

## **"Privacy and liberty of Indian Women"**

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### **"Abstract"**

Privacy is the interest that individual have in sustaining a personal Space free from interference by other people and organisation. It also means a state in which one is not observed or disturbed by other people. Though the compact universal definition of Privacy is not Possible. However it can be summarise in following words" The quality or state of being apart from company or observation i.e. "Seclusion," and freedom from unauthorised intrusion one's right to Privacy"

**Key words:-** Privacy, conjugal, Dignity, conception, consistently, Integrity, Inevitable, Psychological unprecedent, comprehensive, Taboos, Chauvinism, controversssial, hierarchy, felony, adequate, Embryology, substantial contraceptive,

**Introduciton:** A state in which one is not observed or disturbed by other people. Privacy is essential to who, we are human beings; and we make decisions about it every single day. It gives us a shape to ourselves without judgment; allows us think freely without discriminaiton and as an important element of giving us control over who knows what about us. There are seven distinct important types of privacy. We speak of Privacy of Body, correspondence, data, finance, identity location and territory. There are also Three key aspects of Privacy. It protects the inviolate personlity, the individuals independence; dignity and integrity According to Ruth Gavison. There are three Elements in privacy. Secrecy, anonymity and solitude. It is a state which can be lost; whether through the choice of the person in that state or throught the action of another person.

Privacy and security are related. Privace relates to any rights you have to control. Your personal informaiton and how its used, think about those privacy policies you're asked to read and agree to when you doucment load new smartphone apps. Secruity on the other hand, refers to how your personal information is protected. The concept of privacy can be classified into four groups. viz.

- (1) Privacy of Person or Body.
- (2) Privacy of Personal data
- (3) Privacy of personal behaviour
- (4) Privacy of personal communication.

It is stated in "Justice K.S. Puttaswamy v/s union of India (AIR 2009) 24 Aug.

That privacy helps people protect themselves from these troublesome judgments. People establish boundaries from others in society. These boundaries are both physical and informational. We need space of solitude to retreat to, places where we are free of the gaze of others in order to relax and feel at ease. Right to privacy means the right to be left alone" (Justice Louis Brandeis)

**Objects:** The more some one knows about us, the more power they can have over us. Personal data is used to make very important decisions in our lives. Personal data can be used to affect our reputations and it can be used to influence our decisions and shape our behaviour. It can be used as a tool to exercise control over us.

### **Main Context**

"Privacy is the interest that individuals have in sustaining a "personal space free from interference by other people and organisation." The right to privacy is not a specifically guaranteed fundamental right under the constitution. However the apex court of India in a series of cases<sup>1</sup> has held that it is implicit under Article 21 of the Indian constitution guaranteeing right to life and personal liberty. So far as right to privacy of women is concerned the judiciary has dealt with this aspect in a number of cases. In T.Saritha Venkata Subbaiah<sup>2</sup> Justice P.A. Choudhary of the A.P. High Court extended the application of the principle of reasonableness matrimonial matters and invalidated section 9 of the Hindu Marriage Act 1955 dealing with the restitution of conjugal rights and found that "the remedy of restitution of conjugal rights provided for, the section 9 is a savage and barbarious remedy, violating the right to privacy and human Dignity guaranteed under Article 21 of the Indian constitution."<sup>3</sup> Even though, the Supreme Court has disagreed with Saritha as to the validity of section 9 of the

said Act in a subsequent<sup>4</sup> judgment it has by implication accepted the principle that the right to privacy is fundamental right under Article 21.

In state of Maharashtra v. Madhukar Narain<sup>5</sup> the Supreme Court has held that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. In another case, the Supreme Court has held that the right to the privacy of women would preclude such questions to be put female candidates as modesty and self respect may precluded and answer.<sup>6</sup> In the instant case the petitioner a probationer Assistant in Li.C. gave a false declaration regarding the last menstruation period, during her medical examination, since the clauses in declaration ,were indeed embarrassing if not humiliating like the regularity of menstrual cycle, the term therefore the number of conceptions taken etc. The Supreme Court found that such embarrassing questions violate the right to privacy of the lady employees and further directed the corporation to delete such columns in the declaration.

The Supreme Court has consistently maintained that the offence of rape is violative of the right to privacy of the victim. In state of Punjab v. Gurmit Singh<sup>7</sup> the Court observed that: : It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victim's privacy and personal integrity, but inevitable causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim.

A murderer destroys the physical body of the victim, a rapist degrades the very soul of the helpless female

The right to privacy relating to women may be views in following ways.

- A. Right to privacy and pregnant women.
- B. Right to privacy and abortion.
  - (i) Right to abortion in England.
  - (ii) Right to abortion in India.

### **RIGHT TO PRIVACY AND PREGNANT WOMEN**

Vesting fetuses with right that are assertable against the women bearing them would create an unprecedented intrusion on women's bodies and personal lives. The magnitude of the intrusion

on women's rights threatened by the expansion of fatal rights implicates basic constitutional liberty and privacy interests that have been recognised by the *American Court in Roe v. Wade*<sup>8</sup> and in other cases. The court has long held that the constitution protects certain intervention. The court has described the right to be let alone<sup>9</sup> as "the best comprehensive of rights and the right most valued of civilized man." This right is particularly important when the state intervention involves a physical intrusion on an individual's body. No right is held more sacred, nor is more carefully guarded than the right of every individual to the possession and control of his own person." The right to be free from government control of one's physical person has been described as the right to "Personal privacy and dignity", personal security and bodily security and personal privacy.<sup>10</sup> There have been few attempts at state intrusion of the magnitude and sweeping nature involved in state regulation of pregnant women's actions.

Western culture has largely been shaped by Christian teaching as Indian culture has by Hindu teaching, or North African culture by Islamic teaching. One common factor in so far as human reproduction has concerned is the control of religion, reinforced by state laws, which has tried to spread its octopus hand over a woman's uterus after her ovum has been followed by a sperm. But histories show that regardless of Laws or religious taboos largely designed by male chauvinism, women tormented by unwanted pregnancies have resorted to some self method of self induced abortion or have taken the help of some greedy, untrained, illegal practitioner, sometimes even at the cost of their lives.

By far, the western world has shown the trend to free bondage of compulsory pregnancies and to give them the right to choice. According to the population crisis committee, in 1978 about two thirds of the population lived in countries where abortion on request, or under a broad range of social conditions, was permitted. These countries are located in Asia, Europe and North America.

In the Indian Counterpart, the proposal for reforming the restrictive law on abortion was made by way back in 1964 by the Central Family Planning Board of the Central Government with the enactment of Medical Termination of pregnancy Act, 1971 (MTPA). However, the M.T.P.A. is not so generous and thus operates with a rider under which as abortion may take place.

However, there lies a contradiction between MTPA and the Indian Penal Code 1860. Under the MTPA only a Doctor can terminate pregnancies, while under section 312 of the Indian penal code, abortions can be done by any one with the object of saving the life of the mother.

### **RIGHT TO PRIVACY AND ABORTION**

Abortion has become a very controversial issue in the modern world if today, since the recent movements towards liberalization of abortion in the western countries. It contests the prevalent view of abortion solely as private matter. It involves competing interests of pregnant women, father, foetus, state and the society at large.

The abortion has become a controversial and debatable issue among legislatures, planners women groups, religious denomination, media as well as in courts. The dilemma touches the most sensitive aspects of human life. It stirs strong emotions and brings fundamental changes to the day to day life of society. Before the recent document towards liberalization of abortion in the United States of America and England, abortion in most countries declared illegal unless necessary to preserve the life of the mother. In 1967, England and some American states liberalized their status to allow abortion when pregnancy is caused by rape, or to prevent the birth of a deformed child.

In 1973, the United States Supreme Court in *Roe V/s. Wade*<sup>12</sup> and *Doe v. Bolton*<sup>13</sup> ruled that a woman's decision to terminate her pregnancy, at least until the foetus is viable, is a personal matter protected from state interference by her constitutional right to privacy. In effect these two decisions legalized abortion in the U.S.A.

This subject contents against the prevalent view of abortion solely as a private matter. It involves competing interests of pregnant women, father, foetus, society and the state. It balances the competing interests of a married women's decision to terminate pregnancy and father's denial of right to participation in the abortion decision without consent.

### **RIGHT TO ABORTION IN ENGLAND**

Early in England Common Law criminalized abortion and afforded protection to the foetus, while it regarded abortion after quickening an offence punishable with death. Lord Ellenborough's Act of 1803 was the first legislation on the subject of abortion which created a

statutory capital offence of inducing the abortion of a foetus after quickening. The offences against the person's Act of 1837 removed the distinction between abortion hierarchy could not have before and after quickening and made abortion a felony punishable by life imprisonment. A related statute which was passed to protect the interest of the foetus is the Infant Life Preservation Act of 1929 which created the offence of child destruction. The Act states that it is a Crime to destroy the life of a child capable of being born alive before it has an independent existence.

The next signification development in the law regarding abortion came with the case of *R. v. Bourne* decided in 1939. The defendant was an eminent obstetric surgeon. He informed the police of his plan to perform an abortion of a 14 year old girl who had been raped, and having done so, was duly prosecuted. He was charged under the offences against the person Act, 1861 for unlawfully procuring the abortion.

It was held that to procure an abortion is unlawful unless it is done in good faith in order to save the life of mother. It was further held that the surgeon had not to wait until the patient was in peril of immediate death, but it was his duty to perform the operation, if, on reasonable grounds, and with adequate knowledge he was of the opinion that the probable consequence of the continuance of the pregnancy would be to make the patient a physical and mental wreck. The surgeon was found not guilty.

The liberalizing development of the law of abortion in England came in 1967 when the Parliament passed Abortion Act of 1967. The Act and its subsequent amendment by the Human Fertilization and Embryology Act 1990 provides for greater formal opportunities for women to obtain abortions: The abortion Act, 1967 permitted termination of pregnancy of two registered medical practitioners are of the following grounds exist.

1. That the pregnancy has not exceeded to twenty fourth week, and the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated of injury to the physical or mental health of the pregnant women or any existing children of her family. This is the ground for termination which has been equated with social grounds. It is to be noted that, medical opinion is divided as to whether pregnancy and childbirth pose a greater risk to mental

or physical health than abortion, and the matter has never been tested in the courts. Those doctors who disapprove of abortion argue that pregnancy does not automatically pose a risk to health, which is greater than that occasioned by abortion risks to physical or mental health of children of the family are also difficult to assess. The phrase is said to include poverty if the new birth would put intolerable strain on family finance or-one the women's ability to care for her existing children.

2. Where the termination is necessary to prevent grave permanent injury the physical or mental health of the pregnant woman.
3. Where the continuance of the pregnancy would involve of the pregnancy woman, greater than if the pregnancy were terminated.
4. Where there is a substantial risk if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.

However, it has been argued that the 1967 Act officially handed, the power of decision making in abortion to the medical profession. Shiela Mclearn has noted that U.K. abortion laws are considerable less liberal than those in many jurisdiction less liberal because they make no effort to rights to anyone involved in the abortion decision except for the doctors who have legal authority to decide whether or not a particular woman's situation lies within the legally defined defense to a charge of criminal abortion.<sup>15</sup>

### **ABORTION IN INDIA**

In 1971, India liberalized its abortion law and repealed section 312 of the Indian Penal Code, 1860, which exclusively prohibited abortion except for the purpose of saving the life of the mother. With the enactment of the new abortion law, Medical Termination of pregnancy Act 1971(MTPA 1971) has been modelled on the English Abortion Act of 1967.<sup>16</sup> It provides for termination of pregnancy by a registered practitioner acting in good faith under the following circumstances:

- (a) Where the continuance of the pregnancy would involve a risk to the life of the pregnant women or of grave injury to her physical and mental health:

- (b) Where there is substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped:
- (c) Where the pregnancy results from rape; and
- (d) Where the pregnancy has occurred as a result of the failure of a contraceptive device or method (in this case, the anguish caused by such unwanted pregnancy may be presumed to constitute a grave threat to the mental health of the pregnant women).

In fact, the liberalization of abortion law in India was mainly directed towards population control<sup>17</sup>. As Menon has argued, the concepts of mental health or environment of pregnant woman, which have been adopted by the MTP Act as a criterion for justifying abortion are extremely vague and certain to be abused". Besides they often raise problems of medical ethics and physician's wide discretionary power in interpreting such illusive concepts.

**Conclusion:** Art-19 and 21 of the Indian constitution give the new horizon to the citizen of India. These articles in the form of fundamental rights, provide more vigour and expansion in personal life. Privacy, secrecy, security and confidentiality are prime elements for personality development. Though privacy and right to information are the either aspect of the same coin, about privacy prevail over right to know. Its larger interest of society is not neglected.

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