



Law of Privacy in UK: A Study

By

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1. Privacy Jurisprudence in UK has been mostly developed by judiciary and a minor contribution by legislature. Barring an exceptional case,¹ where the right to privacy has been ruled out in English law, many other decided favoured either directly or indirectly the existence of the right of privacy, until for the first time, when the right to privacy was incorporated as a right under British Law.² The Preamble of the Human Right Act, 1988,³ while giving effect to European Convention on Human Rights, protects the right of privacy which has been provided under Art 8(1) of the European Convention or Human Rights.⁴
2. Right to privacy has been viewed as trespass⁵ and such a concept was recognized even earlier by Sir Edward Coke, when he observed thus: “That the house of everyone is to him as his castle and fortress, as well as for his defence against injury and violence as for his repose”.⁶ This is considered as the first case under English Common Law,⁷ which dealt with entry into a property by the Sheriff of London.
3. Postponing the issue of injunction by the courts, when the right to privacy is invaded, itself would amount to denying of the right altogether,⁸ and the interposition of the court in these cases does not depend upon any legal right.⁹ This case can be viewed as a significant development of law of privacy in England, where despite the fact that law of privacy does not depend upon any legal right, it is recognized and the response of the court to intervene and issue an injunction shall be immediate.

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¹ Kaye Vs. Robertson (1991)1 FSR P.62.

² See for details Human Rights Act, 1988.

³ Human Rights Act, 1988 is referred to as HR Act throughout this study.

⁴ European Convention on Human Rights is referred as ECHR throughout this study.

⁵ Entick Vs. Carrington (1765)19 St. Jr. 1029 Per Lord Camden, CJ.

⁶ Peter Semayne Vs. Richard Gresham 77 ER 194 (1604).

⁷ Ibid.

⁸ Prince Albert Vs. Strange (1849) 41 ER 1171.

⁹ Ibid.

4. An isolated case of the non-existence of the right to privacy and consequent no right to action for breach of a person's privacy,¹⁰ subsequent cases in England has strengthened the foundation of right to privacy in U.K. In *R Vs. Director of Serious Fraud Office*,¹¹ Lord Mustill observed as follows:-
- i) It is a simple reflection of the common view that one person, should so far as possible, be entitled to tell another person to mind his own business;
 - ii) All civilized states recognize the assertion of personal liberty and privacy;
 - iii) Equally, although, there may be pronounced disagreements between States and between individual citizens within the States, about where the line should be drawn, few would dispute that some curtailment of the liberty is indispensable to the stability of society and indeed in UK today our lives are permeated by enforceable duties to provide information on demand, created by Parliament and tolerated by the majority, albeit in some cases with reluctance.

These observations favour reasonable restrictions to be imposed on the right to privacy and enforceable duties to give information as enjoined by law. This is comparable to the Indian Law, where duty to furnish 'Aadhar' is mandated. Lord Neuberger comments on the observations of Lord Mustill in the case¹² in these words: "It underlines the approach taken by the Common Law to privacy and recognizes privacy as a principle of general value and privacy had only been given discrete and specific protection at Common Law"¹³.

5. In *Wainwright's* case,¹⁴ the principle laid down by Sedley¹⁵ was referred to, which stated that, "Privacy itself is recognized as a legal principle drawn from the fundamental values of personal autonomy". It was further laid down thus:- "What a concept of privacy does however is to accord recognition to the fact that the law has to protect not only those people whose trust has been abused, but those simply find themselves subjected to an unwanted intrusion in their personal lives"¹⁶. However, the principles laid down by Sedley J, were construed by Lord Hoffman in *Wainwright's* case¹⁷ as a "plea for the extension and possibly renaming of the old action for breach of confidence." Further, Lord Hoffman observed¹⁸ thus:-
- i) What the courts have so far refused to do is to formulate a general principle of 'invasion of privacy';
 - ii) There seems to be a great difference between identifying privacy as a value which underlines the existence of a rule of law (as may point out the direction to which the law should develop) and privacy as a principle of law in itself;

¹⁰ See Note 1.

¹¹ (1993) AC P.1.

¹² Ibid.

¹³ Lord Neuberger, "Privacy in the 21st Century" "UK Association of Jewish Lawyers and Jurist" lecture delivered on 28-11-2012.

¹⁴ *Wainwright Vs. Home Office* (2004) 2 AC P.406.

¹⁵ See for details *Douglas Vs. Hello Ltd.* (2001) QB P.967.

¹⁶ Ibid.

¹⁷ See Note 14.

¹⁸ Ibid.

- iii) The English Common Law is familiar with the notion underlying values – principles only in the broadest sense – which directs its development;
 - iv) Nor is there anything in the jurisprudence of the European Convention of Human Rights which suggests that the adoption of some high level principles of privacy is necessary to comply with Article 8 of the Convention;
 - v) The European Court is concerned only with whether English law provides an adequate remedy in a specific case in what it considers that there has been an invasion of privacy contrary to Art 8(1) and not justifiable under Art 8 (2) of European Convention on Human Rights.
6. The House of Lords in Campbell’s case,¹⁹ per Lord Hope laid down that ‘if there is an intrusion in a situation, when a person can reasonably expect his privy to be expected, the intrusion will be capable of giving rise to liability, unless the intrusion can be justified’. It was further held by Lord Hope “that the courts in order to decide a case must carry out a balancing operation weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure”.²⁰ Baroness Hale, J in his concurring Judgment held that the Human Rights Act does not create any new cause of action actual between private persons and if there is a relevant cause of action applicable, the court as a public authority must act compatibly with both parties Convention rights.²¹
7. Private information, public disclosure of which constituted an interference with the right to privacy²² under Art 8 Rights.²³

In many cases as to what constitutes “reasonable expectation of privacy” has been held to be determined with reference to following aspects²⁴:-

- i) All the circumstances of the case;
- ii) Attributes of the claimant;
- iii) The nature of the activity in which the claimant was engaged;
- iv) The place at which it happened;
- v) The nature and purpose of intrusion;
- vi) The absence of consent;
- vii) Whether it was known or could be informed;
- viii) The effect on the claimant; and
- ix) The circumstance in which and the purpose for which the information came into the hands of publisher.

In R Vs. Commissioner of Police of the Metropolis²⁵ the police forces policy of retaining DNA evidence in the absence of ‘exceptional circumstances’ was held unlawful and violation of Art 8 of ECHR.

¹⁹ Campbell Vs. MGN (2004)2 AC P.457.

²⁰ Ibid.

²¹ Ibid.

²² Associated Newspaper Ltd., Vs. His Royal Highness, the Prince of Wales,(2006) EWCA Civ P.1776.

²³ Art 8 Rights refers to Article 8 of European Convention of Human Rights throughout this study.

²⁴ Murry Vs. Big Pictures (UK) Ltd., (2008)3 WLR P.1360.

In the matter of an application by JR38 for judicial review (Northern Ireland)²⁶ the court held “the criminal nature what the young person was doing was not an aspect of his private life that he was entitled to keep private”. Yet in another case²⁷ dealing with anonymised privacy injunction, Lord Mance held that taking into consideration all circumstances,²⁸ the award of damages, however assessed would be an inadequate remedy.

8. In conclusion, the following findings are made:-

- i) Right to privacy is a protected statutory right;
- ii) The Human Rights Act, 1988 in UK has provided sufficient clarity to the right of privacy;
- iii) Courts are jealous in guarding the right to privacy to be balanced with public interest in its disclosure;
- iv) The Human Rights Act has incorporated the provisions of the European Convention of Human Rights and thus the guarantee of right to privacy has been a part of domestic law;
- v) Human Rights jurisprudence has led to considerable development of human privacy in UK;
- vi) Curtailment of liberty, as may be found reasonable, is indispensable to the stability of society;
- vii) Injunctions in cases of invasion of right to privacy must be granted without delay, as the denial of the injunction leads to denial of the right to privacy altogether.

²⁵(2011) UK SC P.21.

²⁶(2015) UK SC P.42.

²⁷PJS Vs. News Group Newspaper Ltd., (2016) UK SC P.26.

²⁸ All the circumstances are pointed out in the decision.
