
**DR.AMBEDKAR GOVT LAW COLLEGE MOOT COURT
SELECTION ROUNDS, 2016**

BEFORE THE HON'BLE SUPREME COURT OF INDIA

S.L.P. No. of 2016

Vone Anonymous

... Petitioner

Vs.

Members of Media and Press

... Respondent

And

W.P. (PIL) No. of 2016

Women's Cause NGO

...Petitioner

Vs.

State of Amangaram

...Respondent

WRITTEN ON BEHALF OF THE PETITIONERS

COUNSEL FOR THE PETITIONERS

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LIST OF ABBREVIATIONS

AIR	All India Reporter
Art	Article
Del	Delhi High Court
Ed.	Edition
HC	High court
IT Act	Information Technology Act
Mad	Madras
NBA	News Broadcasters Association
P.	Page No.
PCI	Press Council Norms
PIL	Public Interest Litigation
SLP	Special Leave Petition
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
Sec.	Section
V.	Versus
U/a	Under Article
UOI	Union of India

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- ❖ Balakrishna V Rmaswami (1965) AIR 195 (SC)]
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- ❖ Railway vs. Union of India) AIR 1981 SC 298
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- ❖ Council for Environment Legal Action v. Union of India (1996) 5 SCC 281
- ❖ Budhadev Karmaskar v. State of West Bengal(2013) 1 SCC 294
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- ❖ Offences Against Women v.State of U.P. (2013) 83 ALLCC 559

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- ❖ *M/s J. Mohapartra & Co. v. Orissa*, AIR 1984, SC 1572
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- ❖ *Bhartiya Janta Party v. State of West Bengal* AIR 2013 Cal. 215
- ❖ *L. Chandra Kumar v. Union of India*, AIR 1997 sc 1125
- ❖ *Kharak Singh v. State of UP* AIR 1963 SC 1295
- ❖ *Unni Krishna v. State of A.P* A.I.R. 1993 SC 2178
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STATEMENT OF JURISDICTION

▪ **Regarding the matter of SLP filed by Vone Anonymous**

The Hon'ble Supreme Court of India has the jurisdiction to entertain the matter, since the Memorandum for the Petitioner *Vone Anonymous* is filed under Article 136 (**Special Leave Petition**) of the Constitution of India, 1950.

Article 136 of the Constitution of India, 1950.

Special leave to appeal by the Supreme Court-

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, and sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

▪ **Regarding the matter of PIL filed by Women's cause NGO**

The Hon'ble Supreme Court has the jurisdiction in the matter of **Public Interest Litigation** filed by Women's cause NGO concerning the women's interest and right to privacy

Article 32 of the Constitution of India which reads as follows:

“32. Remedies for enforcement of rights conferred by this Part

(1)The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2)The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

SUMMARY OF FACTS

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- ✓ The State of Amaragram is one of the States of Union of India, carved through the State Re-organisation Act of 1956. *Joker Party of India* (“*Joker*” or “*JPI*”) is a National Party and historically the largest party in the state of Amaragram. Mannar Mannan, Ponoonjal (social activist) and their likeminded friends were unhappy about status quo prevailing in the State and inaction on the part of the Government headed by JPI and decided to contest the state assembly elections in 2015 under the banner *Peoples Party of Amaragram* (“*PPP*”) And they emerged with a resounding majority and Mannar Mannan became the Chief Minister.
- ✓ Though the PPP of Amaragram had more than 2/3rd’s majority they struggled to fulfill their pool promises such as women and children safety and investigation into various corruption scandals. Minister Bala Murugan landed in sex scandal when a video containing the Minister and two other women in a compromising position was published in social networking site and later the video went viral and the same was aired in televisions and photos of the women and the Minister was published in few newspapers.
- ✓ Aggrieved by this *Vone Anonymous*, one of the women concerned in the scandal, questioned the credibility of the Video and lodged a complaint which was refused to register, therefore she filed Writ before the High Court seeking action against the Media which published her photos and against the State for not fulfilling their promise in ensuring women safety and not recognizing her right to privacy. The same Writ was dismissed both in High Court and in Intra-Court Appeal on merits. Thereafter, further she files a SLP before the SC as her rights to privacy is infringed by publishing her photos in newspaper and viral videos of her on the social networking site.
- ✓ At this stage, a NGO Women’s Cause run by the former Chief Minister Tmt.Isai, considering the Public Importance, files a Public Interest Litigation (PIL) before Supreme Court to take action against the State, the Chief Minister and the suspended Minister for outraging the modesty of women and failing to protect the interests of Women in the State. This matter was ordered to be tagged along with the Special Leave Petition filed by *Vone Anonymous* and posted before this Hon’ble Constitutional Bench of SC.

QUESTIONS PRESENTED

- (i) Maintainability of the SLP and writ which was dismissed by HC, claiming relief against Companies incorporated under the Companies Act 1956.
- (ii) Maintainability of PIL filed by Women's Cause
- (iii) Scope of Right to Privacy as a part of Fundamental Right
- (iv) Right to freedom of speech and Expression or Right to Privacy, which one would prevail?
- (v) Whether Criminal Proceedings should be initiated against the Media Outlets and the individuals concerned?

SUMMARY OF PLEADINGS

1. The special leave petition filed by the *Vone Anonymous* is maintainable.

- It is humbly submitted that the present special leave petition is maintainable under Article 136 of the Constitution of India. Article 136 is the residuary power of Supreme Court to do justice, where the court is satisfied that there is injustice. The jurisdiction of Supreme Court can always be invoked when a question of a law of general public importance arises.
- In the present case, the impugned order of the HC was mechanically upheld without application of mind and hence, the order is perverse in law.
- In the case at hand, a finding of facts may arise a substantial question of law and therefore the Supreme Court is not precluded from entertaining into the question of facts. Article 136 of our Constitutional uses ‘in any causes or matter’. This gives widest power to this court to deal with any cause or matter, even if it involves question of facts.

2. Public Interest Litigation filed by Women's Cause is maintainable.

- It is humbly submitted before this Hon’ble court that the PIL filed is of bonafide interest by Women’s Cause NGO without any ugly personal interest on this matter.
- Moreover being an NGO truly concerned of the women in general in the country, they have the locus standi to file the PIL . Therefore the PIL filed is maintainable.

3. Scope of Right to Privacy as a part of Fundamental Right

- Right to Privacy being an integral part of Art 21 of the Constitution has the scope as a part of Fundamental Right.

- Even of world conventions , a provision for right to privacy has been recognised universally. Art 12 of Universal Declaration of Human Rights, Art 17 of International Covenant of Civil and Political Rights and Art 8 of European Convention on Human Rights are of rights of privacy.

4. Right to Privacy will prevail over Right to freedom of speech and Expression

- To the resolution the conflicts between freedom of expression and privacy is to be focused on the nature of the publication in which the offending expression has appeared. Here the nature of the publication is offensive and thereby right to privacy only will prevail over the freedom of speech and expression.

5. Criminal Proceedings can be initiated against the Media Outlets and the individuals concerned

- Various provisions under Indecent Representation Of Women (Prohibition) Act, 1986, The Information Technology Act, 2000 such as Section 67A in The Information Technology Act, 2000 and Section 66E of IT Act– Punishment for violation of privacy, Defamation and Section 509 of IPC 1860
- Moreover in Press Council Of India Act 1978 provide Guideline to 6 (i) Right to Privacy, Norm if Journalistic Conduct, PCI

PLEADINGS ADVANCED

**I. THE SPECIAL LEAVE PETITION FILED BY THE VONE ANONYMOUS IS
MAINTAINABLE**

It is humbly submitted that the exercise of Jurisdiction of special leave petition under **Article 136 consist of two steps i.e.1) granting special leave to appeal, 2) hearing the appeals.** It is submitted that the Article 136 can be invoked only when a question of General Public Importance arise, when a substantial question of law arises and when the grave injustice has been occurred Media by publishing the women photos and videos in social networking sites and few newspapers has invaded her right to privacy. It has clearly infringed the right of privacy of the women concerned and grave injustice has taken place by repairing her reputation which is promised by the Constitution.

[1.1] THE JURISDICTION OF SUPREME COURT UNDER ARTICLE 136 CAN ALWAYS BE INVOKED WHEN A QUESTION OF LAW OF GENERAL PUBLIC IMPORTANCE ARISES

It is humbly submitted that the special leave petition filed by the Petitioner against the order of Hon'ble High Court of Amangaram [hereinafter referred as HC] is maintainable under Article 136 of the Constitution of India. It is contended that the jurisdiction of Supreme Court under Article 136 can always be invoked when a question of law of general public importance arises and even question of fact can be a subject matter of judicial review under Art.136. The present issue involves the substantial question of law and the High Court has erred and passed orders without application of mind.

In the present case, viral video of the Petitioner with the Minister Bala Murugan in a compromising position was released in social networking site and screenshots of the video was aired by televisions and the photos of the women was also published in few newspapers which absolutely invaded her right to privacy. The High Court has erred in dismissing the Writ petition filed by *Vone Anonymous* without application of mind regarding the credibility of the video and

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reputation of the women concerned. Hence, the order of the High Court is prejudice to the number of women and the importance of general public is implicated at large.

The principle is that this court would never do injustice nor allow injustice being perpetrated for the sake of upholding technicalities¹. In any case, special leave would be granted from a second appellant decision only where the judgment raises issues of law of general public importance.²

It has been held that this court will not grant special leave petition, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.³

It is also humbly submitted that unless the special leave petition is maintainable, the Petitioner herein would be put into great irreparable loss and hardship.

Hence, considering the nature of this petition and all the above authorities, it is humbly submitted before this court that the matter involves question of law of general public importance as it has infringed the fundamental right to privacy of the Constitution and therefore, the appeal is maintainable under article 136 of the constitution of India.

[1.2] THE ARTICLE 136 OF CONSTITUTION CAN ALWAYS BE INVOKED WHEN A SUBSTANTIAL QUESTION OF LAW ARISES

It is submitted that the substantial question of law in this present issue consists the findings of the High Court has failed to consider the credibility of the video and the media by publishing the photos has invaded the right to privacy of the women concerned.

¹ Janshed Hormusji Wadia V Board of Trustees, Port of Mumbai (2004)3 SCC 214 (SC).

² Balakrishna V Rmaswami (1965) AIR 195 (SC)]

³ Pritam Singh V State AIR 1950 SC 169, 171

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Where findings are entered without considering relevant materials and without following proper legal procedure, SC interference is called for⁴. A Constitution Bench of this Case⁵, while explaining the import of the said expression, observed that: “13. *The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views.*”

Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lies between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties.

Even where there is an enunciation of law by Supreme Court or the concerned High Court and the same has been followed by the lower Court, if the appellant is able to persuade the High Court that the enunciated legal position needs reconsideration, alteration, modification or clarification or that there is a need to resolve an apparent conflict between two view points, it can be said that a substantial question of law arises for consideration.⁶

[1.2.A] FINDING OF FACTS MAY GIVE RISE TO SUBSTANTIAL QUESTION OF LAW.

It is also humbly submitted that the present facts are not coincided with the alleged offences. The High Court has failed to consider the facts of this case. It will, therefore, depend on the facts

⁴ Dale & Carrington Invt. Ltd. V P.K. Prathapan (2005) 1 SCC 212(SC)

⁵ Sir Chunilal Mehta and Sons, Ltd. V Century Spinning and Manufacturing Co. Ltd. (1962) AIR 1314(SC)

⁶ State Bank of India and Ors. Vs. S.N. Goyal_ SCC 2008

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and circumstance of each case whether a question of law is a substantial one and involved in the case.⁷

A finding of facts may give rise to a substantial question of law, inter alia, in the event the findings are based on no evidence and/or while arriving at the said finding, relevant admissible evidence has not been taken into consideration or inadmissible evidence has been taken into consideration or legal principles have not been applied in appreciating the evidence, or when the evidence has been misread.⁸

Even if we assume that the case doesn't involve substantial question of law, SC in the exercise of its power conferred under article 136 can entertain the present appeal. Even on the question of fact, wrong question leads to a wrong answer. In such cases, even errors of fact can be the subject matter of judicial review under Art. 136.⁹

It is open to the SC to interfere with the findings of the fact given by the HC, if the HC has acted perversely or otherwise improperly.¹⁰

The SC is not precluded from going into the question of facts under article 136, if it considers it necessary to do so.¹¹

Hence, it is humbly submitted before this Hon'ble SC that the matter involves substantial question of law in upholding the right of privacy against the freedom of speech and expression, hence entitled to be maintainable.

⁷ ibid

⁸ MadanLal V Mst. Gopi and Anr (1980) 4 SCC 255(SC); see also Narendra Gopal Vidyarthi V Rajat Vidyarthi (2009) 3 SCC 287(SC); see also Commissioner of Customs (Preventive) V. Vijay Dasharath Patel (2007) 4 SCC 118(SC); see also Metroark Ltd. v Commissioner of Central Excise, Calcutta (2004) 12 SCC 505(SC); see also West Bengal Electricity Regulatory Commission v. CESC Ltd. (2002) 8 SCC 715(SC).

⁹ Cholan Roadways Ltd. V G. Thirugnanasambandam (2005) AIR 570 (SC)

¹⁰ Ganga Kumar Srivastava V State of Bihar (2005) 6 SCC 211(SC)

¹¹ Kathi Raning Rawat V The State of Saurashtra (1952) AIR 991 (All), see also Achyut Adhicary V West Bengal (1963) AIR1039 (SC)

**II.PUBLIC INTEREST LITIGATION FILED BY WOMEN'S CAUSE IS
MAINTAINABLE**

It is humbly submitted before this Hon'ble Court that PIL¹² filed by the Women's cause NGO is of bonafide nature and only with the intention of public interest of the women concerned. Therefore, the PIL is maintainable before this Hon'ble court.

According to Black's law dictionary "Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected." Traditional rule was that the right to move the Supreme Court is only available to those whose fundamental rights are infringed.

PIL is a strategic arm of the legal aid movement which intended to bring justice.¹³ Moreover in a SC case¹⁴ where the court held that PIL can be filed by any member of public having sufficient interest for public injury arising from violation of legal rights so as to get judicial redress. This is absolutely necessary for maintaining Rule of law and accelerating the balance between law and justice. PIL is a part of the process of participate justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps¹⁵.

[2.1] BONAFIDE INTEREST

Generally PIL that is filed should be aimed at the redressal of genuine public works or public injury¹⁶. PIL filed by the women's cause NGO is truly based on the bonafide intention in promoting the women's safety in the Country.

¹² Mumbai Kamagar Sabha vs. Abdul Thai AIR 1976 SC 1455; 1976 (3) SCC 832 and Railway vs. Union of India) AIR 1981 SC 298

¹³ State V. Union Of India AIR 1996 Cal 181 at 218

¹⁴ Judges Transfer Case AIR 1982, SC 149

¹⁵ Peoples Union for Democratic Rights v. Union of India (A.I.R.. 1982 , S C 1473)

¹⁶ R & M Trust v. karamangla R.V.Group , AIR 2005 SC563

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Regarding the objective of PIL is expressed by SCC as *“When a petition is filed as a public litigation ... the Court must satisfy itself that the party which has brought the litigation is litigating bona fide for public good. The public interest litigation should not be merely a cloak for attaining private ends of a third party or of the party bringing the petition ... Even when a public interest litigation is entertained, the Court must be careful to weigh conflicting public interest before intervening.”*¹⁷

Moreover the strategy of public interest litigation has been evolved by Indian courts with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.¹⁸ And now it permits Public Interest Litigation or Social Interest Litigation at the instance of "Public spirited citizens"¹⁹ for the enforcement of constitutional & legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief.

In the light of the facts of the present case, it'll be difficult for each and every women to address the issue to the court. Therefore, being an NGO truly based for Women's cause, it is justified that they have no ugly personal interest in the present litigation.

[2.2] LOCUS STANDI

It is prayed before this Hon'ble court is that the PIL filed by the women's cause NGO has locus standi²⁰ in filing for safeguarding the interests of women in general. In such a case the PIL is maintainable before this Hon'ble court.

Various NGO's²¹ has filed PILs relating to offences against women²² and nature and environmental issues concerned. Adding to this, "the law with respect to locus standi has considerably advanced" and "in the case of public interest litigation it is not necessary that a

¹⁷ Raunaq International Ltd.v. I.V.R. Construction Ltd(1999) 1 SCC 492

¹⁸ Bihar Legal Support Society v.The Chief Justice of India & Ors AIR 1987 SC 38

¹⁹ Peoples Union for Democratic Rights v. Union of India (A.I.R.. 1982 , S C 1473).

²⁰ Fertilizer Corporation Kamgar vs. Union of India AIR 1981 SC 149; 1981 (2) SCR 52

²¹ Council for Environment Legal Action v. Union of India (1996) 5 SCC 281

²² Budhadev Karmaskar v. State of West Bengal(2013) 1 SCC 294 , Laxmi v.Union of India (2013) 9 SCALE 290 and Offences Against Women v.State of U.P. (2013) 83 ALLCC 559

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petitioner should himself have a personal interest in the matter.”²³Therefore here even though the NGO has not been affected, i.e. the litigating party directly. It is of the opinion that it holds locus standi as it of public interest in general.

Any member of the public having sufficient interest can maintain an action for judicial redress for public inquiry arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision.²⁴ If public duties are to be enforced and social collective “diffused” rights and interest are to be protected, we have to utilize the initiative and zeal of public minded persons and organizations by allowing them to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights²⁵In light of changing awareness of legal rights and social obligations to take a broader view of the question of the locus to initiate a proceeding.²⁶

In order to initiate PIL there must be a injury arisen because of breach of public duty or violation of the Constitution or of the law, It must seek enforcement of such public duty and observance of the constitutional law or legal provisions. The injury here is that the state govt has failed to fulfil the women’s safety and did not meet the election manifesto as promised in election.

Any attempt to curb the PIL through legislative measures to strifle the voice of justice, would be betrayal of the Constitution and the people of India. It would not only retard the assertion of vindication of citizens fundamental rights, but also put a subtle clog on the court’s power of judicial review, an integral and essential feature, the basic structure of the Constitution.²⁷

Therefore it is pertinent to note that the litigant having the locus standi and of bonafide public interest, it is prayed before this Hon’ble court to allow the petition.

²³ M/s J. Mohapartra & Co. v. Orissa, AIR 1984, SC 1572

²⁴ S.P. Gupta and others vs. Union of India AIR 1982 SC 149

²⁵ S .P. Gupta v. President of India and Others ibid

²⁶ Bhartiya Janta Party v. State of West Bengal AIR 2013 Cal. 215

²⁷ L. Chandra Kumar v. Union of India, AIR 1997 sc 1125

III.SCOPE OF RIGHT TO PRIVACY AS A PART OF FUNDAMENTAL RIGHT

Meaning of privacy is “right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned”.

As regards to Art 21 of the Constitution of India states that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”. After reading the Art 21, it has been interpreted that the term ‘life’ includes all those aspects of life which go to make a man’s life meaningful, complete and worth living. Right to privacy is equated to personal liberty.²⁸

[3.1] ARTICLE 21 BEING THE HEART OF FUNDAMENTAL RIGHTS

The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and decent environment. The expanded scope of Article 21 has been explained by the Apex Court in the case of *Unni Krishnan v. State of A.P*²⁹ and the Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are listed below:

- (1) The right to go abroad.
- (2) The right to privacy.
- (3) The right against solitary confinement.
- (4) The right against hand cuffing.
- (5) The right against delayed execution.
- (6) The right to shelter.

²⁸ Kharak Singh v. State of UP AIR 1963 SC 1295

²⁹ A.I.R. 1993 SC 2178

- (7) The right against custodial death.
- (8) The right against public hanging.
- (9) Doctors assistance

Moreover it was observed that Art21 is the heart of Fundamental Rights and it has extended the Scope of Art 21 by observing that the life includes the education as well as, as the right to education flows from the right to life

[3.2] RIGHT TO PRIVACY AN INTEGRAL PART OF ART 21 OF THE CONSTITUTION

SC observed a very wide ambit to the right of personal liberty. “Privacy is at the core of our vital needs. Privacy leads to fulfillment of our goals, enrichment of ourselves and our growth. The need for privacy distinguishes humans from other animals. It is a fundamental right.” Moreover, a triple test was laid down in this case. Triple Test for any law interfering with personal liberty: (1) It must prescribe a procedure; (2) the procedure must withstand the test of one or more of the fundamental rights conferred u/a 19 which may be applicable in a given situation and (3) It must withstand test of Art 14. The law and procedure authorising interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.³⁰

Earlier right to privacy was recognized as “implicit” in the right to life and liberty – guaranteed by Article 21 of the constitution. the right to privacy is a fundamental right enforceable against state. Further, the right to privacy could also be extended against private persons through the law of torts (torts are law dealing with ‘civil wrongs’). In addition to this further it held that publication of any information without the consent of the person would be violation of Article 21. The only exception is when the information is based on public records. SC further said “A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education, among other matters.”³¹

³⁰ Smt. Maneka Gandhi v. Union of India & Anr., (1978) AIR 597, 1978 SCR (2) 621

³¹ R.Rajagopal v. State of Tamil Nadu (1994). SCC (6) 632 JT 1994 (6) 514 1994

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In another case ³², the SC, while laying down the standards for telephone tapping had observed that the right to privacy is an integral part of the fundamental right to life enshrined under Article 21 of the Constitution. So the SC has liberally interpreted Article 21 so as to ensure an individual a dignified and meaningful life. Pertinently noting that our constitution is a living document which evolves and grows with the changing needs of society. Therefore even if it is not incorporated as a Fundamental Right then also its an inferred right under art 21 and subject to reasonable restrictions on the basis of public interest³³.

In this case³⁴ SC 7 Judge Bench said ‘personal liberty’ in article 21 covers a variety of rights & some have status of fundamental rights and given additional protection u/a 19. Triple Test for any law interfering with personal liberty: (1) It must prescribe a procedure; (2) the procedure must withstand the test of one or more of the fundamental rights conferred u/a 19 which may be applicable in a given situation and (3) It must withstand test of Art 14. The law and procedure authorising interference with personal liberty and right of privacy must also be right just and fair and not arbitrary, fanciful or oppressive.

Right to privacy is an integral part of right to life, a cherished constitutional value and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner.³⁵ Court shall protect right to privacy of individual only in accordance with constitutional privileges.³⁶

Therefore, in light of the precedents cited it is evident that the right to privacy forms an integral part of the fundamental right under art 21 of the Indian constitution.

³² P.U.C.L. v. Union of India(2013) 10 SCC 1

³³ (Govinda Vs State of Madhya Pradesh 1975) AIR 1378, 1975 SCR (3) 946

³⁵ Ram Jethmalani and Ors.Vs. Union of India (UOI) and Ors.35 MANU/SC/0711/2011.

³⁶ Amar Singh Vs. Union of India (UOI) and Ors.36 MANU/SC/0596/2011.

[3.3] INTERNATIONAL CONCEPTS OF PRIVACY

Regardless of national recognition, Right to privacy has been recognised in various world statutes. Following are the articles of world recognition regarding right to privacy.

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 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.”

Henceforth, it humbly submitted before this hon’ble court that right to privacy is regarded as Fundamental right enshrined u/a 21 of the constitution.

**IV. RIGHT TO PRIVACY WILL PREVAIL OVER RIGHT TO FREEDOM OF SPEECH
AND EXPRESSION**

It is humbly submitted before this Hon'ble court that right to privacy will prevail over the right to freedom of speech and expression as it counts on basis of breach of confidentiality and fundamental existence of a living being.

[4.1] TEST OF PUBLIC MORALITY OR FACT THAT PREVAILS

Any right derived from Art 19 can be derived from Art 21 too, under the wide interpretation of 'personal liberty'. Though the Court generally applies the test of 'public interest' or 'public morality' in case of conflict between two derived rights, another interpretation is also possible. A right derived under Art 21 is superior to a right derived under Art 19, since the state enacting law in contravention of such right can be saved under the reasonable restrictions under 19(2) to (5).

The concept of privacy rests on the promise that "a certain private sphere of individual liberty will be kept largely beyond the reach of Government"³⁷ and it embodies the acceptance of the "moral fact that a person belongs to himself and not to others nor to society as a whole".

[4.2] BREACH OF CONFIDENTIALITY

To the resolution the conflicts between freedom of expression and privacy is to be focused on the nature of the publication in which the offending expression has appeared. Is the publication a tabloid, or is it might have indicated to very astute observer where the Narcotics Anonymous meeting was held, constituted a breach of the expanded notion of what it is for information to be confidential; but publication without the photograph would not amount to such a breach of

³⁷ Thornburgh v. American College of Obstetricians & Gynecologists, 476 US 747, 772 (1986)

confidence. That seems a rather odd distinction if the essence of the tort is breach of confidence.³⁸

English case³⁹, although the identity of the parties was concealed, a law journal which first reported the judgment disclosed the names of the parties. This was subsequently rectified by the publication of an apology and the rectification of names. But the damage to the privacy of those concerned had already been done., While recognizing the public interest in having a free press and informed public debate, the Court took the view that this was outweighed by the public interest that victims should be able to resort to hospitals without fear of disclosure and breach of confidence by employees of the hospital. The Court felt that a **breach of confidentiality** would make patients reluctant to come forward for treatment and counselling and this, in turn, would lead to a spread of the disease, which was contrary to public interest.

But whereas in the present case, the victim's photo and video was published in few newspapers and aired in televisions. This proves to be a breach of confidentiality and against the code of ethics of media and press. Here, it has failed to satisfy the weigh of public interest in order to publish the women's photograph.

V. CRIMINAL PROCEEDINGS CAN BE INITIATED AGAINST THE MEDIA OUTLETS AND THE INDIVIDUALS CONCERNED

In common law, a private action for damages for unlawful invasion of privacy is maintainable. The printer and publisher of a journal, magazine or book are liable in damages if they publish any matter concerning the private life of the individual⁴⁰ without such person's consent. There are two exceptions to this rule: first, that the right to privacy does not survive once the publication is a matter of public record and, second, when the publication relates to the discharge

³⁸ Lord Hoffman thought so . Id. At Page 76-77

³⁹ X v. Y39 (1988) 2 All ER 648

⁴⁰ This would include his family, marriage, procreation, motherhood, child-bearing, education etc

of the official duties of a public servant, an action is not maintainable unless the publication is proved to be false, malicious or is in reckless disregard for truth.

The right to privacy in India has derived itself from essentially two sources: the common law of torts and the constitutional law .Criminal proceedings can be initiated against the Media outlets and individual concerned by using following provisions of law.

[5.1]UNDER INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

Section 3 of the Act prohibits publishing or causing to public or arrange or take part in the publication of exhibition of any advertisement which contains indecent representation of women.

Section 4 if the Act prohibits production, causing to be produced, selling, distribution circulation or sending by post any book pamphlet, paper, slide, film, writing, drawing, painting, photographic representation which contains indecent representation.

Section 6 of the Act provides for penalty as follows. —any person who contravenes the provision of Sec. 3 or section 4of the act shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years and two thousand rupees and on subsequent conviction for a term not less than six months but which may extend to five years and with a fine not less than ten thousand rupees extending to one lakh rupees.

In the case of offence is committed by the company, provisions are made in section 7 of the Act According to section 7 —every person who at the time offence was committed, was in charge of, and was responsible to, the company, shall be deemed to be guilty of the offences and liable to be proceeded against and punished accordingly but any such person if he proves that offence was committed without his knowledge or that he had exercised the diligence to prevent it shall not be liable.

[5.2]THE INFORMATION TECHNOLOGY ACT, 2000

Section 67A in The Information Technology Act, 2000

67A Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Section 66E of IT Act– Punishment for violation of privacy⁴¹⁴²

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both

Section 67 – Punishment for publishing or transmitting obscene material in electronic form

Punishment for publishing or transmitting obscene material in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with

⁴¹ Jawaharlal Nehru University MMS scandal

⁴² Nagpur Congress leader's son MMS scandal

imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Section 67B – Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form⁴³

[5.3]INDIAN PENAL CODE 1860

509 IPC Word, gesture or act intended to insult the modesty of a woman

Section 228a of IPC: Disclosure of the identity of victims of certain offences

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D 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.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim: Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation. Explanation.—For the purposes of this sub-

⁴³ Janhit Manch & Ors. v. The Union of India

section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

This enables Disclosure of the identities of rape victims is prohibited by law. Images of rape victims as well as images and videos of rape are sometimes published on the Internet to silence victims and intimidate other women – this is not legal.

Section 499 of IPC: Defamation reads as follows

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person. Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives. Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such. Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation. Explanation 4.—No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful. Illustrations

That is harming the reputation of a person through words, signs, or visible representations is defamation and the punishment for Defamation is given under section 500 :-Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

[5.4] PRESS COUNCIL OF INDIA ACT 1978

If personal information divulged by the media does not shed light on the performance of a public official, which would be of public interest, then the information revealed violates the standards of privacy. Personal details which have no bearing on public resources or interests should not be published.

The PCI Norms reiterate that the media should not intrude "the privacy of an individual, unless outweighed by genuine overriding public interest, not being a prurient or morbid curiosity. **Guideline 6 (i) Right to Privacy, Norm if Journalistic Conduct, PCI.** The well accepted rule, however, is that once a matter or information comes in the public domain, it no longer falls within the sphere of the private. The media has failed to make the distinction between what is warranted invasion of privacy and what constitutes as an unwarranted invasion of privacy. For instance, identity of a rape or kidnap victim that would further cause discrimination is often revealed by the media.

The newspaper said that Sections 13 (2) (c), 14 (1) and 14 (2) of the Press Council of India Act empowers the Council to impose serious checks on the newspaper, news agency, editor or journalist who flouts the norms it has formulated and is against societal norms of decency.

Section 5 of the Cable Television Networks (Regulation) Act, 1995 and the Cable Television Network Rules (hereafter the Cable Television Networks Act), stipulates that no programme can be transmitted or retransmitted on any cable service which contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths. The Rules prescribes a programming code to be followed by channels responsible for transmission/re-transmission of any programme.

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The programme code restricts airing of programmes that offend decency or good taste, incite violence, contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half truths, criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country and affects the integrity of India, the President and the judiciary. The programme code provided by the Rules is exhaustive. The Act empowers the government to restrict operation of any cable network it thinks is necessary or expedient to do so in public interest. The court observed that false and fabricated sting operations violate a person's right to privacy

In addition, to the Cable Television Networks Act and the PCI norms, the News Broadcasting Standard Authority (NBSA) was set up in 2008 as a self-regulatory body by News Broadcasters Association. The primary objective of the NBSA is to receive complaints on broadcasts. The NBSA has drafted a Code of Ethics and Broadcasting Standards governing broadcasters and television journalists. The Code of Ethics provides guiding principles relating to privacy and sting operations that broadcasters should follow.

With respect to privacy, the Code directs channels not to intrude into the private lives of individuals unless there is a "clearly established larger and identifiable public interest for such a broadcast." Any information on private lives of persons should be "warranted in public interest." Similarly, for sting operations, the Code directs that they should be used as "a last resort" by news channels and should be guided by larger public interest. They should be used to gather conclusive evidence of criminality and should not edit/alter visuals to misrepresent truth.

Therefore, it is humbly submitted before this Hon'ble court that the media outlets and as well individual concerned a criminal proceeding can be initiated against . It is concluded that this can be the liability imposed on the media for posting the obscene photos and videos in their television and the unknown person who posted it on the social networking site are liable to be punished with these provisions of law.

PRAYER

In the light of the above, the petitioners pray that this Hon'ble Court may be pleased to

1. Declare the SLP is maintainable and the same to be heard.
2. Declare the PIL filed by the NGO is maintainable.
3. Declare that the scope of right to privacy as a fundamental right is not limited and narrow.
4. Declare that the right to privacy will prevail over the right to freedom of speech and expression and ;
5. Declare that criminal proceedings can be initiated against the Media outlets and individual concerned.

And further pass such orders that may this Hon'ble court deem fit and proper and thus kindly render justice.

For this act of kindness, the Petitioners shall duty bound forever pray.

All of which is humbly submitted,

(Counsel for Petitioners)