Chapter - VI

CASE STUDY

WESTERN CASES:

6.1. Edward Snowden the whistle-blower who rocked the United States--the David who took on the Goliath

On June 10, 2013, Edward Joseph Snowden a 29 year old former CIA computer technician gave a 12 minute interview to The Guardian, a British newspaper disclosing what he found to be the greatest abuses of a surveillance state which was reckless and beyond reasonable boundaries. Snowden who was an employee of the giant government level contractor Booz Allen Hamilton had access to myriad secrets that the U.S. government guarded most jealously.¹

6.1.1. The expose:

Among other information Snowden divulged the existence of and functions of several classified U.S. surveillance programmes and their scope including PRISM, NSA call database and boundless Informant. He also revealed details of Tempora, a British black-oops surveillance program run by the NSA’s British partner GCHQ.
Snowden explained his actions saying “I don’t want society that does these sorts of things (surveillance of its citizens)...I do not want to live in a world where everything I do and say is recorded...my sole motive is to inform the public as to that which is done in their name and that which is done against them”\(^2\)

Snowden argued that the Fourth Amendment to the U.S. Constitution and Article 12 of the Universal Declaration of Human Rights forbade such systems of massive, pervasive surveillance. The fourth amendment to the U.S. Constitution prohibits unreasonable searches and seizures and requires any warrant to be judicially sanctioned and supported by probable cause. Article 12 of the Universal Declaration of Human Rights says that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”. The US Federal administration stung by the disclosures made by Snowden charged him with theft of Government property, unauthorized communication of national defence information and wilful communication of classified intelligence to an unauthorised person; the latter two being allegations under the US Espionage Act.

6.1.2 Reaction of U.S. Congress:

Reactions from among members of the US Congress were largely negative barring a few like senators Ted Cruze and Rand Paul. Senator Paul said “I
do think when history looks at this; they are going to contrast the behaviour of James Clapper, our National Intelligence Director with Edward Snowden. Clapper lied in Congress in defiance of the law in the name of security. Snowden told the truth in the name of privacy”.³ He was referring to a US Senate hearing on March, 2013 where Senator Ron Wyden had questioned James Clapper if the NSA collected any type of data at all on millions of Americans where Clapper had replied “No Sir”. He continued: “Not wittingly, there are cases where they could inadvertently perhaps collect---but not wittingly”.

Glenn Greenwald of the Guardian who interviewed and received the information from Snowden praised him for revealing the surveillance on the American public.⁴ Amy Davidson of the New Yorker commented that it marked the importance of the ‘overdue’ conversation on privacy and the limits of domestic surveillance.⁵ Intelligence officials sought to pacify civil liberties organisations saying that the government’s collection of phone records and internet usage is necessary for protecting Americans and does not infringe on their privacy rights.

Former US president Jimmy Carter said “He’s obviously violated the laws of America, for which he’s responsible, but I think the invasion of human right and American privacy has gone too far….I think that the secrecy that has been surrounding this invasion of privacy has been excessive, so I think that the bringing of it to the public notice has probably been in the long term beneficial”.⁶
Though there were vigorous attempts by the Obama administration to defend the surveillance programmes but strong opposition to the controversial counter-terrorism initiative is mounting among lawmakers. At a House Judiciary Committee hearing on July, 2013, officials from the Justice Department, NSA, FBI and director of National Intelligence Office were given a severe grilling about the scope of the surveillance programs exposed by Edward Snowden. Republican John Coyners, D-Mich took the opportunity to rebuke the panel of government officials over the revelations. “It’s clear to me that we have a very serious violation of the law.” Coyners said. “I feel very uncomfortable about aggregated metadata on hundreds of millions of Americans, everybody, including every member of Congress and every citizen who has a phone in the United States of America, This is unsustainable, it’s outrageous, and must be stopped immediately”.7

6.1.3. The fallout of the Snowden episode:

The Snowden case is not limited to the United States, but has international ramifications involving several other countries. The American snooping system is gigantic. The issue here is a government spying on its own citizens. On one side, the US administration vows by individual liberty and participatory democracy, but on the other side, in the name of national security and fighting against terrorism, encroaches the privacy of its own citizens. The seemingly contradictory stance is due to the global policeman role donned by the United States.
The sanctity of the basic tenets of the American constitution is wilfully violated and it appears the civil rights groups in the US are more than content with their lip service to such issues of violation. The American media, supposedly freer than their counterparts anywhere in the world, have yet to accord due recognition against the collective abuse of individual privacy by the State. Even in an era of inter-dependence and globalisation, the nation state’s security concerns take precedence over individual right to liberty and also privacy. However, the debate over the actions of Snowden and Julian Assange of Wikileaks will continue as to their legality and ethicality.

In the Indian context, the revelations by Snowden are of profound significance and relevant as shown in one heat map India was the fifth most snooped on country in the world at one point in spite of claims of extensive security cooperation between New Delhi and Washington. Though India is upset over this disclosure and a foreign ministry spokesman warned that any privacy violation would be ‘unacceptable’ yet no steps have been taken so far to protect its citizen’s right to privacy from foreign surveillance. On the other hand, there were angry reactions from several European countries and German Chancellor Angela Merkel and French president Francois Hollande branded the spying by US as ‘unacceptable’ while insisting that the NSA stop it immediately. The European Union Justice Commissioner Viviane Keating sent Washington an official list of questions and demanded an explanation.
6.1.4 India on the footsteps of U.S. snooping:

Though Indians are worried about US spy agencies snooping into their accounts and the Indian government is sulking on the fallout of the Edward Snowden episode, slowly and surely the ball has been set rolling for the creation of an Indian Frankenstein—the National Cyber Coordination Centre or the NCCC. The NCCC which is being set up at an initial investment of Rs.1000 crore will include the Intelligence Bureau (IB), Research and Analysis wing (RAW), Indian Computer Emergency Response Team (CERT-IN), National Technical Research Organisation (NTRO), Defence Research and Development Organisation (DRDO), DIARA, Army, Navy, Air Force and Department of Telecommunications. According to a Government source “The NCCC will collect, integrate and scan (Internet) traffic data from different gateway routers of major ISP’s at a centralized location for analysis, international gateway traffic and domestic traffic will be aggregated separately...the NCCC will facilitate real time assessment of cyber security threats in the country and generate actionable reports/alerts for proactive actions by the concerned agencies”.  

Similar to the PRISM programme which is a clandestine mass surveillance data mining program run by the National Security Agency of the US, India is also on the threshold of launching the CMS or Central Monitoring System which will enable the government to monitor all phone and internet connections. The CMS will provide centralized access to the country’s
telecommunication network and facilitate direct monitoring of phone calls, text messages and the internet use by government agencies.

Critics are of the opinion that in the absence of proper privacy laws the surveillance tools may be used to settle political scores rather than for security reasons. At present two laws namely the Information Technology (Amendment) Act, 2008 and the colonial Indian Telegraph Act, 1885 allow for interception or access to communication data. To prepare the ground work for a Privacy Act an expert committee on Privacy under the chairmanship of Justice Ajit Prakash Shah, a retired Chief Justice of the Delhi High Court was constituted. The Committee while submitting its report on October, 2012 concluded that the two laws were inconsistent and that this difference has “created an unclear regulatory regime that is non-transparent, prone to misuse and that does not provide remedy for aggrieved individuals”. In a report to the United Nations Human Rights Council in April, the role of the governments in guaranteeing the right to privacy was stressed upon to enable the citizens to fully enjoy the right to freedom of opinion and expression. Section 66 A of the Information Technology Act which deals with “information that is grossly offensive” has been often used to silence government critics. In April, 2012 an university professor in West Bengal was arrested for circulating messages that criticized the Chief Minister of that state. In a recurrence of the same incident, a man was arrested in Pondicherry a few months later for raising
questions about illegal wealth amassed by the son of the then Union
Finance Minister P. Chidambaram.  

6.1.5. Report of Justice A.P. Shah Committee:

In the light of the above, as proposed by the Justice A.P. Shah committee
principles ingrained in both the Indian Telegraph Act and the Information
Technology Act need to be addressed and strengthened for openness,
accountability, purpose limitation, collection limitation, disclosure to third
parties and notice.

The Justice A.P. Shah committee in its recommendations had suggested that
the Indian Privacy Act should specify the constitutional basis of the right to
privacy. It is also suggested that the right to privacy be applicable to all
situations and should not require a reasonable expectation for the right to
be revoked. Limited exceptions have been contemplated for invocation of
the right which include national security, public order, disclosure in public
interest, prevention, detection, investigation and prosecution of criminal
offences and protection of the individual or of the rights and freedom of
others. It says that the privacy act should extend the right of privacy to
individuals and bring under its regulation data controllers which include
all body corporates and public/governmental bodies and organizations.
Privacy should be extended to all data that is processed by any company or
equipment located in India and all data that has originated in India. This is
in consistency with the Information Technology rules that regulate sensitive
personal information. However, the Shah Committee has recommended that publication of personal data for artistic and journalistic purposes in public interest, the use of personal information for household purposes and disclosure of information under the Right to Information Act, 2005 may not constitute an infringement on the right to privacy. The proposed Privacy Act will also seek to define and harmonize with contemporary laws in force, sensitive personal information, personally identifying information and indirectly identifiable information. It is also envisaged to establish National Level Privacy Principles with respect to collection, processing, storage, access, retention, destruction and anonymization of this information.

To oversee implementation of the provisions of the privacy legislations the committee recommended the appointment of a retired Supreme Court judge as a Central Privacy Commissioner. He will be assisted by Regional Privacy Commissioners who will be a retired judge of a High Court. The Privacy Commissioners shall be vested with the following powers.

a. Conduct investigations into complaints of non-compliance of the national privacy principles.

b. Examine and call documents, examine witnesses and compel appearances.
c. Order privacy impact assessments in relation to implementation of the national privacy principles by data controllers.

d. Review the working and functionality of the privacy legislation, and suggest amendments.

The Committee also recommended that industry should determine privacy standards for themselves through self-regulatory organisation (SRO) with the help of Privacy Commissioners and appoint an ombudsman who will receive complaints from individuals.

A three tier approach has been proposed by the Commission to tackle dispute resolution:

a. The self-regulatory organisations (SRO’s) may put in place an alternative dispute resolution mechanism to deal with complaints investigated by ombudsman to reduce dependency on the Privacy Commissioners and Court and expedite redressal.

b. Privacy Commissioners will be empowered to investigate and impose fines.

c. Any individual or the privacy commissioners will be able to take a complaint to the district level court, the High Court or
the Supreme Court of India and seek compensation for harm caused by violation of his right to privacy.

The following have been identified as broad offences under this Act.

a. Non-compliance with the Privacy Principles.

b. Unlawful collection, processing, sharing/disclosure, access and use of personal data.

c. Obstruction of the Commissioner.

It is felt that the Shah Committee recommendations need to be taken in right earnest by the Government for issue of necessary statues and ordinances for the promulgation of a Privacy bill to safeguard the privacy of its citizens both in the country and abroad.10

6.2. PRINCESS DIANA AND THE PRESS FREEDOM

It has been widely acknowledged that aggressive violation of privacy by paparazzi (professional photographers who specialize in taking photographs of famous people and selling them to the media) had contributed to the death of Lady Diana, the Princess of Wales in August, 1997 in a car accident in France.

Through reports in the media it was known that Princess Diana was pursued by bike riding photographers and reporters at high speed. This was because photographers were anxious to take pictures of her with Dodi Fayed, the son of the wealthy businessman Mohammed Fayed with whom
she was in the car and with whom she was supposedly having an affair. Reports in BBC news revealed that a white Fiat Uno was also involved in the crash and broken pieces of the car were mingled with the remnants of the Mercedes in which Diana was seated. It was presumed that the driver of the car was one of the paparazzi pursuing her.

There have been similar incursions on private moments of celebrities by reporters and actor Tom Cruise revealed that he also suffered harassment from paparazzi and was chased in the same tunnel where Diana’s accident had taken place. Princess Diana being a public figure and the mother of crown prince of England had been the target of several privacy incursions. In August, 1996 she obtained an injunction against a press photographer named Merlin Stenning preventing him from coming within 300 metres from her. On the incident, Anthony Julius, the lawyer of Princess Diana stated: “My client has been compelled as a last resort to take legal action. She hopes that, as well as alleviating her own distress, this will highlight the destructive effects of persistent harassment on women’s lives.” In the spring of 1997 Diana described an incident in which a passer-by forced a freelance cameraman into an arm lock so that she could confiscate his film, as a distressing into her private life. The happenings were captured on camera by another photographer and displayed in one of the prominent newspapers of London.

In all these cases the role of the media was a subject of public discussion concerning its responsibility towards the society. There were clamours for
press reforms in the UK where press laws were inadequate to safeguard the privacy of the common man as well as the celebrities. The UK government defined privacy in the context of National Heritage Select Committee (Government response to the National Heritage Select Committee, 1995) as

(a) A right to be free from harassment, molestation and
(b) A right to privacy of personal information, communication and documents.¹³

The British tabloid market is one which is highly competitive and the tabloid photographers realised that Lady Diana’s stories or photographs were the best options to boost their sales. It is reported that a private picture of Dodi Fayed and Diana embracing each other fetched a record prize of $3.2 million which enticed the paparazzi to break all ethical barriers.¹⁴ Rumours abound that Diana used the media to build her image and remain in the limelight in the wake of tensions with the Royal family. Diana let photographer Jason Fraser know the time when she and Dodi Fayed would be on the beach while holidaying in France and Italy.¹⁵

6.2.1 Prelude to Diana’s death:

Following Diana’s death there were demands for a re-examination of the tension between the right to freedom of expression and the right to privacy. Three leading newspapers of Britain declared that they will not publish any private pictures of Diana’s sons Prince Harry and Prince William when they are minors.
It may be pertinent to mention here that in the UK the common law does not recognize a general right of privacy and for many years there were demands calling for enactment of laws to protect the privacy of British citizens. In 1998, UK enacted the Human Rights Act incorporating Article 8 and Article 10 of the European Convention of Human Rights. While Article 8 safeguards the right to respect for private and family life, Article 10 guarantees the freedom of expression. The Act was amended further in 1998 including Article 12 for protection of freedom of expression where specific provisions were made for the courts to take into account public interest or existing relevant privacy codes while handling journalistic material in legal proceedings. Part V of the Broadcasting Act of 1996 empowers the BSC (Broadcasting Standards Commission), a statutory body for standards and fairness in broadcasting with responsibility for drawing up a code relating to avoidance of unwarranted infringement of privacy in or in connection with obtaining of material included in programmes. The BSC can also adjudicate on complaints pertaining to infringement of privacy. As there was no special mechanism for censoring the contents of the Press after the tragic death of Princess Diana, the UK adopted new privacy guidelines as proposed by the Press Complaints Commission, the self-regulatory body of the media. These guidelines included ‘ban on pictures obtained by persistent pursuit’, ‘preventing media scrums and collective harassment’, ‘greater protection of children’ and a ‘broader definition of private property allowing for more extended protection’.
In the Indian context, the Press Council of India laid down some norms of journalistic conduct. The right to privacy of both the common man and a public figure are given protection and there is provision for complaints, if such norms are violated. But in the absence of proper modes of redress and prosecution, often the privacy intruders go scot free. So there is a need to strengthen the penalty clauses within the norms of journalistic conduct both by the Press Council of India and the Parliament.

In performing this task the Press Council of India can legitimately adopt, by analogy, principles of law and ethics for safeguarding personal privacy and lay down norms of journalistic conduct. Certain vulnerable categories of citizens like children and women may be given added protection while reporting cases of sexual abuse of children or rape and molestation of women. Reports gathered through interception of mail, phone tapping, and bugging, photographing people without their consent are cases which constitute intrusion of privacy.

6.3. CHRISTINE KEELER AND JOHN PROFUMO EPISODE

Profumo affair was a British political scandal that originated with a sexual liaison between John Profumo, the Secretary of State for War in Harold Macmillan’s government and Christine Keeler, a 19 year old would be model in the year 1961.
John Profumo of Italian descent held several ministerial offices during the conservative party administration before his appointment as Secretary of State for War in 1960.

Christine Keeler was a high school drop-out who did odd jobs in shops and cafes to earn a living. She aspired to be a model and had close connections with several important personalities including Stephen Ward, an osteopath and Yevgeny Ivanov, a naval attaché at the Soviet embassy.

John Profumo was introduced to Christine Keeler by Stephen Ward during a social gathering in July 1961. Profumo was attracted to Keeler but the affair continued for a few weeks till the winter of 1961.

Public interest was generated in the Profumo – Keeler affair as Keeler was also involved with Captain Yevgeny Ivanov, a Soviet officer thereby creating a security threat for U.K.

John Profumo in a personal statement to the House of Commons in March 1963 denied any impropriety in the matter. He later resigned from the Government and the Parliament when the truth was revealed. This had a repercussion on Harold Macmillan’s self-confidence who resigned as prime minister on health grounds in October 1963.

There were several dramatized versions of the John Profumo – Christine Keeler affair. In 1989 a film ‘Scandal’ was made which generated a renewed public interest in the affair which deeply upset the Profumo family.\(^{18}\)
S.K. Agarwal (1993) says that in the West the life style of a public official has a tremendous bearing on the administration, but this can be exposed only if it is in public interest to do so. (pg. 112).19

6.4. THE MONICA LEWINSKY SCANDAL

The Monica Lewinsky scandal sometimes referred to as ‘Monicagate’ or ‘Lewinskygate’ refers to a political sex scandal in 1998 between the then United States President Bill Clinton and a 22 year old White House intern Monica Lewinsky. Lewinsky was engaged to work as a White House intern in 1995 and gradually she developed a personal relationship with Clinton. The details of her relationship were divulged by Lewinsky to a close friend and co-worker in the White House Linda Tripp who secretly recorded their telephone conversations.

Tripp handed over the tapes to Kenneth Starr, the Independent Counsel who was investigating Clinton on other issues including the White-water scandal. Linda Tripp was persuaded by literary agent Lucianne Goldberg into recording the conversations with Lewinsky. At the end of 1997 Goldberg discussed the matter with Michael Isikoff of Newsweek.

On January 17, 1998 the news of the scandal first broke out on the Dredge Report which said that Newsweek editors were sitting on a story by investigative reporter Michael Isikoff exposing the Clinton-Lewinsky affair.
Linda also convinced Monica Lewinsky to save the gifts that Clinton gave her and not to dry clean the dress said to contain evidence of Clinton’s acts which later became known as the ‘infamous blue dress’.

In December 1998, The House of Representative voted to issue Articles of Impeachment against Bill Clinton which was followed by a 21 day trial in the Senate.

It may be worthwhile to mention here that Linda Tripp discovered in 1998 that Monica Lewinsky had sworn in an affidavit in the Paula Jones case denying a relationship with Clinton which prompted her to hand over the recorded conversations to Starr. Monica Lewinsky’s biography ‘Monica’s Story’ later reported that ‘Monica felt a brooding sense of outrage that Paula Jones’s freedom to sue the President for money should take precedence over her right to privacy’. In the Paula Jones case, Monica was focused to describe her own consensual sexual activities with Clinton under oath.

American law which is generally reluctant to punish offences against individual honour and dignity identifies workplace offences like that of Lewinsky as gender discrimination.

Louis Brandies and Samuel Warren had written in their path breaking article The Right to Privacy ‘Our system does not afford a remedy even for mental suffering which results from mere contumely and insult, from an intentional and unwarranted violation of the ‘honour of another’.
6.5. NAOMI CAMPBELL VS. MIRROR GROUP NEWSPAPERS LTD.

This case was a House of Lords decision regarding human rights and privacy in English Law. Naomi Campbell, a supermodel was photographed leaving a drug rehabilitation clinic following public denials that she was a recovering drug addict.

The photograph was published along with an article by the Mirror newspaper which contained details of the fact that she was receiving treatment at Narcotics Anonymous (NA), the rehabilitation clinic, the nature of the treatment and how often she attended.

Thereafter Campbell filed a suit seeking damages under the English law including claim for breach of confidence engaging Section 6 of the Human Rights Act.22

6.5.1 The verdict:

The Court of Appeal decision held that where public figures made false statements about their private life, the press was allowed to set the record straight. The Court found that the peripheral details (such as how and where the model was receiving treatment) was necessary to lend credibility to the report. But this approach of the Court of Appeal was overturned by a narrow margin by the House of Lords. The Lords held that the disclosure of additional information was a breach of confidence. The House emphasized on the detrimental effect of the unlawful disclosure of private information on the subject of disclosure.
The Court laid down a two-step test to decide whether the information contained in the article was of a nature that should be protected.

a. Is the information obviously private?

b. Where it is not, is it of such a nature where the disclosure would be likely to give substantial offence to the subject of the information?

Based on these yardsticks the Court felt that the publication of the photograph was in public interest and in such cases the journalist should be allowed some latitude as to how to convey the information.

But the House of Lords was of the opinion that publication of the photograph was likely to cause substantial offence to her and hence ruled in favour of Campbell.

The crux is whether a public person can claim the same degree of privacy as an ordinary citizen in a public space. Perhaps not; and that has been reiterated by the Court of Law in Woodward vs. Hutchins where it has been observed. ‘. . . . those who seek and welcome publicity of every kind bearing on their private lives so long as it shows them in a favourable light are in no position to complain of an invasion of their privacy by publicity which shows them in an unfavourable light’.23

The case examines the balance between protecting confidential information and copyright and protection of privacy of individuals by the Press.

6.6.1 Material Facts:

The Associated Newspaper published extracts from one of the eight journals written by Prince Charles in November, 2005. The journals consisted of Prince Charles’s impression and views during his overseas tour in connection with the formal handover of Hong Kong by the UK to the Republic of China and consisted of personal descriptions and comments during his participation in the events.

The journals were usually photocopied and sent to a list of recipients by Ms. Goodall, an employee of the Prince’s office. The journals sent were marked ‘private and confidential’. The Associated Newspapers obtained the copies of the eight journals from Ms. Goodall via an intermediary. After the publication of the extracts of the journal, Prince Charles brought a claim relating to the journal for breach of confidence and infringement of copyright.24

The claimant contended that the journal published materials which were not in the public domain. However the newspaper’s contention was that since the Prince was a public figure and the documents were received and circulated by his office hence publication of the same was in public interest.
6.6.2 The judgement:

In deciding whether there had been a breach of confidence, Judge Blackburne first considered whether the claimant (Prince Charles) had a reasonable expectation of privacy in respect of the contents of the journal. The Court opined that the material was not intended for anyone other than the Prince’s private office. Moreover the staff of the Prince who may have got a copy of the journal had signed undertakings of confidentiality and were not supposed to expose documents said to belong to the Prince’s office.

Hence the expectation of privacy in respect of the journal by the Prince was not unfounded. The mere fact that the contents of the journal can be considered political and the British Royalty had a history of courting public attention does not prevent the Prince from having a reasonable expectation of privacy in respect of handwritten thoughts which were unintended for public consumption. The judge in this case had to carry out a ‘balancing exercise’ between Article 8 of the European Convention of Human Rights and Article 10 - Right to Freedom of Expression. The newspaper argued that the legitimate aim of interfering with the right vested under Article 8 (right to respect of private life) was the people’s right to receive information about the public figure’s views and conduct.
The Court held that right to confidentiality of the Prince in respect of his private thoughts should be protected regardless of those thoughts. With regard to the justification of the newspaper to publish the notes within the ambit of Article 10 (right to freedom of Expression) the Court held that such a right may be subject to ‘preventing the disobedience of information received in confidence’ which can include the right to protect the confidentiality of the journal. The Court was of the opinion that strong public interest in processing the confidentiality of journals of private offices justified the interference with the newspaper’s right to freedom of expression. The judge took the instance of the verdict in the case of McKennit vs. Ash (2005) where Judge Eady had held that where ‘there is a genuine public interest, alongside a commercial interest in the media in publishing articles or photographs; sometimes such interest would have to yield to the individual citizens’ right to the effective protection private life’.25

6.7. INVASION OF PRIVACY OF PRINCE WILLIAM AND KATE MIDDLETON BY CLOSER MAGAZINE

In September, 2012, Closer, a French magazine published topless photos of Kate Middleton, the Duchess of Cambridge along with her husband Prince William when both were enjoying a private holiday in southern France. The blurry snaps of Kate supposedly taken during a very hot day in the Provence region showed Prince William applying sunscreen on the body of the Duchess of Cambridge.26
An angry Buckingham Palace called the photos a ‘grotesque’ and unjustifiable invasion of privacy and the royal couple announced that they will sue the magazine for intruding into their private space.

An unnamed spokesperson of the Clarence House compared this incident to ‘the worst excesses of the press and paparazzi during the life of Lady Diana, Princess of Wales and said ‘it is unthinkable’ that somebody has taken such photographs.

Laurence Pieau the editor of the Closer Magazine told Associated Press that the terrace of the mansion looked out on a public road and the couple were easily visible from there. She also said the pictures were not shocking and only reflected just a ‘beautiful couple in-love’. Now the question is was the act of the magazine an intrusion into the private lives of Prince William and Kate Middleton.

6.7.1 The verdict:

Both Prince William and Kate Middleton were extremely offended because of the photographs of their private moments coming out in the public domain and sought legal action against publication of the photographs in the court of law. French privacy laws are stricter than the UK in a sense because French Constitution provides for right to privacy of its citizens unlike UK. So as anticipated the Court came down heavily on the magazine describing the pictures as “a brutal display” of the Duke and Duchess’s private lives and directed the magazine to hand over these photographs.
within next 24 hours. In its ruling the Court termed the photographs as “intrusive” and said that in the event of failure to comply with its directive, the magazine will be required to pay a daily fine of 10000 euros.²⁸

Journalism in Britain especially is guided by the Code of Ethics devised by the Press Complaints Commission or the PCC which safeguards the right of privacy while reporting news items. This suggests reporting of items in public interest while

   a) Detecting or exposing crime or serious impropriety.

   b) Protecting public health and safety

   c) Preventing the public from being misled by an action or statement of an individual or an organisation.²⁹

Within the ambit of these guidelines clicking pictures of the royal couple sunbathing on a private holiday and putting them on the front page of a magazine is obviously not in the public interest and thus constitutes an unwarranted invasion of their privacy.

INDIAN CASES:

6.8. SURESH RAM VSMANEKA GANDHI IN THE SURYA NEWSPAPER EXPOSE.

During the autumn of 1978, an incident shocked the nation and was instrumental in changing the political scenario of the country for several decades to come. The incident involved Suresh Ram, son of the then defence minister BabuJagjivan Ram and an undergraduate student of Delhi
University Sushma Choudhury. Though the incident was suggested as a political frame up yet the incident brought to light the trampling of media ethics while exposing the poor awareness of privacy rights in India. Maneka Gandhi, the editor of Surya magazine shocked the nation by publishing nine self-timed photos of Suresh Ram as he copulated with Sushma Choudhury. The photographs which were procured under mysterious circumstances were passed on to journalists like Maneka Gandhi and Khuswant Singh. The political fallout was that Jagjivan Ram’s career was crushed and the Congress led by Mrs Indira Gandhi, the mother-in-law of Maneka Gandhi swung back to power. The publication of the obscene photographs raised serious questions on journalistic ethics and the breach of privacy. Though political sex scandals have rocked the nation now and then yet no concrete steps have been taken by the government for initiating a serious debate for the need of privacy in the case of political personalities and bureaucrats.

On the issue of politicians deserving public sympathy, political commentator Yogendra Yadav is of the opinion that we are being asked to choose between two kinds of vulgarities. He says “on the one hand it is voyeuristic, in the sense that directly or indirectly, even when we seek to condemn what is being dished out to us, we become participants of that voyeurism. On the other hand there is a male conspiracy of silence particularly in the media that invites us to a ‘yeh sab chaltahai’ attitude towards the use of public power for private transaction.”
There have been numerous instances of politically charged sex scandals in India involving senior politicians like N.D. Tiwari and former Odisha Chief Minister J.B. Patnaik. There were also exposes of sex-rackets run by senior politicians like Kerala minister and Muslim League leader, P.K. Kunhalikutty in what is known as ice cream parlour case involving minor girls.

Siddharth Dave, Supreme Court lawyer, is of the opinion that once you are a public figure you are a fair game. He says “In the case of a public figure it is humanly impossible to segregate the public life from the private. People in public life have chosen to be there. They cannot then say that their private life is beyond public scrutiny.”

But if a person’s actions has no bearing on him for holding a public office, any action of his within the private realm cannot be put up for public viewing. If such a situation is allowed to sustain, the society will become vulgar and insane. The press should be restrained from trampling the privacy rights of a public figure if is not in the public interest. Though there may be a clamour for revoking any such law on grounds of infringement of the rights of the press, the privacy law of any democratic country should take this aspect into account for safeguarding the rights of its citizens.

6.9. INDIAN PREMIERE LEAGUE CONTROVERSY INVOLVING SUNANDAPUSHKAR

The media exposure over the IPL Kochi Franchise involving Sunanda Pushkar, one time friend and the late wife of former Minister of State (MoS)
Shashi Tharoor is one example where there are allegations of intrusions in the private realm by the over enthusiastic media. The controversy erupted after Indian premier league (IPL) commissioner Lalit Modi revealed the ownership pattern of IPL Kochi stating that Pushkar, then a friend of Tharoor owned free equity in Rendezvous Sports which is a part owner of IPL Kochi team. The Rendezvous free equity is co-owned by Sunanda Pushkar along with 07 other stakeholders. Pushkar who has been linked to this controversy for acting as proxy for Shashi Tharoor accused the media of ignoring her professional background and international business experience and focusing more on her personal life as if 'a woman cannot be capable of professional or financial success'.\(^{31}\) If justification of such privacy intrusion is public interest, much of the personal information published by the media failed to shed light on IPL holdings or the establishment of the nexus between the IPL holdings and involvement of public officials in the Government.

However, there are instances when good and honest journalism has prevailed over constant pressure from advertisers, sponsors and political lobbying. It is also true that the media houses and journalists are often restricted of reporting human rights abuses and war crimes by political establishments to garner public support of their acts.

The media people should possess that subtle ability to decide what is private or public in a particular context. The law generally views privacy in a binary way dividing the world into two distinct realms—the private realm
and the public realm. It is the sense of fine judgement and that subtle ability of the media person which can go a long way in preventing intrusions of activities in the private realm.

6.10. ABHISHEK MANU SINGHVI CD SCANDAL

In the spring of 2012, newspapers in India carried news of a sex tape released of Abhishek Manu Singhvi, senior advocate and former Congress spokesperson where allegedly he was seen having sex with a senior female lawyer. Video clippings of the CD went viral and were posted on YouTube. The clippings which were around thirteen minutes long were quite literally all over the internet and were largely responsible for Singhvi stepping down as Congress spokesperson and head of the Parliamentary Committee for Law and Justice. Though Singhvi was quick in getting an ex-parte injunction from the Delhi High Court against three media houses – Aaj Tak, Headlines Today and the India Today Group who were in possession of the CD, but by then the damage had already been done. It was later revealed that the driver of Manu Singhvi was involved in capturing and morphing images in conjunction with some television news broadcasters.

Since the CD controversy broke out, Justice Markanday Katju, Chairman of the Press Council of India, has been pressing for regulating social media and for placing restriction which according to him often acts in ‘an arbitrary and irresponsible’ way. Prof David E Morrison and Michael Svennevig in their report for BBC identified three types of spaces associated with privacy.
These are closed space (at home), restricted public space (the office or secluded beach) and open public space (town centre, shopping precincts, open public beach).32

Filming a celebrity figure in the open public space may not be an intrusion into his privacy but may be desired by the person in question to boost up or publicise his image. But filming him/her in the restricted public space without consent or taking photographs in the closed space can be considered as an offence for violating his private space. Journalists often justify their intrusion of privacy under the pretext of public interest but often lack knowledge of what constitutes public interest. Issues of public interest often encompass the benefits accruing to a large group rather than a single individual. Hence a proper judgement is to be made by media houses before releasing any private information in the public domain. Journalists should not go overboard while reporting any personal activity in the private domain. Every individual has a fundamental right of the right to privacy and this cannot be infringed upon to create “sensational news” that may be of commercial interest but against media ethics and morality.

6.10.1 Reactions to Sting Operation:

Experts in India on internet privacy like Apar Gupta of Advani & Company have turned the incident as ‘extremely unfortunate’ and ‘terribly invasive of any person’s privacy’. Another expert Pranesh Prakash of the Centre of Internet and Society says that this incident warrants the urgent need for a
privacy statute and regulations to limit the power of the government and corporations to gather and utilise data about individual citizens. According to Prakash, public figures have a reasonable expectation of privacy and incidences of their private life which are not in private interest should not be exposed to public viewing. Same penal laws can regulate social media on the principle that any act which is unlawful offline is also unlawful online.\textsuperscript{33}

6.11. SUNANDA PUSHKAR, A VICTIM OF SOCIAL MEDIA

On 17\textsuperscript{th} January, 2014 Sunanda Pushkar, wife of Shashi Tharoor, Congress leader and minister in the erstwhile UPA Government was found dead in her hotel room no. 345 at the Leela Palace Hotel in Chanakyapuri, New Delhi. Tharoor who is prone to inviting controversy again found himself in the middle of media glare. It was not too long ago that Tharoor and Sunanda were embroiled in the IPL fiasco for which he lost the ministerial position in the external affairs ministry. Soon after the incident, Tharoor married Sunanda which had raised many eyebrows. Autopsy of Sunanda’s body revealed that she had died of drug overdose possibly after a spat on Twitter between herself and Pakistani journalist Mehr Tarar.\textsuperscript{34}

6.11.1 Social Networking—A Curse or Blessing

T.P. Sreenivasan (2014) while reporting on the news on 23\textsuperscript{rd} January, 2014 said ‘Twitter posts have saved lives. A man lost on a ski slope in Switzerland got help when he tweeted his predicament. Another got bail from arrest as his friend discovered from a tweet that he was jailed in a
foreign country. But there must be an equal number of stories of human tragedies brought about by social media particularly Twitter and Facebook'. Sreenivasan says that putting her private life for scrutiny through use of social media had pushed Sunanda Pushkar to the brink of death. It is said that had Sunanda Pushkar not indulged in social media she would have had a less disturbed and more peaceful married life and may have been alive today. Her husband Shashi Tharoor was a leading ‘Twitterati’ when Sunanda married him and many of his comments on tweet most famously ‘holy cows’ travelling by ‘cattle class’ haunted him for quite a while. Tharoor’s adventures on tweet were discovered by Sunanda who tried to persuade him to stop communicating with Mehr Tarar, the Pakistani journalist. When Tharoor did not relent, Sunanda hit out at Tarar on Twitter by sending angry messages from Tharoor’s account. The desire to take revenge against Tarar without hurting her husband took a toll on the health of Sunanda who was already ill which ultimately led to her death.

Experts say Twitter will flourish till an alternative medium is invented but the Sunanda Pushkar episode should alert the world about the dangers of the invasion of privacy in the social media in our desperate quest for speed and efficiency in communication.\textsuperscript{35}

6.12 J.B. PATNAIK CASE AND ILLUSTRATED WEEKLY

On 18\textsuperscript{th} May, 1986 the Illustrated Weekly of India brought out an article “Shocking: The strange escapades of J.B. Patnaik” by its correspondent S.M.
Abdi followed by a second article “Why is J.B. being allowed to gag the Press”. The articles discussed about the deviant sexual life of J.B. Patnaik, then Chief Minister of Odisha. The first article also carried copies of FIR’s against Patnaik in this connection. Immediately J.B. Patnaik filed a suit in the Orrisa High Court against the Illustrated Weekly for damages worth rupees one crore. He also asked for details about the documents and the source of the documents from the magazine. The Illustrated Weekly moved the Supreme Court on the ground that the application of Patnaik seeking the particulars amounted to disclosure of evidence which was not permissible under the Civil Procedure Court. In the meantime, J.B. Patnaik used his office to harass and humiliate Pritish Nandy, the editor of Illustrated Weekly. After three years of legal tussle the will of the Illustrated Weekly wilted and it tendered an apology to J.B. Patnaik before the Supreme Court. The apology was kept in a sealed cover till it was published by the magazine in its issue dated August 27 – September 02, 1989.

Senior Journalists like Khushwant Singh were of the opinion that had he been the editor of Illustrated Weekly he would not have published such an article. Singh was of the view that a person’s private life should be his own. A public figure’s private life can only be exposed if there was a clear evidence of misuse of power. Senior journalist Nikhil Chakraborty wanted that a code of conduct should be put in place for journalists which should not be in isolation from the code of conduct for politicians or public life as a whole. Another senior editor, Dilip Padgaonkar of the Times of India said
that the right to privacy of a public official should be respected but if that privacy is sought to be explored without malice for public good the press should be allowed to do so.\footnote{6}

6.13. THE AARUSHI TALWAR MURDER CASE

The Aarushi murder case or the Noida double murder case refers to the murder of 14 year old Aarushi Talwar and 45 year old Hemraj Banjade, a domestic help of the Talwar family residing in Noida UP. The murder took place on the night of 15\textsuperscript{th} --16\textsuperscript{th} May, 2008. The case received extensive media coverage by newspapers as well as various television channels.

Initially, reports of the police indicated that Rajesh Talwar had murdered the two after finding them in an ‘objectionable position’ or because Rajesh’s alleged extra marital affair that had led to his blackmail by Hemraj and confrontation with Aarushi. The case was later handed over to the Central Bureau of Investigations (CBI) which also could not make much headway.

In 2009 the case was again taken up by the CBI which accused both Nupur and Rajesh Talwar, parents of Aarushi for murdering her and Hemraj. This decision of the CBI court was challenged in the Allahabad High Court by the Talwars pleading that they were innocent.

The story of the murder of Aarushi and Hemraj provided good material for yellow journalism on speculations of an illicit sexual relationship between a teenaged girl and her male servant. The overzealous media was in search of
sensational news subjected the murdered girl and her parents to character assassination and damaging insinuations.37

On 22nd July 2008, a Supreme Court bench consisting of Justice Altamas Kabir and Justice Markanday Katju asked the media to be careful while covering the case and abstain from making baseless allegations on the character of Aarushi and her father. The judges criticised the ‘sensationalist’ media for lacking in ‘sensitivity, taste and decorum’.38

In 2008, a popular production company decided to air a programme on television channels depicting the twin murder case of Aarushi and Hemraj. Nupur Talwar objected to it and requested the National Commission for Protection of Child Rights (NCPCR) to stop the production company from airing the show saying that they were trying to earn TRP by exploiting a tragedy.39

It may be seen in the present case that in the passion for sensational news media persons have turned a blind eye to the sorrow that had engulfed the Talwar family after they had lost their only child under mysterious circumstances. The morality and the ethics of the media have been sacrificed in the craze for earning money. It is high time perhaps the stalwarts of media should look back and introspect whether truly the principles of social responsibility are being upheld or being compromised in the rat race for TRP.
6.14. THE OPERATION WEST END (TEHELKA EXPOSE)

Tehelka, a news portal which started in the year 2000 as tehelka.com was an Indian news organization mainly known for investigative journalism especially sting operations. The portal was founded by Tarun Tejpal and Aniruddha Bahal.

Tehelka did its first major sting operations in 2001 called ‘Operation West End’ where two of its reporters, special correspondents Mathew Samuel and Aniruddha Bahal filmed how they bribed several defence officials and politicians of the ruling NDA government for striking a defence deal. Both the reporters had reports of dubious defence deals in India with foreign companies where hefty commissions are paid to top brass of the military as well as politicians. Charging commission from defence deal is illegal in India and the news portal had information that people were getting rich by acting as middle man in such deals.

6.14.1 The Expose:

They started their investigations by first creating a fake British arms company based in London and named it ‘West End’. At that moment, the Indian Army was in need of thermal imaging cameras. The team printed business cards and photographs of camera models in their office at suburban Delhi and prepared for the dealings. They initially had to bribe junior officials in the country’s defence ministry to help them in securing deals with several middle men. This middle men fixed deals with various other
stake holders including Samata Party President Jaya Jaitely (the then defence minister George Fernandes belonged to Samata Party) whom they paid Rs. 3 lakhs to tell Fernandes about the company. Later, they met Bharatiya Janata Party (BJP) President Bangaru Laxman who accepted the bribe of Rs. 1.5 lakh and recommended them to meet Brajesh Mishra who was the National Security Advisor to the then Prime Minister Atal Behari Vajpayee. The entire operation took seven and half months and total amount of Rs. 1.5 million was paid as bribe. The operation was covered by around 100 hours of video footage.

The footage was released in the public domain on 14th March, 2001 and created a tremor that shook the entire political establishment of the country. Jaya Jaitely stepped down after two days. Bangaru Laxman resigned the next day with four senior officials. The defence minister George Fernandes was forced to resign but was reinstated later. The Vajpayee Government was on the verge of collapse as its allied party leader Mamata Banerjee also withdrew support but somehow the government survived.

6.14.2. Public Reaction:

The Tehelka expose was supported and welcomed by the big media houses and Tarun Tejpal was hailed for his efforts. The Times of India concluded that the issue of ethics “pales before the sleaze that their team has dug up” while the Hindu called it a “turning point in Indian journalism”. Though the politicians called for the arrest of the journalists and Tarun Tejpal received
death threats however, the reporters insisted that their “extra-ordinary methods” were for the larger public and national interest. In 2004, the CBI registered cases against Jaitely, Laxman, and other officials in the defence ministry. In 2012 Bangaru Laxman was sentenced to four years in jail for this case.

A book titled ‘Tehelka as Metaphor’ was written by noted journalist and author Madhu Trehan on this expose which was published in 2009.

Tehelka was widely criticised because of its sting operations using hidden cameras and investigations which led to the debate about application of media ethics. Sting operations got a fillip after the Tehelka expose and many television channels resorted to sting operations to expose numerous instances of bribery and corruptions. Tejpal defended sting operations for the greater good and the public interest as he believed sting operations exposed people in public office misusing public money and power. The sting operations act as a deterrent for them to engage in such acts in future. However, the Supreme Court of India expressed concerned over the growing number of freelance journalists selling their sting operation recordings to the highest bidder putting in question their intent of “public interest”. Critics of sting operations called the increasing number of crime channels as “a cottage industry of sleaze and slime” as people were increasingly using false sting operations to earn easy money.40
6.15. THE NIRA RADIA TAPES CONTROVERSY

The Radia Tapes controversy related to the issue surrounding the telephonic conversations of Nira Radia, an Indian corporate lobbyist with senior Indian politicians, journalists and businessmen which was recorded by the Indian Income Tax authorities during 2008-09.

The Home Ministry after getting specific information of money laundering, tax evasion and financial irregularities asked the Indian Income Tax Department to tap the phone lines of Nira Radia.

A transcript of the telephone conversations of Nira Radia which was recorded for over 300 days was published by the OPEN magazine in November 2010. Through the people involved in the expose denied the allegation carried by the media, the CBI reported that they had evidence of Nira Radia trying to broker the 2G spectrum deals. Evidence also suggested that Nira Radia tried to influence the appointment of A. Raja as telecom minister in the UPA government through middlemen.

6.15.1. The Cover Up:

Prominent personalities who figured in the tapes include A. Raja, the then telecom minister Kanimozhi, Rajya Sabha MP, Achari, Ratan Tata, Mukesh Ambani, Kalanidhi Maran, Barkha Dutt, M.K. Venu, Prabhu Chawla, Vir Sanghvi and others. Initially only a few Indian newspapers The Deccan Herald and Indian Express wrote about the tapes while others like HT Media
and NDTV questioned the authenticity of the tapes and tried to blackout the news.

But the news gained prominence following sustained pressure by social media on Facebook and Twitter and the outrage against the attempted blackout by Indian media because of the involvement of several senior journalists.

The Washington Post commented on the incident “Twitter has played an important role in launching what has become an international issue, with the Indian diaspora weighing in”. Allegations and counter allegations, defamation case and apologies followed the expose with big media houses like NDTV and Hindustan Times going for extensive damage control for safeguarding the reputation of their senior journalists. Ratan Tata, Chairman of the Tata Group one the biggest industrial houses in India filed a writ petition in the Supreme Court claiming infringement of his right to privacy. Tata claimed that the government authorities have failed to protect his privacy by allowing the tapes to be leaked and therefore asked for directives by the Supreme Court for an independent probe into the leak, for the Indian authorities to retrieve all leaked information and for the media to be prohibited from publishing the tapes in any form.

6.1.5.2. The Debate:

It is true that the taped conversations contained some private discussions yet the leaks brought to light the manner in which the democratic system in
India has been held to ransom by a small group of powerful people in the public sphere. So it is felt that since the issues discussed were of public interest hence it was absolutely fine that these tapes were brought into the public domain upholding the morality of the 'fourth estate'. But at the same time the incident has brought to limelight the issue of how the Indian authorities have taken for granted the right to breach the privacy of their citizens. This issue is worrying privacy activists as phone tapping has been done without any clear guidelines or supervision.

The attempted blackout of the news by the Indian media also raises questions about how freedom of expression can be and is suppressed by journalists when their right to privacy is under attack. So the need of the hour is for the media and the government to strike a fine balance between the right to privacy of individuals and the public interest as well as the responsibility of the media to uphold the tenets of freedom of expression even when it hurts them the most.

6.16. PRIVACY VIOLATIONS BY TV9 IN "GAY CULTURE RAMPANT IN HYDERABAD".

TV9, a leading Telugu news channel conducted a ‘sting operation’ in February, 2011 on the ‘gay culture in the city of Hyderabad’. The channel gathered phone numbers of names of several persons who were gay from a social networking site for gay men. This information which also contained photographs and personal details were displayed prominently by the channel. Besides that the individuals were also asked to reveal their sexual
preferences which experts say were obvious attempts to sensationalize the ‘gay culture’ and create anxiety and panic among the viewers about the increasing trend among the homosexuals getting proactive in asserting their sexual rights.

The report was followed by sporadic protests in the cities of Bangalore and Hyderabad against the channel for airing the programme which exposed private information of the affected persons that included many students and white-collar professionals.

Following the protests, the NBSA (News Broadcasting Standards Authority) took ‘suo motu’ cognizance of the case and summoned TV9 to a hearing on the expose. The justification put forward by the channel of exploiting information in the public domain was rejected by NBSA and TV9 was found guilty of violating Clause 5 (sex and nudity), 6 (privacy) and 9 (sting operations) of the NBSA Code of Ethics which bind news broadcasters. TV9 was ordered to display an apology for carrying the story during primetime broadcast and was fined an amount of Rs.1.00 lakh to be deposited to NBSA.

As per Cause 6 of the NBSA Code of Ethics privacy of individuals is protected and it reads as below:

As a rule channels must not intrude on private lives, or personal affairs of individuals, unless there is a clearly established larger and identifiable public interest for such a broadcast. The underlying principle that news channels
abide by is that the intrusion of the private spaces, records, transcripts, telephone conversations and any other material will not be for salacious interest, but only when warranted in the public interest.

Justice J.S. Verma of NBSA while hearing on the case distinguished between the limited public accessibility of information and information being in the public domain said:

"While the names, particulars and photographs etc. of individuals may be available in the ... members-only section, it cannot be said that such names, particulars and photographs are therefore available in the public domain".

According to Justice Verma merely because one person has decided to share some information about him/her on social networking sites, it does not necessarily imply that he or she has given the license for the information to be made available in the public domain.

This interpretation allows social networking sites to be treated as "private space" and not "public" ones besides upholding the right of sexuality minorities to a private sphere of intimacy.44

The issue also brings forth the blatant violation of privacy rights by the media highlighting the scant regard of the media regulatory authorities by big media houses in India which are normally big corporate entities and wield immense political clout along with financial muscle. Hence the need of the hour is to empower the NBSA and the Press Council of India with
judicial powers supported by strong privacy laws to ensure that privacy of
innocent people are not sacrificed at the altar of freedom of expression.

6.17. DILSHAD SHEIKH AND NAWAZ SHARIF

The Sunday Observer in its issue dated November 24-30, 1991 published a
story on front page elaborating on a romantic affair between the Pakistan
Prime Minister Nawaz Sharif and Dilshad Sheikh sister of Indian movie
stars, Feroze Khan, Sanjay Khan and Akbar Khan.

The romantic adventures of Nawaz Sharif with this Indian socialite
snowballed into a major controversy between the countries of India and
Pakistan.

The conservative mullahas and the Jamait-I-Islam with whose support
Nawaz formed his government pounced on him insisting that the Pakistani
High Commissioner in New Delhi Abdus Sattar had warned Nawaz of the
Bangalore based widow being a Research and Analysis Wing (RAW) agent.

It is believed the affair developed when Dilshad had gone to Pakistan to
attend a wedding in May 1991, where she met Sharif. Though Dilshad
continuously denied having any affair with Sharif yet she was hounded by
the Press and the Kashmiri militants put her on the hit list for embroiling
Nawaz Sharif in the controversy.
In a letter to the editor-in-chief of the Observer Group of Publications Dilshad claimed that the news has exposed her family to ‘unjustified contempt, prejudice, public hatred and peril of threat to life’.

Interestingly Mr. Abdus Sattar, the Pakistani High Commissioner in a letter dated 26th Nov, 1991 to Akbar Khan the brother of Dilshad Sheikh said that he had never made any statement about Dilshad being a RAW agent.

Dilshad filed a defamation case of Rs. 1 crore in a city court of Srinagar for which the editor-in-chief of the Observer Group of Publications, Mr. Pritish Nandy was arrested and later released by the Bombay Police for publishing this story.

But the Observer never withdrew the story nor tendered an apology demanded by Dilshad Sheikh claiming that there was ‘no malafide intention’ behind the story.

While commenting on the Dilshad episode Khuswant Singh, a prominent journalist commented in his column in The Hindustan Times on December 7, 1991.

‘The tragedy is that no matter how strongly a Court of Law or the Press Council censures this kind of ruthless and criminal disregard of people’s right to privacy and unsullied representations, a certain amount of mud will stick and blight the lives of the likes of Dilshad and their kindred. On behalf of my fraternity I tender apologies to them.’

45
6.18. SCANDAL AND EXPOSE INVOLVING GOA LEGISLATIVE ASSEMBLY SPEAKER DAYANAND GANESH NARVEKAR

In September, 1989, Ramakant Khalap the leader of the Maharashtrawadi Gomantak Party (MGP), the Opposition Party in the Goa Legislative Assembly leaked the news about the alleged molestation of a clerk Sunita Haldankar by the Speaker of the Assembly Dayanand Ganesh Narvekar. The news spread like wildfire and came out in the leading English Newspaper Gomantak Times. Echoing on popular sentiment the paper demanded the immediate resignation of Narvekar from his post. On his part Narvekar insisted that he was innocent and if the charges were to be proved he would immediately resign. The case involving Sunita the young typist from Mapusa, a town 15 km north of Panaji which was also the home of the speaker became the centre of a raging political storm and became famous as the secretariat molestation case.

Gradually the protest against Narvekar gained momentum with the Gomantak Rashtriya Marathis Samaj to which Narvekar was a member launching a strong attack on him. On the other hand, Sunita was under tremendous pressure from Narvekar to go back on her complaint of alleged molestation by Narvekar. But she remained steady and did not yield to attempts at silencing her. Sunita became a symbol of resilience to Goan women. She was asked to address a rally by the Students Action Front, a student organisation which she did braving the wrath of the speaker and ultimately, unable to withstand the pressure from the media and public
alike, Dayanand Ganesh Narvekar resigned as speaker of the Goa Assembly.\textsuperscript{47}

Though the case is likely to pass off as one of the hundreds of molestation cases and may be linked to sexual harassment in workplace also but the fact cannot be denied that the activities pertained to action in the private domain of Dayanand Narvekar. The dilemma is whether it qualifies for exposure in the public domain. Women’s organisation and civil rights bodies may be crying hoarse for action against Narvekar because he is holding a public office but media ethics demand that public figures should be allowed to have a reasonable expectation of privacy in their public life.

6.19 KHAHAR SINGH VS. THE STATE OF UP AND OTHERS

1963 AIR 1295, 1964 SCR (I) 332.

Date of Judgement - 18/12/1962

6.19.1. Background

Kharak Singh the petitioner in this case was challenged in a dacoity case but was released by the police as there was no evidence against him.

But the Uttar Pradesh Police put up him under surveillance as defined under Regulation 236 of the U.P. Police Regulations. Surveillance included actions by the police like secret picketing of the house and its approaches, domiciliary visits at night, periodical enquiries by police officers into various aspects of his day to day life, verification of movement and history sheet of all information relating to his conduct.
According to the petitioner Kharak Singh he was regularly woken up by the police from his sleep after nightfall to report to the local police station of his presence in his house. If he had to leave his house to visit another village that had to be informed to the local police station earlier who used to alert the police station of that particular area of visit. The later police station used to put him under the same mode of surveillance as the former.

Fed up by the high handedness of the police authorities Kharak Singh filed a writ petition in the Supreme Court under Article 32 in which he challenged the constitutional validity of Chapter XX of U.P. Police Regulations, in which Regulations 236 also occurs.\(^48\)

In the Supreme Court the defence counsel of Uttar Pradesh pointed out and defended the validity of the action taken by the police in two ways viz. (i) that the impugned Regulations do not constitute an infringement of any of the freedoms guaranteed by Part III of the Constitution of India and (ii) even if they did the rules and regulations have been framed in the public interest and for the police to discharge its duties efficiently.

The issue before the Court was whether ‘surveillance’ under impugned Chapter XX of the U.P. Police Regulations constitutes an infringement on any of the Fundamental Rights as guaranteed under Part III of the Constitution.\(^49\)
6.19.2 **Judgement**

The Supreme Court while delivering the judgement said ‘nothing is more deleterious to a man’s physical happiness and health than a calculated interference with his privacy. We would therefore define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures’.

According to the Court, the State must satisfy itself that the Fundamental Rights of its citizens under Article 21 and Article 19 which guarantees the right of life and personal liberty of its citizens are not infringed upon by showing that there is a law and that it does not amount to a reasonable restriction within the meaning of Article 19(2) of the Constitution. But existence of any such law could not be proved by the counsel for the State of U.P.

So the Court held that the petitioner Kharak Singh can legitimately plead that his fundamental rights both under Article 21 and Article 19 (1) (d) were infringed upon by the State. Therefore the petitioner Kharak Singh would be entitled to the issue of a writ of mandamus directing the U.P. Police not to continue domiciliary visits.
6.20. RAJAGOPAL VS. STATE OF TAMIL NADU

AIR 264, 1994 Sec (6) 632,

Date of Judgement: 07/10/1994

6.20.1. Material Facts:

Shankar alias Gauri Shankar alias Auto Shankar was a criminal who was charged and tried for as many as six murders. He was convicted and sentenced to death by the session’s court for his crime which was also confirmed by the Madras High Court on 17-07-1992.

While in prison during 1991, Auto Shankar wrote his autobiography which ran into almost 300 pages. The autobiography was handed over by Auto Shankar to his wife Jagdishwari for handing over the same to his advocate Chandrasekharan. Shankar requested his advocate to ensure that his autobiography be published in the magazine Nakkheran. The autobiography brought to light the close nexus between Auto Shankar and several IAS, IPS and other top level officers of the State of Tamil Nadu, some of whom were indeed his partners in several crimes.

This fact was corroborated by the presence of several top officials at the house warming ceremony of Shankar through various photographs and video recordings of the event. Naturally, news of the publication of Auto Shankar’s autobiography sent a chill down the spine of these police and prison officials who were afraid that their nexus with criminals would be
exposed. So they forced the prisoner Auto Shankar to write letters to the IG (Prisons) by applying third degree tortures requesting the IG that his life story should not be published in the magazine.

Also the prison authorities communicated to the editor of Nakkeran that the serial writings from the autobiography appearing in their magazine is not of Gauri Shankar alias Auto Shankar but of another person of the same name. Moreover publication of autobiography of a convicted prisoner should be stopped as it was not permitted under existing rules.\(^5\)

Finding no other alternative the editors of Nakkeran field a writ petition in the Supreme Court seeking directions for (i) restraining the respondents state of Tamil Nadu and its officers from interfering with the publication of the autobiography and (ii) for restraining the IG (prisons) Madras from taking legal action against the magazine.

The petitioners (editors of Nakkeran) pleaded that the autobiography was written by Auto Shankar while in prison and with the approval of the jail authorities.

6.20.2. The Court Verdict:

Since neither the prisoner, his wife nor lawyer was party to the petition, the Supreme Court proceeded on the assumption that the prisoner had neither written his autobiography nor authorised the petitioners to publish the same.
The Court considered a matter of principle that the right to freedom of expression is subject to reasonable restrictions placed thereon by law, including restrictions to protect the right to privacy. However, it stressed that in practise it is necessary to restrict the right to freedom of expression no more than is consistent with the democratic way of life ordained by the Constitution as the press plays an important role in a democratic society.

After sieving through a range of comparative law material the Court held that the petitioners (editors of Nakkheran) had a right to publish the biography and the state or its officials could not prevent or restrain the publication. Any remedy of the affected public official / public figure would be available after the publication of the matter in the public domain.

The Court summarised some general principles applicable in this case.

a) The right to privacy is implicit in the right to life and liberty guaranteed under Article 21. It is ‘a right to be left alone’. A citizen has a right to safeguard the privacy of his own and his family and publishing anything regarding concerning the same would be violating his right to privacy which calls for legal action.

b) The rule quoted at (i) above is subject to the exception that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based on public records including court records. This is because once any information
becomes a public document it becomes a legitimate subject for scrutiny by press and media.

c) A public official also enjoys the same protection of his privacy as in (i) and (ii) above but only on matters not concerning the discharge of his official duties.$^{53}$

REFERENCE:


28. “We’ve been vindicated” Kate Middleton and Prince William praise French Court after it prevents further publication of topless photos” at www.mirror.co.uk/news accessed on 15 th March, 2014


47. Ibid 45, Agarwal, S.K., (1993), Right to privacy and Ethics, Media and Ethics, pp 110-111.


50. Ibid, 48.

51. Ibid, 49
