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**CONSTITUTIONAL PERSPECTIVE ON REPRODUCTIVE RIGHT AND
SEX SELECTION**- Trisandhya¹**ABSTRACT**

"Oh, God, I entreat you, I've touched your feet a thousand times, next birth, don't give me a daughter, instead give me Damnation," said one of Uttar Pradesh's oldest residents². In patriarchal Indian society, this song depicts the plight of female children. It clearly depicts the social pressures that women endure when they are unable to conceive. They are forced to murder their newborn girls in order to escape being outcast by the family. In today's Indian society, girls are seen as nothing more than a financial burden and are scorned.

They are frequently denied the right to life on the basis of their gender. This is true in most developing countries, where women are viewed as second-class citizens in comparison to men. This is most common in developing South Asian and South East Asian countries like India, China, Pakistan, and Indonesia, not just because of economic pressures but also because of deeply rooted social and cultural attitudes that are harmful to women of all ages' health and well-being.

"The Indian Constitution provides all people equal treatment and a decent life, as well as an obligation on all citizens to refrain from unjust and inhumane acts, such as sex-selective abortions that result in female feticide. The judiciary has reinforced a comparable protection for unborn children against sex selection procedures by defining the reach of Article 21 within the context of the defined Act, which is a problem-specific law."

The aim of this Article is to foster the child's right to complete development, as stated in Article

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² Dr. G. Srilatha, "Language and Culture in Kanyasulkam, available at <http://www.indictoday.com/quick-reads/understanding-manu-smiriti-part-i-women-freedom>(last visited on 1st feb,2022)

21. As a result, "a toddler born has the right to full growth under Article 21 regardless of the sex of the kid."

INTRODUCTION

"One of the most well-known provisions in the Indian constitution is Article 21, which stipulates that "no one will be deprived of his lives and personal liberty unless by law." Other rights that simply complement and expand the complete meaning and content of the right to exist take precedence and are a precondition for their enjoyment. As a result, our sanctioning systems and courts have made the right to be present a priority. Because the entire edifice of human rights law is based on the bedrock of the right to life, any infringement of that right renders other rights, which may be ancillary to it, useless. When J. analysed the right to exist as a subject, he discovered that "*something more than mere animal lifestyles is conveyed by the term 'lifestyles,'*" as used exactly here."

New Dimensions in the Maneka Gandhi Case

In "*Maneka Gandhi v. Union of India*,"³ the meaning and substance of the words 'individual freedom' were debated. "The candidate's visa was revoked under *section 10 (3) (c)*⁴, on the grounds of "genuine concern for the general public," without enabling the candidate to be heard and without offering any explanation for the decision," according to the complaint. The solicitor questioned the request's legitimacy, saying, among other things, that *Section 10 (3) (c)* violated *Article 21* because it did not advocate for the system within the scope of *Article 21*. The government's decision to maintain the explanations for the visa seizure was found to be unjustified by the Supreme Court.

"*The term 'personal liberty' in Article 21 has the widest scope, and it embraces a wide variety of rights that go to make up man's personal liberty, some of which have been elevated to the level of distinct basic rights and given extra protection under Article 19,*" writes "J. Bhagwati."

The Supreme Court's ruling in the "Maneka Gandhi" case was noteworthy because it permitted

³ AIR 1978 SC 597

⁴ Passport Act, 1967

the "due process provision" of the United States to be incorporated into Indian constitutional law, namely *Article 21*⁵. In the decision, the substantive words 'life' and 'personal liberty' were granted an unprecedented extent.

Expanding Meaning of Life:

*"We believe that the right to life includes the right to live with human dignity and all that entails, including the bare necessities of life such as adequate nutrition, clothing, a roof over one's head, and facilities for reading, writing, and expressing oneself in various forms, as well as the freedom to move about and mix and comele with other people", Bhagwati, J. stated in "Francis Coralie"*⁶ When the Supreme Court stated in "**P. Rathinam v. Union of India**"⁷ that "the right to live with human dignity and the same does not connote unending drudgery," it gave it pride of position. It incorporates some of civilization's finer qualities that make life worthwhile, and the broadened definition of life includes the person's tradition, culture, and legacy."

Liberal Interpretation of the Right to Privacy

The word "non-public liberty," as used in "Article 21," has also been liberalised by removing it from its restricted definitions of freedom from physical restraint and freedom from confinement within prison walls. The term "non-public liberty" is not used in a restricted meaning in Article 21, but rather as a wide term that encompasses all of the rights that make up a person's private liberty⁸. While Article 19(1) encompasses the residue, Article 21 incorporates non-public liberty, according to "Kharak Singh." The court, on the other hand, applied a broad reading to the term "private liberty" in "Article 21." *The violation of an individual's private liberty protected under "Article 21" involves domiciliary visits by police at his door, demanding his sleep and customary comfort.* J. Subba Rao, speaking for a minority opinion, had a far broader approach. Contrary to popular opinion, "Articles 21 and 19 no longer exclude, but rather overlap one another."

Bhagwati, J., relied on Subba Rao's minority view in "**Maneka Gandhi v. Union of India**"⁹. The concept of 'individual freedom' in Article 21 is very broad, and it embraces a wide

⁵ Indian Constitution, 1950

⁶ Francis Coralie v. Delhi, AIR 1981 SC 746, 753

⁷ AIR 1994 SC 1844.

⁸ M.C. Mehta v. Union of India, AIR 2003 SC 3469

⁹ Supra Note 6

variety of rights that contribute to man's individual freedom, some of which have been elevated to the status of clear fundamental rights and given special protection under Article 19.

As a result, the word "personal liberty" used in Article 21 has acted as a springboard for the creation of a slew of other fundamental rights, such as the right to privacy, dignity, and physical integrity, all of which have been given greater protection under Article 19. The right to privacy has numerous dimensions, and the right to privacy in regard to abortion is especially relevant to analyse for the objectives of this study.

Right to Privacy:

The Supreme Court first evaluated the right to privacy, which is drawn from the joint constitutional design of Articles 19 and 21¹⁰, in "*Kharak Singh v. State of Uttar Pradesh*,"¹¹ in which the court was asked if "surveillance" under "*Section XX*"¹² of the Uttar Pradesh was permissible. Police restrictions are infringing on Article 21. The use of legitimate means for domiciliary visits in the evening, as specified in "*Art 236 (b)*"¹³, was ruled to be a breach of fundamental rights. The terms "presence" and "private freedom" employed in "Article 21" were thoroughly examined by the court in this instance.

The question of whether a 'right to protection' can be inferred from current fundamental rights, including "Article 19(1)(d)" or "Article 21" of the constitution, arose for the first time in "*Kharak Singh*," because the charter does not expressly provide a right to privacy as part of the scheme of fundamental rights. A majority of the Judges concluded that our contract does not include a sacrosanct guarantee of privacy. Regardless, Subba Rao, J.'s minority judgement was that the articulation of "private freedom" in "Article 21" should provide the best feasible security.

Subba Rao found that:

"The right to personal liberty includes not only the freedom from restrictions on one's actions, but also the freedom from intrusions into one's personal life. Despite the fact that our charter

¹⁰ Indian Constitution, 1950

¹¹ AIR 1964 SCR(1) 332

¹² Uttar Pradesh Police Rules, 1950

¹³ Ibid

does not expressly declare the right to privacy as a fundamental right, it is an important component of personal liberty”.

The minority decision of Justice Subba Rao set the ground for more discussion of the right to use Article 21 for protection. In the case "**R.M. Malkani v. Province of Maharashtra**"¹⁴, the solicitor's voice was recorded during a telephonic call in which he was attempting to extort money. With all due respect, he asserted that his Article 21 right to security had been violated. In dismissing his motion, the Supreme Court stated, "An honest resident's telephonic communication will be secured by courts against unfair or oppressive hindrance by tapping the discussion." In this case, the Court did not find against invoking the right to privacy under the Constitution's Article 21, but it did rule against the protection sought on the right to privacy due to corruption. As a result, the Court impliedly reaffirmed Article 21's limitations.

The Supreme Court examined the privilege to protection in "**Govind v. State of Madhya Pradesh**."¹⁵ In this decision, the Court considered the constitutionality of "*Madhya Pradesh Authorities Regulations 855 and 856*"¹⁶, which permitted police to observe ongoing criminals through domiciliary visits and picketing. The Court affirmed the Regulation, stating that Article 21 was unaffected because the Regulation in question appeared to be based on "law." The Court also recognised Articles 19(a), (d), and 21 as providing a limited main right to protection. The right to security, on the other hand, is not absolute; under Article 19(5)¹⁷, appropriate limits can be placed subsequently with open enthusiasm.

Defining the goal "Mathew, J"¹⁸. kept an eye on things, saying, "*An overly broad definition of privacy will raise serious questions about the legitimacy of judicial reliance on a right that isn't clearly specified in the Constitution. In any case, a case-by-case approach to developing the right to privacy will be required. As a result, we do not feel that the right to personal liberty, the ability to wander freely throughout India, and the right to freedom of speech result in an independent right to privacy that can be defined as a basic right.*"

¹⁴ AIR 1973 SC 157

¹⁵ AIR 1975 SC 1378

¹⁶ Madhya Pradesh Police Regulation Act, 1961

¹⁷ Supra note 7

¹⁸ ibid

The decision of the Supreme Court is seen as a challenge to one side of the protection statute. *"Assuming that a citizen's Fundamental Rights have penumbral zones and that the right to privacy is a Fundamental Right in and of itself, that Fundamental Right must be limited in the public interest,"* J. Mathew discovered after digging into the confinements.

The Supreme Court decided in "**R. Rajgopal v. State of Tamil Nadu**"¹⁹ that the right to protection has just acquired holy character. Article 21 ensures the right to life and individual liberty of residents, which is ethically legitimate. "Among other things," a resident can "protect his own, his family's, marriage, reproduction, maternity, child rearing, and training."

"The right to choose whether or not to have children is primarily a personal option for both men and women," according to the case "**B.K. Parthasarathi v. State of Andhra Pradesh**"²⁰ In essence, having such a permission means being able to avoid duplication. The state's engagement in such an individual's decision-making process is carefully scrutinised by constitutional courts in both our country and America."

The superior court in "**Neera Mathur v. Life Insurance Corporation of India**"²¹ was caught aback when it looked at a LIC questionnaire searching for information on menstrual intervals and beyond pregnancies, and the petitioner was sacked for failing to give the LIC with proper numbers. The court found that the questionnaire was an invasion of privacy and that no further investigations could be carried out as a result. Article 21 guaranteed the right to personal liberty, which included the right to privacy.

In the case of "**State of Maharashtra v. Madhalkar Narain**,"²² a uniformed police officer came to Banubai's house and demanded consensual sex. While he was being investigated, he claimed that she had matured into a young lady of excellent character and that her evidence could no longer be relied. The court disregarded the defendant's argument, finding that a woman in complete abstinence has the "right to private" and that no one can intrude on her solitude.

¹⁹AIR 1995 SC 264.

²⁰ AIR 2000 AP 156,

²¹(1992) 1 SCC 286.

²² AIR 1991 SC 207

Right to Reproductive Choice:

Reproductive desire is a personal decision that has little or no societal consequence, but has a big impact on the individual. Similarly, marital and family life is a place where certain aspects of a person's life are kept private because these are the man or woman's personal existence. The right to reproductive choice is a subset of the right to privacy, which is protected by India's constitution's Articles 19 and 21. In India's constitution, the reproductive right as well as the right to privacy is not explicitly recognised. The right to privacy, or its smaller partner, the reproductive right, has been chiselled out of the legal interpretation of the 'right to life and individual freedom,' thanks to the sanctity of the courts.

In the United States, the right to privacy has been elevated to a sacred position because it is one of the components of 'freedom' protected by the 'fair treatment statement.' The privilege has been interpreted widely by US courts, and it has been extended to cover a wide range of rights. Following a final court ruling in "**Griswold v. Connecticut**,"²³ it is now firmly established within American established statute that the privilege to privacy is sufficiently substantial to defend conceptive rights against undue state obstacle. As a result, today's right to reproductive choice enjoys broad constitutional support and is no longer a divisive topic.

Although "individual freedom" has not been fully translated in India to embrace practically all aspects of individual liberty, it is the equivalent of "freedom" in the Due Process Clause of the American Constitution. The Supreme Court of India, on the other hand, has construed "individual freedom" in the fullest sense conceivable, including both the right to protection and conceptual rights in its definition. The Supreme Court did not dismiss the argument that Article 21 includes the right to make conceptual decisions as a result of "**Javed v. State of Haryana**,"²⁴ but it did state that reasonable limits may be imposed on such rights' action depending on how comprehensive an explication is to be accepted to the arrangement. The justices in the "Javed decision" are obviously opposed to the idea that regeneration rights should be balanced alongside other components of the right to individual liberty.

The following excerpt from "*Lahoti, J* judgment" demonstrates the judges' reasoning:

"In the name of an overabundance of stress on fundamental rights and individual liberty, the

²³ 381 U.S. 479(more) 85 S.ct1678

²⁴ (2003) 8 SCC 369

*lofty goals of social and economic justice, as well as the concept of distributive justice-economic, social, and political-must not be disregarded."*²⁵

The "Javed case" indicates that the Indian judiciary still has a long way to go before it can assert that the right to reproductive autonomy is inviolable. The judiciary appears to regard reproductive rights as optional privileges, in contrast to its usual attitude on basic rights.

The Court noted that "the ability of a woman to make her own reproductive decisions falls inside the definition of "personal liberty" as defined by Article 21 of the Indian Constitution, while reinforcing the trend of widening the amplitude of "personal liberty." It's critical to recognise that reproductive decisions to procreate as well as to stop from procreating are routinely made. This suggests that a woman's right to refuse to engage in sexual activity or to insist on the use of contraceptive methods should be unconstrained in any form. When it comes to birth control, women also have other options, such as sterilization. When pushed to its logical conclusion, reproductive rights encompass a woman's right to carry a pregnancy to term, give birth, and raise her children."²⁶

As a result, the Supreme Court of India has granted women the fullest possible range of rights, and their right to self-government under "Article 21 of the Indian Constitution" cannot be taken away from them.

"Inspector (Mahila) Ravina Malik v. Union of India and ors"²⁷ was the name of the case. Due to her pregnancy, the petitioner, a Central Reserve Police Force Inspector, was unable to attend the Senior Inspector Course. The candidate enrolled in and completed the following pre-limited time course, completing the qualifying requirements for advancement to Assistant Commandant. Her name, on the other hand, was not included on the subsequent promotion list, and she so lost her standing in relation to her peers and others.

She filed a petition for re-establishment of her rank in this regard, but it was denied on the grounds that she "had shown her reluctance to adhere to the specialised course" required to keep her job. Due to her pregnancy, the applicant requested that her position be reinstated with effect from the date she was unable to enroll in the first (SICC) restricted time course. In addition, she

²⁵ Ibid

²⁶ A.K Singh, "Crime Against Women" (D.P.S Publishing House, New Delhi, 1ST ed., 2011)

²⁷ AIR 2014 SC 4525

Right to Sex Selection:**Gender Discrimination: Sex Selective Abortion**

Because one of the primary underpinnings of the Indian majority rule system is uniformity, Article 14 of the Indian Constitution prohibits separation on any grounds and guarantees equality to all people under the constant gaze of the law. A form of sexual orientation oppression of potential women is sex, specifically the early birth of female embryos based on the sex of the hatchling. Premature birth of female neonates based on sex is thus an explicit breach of the balancing principle. Despite the fact that he had already pushed for perfect equality between men and women in the following terms, "John Stuart Mill," the founder of utilitarianism, would dispute the efficacy of sex selective abortion in the face of personal liberty to abortion.

The legal subordination of one sex to the other, which governs existing social relations between the sexes, is wrong in and of itself, and has become one of the major impediments to human progress; it should be replaced by a principle of perfect equality, which acknowledges no power or privilege on one side, nor disability on the other³².

When a female infant is aborted solely because of her gender, however, it is a violation of the concept of equality. As a result, many would-be mothers were denied the chance to become mothers.

CONCLUSION

There is no clear provision in the Indian constitution prohibiting intercourse selective abortion. The Supreme Court and the High Courts have upheld the validity of the "Pre-concept and Prenatal Diagnostic Techniques Act, 1994," as well as the "Medical Termination of Pregnancy Act, 1971," in order to prevent the harm of intercourse selective abortion and to protect your intercourse choice before the level of theory, and has issued a number of directives to the relevant government, kingdom governments, and union territories to ensure strict adherence to the implementation. Similarly, the Supreme Court and Courts of Appeal have broadened the reach of "Article 21" to include the right to reproductive desire in a larger sense of life and personal liberty. Despite the expecting mothers' wishes to carry the pregnancy to term, the

³² J.S. Mill, *The Subjection of Women* 427, (Oxford University Press 1912).

courts upheld the right of the pregnant girls. Female feticide is also a violation of the equality article of the Indian constitution.



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