

The european convention of human rights law constitutional administrative essay

Law



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Privacy is an essential human right acknowledged in the Universal Declaration of Human Rights under Article 19[1]. Since the establishment of the European Convention of Human Rights (ECHR), particularly Article 8[2], the right to a private life, which has been embodied into domestic law by means of the Human Rights Act 1998 (HRA)[3], privacy rights have become one of the most debated viewpoints of English law. With the development of privacy rights in the UK, there are a growing number of "celebrity" figures from the entertainment and sporting industry who are not publicly responsible and seek to safeguard their private lives preventing the media from publishing privacy invading speech which can be otherwise labelled as fictitious "gossip". However, Article 8, the 'right to a private life' must be balanced with the media's Article 10 'right to freedom of expression' as according to s. 6 HRA[4], public authorities are to perform compatibly with the convention rights. In society, the media portray a key function and have been regarded as 'public watchdogs' in 'safeguarding a democracy'[5]. The right to freedom of expression is an assured protection from the State and is justified by four key bases which are the argument from truth, self-fulfilment, participation in a democracy and autonomy. Some forms of expression, such as celebrity gossip and privacy invading speech are occasionally unverified by any underlying rationale and do not contribute to the core objective of Article 10 ECHR[6], which is the continuance of a democratic society. Instead, the media's right to broadcast private information regarding a public figure directly clashes with their right to privacy under Article 8 ECHR.[7] This right can be intervened with by reference to what is necessary for a democratic society.[8] The underlying values for the safeguard of privacy

have been established by Lord Hoffman in the case of *Campbell v MGN*[9] as an aspect of human autonomy and dignity and the right to control the distribution of material about one's private life. It is significant to critically examine to what degree the academic justifications underlying the freedom of expression supports privacy invading speech and whether the essential privacy values have been taken into consideration in cases involving celebrity gossip. Primarily, John Stuart Mill's claim from truth rationalising the protection of free speech has had ineffectual stimulus of both Strasbourg and the UK courts. He suggested that free speech must be protected as liberated debate is necessary for the discovery of truth[10] and opinions should not be oppressed since it is deemed to be false, since to do so would be an assumption of infallibility.[11] Though it may be disputed this rationale has slight bearing in protecting privacy invading speech, as Barendt claimed that Mill's theory applies more strongly to assertions of opinions concerning political, moral and social affairs than of fact...[12] Privacy claims preclude the publication of an individual's private facts, thus, confining the rights to freedom of expression. This precise form of speech poses has diminutive risk to open and immoral debates of public interest which he seeks to protect. [13] Schauer identified that the finding of a fresh fact does not automatically add previous understanding or substitute a false belief, but 'replace what had previously epistemological empty space'. [14] This is in situations where a public figure deliberately represents themselves as possessing values, nonetheless on the contrary, altering such false beliefs will be held to have a greater speech value than a revelation of public figure to which no preceding conception exists[15]. An example of this is in the case of *Campbell v MGN*.

[16]The dispute from truth theoretically abolishes the right to selective disclosure because it allows invasion into public figures private life in order to determine the truth, regardless of any significance that the speech holds, [17]supporting Schauer's point,[18]it is on these grounds that it can be assertively said that the argument from truth provides inadequate support for privacy invading speech. Secondly, the validation for the protection of free speech which has acquired some acknowledgement at Strasbourg[19]and the House of Lords[20]is the argument from self-fulfilment. This debate suggests that freedom of speech is a necessity in order for individual's to participate with ideas and opinions which is vital for human development.[21]In essence, this argument preserves all categories of expression as well as privacy invading speech. It is for the individual to determine what forms of expression are of value which will contribute to his self-development.[22]Zimmerman identified that issuing an individual's private information may have educational effect on the public which can 'inform the social, political, moral and philosophical positions of an individual citizen,'[23]Miller on the other hand, debated that media can accomplish their educative purpose without publishing dramatic articles about a public figures private life and overstepping their fundamental rights to privacy. [24]Owning no control over the distribution of private information can ultimately lead to harm to a personage's dignity particularly if the publication awaken feelings of shame and embarrassment.[25]This is clarified in the cases of *A v B plc*.[26]and *Theakston v MGN*.[27]It appears strange that Article 10 ECHR which strives to boost an individual self-development, instead, is being exploited to defend speech which obstructs

and attacks the development of others.[28]Additionally, it does to a certain point instead of opposing a right to privacy, supports it. Thirdly, the dispute which arises from participation in a democracy has been labelled as ' the most fashionable, free speech theory in modern western democracies'.

[29]This stemmed from Meiklejohn, who anticipated that free speech must be secured for its input to the democratic process, in the absence of this insecurity; citizens would be incapable of carrying out necessary errands in order to completely partake in a democratic society.[30]Lord Steyn termed the freedom of speech as the ' lifeblood of democracy'[31]as citizens must be able to receive material which will encourage their decision making process. Article 8(2) ECHR states that there will be no interference with the right to private life, except which is necessary for a democratic society[32]. On these grounds, it is tough to explain to what level information relating to a public figure's private life provides to a democratic society. This was exemplified by Strasbourg's verdict in the case Von Hannover v Germany[33]. Bork has debated that it would be erroneous to mix forms of expression which promotes its overthrow;[34]consequently this form of speech entices almost no provision from the argument from partaking in a democracy. Lastly, the argument from autonomy as a defence for free speech similarly can be seen to have negligible relevance in relation to privacy invading speech. Scanlon pronounces that the foundation of this specific dispute as all citizens enjoying ethical choice as equal, autonomous and rational individual's to control for them what he or she should believe. [35]Any limitations positioned on what an individual's reads or sees is a major intrusion with this right. This argument pursues to safeguard all

procedures of expression including privacy invading speech, in spite of the fact that it is in direct clash with the individual's right to selective disclosure, dignity and utilitarian autonomy. As a result, it may be debated that this explanation for the protection of privacy invading speech is unconvincingly unsuccessful. Levenson's report[36] delivers a distinctive prospect to witness cases of scandalous procedures taken by 'press to obtain stories'[37]. A 'backstop' regulator has been advocated by Levenson in order to end such intrusion, however, this recommendation appears a little challenging, since insisting on power over the press primarily since, unlike in broadcast regulation, there is no clear agreement that the regulator may impose[38]. Wragg clearly desired to overlook this and assured that, 'the ultimate solution to the problem lies not with the press or the regulator, but with the public.'[39] Overall, in conquering stability between a celebrity's right to privacy and the media's right to freedom of expression, the origin upon which convention right triumphs is reliant on whether it is of the public interest to publicise the material. Nevertheless, the correct burden to be attached to celebrity "gossip" remains an unsettled matter.[40] The development of privacy rights in Britain may aid to hinder the commercialisation of journalism at 'celebrities' expense; consequently the weakness given to privacy may decrease the media's growing intrusion with social environment.

F.

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