

10.02.2023

Contribution of Constitutional Courts in India in Protecting Independence of Judiciary & Promoting Gender Justice & Right to Privacy

(Lecture delivered at NJA, Bhopal on Feb 10, 2023)

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(A) Independence of Judiciary

1. **Rule of Law and supremacy of Constitution:** It is the Constitution that is supreme and not any organ created thereunder. It is the rule of law that constitutes the core of our Constitution. See: **Supreme Court Advocates-on-Record Association and Another Versus Union of India, (2016)5 SCC 1 (Five-Judge Bench) (paras 293 & 296).**
2. **Basic features of the Constitution of India:** Following are said to be the basic features of the Constitution of India:
 - (i) Democratic governance
 - (ii) Supremacy of Constitution
 - (iii) Separation of Powers
 - (iv) Federalism
 - (v) Fundamental Rights
 - (vi) Secularism

- (vii) Socialism
- (viii) Social Justice
- (ix) Unity and Integrity of India
- (x) Directive Principles of State policy. See: **I.R. Coelho Versus State of Tamil Nadu, AIR 2007 SC 861 (Nine-Judge Bench) and S.R. Bommai Versus Union of India, (1994) 3 SCC 1 (Nine-Judge Bench)**

3. **Parliamentary democracy and its essentials:** Following are the essentials of parliamentary democracy:

- (i) Representation of the people
- (ii) Responsible Government
- (iii) Accountability of the Council of Ministers to the Legislature. See: **KuldipNayar Versus Union of India, AIR 2006 SC 3127 (Five-Judge Bench)** (para 21)

4. **Principles of Constitutionalism:** The principle of constitutionalism is now a legal principle which requires control over the exercise of governmental power to ensure that it does not destroy the democratic principles upon which it is based. These democratic principles include the protection of fundamental rights. The principle of constitutionalism advocates a check and balance model of the separation of powers. See: **NandiniSundar Versus State of Chhattisgarh, (2011) 7 SCC 547** (paras 83 and 84)& **GVK Industries Versus ITO, (2011) 4 SCC 36 (Five-Judge Bench)** (paras 35 and 36).

5. **Constitution of India is essentially a political document:** It will be an inexcusable error to examine the provisions of the Constitution of India from a pure legalistic angle and interpret their meaning only through jurisdictional technicalities. The Constitution is essentially a political document. Democracy and federalism are essential features of the Constitution and are of

its basic structure. See: **S.R. Bommai Versus Union of India, AIR 1994 SC 1918 (Nine-Judge Bench)**(para 64)

6. **Constitution is what the Judges say it is:** Constitution of India is what the Judges say it is. See: **Supreme Court Advocates-on-Record Association and Another Versus Union of India, AIR 1994 SC 268 (Nine-Judge Bench)** (para 292)
7. **All constitutional authorities should act in harmony with each other:** Constitution of India expects that all constitutional authorities must act in harmony, and there must be comity between them to further the constitutional vision of democracy in the larger interest of the nation. See: **NabamRebia&Bamang Felix Versus Deputy Speaker, Arunachal Pradesh Legislative Assembly & Others, (2016) 8 SCC 1 (Five-Judge Bench)** (para 373).
8. **Independence of Judiciary one of the basic features of the Constitution of India:** Independence of Judiciary is one of the basic features of the Constitution of India. Constitutional ethos of independent Judiciary cannot be permitted to be adversely impacted by the executive or even by legislative power. For an independent and impartial Judiciary to serve the constitutional goals, Judges must act fairly, reasonably, free of fear and favour. See: **Secretary, Ministry of Health and Welfare, Government of Maharashtra Versus S.C. Malte, (2012) 13 SCC 118.**
9. **Primacy of the judiciary in the matters of appointment and transfers of Judges is also part of the basic structure of the Constitution:** Primacy of the judiciary in the matters of appointment and transfers of Judges is also part of the basic

structure of the Constitution. See: **Supreme Court Advocates-on-Record Association Versus Union of India, (2016) 5 SCC 1 (Five-Judge Bench).**

10. **No organ created under the Constitution of India has supremacy over the other:** Necessity of comity between different institutions for ensuring institutional integrity and at the same time respecting functional domain of other is essential for smooth functioning of various institutions created under the Constitution. It is not the supremacy of one institution over the other or demarcating boundaries but constitutional vision is for constitutional functionaries to efficiently coordinate to achieve the constitutional goals. See: **State of Rajasthan Versus Ramesh Chandra Mudra, (2020) 20 SCC 163 (Para27)**
11. **Adequate funding of Judiciary for its independent and efficient functioning:** Adequate budgeting so as to meet the judiciary's work demands, so as to ensure proper infrastructure and facilities is integral to judicial functioning. In that sense, it is an aspect of judicial independence. That independence of judiciary is part of the basic structure of the Constitution and is by now well entrenched. An integral part of "independence of judiciary", as a constitutional value, is the "institutional independence" i.e. the aspect concerning the financial freedom or autonomy which the Judiciary must possess and enjoy. See: **State of Rajasthan Versus Ramesh Chandra Mudra, (2020) 20 SCC 163 (Para27)**
12. **Independence of Judiciary is of paramount importance in democratic system of governance:** Independence and integrity of the Judiciary in a democratic system of government is of the highest importance not only to the Judges but to the citizens at

large who may have to seek redress as the last resort in the courts of law against any illegal acts or the high-handed exercise of power by the Executive. Fearless functioning of an independent and efficient Judiciary is equally of paramount importance in democracy. See: **Supreme Court Advocates-on-Record Association and Another Versus Union of India, 2015 SCC OnLine SC 388.**

13. **‘Impartiality’ is the soul and ‘Independence’ lifeblood of the Judiciary:** Impartiality, independence, fairness and reasonableness in decision-making are the hallmarks of the judiciary. If “impartiality” is the soul of the judiciary, “independence” is the lifeblood of the Judiciary. Without independence, impartiality cannot thrive. Independence is not the freedom for Judges to do what they like. It is the independence of judicial thought. It is the freedom from interference and pressures which provide the judicial atmosphere where he can work with absolute commitment to the cause of justice and constitutional values. It is also the discipline in life, habits and outlook that enables a Judge to be impartial. Its existence depends however not only on philosophical, ethical or moral aspects but also upon several mundane things—security in tenure, freedom from ordinary monetary worries, freedom from influences and pressures within (from others in the judiciary) and without (from the executive). The independence of an individual Judge, that is, decisional independence; and independence of the Judiciary as an institution or an organ of the State, that is, functional independence, are the broad concepts of the principle of independence of the judiciary/tribunal.” See: **Somesh Chaurasia Versus State of M.P., 2021 SCC OnLine SC 480**

14. **Independence of Judiciary is the Independence of each and every Judge:** Functioning of the Judiciary as an independent institution is rooted in the concept of separation of powers. Individual judges must be able to adjudicate disputes in accordance with the law, unhindered by any other factors. Thus, for that reason, independence of judiciary is the independence of each and every judge. The independence of individual judges also encompasses that they are independent of their judicial superiors and colleagues. See: **SomeshChaurasia Versus State of M.P., 2021 SCC OnLine SC 480**
15. **Supreme Court as legal mentor of the nation:** When the Supreme Court, as the apex adjudicator declaring the law for the country and invested with constitutional credentials under Art. 141, clarifies a confused juridical situation, its substantial role is of legal mentor of the nation. Such is the spirit of the ruling in Trustees of Port, Bombay, (1974) 4 SCC 710. See: **Commissioner of Income Tax, Madras vs. R.M.Chidambaram Pillai, (1977) 2 SCR 111.**
16. **Declaration of law by High Court binding within its jurisdiction/State:** The High Court occupies the status of the highest and most superior court in the State and so it becomes incumbent on all persons or authorities within its jurisdiction to respect its orders and abide by well known principles fundamental to the courts of justice that any disobedience or disregard to any order passed by the High Court will be on pain of committal for contempt. It must not be lost sight of that it is implicit in the power of supervision conferred on a superior court that all Tribunals subject to its supervision should conform to the law laid down by it otherwise there would be

confusion in the administration of law and respect for law would irretrievably suffer. Law declared by High Court is binding in that state on lower courts and tribunals too. See: **(i) Jagdish Narain Vs. Chief Controlling Revenue Authority, AIR 1994 All 371** and **(ii) M/s. East India Commercial Co. Ltd., Calcutta Vs. Collector of Customs, Calcutta, AIR 1962 SC 1893 (Three -Judge Bench)**

17. **Constitutional courts protectors of dignity of life and human rights:** Life without dignity is like a sound not heard. Dignity speaks, it has its sound, it is natural and human. It is a combination of thought and feeling and it deserves respect even when the person is dead and described as a 'body'. Quality of life ensures dignity of living and dignity is but a process in realizing the sanctity of life. The quality of life depends upon the life in our years. Adding to the length of life must bear a functional nexus with the quality of life. Human sufferings must have significance not only in terms of how long we live but also in terms of how well we live. The right to live with dignity also includes the smoothening of the process of dying in case of a terminally-ill patient or a person in PVS with no hope of recovery. See: **Common Cause Vs. Union of India, (2018) 5 SCC 1.**

18. **Judges of District Courts exercise sovereign judicial powers of the State like members of the Council of Ministers & Legislatures:** The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the council of ministers and the members of the

legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State-power are the Ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions. The Council of Ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the Judges from the judicial staff. **The parity is between the political executive, the legislators and the judges and not between the Judges and the administrative executive.** This distinction between the Judges and the members of the other services has to be constantly kept in mind for yet another important reason. Judicial independence cannot be secured by making mere solemn proclamations about it. It has to be secured both in substance and in practice. It is trite to say that those who are in want cannot be free. Self-reliance is the foundation of independence. The society has a stake in ensuring the independence of the Judiciary, and no price is too heavy to secure it. To keep the judges in want of the essential accoutrements and thus to impede them in the proper discharge of their duties is to impair and whittle away justice itself. See: **All India Judges' Association Vs. Union of India & Others, AIR 1993 SC 2493 (Three-Judge Bench)** (Para 4).

19. **District Judiciary must remain separate from the Executive in public services of the State:** Our Constitution specifically envisages the independence of the district judiciary. This is

implicit in Article 50 of the Constitution which provides that the State must take steps to separate the Judiciary from the Executive in the public services of the State. The district judiciary operates under the administrative supervision of the High Court which must secure and enhance its independence from external influence and control. This compartmentalization of the Judiciary and Executive should not be breached by interfering with the personal decision-making of the judges and the conduct of court proceedings under them. See: **SomeshChaurasia Versus State of M.P., 2021 SCC OnLine SC 480.**

20. **Judiciary must remain immune from political pressures and considerations:** There is no gainsaying that the Judiciary should be immune from political pressures and considerations. A Judiciary that is susceptible to such pressures allows politicians to operate with impunity and incentivizes criminality to flourish in the political apparatus of the State. See: **SomeshChaurasia Versus State of M.P., 2021 SCC OnLine SC 480.**

21. **India cannot have two parallel legal systems, one for the rich and other for the poors:** India cannot have two parallel legal systems, one for the rich and the resourceful and those who wield political power and influence and the other for the small men without resources and capabilities to obtain justice or fight injustice. The existence of a dual legal system will only chip away the legitimacy of the law. The duty also falls on the State machinery to be committed to the rule of law and demonstrate its ability and willingness to follow the rules it itself makes for its actions to not transgress into the domain of “governmental lawlessness”. See: **SomeshChaurasia Versus State of M.P., 2021 SCC OnLine SC 480.**

22. **Impact of malice of Judge in decision making:** As far as decisional independence of courts is concerned, a good example of the protection available to courts is to be found in *Anderson (1895) 1 QB 668 (CA)* where it was said by Lord Esher M.R. (QB, at page 670) that the question arises whether there can be an action against a Judge of a court of record for doing something within his jurisdiction, but doing it maliciously and contrary to good faith. It is the law in England that no such action will lie. Explaining this, Lord Bridge of Harwich said in *MC. (A Minor), In re, 1985 AC 528 (AC, at page 541)* that the principle underlying this rule is clear. If one Judge acts dishonestly within his jurisdiction to the detriment of a party before him, it is less harmful to the health of society to leave that party without a remedy than that nine hundred and ninety-nine honest Judges should be harassed by vexatious litigation alleging malice in the exercise of their proper jurisdiction. **See: SCC Online Web Edition: <http://www.sconline.com>(Para 720)**
23. **Unjust criticism of Judiciary deprecated by the Supreme Court of India:** Judiciary had been and is discharging an important role of establishing the ideals of democracy as thought by the makers of the Constitution through a rightful interpretation of the provisions of the Constitution. However, it is seen that on numerous occasions Judiciary has been criticized on account of its accountability. Recently, the critics have raised concerns in relation to the conduct of the highest judiciary on the ground of failing in its accountability pertaining to upholding the principles of natural justice in the matter related to the allegation of sexual harassment against the Hon'ble Chief Justice of India and incidental matters brought on record thereto. A lot had been discussed, not just in national but also

in international media, raising several concerns sufficient enough to distort the long held impression, image and goodwill of the highest judiciary on one hand and the right of reputation of women in our country on the other. See: **In the Matter of Great Public Importance Touching upon the Independence of Judiciary, (2020) 10 GNLU Journal of Legal Development & Politics, (October) 114.**

24. **Judicial power of Judiciary is the judicial power of the State:** Indian Constitution is framed on the edifice of liberal democratic principles moderated by the vision of equitable development and historical experiences. The federal structure of the Indian polity has adopted the Westminster model of parliamentary government with an independent judiciary. The bureaucracy usually selected by independent bodies on the basis of competitive exams is accountable to the political executive. The Constitution makers although conscious of protecting the independence of judiciary wanted to make it the least dangerous branch in the governance structure. Indian Constitution makers were no less mistaken about the Indian judiciary than Hamilton was about the Supreme Court of the United States of America. The Supreme Court of India had to assert its role and step into protecting the well debated and cautiously cultivated principles of the Indian Constitution from destruction by swings of popular opinions created by opportunist politics. And the court developed the principle of basic structure or basic features of the Indian Constitution. Basic structure comprises of certain principles which are foundational rock of the Indian Constitution and provide the document with its present identity, hence outside the amending power of the Parliament because Parliament itself is a creature of the Constitution. From time to time, the Supreme Court has been identifying these principles. Recently there has

developed a political consensus with regard to maintenance of essential identity of the Indian Constitution on the ground that it documents the social contract among various political and social groups of the Indian society. Possibly Tushnet is right in saying that Constitution lays down the framework within which the national politics operates. Broadly, some of the principles identified have been principle of equality, secularism, democracy, rule of law, separation of powers, judicial review, independence and dignity of judiciary etc. The very enunciation of the principle of basic structure strengthens the foundation of rule of law in the country. The other three principles are different facets of the principle of rule of law. Principle of separation of powers was appreciated by Montesquieu because it ensures rule of law and protects against authoritarianism that would jeopardize rights of citizens. A government based on rule of law and liberal democracy necessarily requires independent judiciary for its sustenance. No wonder the judiciary in India has been jealously guarding not only its own independence and dignity but also principles of separation of power and rule of law. In the case of *L. Chandrakumar v. Union of India*, the court referred to the task entrusted to the superior courts in India thus : "The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence." Hence, the Supreme Court has emphatically declared separation of powers, rule of law, judicial review and

independence of judiciary as some of the basic features of the Indian Constitution. In *Indira Nehru Gandhi v. Raj Narain* the Supreme Court stated that Parliament cannot perform adjudicatory function and any dispute regarding election of the Prime Minister has to be cleared by the court or the tribunals established for the purpose because separation of powers was part of the basic structure of the Indian Constitution. Through a series of decisions, the Supreme Court ensured independence of Judiciary in matters of appointment and transfer of high court judges. Appointment of judges was effectively taken away from the executive and entrusted to a collegium of judges comprising judges of the Supreme Court and High Courts. In *Indira Nehru Gandhi v. Raj Narain*, the Supreme Court held that it is true that no express mention is made in our Constitution of vesting in the Judiciary the judicial power as is to be found in the American Constitution. But a division of the three main functions of Government is recognized in our Constitution. Judicial power in the sense of the judicial power of the State is vested in the Judiciary. Source: **Notes and Comments: India's Tryst with Independent Tribunals and Regulatory Bodies and Role of the Judiciary, 55 Journal of Indian Law Institute, (2013) 215.**

25. **District Judiciary is the first point of interface with the litigants' community:** An independent and impartial judiciary is the cornerstone of democracy. Judicial independence of the district judiciary is cardinal to the integrity of the entire system. The courts comprised in the district judiciary are the first point of interface with citizens. If the faith of citizens in the administration of justice has to be preserved, it is to the district judiciary that attention must be focused as well as the 'higher' judiciary. Trial judges work amidst appalling conditions – a lack of infrastructure, inadequate protection, examples of judges

being made targets when they stand up for what is right and sadly, a subservience to the administration of the High Court for transfers and postings which renders them vulnerable. It is only that civil liberties for every stakeholder – be it the accused, the victims or civil society – will be meaningfully preserved in our trial courts which are the first line of defense for those who have been wronged. Functioning of the Judiciary as an independent institution is rooted in the concept of separation of powers. Individual judges must be able to adjudicate disputes in accordance with the law, unhindered by any other factors. Thus, for that reason independence of judiciary is the independence of each and every judge. This independence of individual judges also encompasses that they are independent of their judicial superiors and colleagues. See: **Somesh Chaurasia Versus State of M.P., AIR Online 2021 SC 364.**

(B) Gender Justice

1. **Gender equality in the context of Section 497 IPC:** Section 497 IPC is destructive of and deprives a woman of her agency, autonomy and dignity. If the ostensible object of the law is to protect the “institution of marriage”, it provides no justification for not recognizing the agency of a woman whose spouse is engaged in a sexual relationship outside of marriage. She can neither complain nor is the fact that she is in a marital relationship with a man of any significance to the ingredients of the offence. The law also deprives the married woman who has engaged in a sexual act with another man of her agency. Section 497 IPC is thus founded on the notion that a woman by entering upon marriage loses, so to speak, her voice, autonomy and agency. A provision previously not held to be unconstitutional can be rendered so by later developments in the society, including gender equality. When the parties to a marriage lose their moral commitment of the relationship, it creates a dent in the marriage and it will depend upon the parties how they deal with the situation. It is now widely recognized that causes for the breakdown in marriages are far more complex. Quite frequently adultery is found to be the result and of the cause of an unhappy marital relationship. It is absolutely a matter of privacy at its pinnacle. The theories of punishment, whether deterrent or reformative, would not save the situation. A punishment is unlikely to establish commitment, if punishment is meted out to either of them or a third party. Provision of Sec. 497 IPC thus is violative of Articles 14, 15(1) and 21 of the Constitution, being manifestly arbitrary, gender discriminatory, encroachment into women's identity, dignity, liberty, privacy, sexual autonomy and freedom to make

independent choice in masculine chauvinism and dominance by treating women as mere property of men devoid of independent sexual agency. See: **Joseph Shine Versus Union of India, (2019) 3 SCC 39.**

2. **Protection to LGBT community under Article 15 of the Constitution of India:** Discrimination on ground of sex includes discrimination on ground of sexual orientation. LGBT community which is a sexual minority, or anyone similarly situated, having suffered unjustified hostile discrimination, is entitled to protection under Article 15 of the Constitution of India. See: **Navtej Singh Johar Versus Union of India, (2019) 1 SCC (Criminal) 1.**
3. **Hijras & eunuchs declared as 'Third Gender' and 'Transgender Persons':** Hijras & Eunuchs have been declared by the Supreme Court as 'Third Gender' and 'Transgender Persons'. See: **National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.**
4. **Suggestions by Supreme Court to check increase in crimes against women:** The Supreme Court took the judicial notice of the fact that crime against women increased by 110.5% during 2011 and 2015 and directed that the root problem must be studied. Stringent legislations and punishments alone would not be sufficient. Other measures like value education, police patrolling at desired locations, mobile apps for immediate assistance and similar other measures were suggested by the Supreme Court to be taken by the States. See: **Mukesh Versus State (NCT of Delhi), (2017) 6 SCC 1.**
5. **Gender discrimination in cinema and profession of hair dressing etc. declared unconstitutional by the Supreme Court:**

Cine Costume Make-up Artists and Hair Dressers Association, a registered trade union in Maharashtra, complained of gender discrimination in the profession of cinema, arts and other occupations. Bye-laws of the above Association prescribed that membership of the Association shall comprise of make-up men, costume men, and hair dressers (both men and women). Women were not permitted to work as make-up artists. The Supreme Court held that the same offended Article 21 of the Constitution of India which deals with the right to livelihood and for that reason the same is against the fundamental human rights. See: **CharuKhurana Versus Union of India (2015) 1 SCC 192.**

6. **Sabarimala Temple case of gender discrimination:** Supreme Court struck down ban on entry of women into Sabarimala Temple in Kerala by holding that the same amounts to gender discrimination. See: **Indian Young Lawyers Association Versus State of Kerala, (2017) 10 SCC 689 (Three-Judge Bench).**

7. **Covenant on the Elimination of All Forms Of Discrimination Against Women (CEDAW), 1979:** Though there has been formal removal of institutionalized discrimination, yet the mind-set and the attitude ingrained in the subconscious have not been erased. Women still face all kinds of discriminations and prejudices. The days of yore when women were treated as fragile, feeble, dependent and subordinate to men, should have been a matter of history, but it has not been so. The Covenant on the Elimination of All Forms Of Discriminations Against Women (CEDAW), 1979, is the United Nations' landmark treaty marking the struggle for women's right. It is regarded as the Bill of Rights for women. It graphically puts what constitutes discrimination against women and spells out tools so that women's rights are not violated and they are conferred the

same rights. India is party to this Convention and other declarations and is committed to actualize them. In 1993 Conference, gender-based violence and all categories of sexual harassment and exploitations were condemned. On a perusal of the articles of CEDAW, it is clear as crystal that apart from right to work being an inalienable right of all human beings, it has commended the right to same employment opportunity, including the application of same criteria for selection in matters of employment and all steps to be taken to eliminate discrimination against women in the field of employment in order to ensure equality among man and woman. It is founded on social security and many other facets. See: **CharuKhurana Versus Union of India (2015) 1 SCC 192.**

8. **Live-in relationship when doesn't amount to marriage:** Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the **Protection of Women from Domestic Violence Act, 2005.** All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions :
- (a) the couple must hold themselves out to society as being akin to spouses.
 - (b) they must be of legal age to marry.
 - (c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.
 - (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant

period of time. See: **D.VelusamyVersusD.Patchaiammal, AIR 2011 SC 479.**

9. **Live-in relationships & its preconditions to be treated as marriage:** Merely spending weekends together or a one night stand would not make it a 'domestic relationship' u/s 2(f) of the Protection of Women from Domestic Violence Act, 2005. All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions.
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 - (d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. See: **D.Velusamy Versus D.Patchaiammal, AIR 2011 SC 479.**
10. **Live-in-Relationship without marriage & maintenance:** Living as husband & wife for considerable period without marriage whether or not entitles the woman, to maintenance was referred to larger Bench by the Supreme Court. See: **2011 CrLJ 96 (SC).**

(C) Right to Privacy

1. **Article 12 of the Universal Declaration of Human Rights on December 10, 1948 by United Nations for protection of Right of Privacy:** No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of law against such interference or attacks.
2. **Right to privacy a fundamental Right/human right:** Right to privacy has been declared by the Supreme Court of India to be a fundamental right of citizens and also a human right under Article 21 of the Constitution of India. See: **AIR 2015 SC 3081 & AIR 2017 SC 4161.**
3. **Right to privacy is a basic fundamental right:** Right to privacy is a basic fundamental right under Article 21 of the Constitution. It forms an intrinsic part of Article 21 and freedom guaranteed in Part III of the Constitution of India. See: **K.S. Puttaswamy Versus Union of India, (2017) 10 SCC 1 (Nine-Judge Bench).**
4. **Sec. 497 IPC being gender discriminatory and arbitrary is violative of Articles 14, 15(1) and 21 of the Constitution** :Section 497 IPC is thus founded on the notion that a woman by entering upon marriage loses, so to speak, her voice, autonomy and agency. A provision previously not held to be unconstitutional can be rendered so by later developments in the society, including gender equality. When the parties to a marriage lose their moral commitment of the relationship, it creates a dent in the marriage and it will depend upon the parties how they deal with the situation. It is now widely recognized that causes for the breakdown in marriages are far

more complex. Quite frequently adultery is found to be the result and of the cause of an unhappy marital relationship. It is absolutely a matter of privacy at its pinnacle. The theories of punishment, whether deterrent or reformative, would not save the situation. A punishment is unlikely to establish commitment, if punishment is meted out to either of them or a third party. Provision of Sec. 497 IPC thus is violative of Articles 14, 15(1) and 21 of the Constitution, being manifestly arbitrary, gender discriminatory, encroachment into women's identity, dignity, liberty, privacy, sexual autonomy and freedom to make independent choice in masculine chauvinism and dominance by treating women as mere property of men devoid of independent sexual agency. See: **Joseph Shine Versus Union of India, (2019) 3 SCC 39.**

5. **Disclosure of name of victim of sexual offences made punishable u/s 228-A IPC:** Section 228-A IPC reads thus : “Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence u/s 376, Sec. 376-A, Sec. 376-B. Sec. 376-C, or Sec. 376-D of the IPC is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to **two years**, and shall also be liable to **fine.**” Identity of the minor/child victim of sexual offences under the POCSO Act, 2012 can also not be disclosed and Section 228-A IPC applies to the POCSO Act, 2012 also. See:
- (i) A Vs State of UP, (2020) 10 SCC 505 (Three-Judge Bench)
 - (ii) NipunSaxena Vs Union of India, (2019) 2 SCC 703

6. **Having sexual relationship with female below 18 years of age with or without consent amounts to rape:** Man committing sexual intercourse or acts with own wife aged between 15 and 18 years exempted from offence of rape regardless of wife's consent vide said Exception. Supreme Court held that Exception 2 is violative of Articles 14, 15 and 21 of the Constitution and contrary to constitutional morality, human right concept as also pro-girl child statutory provisions contained in various other legislations. Hence by a harmonious and purposive interpretation, Exception 2 has to be read down as providing "sexual intercourse or sexual acts by a man with his own wife, not being under eighteen years of age, is not rape", so as to bring it in consonance with constitutional and pro-girl child statutory philosophy. Supreme Court clarified that it has not expressed its views on issue of marital rape where the wife is 18 years old or older. Further clarified that this judgment will have prospective effect and that Section 198(6) CrPC will apply to cases of rape of "wives" below 18 years and cognizance can be taken only in accordance with the provisions of Section 198(6) CrPC. See: **Independent Thought Versus Union of India, (2017) 10 SCC 800**
7. **Forced virginity test held unconstitutional:** Virginity test conducted on a female detainee accused under investigation, or in custody, whether judicial or police, is unconstitutional and violative of Article 21 of the Constitution which includes right to dignity. See: **Judgment dated 07.02.2023 of the Delhi High Court on the point of virginity test.**
8. Whether compelling a person to give a sample of his voice is violative of his fundamental right of privacy under Article 21 and also the fundamental right Article 20(3) of the Constitution

has been left undecided by the Hon'ble Supreme Court. **See Ritesh Sinha vs. State of U.P., (2019) 8 SCC 1 (Three - Judge Bench)**

9. **Magistrate has power to direct a person to give sample of his voice** :The Criminal Procedure (Identification) Act, 2022 (Replacing the Identification of Prisoners Act, 1920) and Section 311-A CrPC empowers the Magistrate to direct the accused to give sample of his voice during investigation of crimes.

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