delhi H.C. also referred “The Yogyakarta” principles, which define the expression “sexual orientation” and “gender identity,”

“...all persons are entitled to enjoy the right to privacy, regardless of sexual orientation or gender identity”\textsuperscript{257} H.C. held Sec 377 IPC grossly violate of right to privacy and liberty embodied in Art 21 as it criminalises consensual sexual acts between adults in private.

\textsuperscript{250} Para 73.
\textsuperscript{251} 2010 CrIJ 94 Del.
\textsuperscript{252} Supra.
\textsuperscript{253} Supra.
\textsuperscript{254} Supra.
\textsuperscript{255} Supra.
\textsuperscript{257} Para 44.
3.5.12 Narco Test and Right to Privacy-

Going to interpret Art 21 to the wide extension S.C. held in Selvi v. State of Karnataka\textsuperscript{258} that unreasonable mode of investigate and search are violative of right to privacy. “In this case, legality of their scientific tests, namely, narco analysis, polygraph test (Lie-detector test) and Brain Electrical Activation Profile (BEAP) test, was challenged inter alia on the ground that these tests violate the test subject’s rights under article 20 (3) and 21 of the Constitution and under section 161 (2) of the Criminal Procedure Code, 1973.

In narco analysis, intravenous injection of sodium pentothal is given to test subject due to which the test subject enters into hypnotic trance, and answers may be incriminating to him. He may reveal information, which he may otherwise conceal in a state of full consciousness.

In Polygraph test, instruments like cardiographs, pneumographs, cardio-cuffs, sensitive electrodes, etc. are attached to test subject’s body. Physiological responses like respiration, blood pressure, blood flow, pulse rate, galvanic skin-resistance, etc. in his body are measured after putting certain question to him. Theory behind polygraph test is that when a person is giving false reply to an incriminating question put to him, he would produce physiological responses, which are different from the responses given in normal course.

In BEAP test (which is known as “P 300 waves test”), electrical waves emitted from test subject’s brain are recorded by attaching electrodes to his scalp. The test subject is auditory or visual stimuli (words, sounds, pictures, videos) that are relevant to the facts being investigated (known as material probes), alongside other irrelevant words

\textsuperscript{258} (2010) 7 SCC 263.
and pictures (known as neutral probes). The underlying theory is that in case of guilty suspects, exposure to material probes will lead to emission of P300 wave components by examining records of these wave components the examiner can make inferences about test subject’s familiarity with information related to crime.\(^{259}\)

Supreme Court held all three tests to be impermissible,

“So far, judicial understanding of privacy in India has mostly stressed on protection of body and physical spaces from intrusive actions by the state. While the scheme of criminal procedure as well as evidence law mandates interference with physical privacy through statutory provisions, that enables arrest, detention search and seizure among others, the same cannot be the basis for compelling a person to impart personal knowledge about a relevant fact. Theory of interrelationship of right mandates that right against self-incrimination should also be read as a component of personal liberty under art 21. Hence, understanding of right to privacy should account for its intersection with art 20(3). Furthermore, rule against involuntary confessions as embodies in sections 24, 25, 26, and 27 of the Evidence Act, 1872 seeks to serve both the objectives of reliability as well as voluntariness of testimony given in a custodial setting. A conjunctive reading of Articles 20(3) and 21 of the constitution along with the principles of evidence law leads to a clear answer importance of personal autonomy especially in circumstances where the person faces exposure to criminal changes or penalties.”\(^{260}\)

\(^{259}\) *Ibid* at pp 264-265

\(^{260}\) *Ibid*, para 225 at p 270
3.5.13 Right to Privacy and Dignity are Facets of Human Rights-

In *Re: Ramlila Maidan Incident 4/5-6-IIV. Home Secretary, UOI and otr.*, \(^{261}\) it was held that Privacy and dignity of Human Life has always been considered a fundamental human right of every human being like any other key values such as freedom of association and free of speech. Therefore, every act which offends or impairs human dignity tantamount to deprivation *pro tanto* of his right to live and the state action must be in accordance with reasonable fairs and just procedure established by law which stands the test of other fund rights. Right to privacy is an integral part of art 21. Illegitimate intension into privacy of a person is not permissible as right to privacy is implicit in the right to life and liberty guaranteed under our Constitution. Such a right has been extended even to women of easy virtues as she has been held to be entitled to her right to privacy. However, right to privacy may not be absolute and in exception circumstances, particularly surveillance in consonance with the statutory provisions may not violate such a right.\(^{262}\)

3.5.14 Conjugal Rights and Privacy-

The Andhra Pradesh High Court in *T. Saritha v. Venkata subbaiah*\(^{263}\) declared Sec. 9 of the Hindu Marriage Act, 1955, Constitutionally void as violative of the right to privacy and human dignity guaranteed by Art. 21. The Court held the provision as savage and barbarous.

The above view presented by the A.P. High Court was dissented by the Delhi H.C. in case of *Smt. Harvinder Kaur v. Harmander Singh.*\(^{264}\) It was declared that the object of restitution decree was to bring about

\(^{261}\) 2012 Cri. L.J. 3516 (U) SC.
\(^{262}\) paras 255, 259.
\(^{263}\) AIR 1983 AP 356.
\(^{264}\) AIR 1984 Delhi 61.
cohabitation between the estranged parties so that they could live together in the matrimonial home in amity. It was to preserve the marriage.

The S.C. in Saroj Rani v. Sudarshan Kumar\(^{265}\) accepted the view of the Delhi H.C. and held that conjugal rights should be viewed in their proper perspective by keeping in mind its dictionary meaning. The Court explained that the only sanction against the disobedience of such a decree was attachment of property provided he or she had property to be attached that too when the disobedience was wilful. The Court thus upheld the validity of Sec. 9 of the Hindu Marriage Act, 1955 and pronounced that it served a social purpose as an aid to the pressure to break up marriage.

3.5.15 Publicity/ Merchandising Rights-

The right to exploit the economic value of the name and fame of an individual is termed as publicity right. To claim this right it is necessary to establish that fame is a form of merchandise i.e. an act intended to promote the sale/ popularity of a commodity or an activity. Hence, if someone uses the fame of a celebrity to promote his goods it would be termed as an unfair trade practice, misappropriation of the intellectual property of the celebrity, an act of passing off etc.

Instances of such cases in the media world are very common. Taking as an instance the case of Sourav Ganguly v. Tata Tea ltd.\(^{266}\) wherein Sourav Ganguly who returned from Lords after scoring magnificent centuries found himself extremely disturbed when he realized that Tata Tea Ltd., in which he was employed as a manager, was promoting its 1 kilo tea packet by offering the consumers a chance to congratulate Sourav through a postcard which was there inside each packet of tea. In a way indirectly what the company intended was to promote the sale of its tea packet in the Indian market where Sourav had

\(^{265}\) AIR 1984 SC 1562.

\(^{266}\) Calcutta High Court.
earned considerable amount of popularity. The court ruled in favour of Sourav by accepting that his fame and popularity is his intellectual property.

However, the law with this regards i.e. publicity/merchandising rights of the celebrities is still not fairly developed, especially in India. Courts in the various foreign countries have adopted different approach to justify this right and no uniform justification has crystallized yet.²⁶⁷

There is always a serious problem to debate about the right of the public to know and the right of the individual to deserve privacy.

3.6 Right to Privacy and Freedom of Speech and Expression-

The right to freedom of speech and expression and right to privacy are two sides of the same coin. As the freedom of speech and expression is vital for the dissemination of information on the matter of public interest, it is equally important to safeguard the private life of an individual to the extent that it is unrelated to public duties or matters of public interest. Law of privacy endeavours to balance these competing freedoms.

Art.19 (1)(a) of the constitution of India provides Freedom of Speech and Expression whereby every person has the right to express himself by words, writings, gestures, printing, paintings etc. this thus gives the people the right to know otherwise the purpose of Art19(1)(a) is lost as if people will not receive information then what would be the purpose of others to give information. Freedom of speech is actually implemented when person giving information actually has someone to be his listener. Media, both print and electronic, exercise their freedom of speech and expression guaranteed under the Constitution.

²⁶⁷Available at http://www.goforthelaw.com/articles/fromlawstu/article31.htm by Arindam Datta visited on 27.06.13 at 3.20 p.m. IST.
In the case of *ABC v. commissioner of Police and others*\(^{268}\), the petitioner, on behalf of her minor daughter as her mother and next friend brought petition for breach of the right to privacy and confidentiality, of her daughter under right to life guaranteed under Art 21 of the constitution of India. In *R. Rajagopal*\(^{269}\) Justice B.P. Jeevan Reddy opined,

"…… 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 other…………. An exception must be carved out to 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"\(^{270}\)

While referring to the *norm of journalistic conduct*\(^{271}\) the court stated,

(i) The press shall not intrude or invade the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity…thing concerning a person’s home, family, religion, health, sexuality, personal life and private affair are covered by the concept of PRIVACY excepting where any of there, impinges upon the public or private inter…”

(ii) While reporting crime involving rape, objection or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names photographs of the victims or other particulars leading to their identity shall not be published…"


\(^{269}\) *Supra*.

\(^{270}\) Para 65(2).

\(^{271}\) As laid down by the PCI in 1996 and revised in 2010.
(iii) The court held that telecast of the video recording of the alleged interview by the petitioner along its transcript reveals blatant violation and disregard of the petitioner’s daughter’s right to privacy and confidentially ... the said telecast discloses: the name of the accused father and his place of work along with his designation- which would not only identify him but also the victim as it is disclosed that the victim is his own daughter; the age of the victim; visual shots of the display board of the colony............. Revelation of particulars of such nature and to such extent, are patently sufficient for the disclosure of the identity of the petitioner’s daughter..........” “the respondent\(^{272}\) has acted in utter disregard and disrespect of the right of the victim of sexual abuse to privacy, recognized not only as inherent to the fundamental right to life under Art 21 of the constitution, but also enumerated in the norms of journalistic conduct............” court also order for compensation of Rs 5 Lakh.\(^{273}\)

### 3.6.1 Media Guidelines Case-

In *Sahara India Real Estate Corp. Ltd. and Ors. v. Securities and Exchange Board of India and Ors*\(^{274}\). The petitioner referred the case of *State of Maharashtra v. Rajendra J. Gandhi*\(^{275}\) in which it was held, “A trial by press, electronic media or public agitation is the very antithesis of rule of law.”

In the present case, Sahara made the prayer to S.C. to frame the guidelines to reporting in the electronic and print media of matters, which are *sub-judice* in a court including public disclosure of documents forming part of court proceedings, well as to the manner and extent of

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\(^{272}\) Respondent no. 3 Aaj Tak news channel.

\(^{273}\) W.P. (C) no. 12730/2005, Judgment delivered on 5.2.13, *ABC v. Commission of Police and Ors*.

\(^{274}\) 2012 Cr. L J 4584 SC.

\(^{275}\) (1997) 8 SCC 386.
publicity of proceedings pending before court. S.C., although did not frame any guideline in the light of constitution scheme but it held that “anyone be an accused or an aggrieved person, who genuinely apprehends on the basis of the content of the publication and its effect, an infringement of his/her rights under art 21 to a fair trial and all that it comprehends, would be entitled to approach an appropriate writ court and seek and order of postponement of the offending publication/broadcast or postponement of reporting of certain phases of the trial (including identify of the victim or the witness or the complainant), and that the court may grant such preventive relief, on a balancing of the right to a fair trial and Article 19(1) (a), bearing in mind the abovementioned principles of necessity and proportionality and keeping in mind that such orders of postponement should be for short duration and should be applied only in cases of real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. Such neutralizing device (balancing test) would not be an unreasonable restriction and on the contray would fall within the proper constitutional framework.”

3.7 Limitation on Right to Privacy-

The right to privacy has now become established in India, but as a part of Art 21, and not as an independent right in itself, as such a right, by itself has not been identified under the constitution. The court has however refused to define privacy saying, “As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case.” However in case of R. Rajagopal v. State of Tamil

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276 Para 43.
Naidu\textsuperscript{277} the Supreme Court has laid down certain propositions defining right to privacy.\textsuperscript{278}

The court has made it clear that the principles above mentioned are only the broad principles. They are neither exhaustive nor all comprehending; indeed no such enunciation is possible or advisable. As rightly pointed out by Mathew, J., this right has to go through a case—a by case development.\textsuperscript{279}

Applying the above propositions, these permitted the newspaper to publish the biography of a confirmed criminal “so far as it appears from the public records, even without his consent or authorisation.” If the press goes beyond this, it would be invading his privacy. The state its officials cannot restrain the said publication. Their remedy, it any, would arise only after the publication.\textsuperscript{280}

In Sharda v. Dharmal\textsuperscript{281} It was held that constitutional Right to privacy is not a absolute right. If there were a conflict between fundamental rights of two parties, that right which advances public morality would prevail. Therefore, order to undergo medical test does not offend Art 21. However, such power has to be exercised only when applicant has strong prima facie case.

3.7.1 Private Parties & Privacy-

While it may seem that the right to privacy is adequately protested as a fundamental right, it is essential to keep in mind that barring a few exception, fundamental rights secured to the individual are limitations only on State action. Thus such an interpretation will not protect an

\textsuperscript{277} Ibid.
\textsuperscript{278} Ibid.
\textsuperscript{279} M.P. Jain, at Page 1135.
\textsuperscript{280} Khushwant Singh v. Maneka Gandhi, AIR 2002 De158.
\textsuperscript{281} AIR 2003 SC 3450.
individual against the actions of private parties as enunciated in *P.D. Shamdasani v. Central Bank of India*\(^{282}\).

Furthermore in *Vidya Verma v. Shiv Narain Verma*\(^{283}\) it was held that:

No question of infringement of any fundamental right under Article 21 arise where the detention complained of is by a private person & not by a state or under the authority or orders of the state & the S.C. will not therefore, entertain an application for a writ of habeas corpus, Under Act 32 of the Constitution. Consequently an action under Act 32 of the Constitution for a writ of habeas corpus founded on Act 21 & directed against a father for alleged detention of his daughter does not lie.\(^{284}\)

The obvious question that arises is that against whom the right to privacy is available. Therefore, this involves the media. The media itself is a private institution however its role & impact in a democracy is large & with far reaching ramification. British courts have held that there is no reason to accord privacy with less protection against the vision by private parties as distinct from the intrusions of the state. However there may be certain justification for publishing personal information available to private parties such as the media which shall not be available to the state.\(^{285}\)

### 3.7.2 Emergency and Right to Privacy-

Article 358 provides for the suspension of six fundamental rights as mentioned in Art. 19. As soon as the emergency is over the suspended rights will be revived. Article 359 explains that the President can suspend the right to enforce fundamental rights guaranteed under part III of the

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\(^{282}\) *AIR 1952 SC 59*

\(^{283}\) *AIR 1956 SC 108: 1956 Cri L J 285*

\(^{284}\) *Ibid*

Constitution, during the proclamation of emergency. It provides that while proclamation of emergency is in operation, the President may declare the right to move the Court for the enforcement of such fundamental right as may be mentioned in the order, suspended.\textsuperscript{286}

But after the 44\textsuperscript{th} Constitutional Amendment, The President does not have the power to suspend the enforcement of the fundamental rights guaranteed in Art. 20 and 21 to overcome the judicial decision given in Shukla,\textsc{s} case.\textsuperscript{287}

The right to privacy, which is implicit in fundamental rights, too will be affected by the emergency provisions.

3.7.3 Community rights and Right to Privacy-

Right to privacy is not absolute right. As any other right, it has the corresponding duty. It may not have justification for its protection if the privacy restriction is inflicted in the public interest, for violation of law or to protect morality and decency. Right to privacy being the part of fundamental rights is subject to reasonable restriction in the interest of general public. When public interest overweighs the private interest of the privacy, the right to privacy has to bow. When there is question of right to life, it will have preference over right to privacy. In the same manner if there are threats to the security of the country, the right to privacy cannot be protected.

3.7.4 Public Figures and Right to Privacy-

Every individual has a human right to be left alone. The same has been recognised by the Indian Courts in a number of cases. However, the acts of public personalities are not afforded the same level of protection. The public has a right to know about the acts and conducts of the public

\textsuperscript{286} \textit{A.D.M. Jabalpur v. Shukla}, AIR 1976 SC 1207.

\textsuperscript{287} \textit{Ibid.}
officials as they work for the benefit of the public. Therefore, if the acts and conduct of the public person are of public interest even if conducted in private they may be brought to public knowledge through the medium of the press. The press has however, a corresponding duty to ensure that the information about such acts and conduct of public interest of the public person is obtained through fair means. It should be properly verified and then reported accurately. A public personality has to pay the price for being in the eye if the public. However, this does not mean that the media can publish any information it receives. The information has to be verifiable and accurate. The essential ingredient required for the publication is that it has to in public interest\textsuperscript{288}.

It can be stated after analysis of above discussion, that the judiciary, which is the ray of hope for protecting rights and liberty of the persons, is performing the tremendous job by spelling out the privacy protection in a number of cases, that can become the bed-rock for the model privacy legislation.