

CHAPTER-3

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CHAPTER-3

SCOPE OF THE RIGHT

Rights are generally available to innocent persons. Jurisprudentially speaking, a right is a protected interest under the law, therefore, it is necessary that the particular interest must be recognized and protected by the legal system through legal rules in order to raise it to the status of a right. Modern legal systems not only protect the rights of the innocent but the rights of other persons are also protected. The scope of the right to privacy in this respect extends over the innocent, as well as, the accused and criminals and also to the persons of good character and bad characters which have been discussed here. Every right has to operate within limitations, therefore, the limit on the right to privacy has been discussed. A right without effective remedy is a right without protection. For the effective enforcement of a right it becomes necessary to provide for an effective remedy. The right to privacy in this respect attracts the constitutional remedies as well as the civil law remedies, a brief reference thereof has been made in this chapter.

A. Innocent Persons

Privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and childrearing of any individual. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against Government" a phrase coined by Professor Corwin express this idea forcefully. In this sense, many of the fundamental rights of citizens can be described as contributing to the right to privacy¹. As Ely says: "There is nothing to prevent one from using the word 'privacy' to mean the freedom to live one's life without governmental interference. But the court obviously does not so use the term. Nor could it, for such a right is at stake in every case."² Thus it follows that the right to privacy is available to all innocent persons and can be restricted or denied to persons having a criminal record, who are habitual offenders and are a danger to community security. In *Govind's* case the court observed that surveillance is to be confined to the limited class of citizens who are determined to lead a criminal life or whose antecedents would reasonably lead to the conclusion that they will lead

1. *Govind vs. State of Madhya Pradesh*, AIR 1975 SC 1378, at 1385.

2. See, *The Wages of Crying Wolf: A Comment on Roe vs. Wade*, 82 *Yale L.J.* 920, at 932.

such a life. Persons who appear to be earning an honest livelihood, i.e., innocent persons should not be subject to surveillance.³ The court in the above case observed that the impugned regulation 855 of the M.P. Police Regulations, empowers surveillance only of persons against whom reasonable materials exist to induce the opinion that they show 'a determination, to lead a life of crime' – crime in this context being confined to such as involve public peace or security only and if they are dangerous security risks. Mere convictions in criminal cases where nothing gravely imperils safety of society can not be regarded as warranting surveillance under this regulation. Similarly, domiciliary visits and picketing by the police should be reduced to the clearest cases of danger to community security and not routine follow-up at the end of a conviction or release from prison or at the whim of a police officer.⁴

In *Malak Singh vs. State of Punjab*,⁵ the Supreme Court examined the extent of the right of a person whose name was included in surveillance register of the police to be given opportunity to show cause against such inclusion. It was observed that discreet surveillance of suspects, habitual and potential offenders may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. The entry in the surveillance register is to be made on the basis of the material provided by the history sheet whose contents, by their very nature have to be confidential. But all this does not mean that the police have a license to enter the names of whoever they like (dislike?) in the surveillance register; nor can the

3. *Ibid*, note 1, at 1386.

4. *Ibid*, note 1, at 1386.

5. AIR 1981 SC 760.

surveillance be such as to squeeze the fundamental freedoms guaranteed to all citizens or to obstruct the free exercise and enjoyment of those freedoms; nor can the surveillance so intrude as to offend the dignity of the individual. Surveillance of persons who do not fall within the categories mentioned in Rule 23.4⁶ or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules, will entitle a citizen to the court's protection which the court will not hesitate to give.⁷ Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not may be entered. Thus nowhere is it provided that the right to privacy of an innocent person can be infringed. It is clear that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling state interest test.

6. Chapter 23 of the Punjab Police Rules deals with prevention of offences, Rule 23.4 which provides for the maintenance of a surveillance register in every police station is in the following terms:

(1) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in Form 23.4 (1).

(2) In Part I of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction of the police station concerned, who belonged to one or more of the following classes: -

(a) All persons who have been proclaimed under Section 87, Code of Criminal Procedure, 1973.

(b) All released convicts in regard to whom an order under Section 565, Criminal Procedure Code, has been made.

(c) All convicts the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under Section 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made under Section 16 of the Restriction of Habitual Offenders (Punjab) Act, 1918.

(3) In Part 2 of such register may be entered at the discretion of the Superintendent –

(a) persons who have been convicted twice, or more than twice, of offences mentioned in Rule 27.29;

(b) Persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;

(c) persons under security under Section 109 or 110, Code of Criminal Procedure;

(d) Convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions.

7. *Ibid*, note 5, at 763-64.

B. Accused and Criminals

The question regarding the scope of the right to privacy of accused and criminals came up before the Supreme Court in *Kharak Singh vs. State of Uttar Pradesh*.¹ In this case the petitioner – Kharak Singh was challaned in a case of dacoity in 1941 but was released under Section 161, Criminal Procedure Code as there was no evidence against him. On the basis of the accusation against him the police opened a “history-sheet” in regard to him. Regulation 236 in chapter XX of the Police Regulation defines “history-sheets” as “the personal records of criminals under surveillance”. That regulation further directs that “history-sheets” should be opened only for persons who are or are likely to become habitual criminals or the aiders or abettors of such criminals. These history-sheets are of two classes: Class A for dacoits, burglars, cattle-thieves, and railway-goods - wagon thieves, and Class B for those who are confirmed and professional criminals who commit crimes other than dacoity, burglary, etc., like professional cheats. A history sheet in Class A was opened up for the petitioner and he was therefore “under surveillance”²

The sole question for determination in the above case was whether “surveillance”³ under the impugned Chapter XX of the U. P. Police

1. AIR 1963 SC 1295.

2. Ibid, at 1298

3. Regulation 236 defines “surveillance” which reads :

Without prejudice to the rights of Superintendents of Police to put into practice any legal measures, such as shadowing in cities, by which they find they can keep in touch with suspects in particular localities or special circumstances, surveillance may for most practical purposes be defined as consisting of one or more of the following measures :

Regulations constituted an infringement of any of a citizen's fundamental rights guaranteed by part III of the Constitution. In this case it was held by majority that Regulation 236(b) providing for domiciliary visits was unconstitutional for the reason that it abridged the fundamental right of a person under Article 21 and since Regulation 236(b) did not have the force of law, the regulation was declared bad. The other provisions of the Regulation were held to be constitutional.

In *D.B.M. Patnaik vs. State of Andhra Pradesh*⁴, the Supreme Court observed that convicts are not by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. Even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law. No person, not even a prisoner, can be deprived of his 'life' or 'personal liberty' except according to procedure established by law.⁵

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- (a) secret picketing of the house or approaches to the house of suspects ;
 - (b) domiciliary visits at night ;
 - (c) through periodical enquiries by officers not below the rank of sub-inspector into reputed habits, associations, income, expenses and occupation;
 - (d) the reporting by constables and chowkidars of movements and absences from home;
 - (e) the verification of movements and absences by means of inquiry slips ;
 - (f) the collection and record on a history-sheet of all information bearing on conduct.

4. AIR 1974 SC 2092.

5. *Ibid.*, at 2094 - 2095

Again in *Sunil Batra vs. Delhi Administration*⁶, the Supreme Court reiterating the above view observed that it is no more open to debate that convicts are not wholly denuded of their fundamental rights. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is then all the more substantial.⁷

To what extent may the citizen's right to be let alone be invaded by the duty of the police to prevent crime was the problem posed in *Malak Singh vs. State of Punjab*.⁸ Section 23 of the Police Act prescribes it as the duty of police officers "to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances". In connection with these duties it will be necessary to keep discreet surveillance over reputed bad characters, habitual offenders and other potential offenders. Organized crime cannot be successfully fought without close watch of suspects. But surveillance may be intrusive and it may so seriously encroach on the privacy of a citizen as to infringe his fundamental right to personal liberty guaranteed by Article 21 of the Constitution and the freedom of movement guaranteed by Article 19(1) (d). That cannot be permitted. So long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 of the Punjab Police Rules a person whose name is included in the surveillance register cannot have a genuine cause for complaint.⁹ History sheets and surveillance registers have to be and are confidential

6. AIR 1978 SC 1675.

7. *Ibid*, at 1727.

8. AIR 1981 SC 760.

9. *Ibid*, at 763.

documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. The nature and character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial, that it is difficult to conceive of the application of the rule of *audi alteram partem*. Such enquiry as may be made has necessarily to be confidential and it necessarily excludes the application of that principle.¹⁰ It would be contrary to the public interest to reveal the information in the history-sheet, particularly the source of information.¹¹ However, in surveillance of persons who do not fall within the categories mentioned in Rule 23.4 of the Punjab Police Rules or for reasons unconnected with the prevention of crime, or excessive surveillance falling beyond the limits prescribed by the rules will entitle a citizen to the court's protection which the court will not hesitate to give. Surveillance, therefore, has to be unobstructive and within bounds.¹² While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the court when an entry is challenged that there are grounds to entertain such reasonable belief.¹³

In *R. Rajagopal vs. State of Tamilnadu*¹⁴, the Supreme Court had the occasion to decide the question regarding the publication of autobiography of condemned prisoner vis-à-vis right to privacy and

10. *Ibid*, at 763.

11. *Ibid*, at 763.

12. *Ibid*, at 763-64.

13. *Ibid*, at 764.

14. AIR 1995 SC 264.

powers of state officials. The apex Court observed that the editor or publisher of the Magazine have a right to publish, what they allege to be the life-story or autobiography of condemned prisoner in so far as it appears from the public records, even without his consent or authorization. But if they go beyond that and publish his life-story, they may be invading his right to privacy and will be liable for the consequences in accordance with law. Similarly, the State or its officials cannot prevent or restrain the said publication .¹⁵

Thus it has been well-settled that the fundamental rights are not only available to freemen but to the accused, prisoners, convicts and detenus also. The right to privacy shall also be available to the accused and the criminals; however, this right may be curtailed so far as it is necessary for the prevention of crime. The curtailment of the right cannot be done by mere regulation without the authority of law. It is possible to deprive a person of the right only by the just, fair and reasonable procedure established by the law.

15. *Ibid*, at 277.

C. Prostitutes

The right to privacy is available to women. The question which arises in this respect is whether it is available only to women of good characters or even to women of bad characters. In *State of Maharashtra vs. Madhukar Narayan Mardikar*,¹ the question arose as to whether a prostitute also has a right to privacy and protection from sexual assault. In the above case, a police inspector was dismissed from service on his proved involvement in an act of rape. The High Court quashed his dismissal on the ground that the woman, whom he was alleged to have raped, was a woman of easy virtue. The Supreme Court on appeal held that a woman even of so-called easy virtue was entitled to protect herself against unwilling sexual assault. This was part of her personal liberty which was included in the right to privacy. Ahmadi, J., as he then was, aptly observed: .

“Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue her evidence cannot be thrown overboard. At the most the officer called upon to evaluate her evidence would be required to administer caution up to himself before accepting her evidence.”²

1. AIR 1991 SC 207.

2. *Ibid.* at 211.

D. Limitations of the Right

To determine in advance of experience the exact line at which the dignity and convenience of the individual must yield to the demands of the public welfare or of private justice would be a difficult task; but the more general rules are furnished by the legal analogies already developed in the law of slander and libel and in the law of literary and artistic property.¹

1. The right to privacy does not prohibit any publication of matter which is of public or general interest. In determining the scope of this rule, aid would be afforded by the analogy, in the law of libel and slander, of cases which deal with the qualified privilege of comment and criticism on matters of public and general interest. There are of course difficulties in applying such a rule; but they are inherent in the subject-matter, and are certainly no greater than those which exist in many other branches of the law – for instance, in that large class of cases in which the reasonableness or unreasonableness of an act is made the test of liability. The design of the law must be to protect those persons with whose affairs the community has no legitimate concern, from being dragged into an undesirable and undesired publicity and to protect all persons, whatsoever; their position or station, from having matters which they may properly prefer to keep private, made public against their will. It is the unwarranted invasion of individual privacy which is reprehended, and to be, so far as possible, prevented. The distinction, however, is obvious and fundamental. There are persons who may reasonably claim as a right, protection from the notoriety entailed by being made the victims of the journalistic enterprise. There are others who, in varying degrees, have renounced the right to live their lives screened from public observation.

Matters which men of the first class may justly contend, concern themselves alone, may in those of the second be the subject of legitimate interest to their fellow-citizens. Peculiarities of manner and person, which in the ordinary individual should be free from comment, may acquire a public importance, if found in a candidate for political office. Some further discrimination is necessary, therefore, than to class facts or deeds as public or private according to standard to be applied to the fact or deed *per se*. To publish of a modest and retiring individual that he suffers from an impediment in his speech or that he cannot spell correctly, is an unwarranted, if not an unexplained, infringement of his rights, while to state and comment on the same characteristics found in a would-be congressman could not be regarded as beyond the pale of propriety. ²

The general object in view is to protect the privacy of private life, and to whatever degree and in whatever connection a man's life has ceased to be private, before the publication under consideration has been made, to that extent the protection is to be withdrawn. Since, then, the propriety of publishing the very same facts may depend wholly upon the person concerning whom they are published, no fixed formula can be used to prohibit obnoxious publications. Any rule of liability adopted must have in it an elasticity which shall take account of the varying circumstances of each case, a necessity which unfortunately renders such a doctrine not only more difficult of application, but also to a certain extent uncertain in its operation and easily rendered abortive. Besides, it is only the more flagrant breaches of decency and propriety that could in

1. Warren and Brandeis, *The Right to Privacy*, 4*HLR*193, at 214.

2. *Ibid*, at 214 - 215.

practice be reached; and it is not perhaps desirable even to attempt to repress everything which the nicest taste and keenest sense of the respect due to private life would condemn.³

In general, then, the matters of which the publication should be repressed may be described as those which concern the private life, habits, acts, and relations of an individual, and have no legitimate connection with his fitness for a public office which he seeks or for which he is suggested or for any public or quasi-public position which he seeks or for which he is suggested, and have no legitimate relation to or bearing upon any act done by him in a public or quasi-public capacity. The foregoing is not designed as a wholly accurate or exhaustive definition, since that which must ultimately in a vast number of cases become a question of individual judgment and opinion is incapable of such definition; but it is an attempt to indicate broadly the class of matters referred to. Some things all men alike are entitled to keep from popular curiosity, whether in public life or not, while others are only private because the persons concerned have not assumed a position which makes their doings legitimate matters of public investigation.⁴

2. The right to privacy does not prohibit the communication of any matter, though in its nature private, when the publication is made under circumstances which would render it a privileged communication according to the law of slander and libel. Under this rule, the right to privacy is not invaded by any publication made in a court of justice, in legislative bodies, or the committees of those bodies, in municipal assemblies, or the committees of such assemblies, or practically by any

3. *Ibid*, at 215 - 216.

4. *Ibid*, at 216.

communication made in any other public body, municipal or parochial, or in any body quasi-public, like the large voluntary associations formed for almost every purpose of benevolence – business, or other general interest; and (at least in many jurisdictions) reports of any such proceedings would in some measure be accorded a like privilege. Nor would the rule prohibit any publication made by one in the discharge of some public or private duty, whether legal or moral, or in conduct of one's own affairs in matters where his own interest is concerned.⁵

3. The law would probably not grant any redress for the invasion of privacy by oral publication in the absence of special damage. The same reasons exist for distinguishing between oral and written publications of private matters, as is afforded in the law of defamation by the restricted liability for slander as compared with the liability for libel. The injury resulting for such oral communications would ordinarily be so trifling that the law might well, in the interest of free speech, disregard it altogether.⁶

4. The right to privacy ceases upon the publication of the facts by the individual, or with his consent. This is but another application of the rule which has become familiar in the law of literary and artistic property. The cases there decided establish also what should be deemed a publication; - the important principle in this connection being that a private communication of circulation for a restricted purpose is not a publication within the meaning of the law.⁷

5. The truth of the matter published does not afford a defence. Obviously

5. *Ibid*, at 216 – 217.

6. *Ibid*, at 217.

7. *Ibid*, at 218.

this branch of law should have no concern with the truth or falsehood of the matters published. It is not for injury to the individual's character that redress or prevention is sought, but for injury to the right of privacy. For the former, the law of slander and libel provides perhaps a sufficient safeguard. The latter implies the right not merely to prevent inaccurate portrayal of private life, but to prevent its being depicted at all.⁸

6. The absence of "malice" in the publisher does not afford a defence. Personal ill-will is not an ingredient of the offence, anymore than in an ordinary case of trespass to person or to property. Such malice is never necessary to be shown in an action for libel or slander at common law, except in rebuttal of some defence, e.g., that the occasion rendered the communication privileged or under the statutes, that the statement complained of was true. The invasion of the privacy that is to be protected is equally complete and equally injurious, whether the motives by which the speaker or writer was actuated are, taken by themselves, culpable or not; just as the damage to character, and to some extent the tendency to provoke a breach of the peace, is equally the result of defamation without regard to the motives leading to its publication. Viewed as a wrong to the individual, this rule is the same pervading the whole law of torts, by which one is held responsible for his intentional acts, even though they are committed with no sinister intent ; and viewed as a wrong to the society , it is the same principle adopted in a large category of statutory offences.⁹

The Supreme Court in various cases tried to evolve the limitations upon the right to privacy. In *Malak Singh vs. State of Punjab*,¹⁰ where the

8. *Ibid.*, at 218.

9. *Ibid.*, at 218-219.

10. AIR 1981 SC 760

appellants sought the removal of their names from the surveillance registers maintained by the police under Rule 23 of the Punjab Police Rules and the insistence for opportunity to show cause against such inclusion, the Court observed that so long as surveillance is for the purpose of preventing crime and is confined to the limits prescribed by Rule 23.7 of the Punjab Police Rules a person whose name is included in the surveillance register cannot have a genuine cause for complaint.¹¹

In *R.Rajagopal vs. State of Tamilnadu*,¹² dealing with the question regarding publication of autobiography of a condemned prisoner vis-à-vis right to privacy and powers of state officials, the Supreme Court laid down:

“(1) A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a

11. *Ibid*, at 763.

12. AIR 1995 SC 264.

matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media and others. However, in the interests of decency [Art. 19 (2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being published in press or media.

(3) There is yet another exception to the Rule in (1) above, indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made "by the defendant" with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of the duties, the public officials enjoy the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for

contempt of Court and the Parliament and Legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exception to this rule.....”¹³

Again in *Mr. 'X' vs. Hospital 'Z'*,¹⁴ the Supreme Court has held that although the “right to privacy” is a fundamental right under Article 21 of the Constitution but it is not an absolute right and restrictions can be imposed on it for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. In this case, the appellant after obtaining the degree of MBBS in 1987 joined the Nagaland State Medical and Health Service as Assistant Surgeon Grade 1. A government servant was suffering from some disease. He was advised to go to the ‘Z’ Hospital at Madras. The appellant was directed by the government of Nagaland to accompany the said patient to Madras for treatment. For the treatment of the disease the patient needed blood. The appellant was asked by the doctors to donate blood for the patient. When his blood samples were taken the doctors found that the appellant was HIV (+). In the meantime the appellant settled his marriage with one Miss ‘Y’ which was to be held on Dec 12, 1995. But the marriage was called off on the ground that the blood test of the appellant conducted by the respondent hospital was found to be HIV (+). As a result of this he contended that his prestige among his family members was damaged. The appellant filed a writ petition in the High Court of Bombay for damages against the respondents on the ground that the information which was required to be secret under Medical Ethics was disclosed illegally and

13. *Ibid*, at 276-77.

14. AIR 1999 SC 495.

therefore the respondents were liable to pay damages. He contended that the respondents were under a duty to maintain confidentiality on account of Medical Ethics formulated by the Indian Medical Council. He contended that the appellant's "right to privacy" had been infringed by the respondents by disclosing that the appellant was HIV (+), and therefore, they are liable in damages.

A two-judge division Bench of the Supreme Court comprising Saghir Ahmed and Kirpal, JJ., held that by disclosing that the appellant was suffering from AIDS the doctors had not violated the right of privacy of the appellant guaranteed by Article 21. The Court held that although the right to privacy is a fundamental right under Article 21, but it is not an absolute right and restrictions can be imposed on it. The right to marry is an essential element of right to privacy but is not absolute. Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. Every system of matrimonial law provides that if a person is suffering from venereal disease in a communicable form it will be open to the other partner in the marriage to seek divorce. If a person is suffering from disease even prior to the marriage he has no right to marry so long as he is not fully cured of the disease. As such when the patient was found to be HIV (+), the disclosure by the doctor was not violative of either the rule of confidentiality or the patient's right to privacy as the lady with whom the patient was likely to be married was saved by such disclosure or else she too would have been infected with the dreadful disease if marriage had taken place.

Miss 'Y' was entitled to enjoy all human rights available to any other human being. This is apart from, and in addition to the fundamental right available to her under Article 21 which guarantees right to life to every citizen of the country. Right to life of the lady with whom the

patient was to marry positively includes the right to be told that a person with whom she was proposed to be married was victim of a deadly disease which was sexually communicable. Right to life includes right to lead a healthy life so as to enjoy all faculties of the human body in their prime condition. Moreover, where there is a clash of two fundamental rights as in the instant case, namely, the patient's right to privacy as part of right to life and his proposed wife's right to lead a healthy life which is her fundamental right under Article 21, the right which would advance the public morality or public interest would alone be enforced through the process of court. The Court said that moral considerations cannot be kept at bay and the judges are not expected to sit as mute structures of clay in the Hall, known as Court Room, but have to be sensitive, "in the sense that they must keep their fingers firmly upon the pulse of the accepted morality of the day".¹⁵

15. J.N.Pandey, *Constitutional Law of India*, 209-10, 36th Edition, 2000.

E. Remedies

It is true that our Constitution does not specifically provide the right to privacy as a fundamental right but this right is enshrined in Article 21 of our Constitution. It is also true that fundamental rights are meaningless unless there is an effective machinery for the enforcement of the rights. It is the remedy, which makes the right real. If there is no remedy there is no right at all. Remedies may be two types, viz., constitutional remedies and civil law remedies. Constitutional remedies may be availed of by way of moving the Supreme Court under Article 32 and the High Courts under Article 226, by the way of public interest litigation or by way of claim for compensation. The civil law remedies may be acquired by the way of damages and injunction. As the right to privacy is a part of the right to personal liberty under Article 21, so whenever this right is infringed, one may get remedies for the violation of fundamental rights.

Constitutional Remedies

1. Right to move the Supreme Court or High Courts

Article 32(1) guarantees the right to move the Supreme court by “appropriate proceedings” for the enforcement of the fundamental rights conferred by Part III of the Constitution. Clause(2) of Article 32 confers power on the Supreme Court to issue appropriate directions for orders or writs, including writs in the nature of *habeas corpus*, *Mandamus*, prohibition, *quo-warranto* and *certiorari* for the enforcement of any of the rights conferred by Part III .

The traditional rule is that the right to move the Supreme Court is only available to those persons whose fundamental rights are infringed. The power vested in the Supreme Court can only be exercised for the enforcement of fundamental rights. Article 32 permits large discretion to the Court to give appropriate relief. The Court can frame such writs as the exigencies of a particular case demand.¹

On the other hand, Article 226 of the Constitution confers power on all the High Courts to issue the writs, orders or directions for the enforcement of fundamental rights. So by Articles 32 and 226 the Supreme Court and the High Courts protect the citizen's fundamental rights. In discharging the duties assigned to protect fundamental rights the Supreme Court in the words of Patanjali Shastri, J., plays the role of a sentinel on the *qui vive*.² Again in *Daryao vs. State of Uttar Pradesh*,³ the Supreme Court considered it a solemn duty to protect the fundamental right zealously and vigilantly. Thus whenever a man's right to privacy is violated he can move the Supreme Court or the High Courts for getting appropriate remedy.

2. Public Interest Litigation

The judiciary in India has accepted public interest litigation as an effective tool in its hands to uphold the life, liberty, equality and basic human rights enshrined in the Constitution. The courts permit public interest litigations or social interest litigations at the instance of 'public-spirited

1. *Chiranjit Lal Chaudhury vs. Union of India*, AIR 1951SC 41.

2. *State of Madras vs. V.G.Raw*, AIR 1952 SC 196.

3. AIR 1961 SC 1457 at 1461.

citizens' for the enforcement of constitutional or other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position, are unable to approach the court for relief. In privacy related issues also, it is seen that social-spirited persons go to the Supreme Court for appropriate remedy.

In *People's Union for Civil Liberties vs. Union of India*,⁴ popularly known as 'Telephone-tapping case', the petition was filed by way of a public interest litigation under Article 32 of the Constitution by the People's Union for Civil Liberties – a voluntary organization – highlighting the incident of telephone-tapping in the recent years. In this case the constitutional validity of Section 5 of The Indian Telegraph Act, 1885 which authorizes the central or the state governments to resort to telephone-tapping in the circumstances mentioned therein was challenged. The Court laid down exhaustive guidelines to regulate the discretion vested in the state for the purposes of telephone-tapping and interception of other messages so as to safeguard public interest against the arbitrary and unlawful exercise of power by the government.

There are various cases where various non-governmental organizations filed a public interest litigation for the prevention of sexual harassment of working women. In *Vishaka vs. State of Rajasthan*,⁵ a writ petition was filed by Vishaka, a non-governmental organization, by way of PIL seeking enforcement of fundamental rights of working women under Articles 14, 19 and 21 of the Constitution. The Court held that it is the duty of the employer or other responsible person in work places or other institutions, whether public or private, to prevent sexual harassment

4. AIR 1997 SC 568.

5. AIR 1997 SC 3011.

of working women. It is necessary for the safety of the society as well as to maintain the dignity, decency and privacy right of a woman.

3. Compensation under the Indian Constitution

The Constitution of India guarantees the fundamental right to life and personal liberty under Article 21 to any person. As the right to privacy is a part of Article 21, the Supreme Court has in various cases involving the invasion of privacy rights awarded compensation to the victims. Most of these cases are related with custodial violence, rape, illegal search and seizure, etc.

In *Delhi Domestic Working Women's Forum vs. Union of India*,⁶ the Supreme Court directed the setting up of a criminal inquiries compensation board to award compensation to a rape victim whether or not a conviction has taken place. In awarding compensation the board has to take into account the pain, suffering and shock as well as the loss of earnings and expenses of the child. Thus the court trying an accused in a rape case has the jurisdiction to award compensation to the victim of the rape.

In *P.Rathinam vs. State of Gujarat*,⁷ the Supreme Court appointed a commission to investigate a place where a rape had taken place and directed the government to pay interim compensation of rupees fifty thousand to the victim of rape.

Thus, it is seen that compensation may be awarded by the court

6. (1995) 1 SCC 14.

7. 1994 SCC (Cri.) 1163.

where a woman's right to privacy or health is involved. In *Jwala Devi vs. Bhoop Singh*,⁸ it was alleged by an old woman that she was assaulted, tortured and paraded in the street after rubbing black shoe-polish on her face by a police official. It was a gross violation of her privacy right and finally the Supreme Court in an appeal directed that rupees five thousand be paid as compensation to the petitioner.

Civil Law Remedies

Generally civil law remedies are available in the case of torts. The remedies available for a tort by means of an action are by way of damages and injunction.

1. Damages

In a suit for damages in tort, the court awards pecuniary compensation to the plaintiff for the injury or damage caused to him by the wrongful act of the defendant. There are provisions of punishment to offenders who violate or infringe the right to privacy by way of trespass or invasion of incorporeal right to property.

In *Govind vs. State of M.P.*,⁹ it was alleged that the domiciliary visits and other actions of the police infringed the petitioner's privacy right. However, in *R.Rajagopal vs. State of Tamilnadu*,¹⁰ we find that the right to privacy or the remedy of action for damages is not available to

8. AIR 1989 SC1441.

9. AIR 1975 SC 1378.

10. AIR 1995 SC 264.

public officials as long as the criticism concerns the discharge of their public duty; not even when the publication is based on untrue facts and statements, unless the official can establish that the statements had been made with reckless disregard of truth.

2. Injunction

The person suffering the invasion of his right may bring a suit for damages or injunction as he may deem fit and proper. Injunction is available to prevent an attempted trespass or for continuing the same. The grant for injunction is however discretionary and is regulated by the Specific Relief Act, 1963.¹¹

Sometimes the court ordered for injunction to restrain the publication which was based upon a defamatory statement. In *Smt. Sonakka Gopalagowda Shanthaneri vs. U.R. Ananthemurthy*,¹² the petitioner filed a suit for injunction for restraining a film-maker from exhibiting a film or an author from reprinting a disputed book which was based on defamatory statement relating to her husband's character. The Court held that loss of reputation and consequent loss of dignity and character cannot be compensated in terms of money and held that to restrain the opposite party from committing defamation the proper remedy is an order of injunction.

Similarly in *M/s. Anglo-Dutch Paint, Colour and Varnish Works*

11. Secs 37-39, Specific Relief Act, 1963.

12. AIR 1988 Kant 255. *see, also, National Sugar Mills Ltd. vs Ashutosh Mukherjee*, AIR 1962 Cal 27.

Pvt. Ltd. vs. M/s. India Trading House,¹³ the Court granted an injunction against the infringement of copy-right or trademark.

An injunction can be granted to keep the secrecy of a family. In *Ashim Ranjan Das vs. Bimla Ghosh*,¹⁴ privacy of members of undivided family was in question. The members of an undivided family are protected under the law to maintain their privacy. If a stranger, who claiming lease of a portion of the disputed house, seeks to interfere with the privacy, then the members will naturally require an urgent remedy. The Court in this case directed interim injunction to the plaintiffs, against the stranger lessee, from entering into possession as no stranger can be permitted to pierce the veil of that privacy.

In *Argyll vs. Argyll*,¹⁵ the Duchess of Argyll, filed a suit for injunction to restrain the publication of a famous newspaper named 'The People' which was related with her personal married life with the Duke of Argyll. The newspaper got this personal information from the Duke and they offered to publish the information in their newspaper. As this matter was a personal matter and not related with public interest, the Court granted injunction to restrain the publication.

13. AIR 1977 Del 41.

14. AIR 1992 Cal 44.

15. (1967) 1 Ch. 302.