Privacy vs Press Freedom

Mains: *GS-II – Polity & Governance*

Why in news?

The Digital Personal Data Protection (DPDP) Act, 2023, has reignited the debate over privacy and press freedom.

What is the case background?

- **News Publishers Challenge to DPDP Act** – On October 27, 2026, the Digital News Publishers Association (DNPA), representing 21 news publishers, approached the Supreme Court seeking an interim stay on provisions of the DPDP Act, 2023.
- **Concerns & risk** – In its October 6 petition, the association argued that the Act could impede investigative journalism, expose confidential sources, force the removal of published reports, and deter whistleblowers.
- Further, it contended that the absence of a specific journalistic exemption threatens press freedom.
- **Warning against 'Pre-Censorship'** – Representing the DNPA, senior advocate Madhavi Divan cautioned that if journalists were asked to obtain consent from the subjects of their reports, it would create "a complete regime of pre-censorship".
- **Next hearing & Constitutional question** – The Supreme Court listed the case for further hearing on November 17.
- The challenge raises a constitutional question: what does the law say about privacy, press freedom, and the public's right to know?

Can journalists peep into a person's private life in the name of public interest?

- **Balancing press freedom & privacy** – Journalists have the freedom to investigate and report under Article 19(1)(a) (Freedom of Speech and Expression); this right must be balanced with the Right to Privacy, which the Supreme Court recognised as a Fundamental Right under Article 21 in the ***K.S. Puttaswamy (2017) judgment***.
- **Public Officials cannot avoid legitimate scrutiny** – In ***R. Rajagopal v. State of Tamil Nadu (1994)***, also known as the 'Auto Shankar case', the Supreme Court drew a telling boundary: a government official cannot claim privacy to prevent scrutiny of actions performed in their official capacity.
- However, holding public office does not place every aspect of that person's private life under public scrutiny.
- **No prior restraint on publication** – The Court also held that the State cannot impose prior restraint or prohibition of publication on privacy grounds.

- **Investigative journalism is not a parallel trial** – Although investigative reporting can uncover important facts, journalists must avoid conducting a media trial that prejudges a case before the courts deliver a verdict.
- **Courts can delay reporting** – In ***Sahara India Real Estate Corp. v. SEBI (2012),*** the Supreme Court ruled that while investigative journalism and "open justice" are vital, courts can issue temporary postponement orders on media reporting if ongoing publicity poses a real and substantial risk to a fair trial.
- **Warning against media trials** – In ***Manu Sharma v. State (NCT of Delhi) (2010),*** the Supreme Court cautioned against media coverage that turns a suspect or an accused into a convict in the court of public opinion, even before the judiciary has pronounced its verdict.

Can journalists use hidden cameras, voice recorders and sting operations to expose misconduct?

- **Sting operations & line between investigation & entrapment** – A sting operation can help uncover corruption, misconduct, or illegal activities, making it an important tool of investigative journalism.
- However, an important legal question is where legitimate investigation ends and entrapment (inducing someone to commit an offence) begins.

> *A **sting operation** is a deceptive plot by law enforcement or investigative media to catch someone committing a crime or exposing wrongdoing.*

- **SC upheld public-interest sting operations** – In R.K. Anand v. Registrar, Delhi High Court (2009), the Supreme Court upheld the sting as serving an important public cause by exposing an attempt to suborn a court witness and undermine the BMW trial.
- **No legal immunity** – However, in Rajat Prasad v. CBI (2014), the Supreme Court recognised the public-interest value of investigative journalism but held that it does not provide blanket immunity for unlawful acts committed during a sting operation.
- That is, a claim of public interest does not, by itself, wipe out criminal liability arising from a sting operation.
- **Evidence determines criminal responsibility** – The Supreme Court further stated that the intent, conduct, and role of each accused person must be assessed based on the available evidence before fixing criminal liability.

How do international human rights standards and laws of different countries balance privacy with press freedom?

- **International protection** – Articles 17 and 19 of the International Covenant on Civil and Political Rights, and Articles 8 and 10 of the European Convention on Human Rights safeguard both privacy and freedom of expression.
- **Upholding press freedom** – In Axel Springer AG v. Germany (2012), the European Court of Human Rights (ECHR) examined whether a newspaper's reporting on a television actor's arrest, on suspicion of possessing cocaine, had crossed the boundary of privacy.

- By a 12-5 majority, the Grand Chamber ruled that there was a violation of the newspaper's freedom of expression under Article 10 of the ECHR.
- **Media as a public watchdog** – The court recognised the press as a public watchdog in reporting matters of public interest and found that the restrictions imposed on the newspaper were not justified by the need to protect the actor's private life.
- **Different countries follow different approaches**
    - **USA** – The First Amendment to the U.S. Constitution (1791) protects freedom of the press, while the Privacy Protection Act, 1980, restricts law-enforcement searches and seizures of journalists' unpublished work, subject to exceptions.
    - **UK** – The U.K.'s Data Protection Act, 2018, allows journalists to claim exemption from certain data-protection requirements, including informing individuals about the use of their personal data, if they reasonably believe publication is in the public interest.
    - **Brazil –** Brazil's General Data Protection Law (LGPD) excludes data processing carried out exclusively for journalistic purposes.
    - **Kenya** – Section 52 of Kenya's Data Protection Act, 2019, provides a conditional exemption from certain data-protection principles for journalistic purposes, subject to public-interest requirements and ethical safeguards.
- **Global trend** – Across countries, the common approach is to balance individual privacy rights with the media's role in informing the public, often through special exemptions for journalistic activities.

Reference

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