

RIGHT TO PRIVACY - HUMAN RIGHT OF WOMEN- AN ANALYSIS

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The right to privacy enables a woman to exercise her autonomy, away from the glare of societal expectations. The Constitution guarantees the recognition of individuality and this recognition runs through the entire length and breadth of this dynamic document. The women's right to privacy has become an effective tool in preserving the dignity of women. In a male dominated society like ours, right to privacy is much needed for women and their development. Right to privacy emerges from right to life and liberty which in turn relates to human dignity. These values are integral to the right to life under Article 21 of the Constitution.

The universal Declaration of Human Rights 1948 became the Magna Carta of people all over the world Article 12 of Universal Declaration of Human Rights makes a reference to privacy by stating that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence or to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks". The Universal Declaration of Human Rights ¹ also proclaims that all human beings are born free and equal in dignity and rights. The International Covenant on Civil and Political Rights, to which India is a

¹ Article 1 of UD H R

party talks about privacy² it is stated that “No one shall be subject to arbitrary or unlawful interference with the privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or in the economic well being of the country for the protection of health or morals, or for the protection of the rights and freedom of others.”³ The Indian Constitution in its preamble too aims at securing fraternity assuring the dignity of the individual.⁴ A woman has a right to safeguard the privacy of her own, her family, marriage, procreation, motherhood, child bearing and education among others. It is pertinent to note that Article 51A (e) of the constitution imposes a fundamental duty on all citizens to renounce practices derogatory to the dignity of women⁵.

The law relating to privacy in India has not developed fully, as there is no express constitutional or statutory provision recognizing the right to privacy. Privacy is a fundamental human right, and is central to the maintenance of democratic societies. It is essential to human dignity and it reinforces other rights, such as freedom of expression and information, and freedom of association and is recognized under International Human Rights Law⁶. Privacy of the individual is an essential aspect of dignity. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognized. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects

² Article 17 (1) of the International Covenant on Civil and Political Rights.

³ European Convention on Human Rights.

⁴ Francis Coralie Mullin V Administrator, Union Territory of Delhi. AIR 1981 SC 746.

⁵ Inserted by 42nd Constitutional Amendment in 1976.

⁶ Preamble to the international principles on the application of Human Rights to communication, surveillance which were launched at the UN Human Rights Council in Geneva in September 2013.

for the individual a zone of choice and self determination.⁷ The privacy of the individual recognizes an inviolable right to determine how freedom shall be exercised.

Privacy is the condition or state of being free from public attention to intrusion into or interference with one's acts or decision.⁸The right to privacy has been described as "the right to be let alone"⁹. But today the privacy concept has undergone drastic changes thereby expanding its scope so wide. The term privacy varies according to content, culture, place, person etc. The right to privacy is not simply the 'right to let alone' and has travelled far beyond that initial concept. It now incorporates the idea of spatial privacy, and decisional privacy or privacy of choice. It extends to the right to make fundamental personal choices, including those fundamental personal choices, including those relating to 'intimate 'sexual conduct without unwarranted state interference.¹⁰

Even in the ancient and religious texts of India, a well developed sense of privacy is evident. A woman ought not to be seen by a male stranger seems to be a well established rule in Ramayana. Women are respected in India from the beginning. In most parts of India, still the practice of worshipping female Goddess prevails. According to Hindu mythology, when Draupati's modesty was about to be violated in public Lord Krishna came to rescue her. Intruding upon the privacy of women is made an offence under section 509 of the Indian Penal Code.¹¹The right to privacy is implicit in the right to life and liberty guaranteed to the citizens by Article 21 of the Constitution. Privacy attaches to the person since it is an essential facet of the dignity of the human being..Privacy is a constitutionally protected right which emerges primarily

⁷ Dr. Chandrachud.J, in Puttaswamy V Union of India(2017)10 SCC1, at 499.

⁸ Black's Law Dictionary(Bryan Garner Edition)3783 (2004)

⁹ Samuel D Warren and Louis Brandeis "The right to privacy" 4 Harv LR 193 (1890)

¹⁰ Indu Malhotra.J in Navtej Singh Johana V Union of India (2018)10 SCC1 at 640.

¹¹ Sec. 509 of IPC states whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture or object shall be seen, by such women, "or intrude upon the privacy of such women", shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both.

from the guarantee of life and personal liberty in Article 21 of the Constitution.¹² Just like other fundamental rights the right to privacy is not an absolute right and is subject to reasonable restrictions. Any restriction on the right to privacy must adhere to the requirements of legality, existence of a legitimate state interest and proportionality. The choice of an individual is an inextricable part of dignity and choice within the framework of liberty is of paramount importance. The concept of liberty has to be weighed and tested on the touchstone of Constitutional sensitivity, protection and the values it stands for.¹³ The right to life under Article 21 permits every person to live life to the fullest and to enjoy freedoms guaranteed as fundamental right, constitutional rights, statutory rights and common law rights. Liberty and privacy are integrally connected in a way that privacy is often the basic condition necessary for exercise of the right of personal liberty.¹⁴

In *Kharak Singh V State of Uttarpradesh*¹⁵ it was held that the word liberty in Article 21 was comprehensive enough to include privacy also. It was also held that even though Constitution does not expressly declare right to privacy as a fundamental right, this right is essential ingredient of personal liberty. This view was elaborated by the Supreme Court in *Govind V State of M.*¹⁶ In this case the Apex Court held that the right to privacy may have the same status for fundamental rights. Privacy primarily concerns the individual, it therefore relates to and overlaps with the concept of liberty and any right to liberty and any right to privacy must encompass, must protect the personal intimacies of the home, the marriage, motherhood, procreation and child bearing. A woman's freedom of choice, whether to bear a child or about

¹² Dr. Chandrachud.J in *Puttaswamy V Union of India* (2017) 10 SCC1 at 508.

¹³ Deepak Misra J in *Shakti Vahini V union of India*(2018) 7SCC192 at 212.

¹⁴ Bobde.J in *Puttaswamy V Union of India* (2017)10SCC1 at 543.

¹⁵ AIR 1963 SC 1295

¹⁶ AIR 1975 SC 1378

her pregnancy is areas which fall in the realm of privacy.¹⁷ It has been clearly recognized that an individual's exercise of choice in choosing a partner is a feature of dignity and therefore it is protected under Article 19 and 21 of the Constitution.¹⁸ In *State of Maharashtra V Madhukar Narayan Mardikar*¹⁹ departmental proceedings were started against a police inspector for entering into a house and attempting to rape a woman who was inside the house. The defense of the police officer was that the woman was of easy virtue and he had raided the house for illicit liquor. The police official was dismissed from service and he challenged the dismissal order before the Bombay High Court. Unfortunately the Bombay High Court held that as the woman is an unchaste having no virtues, it would be extremely unsafe to allow the future and carrier of a government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit relation with another. While reversing this judgment the Supreme Court held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to protection of law.²⁰ It is submitted that it is a landmark judgment in which women's right to privacy was recognized expanding the scope of Article 21. The right to privacy is broad and pervasive under our Constitutional scheme, and encompasses decisional autonomy, to cover intimate personal decisions and preserves the sanctity of the private sphere of an individual.²¹

In *Sareetha V Venkata Subbiah*²² the petitioner challenged the remedy of restitution of conjugal rights provided under Section 9 of the Hindu Marriage Act 1955 on the ground that it

¹⁷ Chelameswar.J in *Puttasway V Union of India* (2017)10SCC1 at530.

¹⁸ *Shakthi Vahini V Union of India* (2018)7SCC192

Shafin Jahan V Asokan K.M (2018)16SCC368

¹⁹ AIR 1991 SC207

²⁰ AIR 1991 SC207 at211

²¹ *Indu Malhotra.J in Navtej Singh Johar V Union Of India* (2018) 10 SCC1 at 640

²² AIR1983 AP 356

violated the petitioner's right to privacy guaranteed under Article 21 of the Constitution. The Andhra Pradesh High Court held that the decree of restitution of conjugal rights deprived a woman over her choice as and when and by whom the various parts of her body should be allowed to be sensed, and hence the right to privacy guaranteed under Article 21 is violated. It was held that the remedy of restitution of conjugal rights violates the right to privacy guaranteed by Article 21 of the Constitution and so is unconstitutional. But in *Saroj Rani V Sudarshan Kumar*²³ the Supreme Court overruled the decision in *Sareetha Case*²⁴ and held that section 9 of the Hindu Marriage Act 1955 is constitutionally valid. The right to privacy by itself has not been identified under the Constitution. But as a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case.

A woman's right to privacy in respect of procreation was given recognition by the Madras High Court in *Krishnan V G. Rajan alias Madipu Rajan and others*²⁵. In this case a minor girl of 16 years was kidnapped and her father filed a writ of Habeas Corpus to get her back and also to terminate her pregnancy. The girl pleaded for continuance of pregnancy until delivery. The Madras High Court held that fundamental rights can be enjoyed even by a minor and therefore she has the right to decide about her pregnancy and to have the child having become pregnant. Women have a right to control their own bodies.

The scope of right to privacy is widening day by day. The recognition of right to privacy as fundamental right under Article 21 has resulted in the acceptance of so many women's rights. This right to privacy is always in the process and development. The Supreme

²³ AIR 1984 SC 1562

²⁴ *Sareetha V Venkata Subbiah* AIR 1983 AP 356

²⁵ 1994(1) Law weekly at 89

Court being the highest Constitutional Court has the responsibility to monitor the preservation of human dignity and liberty, which in turn may result in the protection of right to privacy.