
WOMEN'S RIGHT TO PRIVACY: POST JUSTICE K.S PUTTASWAMY CASE

Manisha Rawat, Research Scholar, Jagannath University, Jaipur &
Rajat Choudhary, Research Scholar, Jaipur National University, Jaipur

ABSTRACT

In Justice K.S. Puttaswamy v. Union of India¹, the Supreme Court of India recently ruled that the right to privacy is a basic right under the Indian Constitution. For years to come, the aforementioned judgement will have a substantial impact on our legal and constitutional jurisprudence. Recognition of privacy as a fundamental right has long been a demand in India, and it will enrich and touch every part of human life if it is granted. The ruling will have implications for freedom of speech, surveillance, and same-sex rights. But, most crucially, it has implications for women's rights, which has drew the attention of women's rights activists.

The present study examines the evolving meaning of the right to privacy in India through case law dating back to its establishment. It also intends to investigate the implications of the Supreme Court of India's recent verdict on the right to privacy on the various interpretations of the term "gender."

Keywords: Right To Privacy, Abortion, Female Foeticide, Article 21, MTPA Act

¹ Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1

Introduction

The right to privacy is not a basic right protected by the Indian Constitution. In a series of cases², the Supreme Court of India has decided that it is implicit under Article 21 of the Constitution, which guarantees the right to life and personal liberty. With respect of women's right to privacy, the courts have addressed this issue in a number of cases.

In **T. Saritha v. VenkataSubbaiah**,³ Hon'ble Justice P.A. Chowdhary of the Andhra Pradesh High Court applied the principle of reasonableness to matrimonial matters and confirmed Section 9 of the Hindu Marriage Act, 1955, which deals with restitution of conjugal rights, unconstitutional, finding that "the remedy of restitution of conjugal rights provided for by that section is a brutal and inhuman remedy, violating Regardless of the fact that the Supreme Court disagreed with Saritha on the legality of Section 9 of the same Act in a subsequent⁴ opinion, the idea that the right to privacy is a basic right under Article 21 was effectively acknowledged.

The Supreme Court has said clearly in **State of Maharashtra and Others v. Madhukar Narayan Mardikar**⁵ that even a woman of easy virtue is entitled to privacy, and that no one has the right to violate her privacy at any time. In another case, the Supreme Court decided that women's right to privacy would prevent such questions from being asked of female candidates because modesty and self-respect may prevent an answer."⁶ The petitioner, a probationary Assistant in the L.I.C., lied about her last menstruation period during her medical examination because the clauses in the declaration were embarrassing, if not humiliating, such as the regularity of menstrual cycle, the term for it, the number of conceptions taken, and so on. The Supreme Court decided that such humiliating inquiries intrude on the lady employees' right to privacy, and directed the firm to remove such columns from the declaration.

The Supreme Court has regularly held that the crime of rape infringes on the victim's right to privacy. In the case of **State of Punjab v. Gurmit Singh**,⁷ the court stated: *"It is a heartbreaking reflection of society's indifference to the violation of human dignity of sex crime victims. We must keep in mind that a rapist not only violates the victim's privacy and personal dignity, but also cause tremendous psychological and bodily injury. Rape is more than just a*

² Kharak Singh V. State of U.P. AIR 1963, SC 1295

³ AIR 1983 AP 356

⁴ AIR 1984 SC 1562.

⁵ AIR 1991 SC 207.

⁶ AIR 1992 SC 392.

⁷ AIR 1996 SC 1393

physical assault; it often damages the victim's entire personality. A murderer denigrates his victim's physical body, whereas a rapist ruins the helpless female's soul."

In **Ms. X v. Mr. Z**,⁸ the wife filed a petition for dissolution of marriage against her husband under Section 10 of the Indian Divorce Act, alleging cruelty and adultery. The husband also claimed that his wife had an affair with one person, which caused tension in the household. The wife's pregnancy was ended at the All India Institute of Medical Sciences, and the hospital's records and slides of tabular gestation were kept. The husband filed a request for a DNA test of the stated slides in order to determine whether he is the father of the foetus. The right to privacy, while a fundamental right that is part of the right to life entrenched in Article 21, is not an absolute right, according to the court. When a person's right to privacy has been incorporated into a public document, he or she cannot claim that a DNA test would violate that right. When the foetus was no longer a part of the body, It has been kept at AIIMS, and the wife, who has now been dismissed, cannot claim that it infringes on her right to privacy. When adultery is stated to be one of the grounds for divorce, the husband's request for a DNA test of the said slides may be granted.

The Punjab and Haryana High Court concluded in **Surjit Singh Thind v. Kanwaljit Kaur**⁹ that allowing medical examination of a woman for her virginity is a violation of her right to privacy and personal liberty guaranteed by Article 21 of the Constitution. The wife had petitioned for a decree of nullity of marriage, claiming that the marriage had never been consummated because the husband was impotent. The husband argued that the marriage had been consummated and that he was not impotent. The husband applied for her medical checkup in order to prove that the wife was not a virgin. The court ruled that enabling medical examination of a woman's virginity breaches her constitutional right to privacy under Article 21. Such an order would amount to a widespread investigation against a woman who is already vulnerable. The virginity test cannot be used as the primary basis for proving marriage consummation.

2. Right to Privacy and Pregnant Women:

The MTPA, on the other hand, is less generous and includes a rider that allows for abortion. The MTPA, on the other hand, is in conflict with the Indian Penal Code of 1860. Only a doctor

⁸ AIR 2002 Delhi 217. ⁹ AIR 2003 P&H 353.

can terminate pregnancies under the MTPA, whereas abortions can be made/done by anybody with the goal of saving the mother's life under Section 312 of the Indian Penal Code. In India, abortion is legal if the pregnant woman's life or physical or mental health would be endangered if the pregnancy were to continue. Many people used to abort their babies.

Because it was illegal, it was done behind closed doors. With the enactment of the Law, medical abortion became lawful, subject to specified criteria to protect the mother's health. In Vedic, Upanishad, later Puranic (old) and Smriti literature, abortion is strongly condemned.⁹ According to the Supreme Court, "the right to privacy is implied in Article 21 of the Constitution, and this right can be considered to include a right to abortion."

3. Right to Privacy and Abortion:

Since recent trends toward abortion liberation in Western countries, abortion has become a particularly controversial topic in today's globe. It challenges the widely held belief that abortion is purely a personal matter. Pregnant women, fathers, foetuses, the state, and society at large all have conflicting interests.

Abortion has become a sensitive and controversial topic among legislators, planners, women's organisations, religious denominations, the media, and the courts. The debate touches on some of the most vulnerable parts of human life. It provokes intense emotions and causes profound changes in society's day-to-day operations.

The Inter American Commission on Human Rights and Article 1 of the American Declaration of Rights and Duties of Man both authorized abortion until the end of the first trimester from conception. The foetal right to life must be balanced against with the mother's rights.

The right to a woman's private life is inextricably linked to her right to an abortion. However, Indian law permits abortion in specific circumstances in order to protect the mother's health. The Supreme Court broadened the reach of Article 21 by establishing the right to privacy beside the right to abortion as a fundamental right.

India liberalized its abortion laws in 1971. It passed the *Medical Termination of Pregnancy Act of 1971* and rewrote *Section 312* of the Indian Penal Code of 1860, which forbade abortion

⁹ Paragraph 3 of the Code of Ethics of the Medical Council of India says: I will maintain the utmost respect for human life from the time of conception.

unless it was necessary to save the mother's life.

In **D Rajeshwari v. State of Tamil Nadu**¹⁰, an unmarried 18-year-old girl prayed for a court order to terminate the pregnancy of the child in her womb on the grounds that keeping the unwanted pregnancy for three months had made her mentally ill, and that the continuation of the pregnancy had caused great anguish in her mind, going to result in a grave injury to her mental health, because the pregnancy was resulted by rape. The court decided to allow the pregnancy to be terminated.

The accused in **Dr. Nisha Malviya and Anr.v. State of M.P.**¹² had raped a juvenile girl of about 12 years and made her pregnant. Two additional co-accused allegedly abducted this girl and aborted her pregnancy, and they were charged with causing a miscarriage without the girl's consent. The court found all three defendants guilty of terminating a pregnancy without the mother's or the girl's consent.

The woman was married to Navneet in **Shri Bhagwan Katariya and others v. State of M.P.**¹¹ Applicants were Navneet's younger brothers, and Bhagwan Katariya was his father. After the complainant became pregnant, her husband and other family members took offence, took her for an abortion, and had the abortion done without her consent.

"Referring to Section 3 of the Medical Termination of Pregnancy Act, 1971," the Court stated, "it provides that a doctor is entitled to terminate the pregnancy under particular circumstances, and if the pregnancy was terminated in accordance with the provisions of law, it must be presumed that it could not have been done without the consent of the woman."

Murari Mohan Koley v. The State and Anr.¹²¹³ included a mother who desired an abortion because she had a 6-month-old daughter. She went up to the petitioner and asked for an abortion. And the petitioner agreed to it in exchange for a remuneration. However, the woman's condition in the hospital worsened, and she was transferred to another facility. However, she died as a result of it. Abortion was not carried out.

¹⁰ (1996) CR LJ, 3795.

¹² (2000) Cri LJ, 671.

¹¹ 2001 (4) MPHT 20 CG

¹² (2004) 3 CALLT 609, HC

¹³ INDLAW RAJ 142

The petitioner, a registered medical practitioner, had to show that his actions (including omissions) were done in good faith in order to be exempted from criminal culpability under Section 3 of the MTP Act, 1971.

The legitimacy of the Medical Termination of Pregnancy Act was challenged in **Nand Kishore Sharma & Ors v. Union of India & Anr**¹⁵. The court ruled that the Act is legitimate because its purpose was to protect the pregnant woman's life from any harm to her bodily or mental health, and therefore does not appear to be in violation with Article 21 of the Indian Constitution.

In **V. Krishnan v. V.G. Rajan**¹⁴, the court concluded that, while the guardian's approval is essential for an abortion, the minor's consent is as vital and should be obtained. The woman's consent is of utmost important, and no one has the authority to take it away from her.

The preceding explanations demonstrate categorically that a woman's right to abortion is universal rights, and no one can take it away from her.

4. Implication of Puttasawmy case on women's Right to Privacy:

Without an uncertainty, the ruling recognize right to privacy as a fundamental right will have a significant influence on women's rights by allowing aggrieved women to go directly to court to enforce their right to private against the state. But, like every other right, this one's not absolute. For instance, according to Justice Sapre, legitimate constraints can take the shape of "social, moral, and substantial public interest in line with the law¹⁵." In cases where 'strictest scrutiny' is essential, Justice Chelameswar also declared that there can be a compelling state interest to infringe on the Right to Privacy¹⁶.

Furthermore, the curse of evil, such as 'Marital Rape,' will disappear as a result of this decision, as privacy encourages autonomy over the body. Sexual assaults cannot be accepted or disguised in the name of the institution of marriage. Since the acknowledgment of the right to privacy as a basic right, the Indian Penal Code can no longer protect marital rape and has been overruled. The right to control one's own body should takes priority over a faulty interpretation of the institution of marriage. The right to choose for women has been bolstered in this decision. "The

¹⁴ H.C.M.P. No. 264 of 1993

¹⁵ Available at http://supremecourtindia.nic.in/supremecourt/2012/35071/35071_2012_ Judgement_24-Aug-2017.pdf

¹⁶ *ibid*

right to terminate the life of the foetus fits clearly within the scope of the right to privacy," Justice Chelameswar stated emphatically in his decision. The difference is only a matter of degree in this case.

The acknowledgement of a woman's right to her body is significant because it could pave the way for the expansion of this tightly restricted right in the future. An unambiguous declaration in balance in favour of individual privacy-of which bodily autonomy is the essence-might just prove to be a major milestone towards securing gender justice for the historically disadvantaged half of our population in a country where misplaced patriarchy manifests itself through judgments preventing abortion of foetuse conceived through rape"¹⁷.

As a result, the decision is likely to have two fundamental implications for women's rights. To beginning with, women have the right to privacy in the institution of marriage, which is considered as a fundamental right that includes physical privacy and sovereignty over her body. Furthermore, this right to privacy is not unqualified or absolute. The state has every responsibility to protect its female inhabitants from unwanted sexual activity within the boundaries of their own homes.

Conclusion

The recent privacy judgement is expected to result in several of the extraordinary accomplishments. It also demonstrates the strength of our judicial system in accepting that previous mistakes can and will be rectified. The verdict confirms our conviction in the supremacy of the rule of law, and it is reassuring to know that the law continues to defend individual rights and liberties from irrational government action. The Supreme Court's agreement that the state should not tell individuals what they should eat, how they should dress, or whom they should associate with in their personal, social, or political lives are reassuring for citizens. The fact that our nation's economic highest court is actively working to safeguard minorities from discrimination based on their beliefs, gender, or religious practices is a victory for regular people.

Women are considered to be the most vulnerable members of society, demanding the development of a proper legal structure to safeguard them. Though there are laws protecting women, they are insufficient because they do not address major issues such as women's

¹⁷ *ibid*

participation in the decision-making process about whether or not to have children, whether or not to use contraceptive methods, or the freedom to control their bodies, their sexuality and fertility, and the freedom to make reproductive decisions. There is a need to raise awareness about these difficulties and possibly spare women from their long-standing suffering.

It is past time for the government to launch a comprehensive action plan to restructure the present social system, incorporating numerous ministries, departments, and nongovernmental groups. To this end, it extols the virtue of motherhood as a god's gift that has been viewed "as a blessing and not as a curse" and that it is still hoped to be viewed "as a blessing and not as a curse."