

ISSN: 2582-2942



LEXFORTI

Legal Journal

Vol-II Issue- I

October, 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



EDITORIAL BOARD

Editor in Chief

Rohit Pradhan
Advocate Prime Dispute
rohit@lexforti.com

Editor in Chief

Sridhruti Chitrapu
Member | CiArb
sridhruti@lexforti.com

Editor

Nageshwar Rao
Professor (Banking Law)
47+ years of scholarly experience

Editor

Dr Rajanikanth M
Assistant Professor | Management
Symbiosis International University

Editor

Foram Thakar
Assistant Professor | LJ School of Law



EDITORIAL BOARD

Editor

Nandita Reddy
Advocate Prime Dispute

Editor

Romi Kumari
Student Editor

Editor

Shubhangi Nangunoori
Student Editor



ABOUT US

LexForti Legal News and Journal offer access to a wide array of legal knowledge through the Daily Legal News segment of our Website. It provides the readers with latest case laws in layman terms. Our Legal Journal contains a vast assortment of resources that helps in understanding contemporary legal issues. LexForti Legal News and Journal also offers Certificate courses. Whoever register for the course is provided the access to the state of the art E-portal. On completion of all the module and Test, candidate will be given Certificate of Accomplishment of Course. Be sure to make the most of it. LexForti Legal News and Journal is also proud to announce that we have made India's first Legal News android application which contains Daily Legal News, Legal Journal and Certificate Courses, everything in 4 MB.



How Safe Is Right To Privacy, In The Case of Special Marriage Act?

Janani Sridharan

Right to Privacy has taken offshoot as a Fundamental Right from Article 21 and since there are no clear areas that define it, there have been various issues surrounding it. Though it has been established in many cases, that Right to privacy is important, the “good fences make good neighbours” policy cannot be exaggerated to an extent that it harms a whole community or a group or individuals. After all, as Aristotle said, “Man is a social animal”, this article mainly focuses on a specific aspect of “right to privacy” and its effects, i.e., whether the marriage under the “special marriage Act” should be a private affair or not. The Puttuswamy case has clarified this statement further, that the “right to privacy” is a fundamental right but it is not absolute in nature. Reasonable restrictions can be imposed on it. The Justice BN Srikrishna committee highlights on the aspects where privacy can be imposed and where it can be restricted. The Right to privacy has to be under the ambit of reasonableness, otherwise the administrative, legislative and the judiciary have to intervene to protect the interest of a community or a larger group of individuals, and where there is a conflict, the interest of the society is paramount.

‘The purpose of law’ lies in the questions what law has achieved in the past and is achieving in the present and the question of what law should pursue.¹ According to Bentham, “a person ought to do that act which will bring about the greatest happiness (pleasure) for the greatest number of persons (the community).” Sacrificing the individual happiness for a greater task at hand is generally how a person can exist in a society. Though this may sound preposterous in a society, which is taking so much concern in the rights of even a convicted death criminal and goes to the extent of fulfilling his last wish, it is the general accepted norm that not at all times, an “individual’s benefits” are considered over “collective benefits”. In Common law countries such as England, there is no clear definition of “private rights”. This idea has come from the American Courts after the “human rights” came to existence. The Article 12 of Universal Declaration of Human Rights (1948) states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks.” Article 17 of International Covenant of Civil and Political Rights (to which India is a party) states “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honour and reputation” Article 8 of European Convention on Human Rights states, “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by

¹ G.W.Paton, “A textbook on Jurisprudence”, pg 125, Oxford university press, Reprinted 2017

a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others.”

In India, the idea of Right to privacy, came through a series of case laws and it is said to be derived from Article 21 of the Indian Constitution which says “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The Right to privacy as a fundamental right came to be recognised from the historic nine bench judgment in the case of Puttuswamy Versus Union of India and is protected under Part III of the Constitution of India. It declares privacy to be a fundamental right, the Supreme Court has overruled verdicts given in the M.P. Sharma case in 1958 and the Kharak Singh case in 1961, both of which said that the right to privacy is not protected under the Indian constitution. Both cases had held, in different circumstances, that the Constitution of India does not specifically protect the right to privacy. Based on this judgment, the court has held that Right to privacy is a fundamental right, but it is not absolute and is subject to reasonable restrictions which need not be separately articulated but can be derived from Articles 14, 19 and 21 of the Constitution of India. It is a natural right that subsists as an integral part to the right to life and liberty. It is a fundamental and inalienable right and attaches to the person covering all information about that person and the choices that he/ she makes. It held that the State can impose restrictions on the right to privacy to protect legitimate State interests but it can only do so by following the three-pronged test:

Existence of a law that justifies an encroachment on privacy; A legitimate State aim or need that ensures that the nature or the content of this law falls within the zone of reasonableness and operates to guard against arbitrary State action; and the means adopted by the State are proportional to the objects and needs sought to be fulfilled by the law.²

There are various aspects of Right to privacy that one can ponder over on and on. But the recent issue on the Right of marriage relating to the Special Marriage Act is creating ripples. Publication of the marriage details by the marriage officer, is said to be violative of the couples’right of

²Trilegal, India: Supreme Court Declares Right To Privacy A Fundamental Right <https://www.mondaq.com/india/privacy-protection/625192/supreme-court-declares-right-to-privacy-a-fundamental-right> accessed on 4oct 2020, (2.20pm)

privacy and that holds food for thought. As Peter L. Berger says, “Society not only controls our movements, but shapes our identity, our thought and our emotions. The structures of society become the structure of our own consciousness”. He continues, our bondage to society is not simple but complex. Sometimes, indeed, we are crushed into submission. Much more frequently we are entrapped by our own social nature.³ By this, one can understand that it is impossible to do any act which is unseen by the society. The measures of control put in place in the name of norms, customs and culture are for the benefit of the individual and not for his detriment. There are various cases wherein many people get duped when the marriage happens without the knowledge of their parents or their community. Many cases under (Sec 493 and Sec 496 of IPC) Mock or invalid marriage, Bigamy (Section 494 and 495 of IPC) and Criminal elopement (Section 498 of IPC) tell us about the offences where marriages are misused, these offences are the so-called result of the aberrations caused on valuing privacy to an extent that it secludes the individual from the society. Too much of anything is un-desirable. Making matrimonial affair, the business of two individuals, would later harm the individual itself at a later point. When it is made a private affair, the state cannot later step in to help the individual in need. Marriage is an institution which evolved out of gradual processes. Though it was initially based on practice it finally entered into the state of legal recognition. The institution of marriage is viewed from many different angles, for it is intimately connected with the crude customs of a locality⁴

There have been many cases before the courts of India where either the woman or the man has been forced into marriage, when there is no one to rescue, law has to reach out to the victim, and for law to reach out, there should be some means and ways, one of which is producing of proper evidences by the victim that she/he has been duped. If it is a private affair, then the law would not be able to do too much. The idea that publication of the details would lead to violation of privacy seems to be a one sided view. The concern that because it is published it might make way for some harassment or torture against one of the couple is of no avail. In such cases, if the reasons are stated and are found to be proper, the couple has the right to approach the court or legal services to address their grievances. The marriage officer can also be of assistance to the couple too in this case.

³C.N.Shankar Rao, Principles of sociology with an introduction to sociological thought, Pg161, S.Chand &Company Ltd, 2012

⁴ Mamta Rao, Law relating to women and children, Pg 190, Eastern book company, Reprinted 2011

The Banns of marriage is a public legal notice made in a church proclaiming an intention of impediment to the marriage may make their objection known⁵. An article published by the INDIA TODAY Magazine online ⁶talks about the plight of women caused by “sham marriages”. It talks about the plight of women who were cheated by NRI men on the pretext of marriage and most of the marriages were not even registered. As per the report of the regional passport officer, there are between 25,000 and 30,000 abandoned brides in Punjab and Haryana alone. Other estimates, including numbers put out by the National Commission for women and (NCW) and the Union Ministry for women and Child development (WCD), have put the number at 40,000 plus. It is said that these are not even official numbers and that it is based on what was put out by former Union minister Balwant Singh Ramoowalia and Chandigarh based lawyer Daljit Kaur. The RPO at Chandigarh has actively taken to revoking the passports of truant NRI spouses, and absconding grooms have been charged with non bailable sections of Indian Penal Code including 498(A), 420,406 and 120(B). But though this is there, morally speaking the life of the women hangs in the balance.

Besides this issue, there are other problems brought by the recent development of technology. An Article published by the Indian Express highlights the issue. ⁷ It talks about how befriending a stranger and getting physically close with him on his promise to marry her, brought havoc on a young woman. And there are various cases where fraud happens after one of the parties swindles money from the other on the pretext of marriage or by faking a marriage. All these happen because of the idea of privacy and non intervention of others into one’s life. Though some may say they can take care of themselves by annulling the marriage or making it void later, a lot of time and energy is saved when these details are known before hand and what else could be easier than the publication by the marriage officer. Publication is the best way of probing into any sort of criminal activities or any loopholes of the parties before hand and nipping it in the bud. Though it may seem too much because of the growth of the recent notions of modernization and private rights, it is an essential factor as it prevents unwarranted hazards or potential threats to the couple, especially to women, though men suffer equally. There is more of a social stigma attached to a woman than on a man on the event of a failed marriage. Though many changes

⁵ www.britannica.com, accessed on 03 oct 2020,(1pm)

⁶Asit Jolly, Sham Marriages:Revenge of the Brides, <https://www.indiatoday.in/magazine/the-big-story/story/20190121-sham-marriages-revenge-of-the-brides-1427714-2019-01-15>, accessed on 06 oct 2020(4 pm)

⁷ HM Chaitanya Swamy and Preeja Prasad,Unhappily ever after:Cases of marriage fraud on the rise in Bengaluru, accessed on 5 Oct 2020 (3.40 pm)

have come about in a society, regarding all social institutions including that of marriage, morally not much has changed, the amount of mental agony and financial distress suffered by a person on such failure is large and as the saying goes “prevention is better than cure”, the state has the right to take any action to protect the rights and livelihood of its citizens at any time, and this precisely what the special marriage Act does at present. Any changes into the said provisions would not be steering the society in the right direction.