

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.2839 of 2018

Surya Vetrikondan

...Petitioner

vs.

1.The State of Tamilnadu,
Represented by its Chief Secretary,
Secretariat, Fort St. George, Chennai-109.

2.The Secretary,
Department of Registration,
Government of Tamilnadu,
Secretariat, Fort St.George, Chennai-109.

3.The Union of India,
Represented by its Chief Secretary,
Raisina Hill, New Delhi.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents to consider the representation dated 22.01.2018 and make a scheme for registering all marriages conducted so far and hereinafter and also to record and catalogue the same and also issue declare that a medical certificate of fitness is compulsory for all prospective registrations.

For Petitioner : Ms.R.Revathi
for M/s.Black N Red Law Asson.

For R1 & R2 : Mr.T.N.Rajagopalan
Government Pleader.

For R3 : Mr.S.Sathish Rajan
Central Govt. Standing Counsel.

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

The present writ petition is for a writ of mandamus directing the respondent state to make a scheme for registering all the marriages conducted so far and

hereinafter, to record and catalogue the same, and also to declare their medical certificate of fitness as compulsory, for all the prospective registrations.

2. The petitioner is a lawyer. He has given a representation dated 22.01.2018, to the Chief Secretary, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai, relevant portion of the representation read as under:-

"2. The courts have often come to the rescue of the innocent victims of marriage in other guises also. For example a man could set up a separate household for his concubine, would have even married her without the knowledge of his wife, to the detriment of both. Even after years of living together and begetting children men could easily wriggle out of the marital obligations under the defense that the marriage is not legal, taking advantage of his own illegal action. However the Supreme Court and the High Courts justified the rights of illegitimate children over the father's estate and also approved "live-in" relationships as being eligible for maintenance. The Hon'ble Supreme Court also has given directions with regard to uniform civil code. There are so many occasions when the courts came to the rescue of helpless women who underwent untold misery and established their rights. One such directions was a directive to form guidelines and make registration of marriages compulsory, whatever be the personal law. I submit that though the Tamilnadu Registration of Marriages Act 2009 was enacted it did not make registration mandatory. Section 23 therein provides that no marriage would be considered invalid on the ground that it had not been registered under the Act.

3. I submit that it is time that a scheme of regularization be brought in to register all marriages and have a database of the same. Just like how conveyances and property related transactions are catalogued and made available upon search, marriage details should also be made available upon application for the same. Similarly there should be an adjudication system for condoning delays in registration and also for resolving disputes.

4. I submit that apart from this time has now evolved for checking another crime which is now prevalently the major reason for divorces viz. the medical fitness or the existence of a contagious disease in the spouse. While the parents of boy or girl venture to check about the background, character, the number of sister or brother to the groom and the presence or absence of in-laws, and most of the families look for the harmony in horoscopes but fail

to check about the physical fitness of the groom and bribe. This kind of handicap is often not found until a person is married and gets acquainted with the partner and in worst cases, after being victim of the contagious disease themselves. I therefore submit that a medical fitness certificate from a recognized physician ought to be made a precondition for a valid marriage.

5. As the popular saying goes, "Necessity is the mother of all inventions." As novel and new crimes are invented, new laws and rules come into force to curb the crimes. Therefore registration of marriages along with a medical fitness certificate should be made mandatory to make any marriage valid. Courts are being liberal when rights are denied on the ground that the marriage is not registered which is of course a welcome gesture. Even recently the Madurai Bench of this Hon'ble Court has held that registration of a inter religious marriage is not mandatory. However to regulate the entire system like how an Aadhar card is the single unit record of an individual's identity a marriage database of all marriages is also necessary so that prospective brides and grooms can look upto the same before consent to marriage and to ensure that their 'would be partner' is not already married. A certificate of medical fitness would put an end to all anxiety about health related issues which may crop up later."

3. The writ petition has been filed for the reason that, the representation of the petitioner, has not been considered. The writ petition is nothing but a reproduction of the representation.

4. The prayer of the writ petitioner can be broken into two parts. The first part of the prayer is for making a scheme for registering all the marriages conducted so far and hereinafter. The second part of the prayer is for a direction to declare that a medical certificate of fitness is compulsory for all the prospective registrations.

5. Laws relating to the Marriage of a Hindu, Christian and Parsi are codified under the Hindu Marriage Act, 1955 the Indian Christian Marriage Act, 1872, the Parsi Marriage & Divorce Act, 1936 respectively. Law of Marriage relating to Jews & Muslims are not codified.

6. The prayer sought for by the petitioner will apply all the marriages, irrespective of the religion. The Hindu Marriage Act, 1955, which applies to Hindu, Buddhist, Jains or Sikhs does not make registration of marriages compulsory. The registration of marriages under Hindu Marriage Act, 1955, is governed by Section 8 of the Act. Section 8 of the Hindu Marriage Act, 1955, reads as under:-

"8. Registration of Hindu Marriages.- (1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such condition as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified and where any such direction has been issued, and person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."

7. Section 8 of the Hindu Marriage Act, 1955, therefore makes registration of marriage only optional.

8. Sections 30, 31 and 33 of the Indian Christian Marriage Act, 1872, which deal with registration of marriage under the Christian Marriage Act, 1872 reads as under:-

"30. Registration and returns of marriages solemnized by Clergymen of Church of Rome - Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the [Registrar General of Births, Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding.

31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland- Every Clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the [Registrar General of Births, Deaths and Marriages], through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

33. Entries of such marriages to be signed and attested- The entry of such marriage in both the certificate and marriage register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register-book."

9. There is no provision under the Indian Christian Marriage Act, 1872, which makes it obligatory that the party to such marriage, should have the particulars relating to the marriage entered into, in a register maintained by a authority specified in the Act. The Act does not give power to the State Government to make rules providing that the parties to such marriage should have the particulars / details of the marriage to be entered in the marriage register to be maintained by the State for that purpose.

10. Marriages of Parsis are governed by the Parsi Marriage and Divorce Act, 1936. Section 6 of the Parsi Marriage and Divorce Act, 1936, provides for registration of marriages under the Parsi Marriage Act. Section 6 of the Act, is extracted hereunder:-

"6. Certificate and Registry of Marriage Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee."

Under the Parsi Marriage Act, the priest issues a certificate which is signed by the parties and two witnesses to the marriage and the priest sends the certificate to the Registrar approved under the Act for registration.

11. As stated earlier, there is no codified law, regulating / governing the marriages of Muslim and Jews. Apart from this personal law, Special Marriage Act 1954 has been enacted for marriages to be solemnized under the Special Marriage Act, between individuals belonging to different religions. Sections 15 and 16 of the Special Marriage Act, 1954, governs the provisions of registration for marriages under the Special Marriage Act. They read as under:-

"15. Registration of marriages celebrated in other forms.- Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:-

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration;

(d) the parties have completed the age of twenty-one year at the time of registration;

(e) the parties are not within the degrees of prohibited relationship: Provided that, in case of a marriage celebrated before the

commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage."

"16. Procedure for registration.- Upon receipt of an application signed by both the parties to the marriage for the registration of their under this chapter, the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in Sec. 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the Form specified in the Fifth Schedule and such certificate shall be signed by the parties to the marriage and by three witnesses."

12. The Court cannot issue a Mandamus to the authorities to keep a register of Marriages, for all the religions.

13. Though the respective enactments governing the marriages for different religions have been made under the powers in list-III of the 7th Schedule of the Constitution of India, it is for the State Government to make appropriate legislation for this purpose. What the petitioner is seeking for, is legislation by the Court which will apply to all the marriages, governed by the respective Acts and also to such marriages, which are not yet codified.

14. It is a well settled proposition of law that the Court can neither legislate nor issue a direction to the legislature to enact legislation, in a particular manner. The Hon'ble Supreme Court in the case of V.K.Naswa vs. Union of India reported in 2012 (2) SCC 542 observed as under:-

"6. It is a settled legal proposition that the court can neither legislate nor issue a direction to the legislature to enact in a particular manner.

7. In Mallikarjuna Rao v. State of A.P. [(1990) 2 SCC 707 : 1990 SCC (L&S) 387 : (1990) 13 ATC 724 : AIR 1990 SC 1251] and V.K. Sood v. Deptt. of Civil Aviation[1993 Supp (3) SCC 9 : 1993 SCC (L&S) 907 : (1993) 25 ATC 68 : AIR 1993 SC 2285] , this Court has held that the writ court, in exercise of its power, under Article 226, has no power even

indirectly to require the executive to exercise its law-making power. The Court observed that it is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. The power under Article 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law-making power in any manner. The courts cannot assume to themselves a supervisory role over the rule-making power of the executive under Article 309 of the Constitution. While deciding the said case, the Court placed reliance on a large number of judgments, particularly *Narinder Chand Hem Raj v. UT, H.P.* [(1971) 2 SCC 747 : AIR 1971 SC 2399], where it has been held that legislative power can be exercised only by the legislature or its delegate and none else.

8. In *State of H.P. v. Parent of a Student of Medical College* [(1985) 3 SCC 169 : AIR 1985 SC 910], this Court deprecated the practice adopted by the courts to issue directions to the legislature to enact a legislation to meet a particular situation observing: (SCC p. 174, para 4) "4. ... The direction given by the Division Bench was really nothing short of an indirect attempt to compel the State Government to initiate legislation with a view to curbing the evil of ragging, for otherwise it is difficult to see why, after the clear and categorical statement by the Chief Secretary on behalf of the State Government that the Government will introduce legislation if found necessary and so advised, the Division Bench should have proceeded to again give the same direction. Thus the Division Bench was clearly not entitled to do. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation."

9. In *Asif Hameed v. State of J&K* [1989 Supp (2) SCC 364 : AIR 1989 SC 1899] this Court while dealing with a case like this at hand observed: (SCC p. 374, para 19)

"19. ... While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not

an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonise qua any matter which under the Constitution lies within the sphere of legislature or executive."

(emphasis added)

10. In *Union of India v. Deoki Nandan Aggarwal* [1992 Supp (1) SCC 323 : 1992 SCC (L&S) 248 : (1992) 19 ATC 219 : AIR 1992 SC 96] , this Court similarly observed: (SCC p. 332, para 14)

"14. ... It is not the duty of the court either to enlarge the scope of the legislation.... The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts."

11. Similarly in *Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : AIR 1999 SC 1351] , this Court held that the court cannot fix a period of limitation, if not fixed by the legislature, as "the courts can admittedly interpret the law and do not make laws". The court cannot interpret the statutory provision in such a manner "which would amount to legislation intentionally left over by the legislature".

12. A similar view has been reiterated by this Court in *Union of India v. Assn. for Democratic Reforms* [(2002) 5 SCC 294 : AIR 2002 SC 2112] observing that the court cannot issue direction to the legislature for amending the Act or Rules. It is for Parliament to amend the Act or Rules. In *District Mining Officer v. Tisco* [(2001) 7 SCC 358] , this Court held that function of the court is only to expound the law and not to legislate.

13. Similarly, in *Supreme Court Employees' Welfare Assn. v. Union of India* [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] , this Court held that the court cannot direct the legislature to enact a particular law for the reason that under the constitutional scheme Parliament exercises sovereign power to enact law and no outside power or authority can issue a particular piece of legislation. (See also *State of J&K v. A.R. Zakki* [1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285 : AIR 1992 SC 1546] .)

14. In *Union of India v. Prakash P. Hinduja* [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314 : AIR 2003 SC 2612] , this Court held that if the court issues a direction which amounts to legislation and is not complied with by the State, it cannot be held that the State has committed the contempt of court for the reason that the order passed by the court was without jurisdiction and it has no competence to issue a direction amounting to legislation.

15. The issue involved herein was considered by this Court in *University of Kerala v. Council of Principals of Colleges* [(2010) 1 SCC 353 : AIR 2010 SC 2532] . The Court elaborately explained the scope of separation of powers of different organs of the State under our Constitution; the validity of judicial legislation and if it is at all permissible, its limits; and the validity of judicial activism and the need for judicial restraint, etc. The Court observed: (SCC p. 361, para 13)

"13. ... '19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and the rules.' [Ed.: As observed in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294, p. 309, para 19.] "

16. In *State of U.P. v. Jeet S. Bisht* [(2007) 6 SCC 586] , this Court held that issuing any such direction may amount to amendment of law which falls exclusively within the domain of the executive/legislature and the court cannot amend the law.

17. In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers* [(2011) 8 SCC 568 : (2011) 2 SCC (L&S) 375] , this Court while dealing with the issue made the observation that in exceptional circumstances where there is inaction by the executive, for whatever reason, the judiciary must step in, in exercise of its constitutional obligations to provide a solution till such time the legislature acts to perform its role by enacting proper legislation to cover the field. (See also *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241 : 1997 SCC (Cri) 932 : AIR 1997 SC 3011] ; *Common Cause v. Union of India* [(2008) 5 SCC 511 : AIR 2008 SC 2116] and *Destruction of Public and Private Properties v. State of A.P.* [(2009) 5 SCC 212 : (2009) 2 SCC (Cri) 629 : AIR 2009 SC 2266])

18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."

15. There are several other judgments of the Hon'ble Supreme Court reiterating the same principle and they are not repeated.

16. The second portion of the prayer, for a declaration that the medical certificate of fitness registration is

compulsory, for all the prospective registration, also cannot be granted. Such an order would be directly opposed to right of privacy.

17. It is now well settled that the right of privacy is enshrined under Article 21 of the Constitution of India, and Court cannot issue a Mandamus, which would encroach upon the fundamental right of an individual. An individual's fundamental right of dignity and privacy, cannot sought to be violated by writ Court.

18. It is well settled that the individual is the focal part of the Constitution of India because it is in realisation of the individual's rights that the collective well being of a community is determined. Right of Privacy is the foundation of all liberty. Individual dignity and privacy are inexplicably linked. Privacy eminently qualifies as an inevitable natural right, intimately connecting two values, whose protection is a matter of Universal and Moral dignity.

19. The Hon'ble Supreme Court in Mr. X vs. Hospital Z, reported in (1998) 8 SCC 296, while dealing with an issue as to whether a doctor could divulge information regarding a patient that he was suffering from HIV, it was observed as under:-

"28. Disclosure of even true private facts has the tenancy to disturb a person's tranquility. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities and as already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right, however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

20. A person cannot be forced to divulge a disease that he is having, in public domain. If a person is forced to give a medical certificate, at the time of registration of his marriage, it will amount to announcing the entire world at large, and against the right of privacy.

21. The Hon'ble Supreme Court in the case of K.S. Puttaswamy vs. Union of India reported in 2017 (10) SCC 1 has observed para 107, 108, 119, 298, 309, 310, 319 as under:-

"107. In Kesavananda Bharati v. State of Kerala [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225] ("Kesavananda Bharati"), Sikri, C.J. noticed that the Preamble is a part of the Constitution. The Preamble emphasises the need to secure to all citizens justice, liberty, equality and fraternity. Together they constitute the

founding faith or the blueprint of values embodied with a sense of permanence in the constitutional document. The Preamble speaks of securing liberty of thought, expression, belief, faith and worship. Fraternity is to be promoted to assure the dignity of the individual. The individual lies at the core of constitutional focus and the ideals of justice, liberty, equality and fraternity animate the vision of securing a dignified existence to the individual. The Preamble envisions a social ordering in which fundamental constitutional values are regarded as indispensable to the pursuit of happiness. Such fundamental values have also found reflection in the foundational document of totalitarian regimes in other parts of the world. What distinguishes India is the adoption of a democratic way of life, founded on the Rule of Law. Democracy accepts differences of perception, acknowledges divergences in ways of life, and respects dissent.

108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).

119. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance.

Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve.

298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to

convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.

309. Formulation of a regime for data protection is a complex exercise which needs to be undertaken by the State after a careful balancing of the requirements of privacy coupled with other values which the protection of data subserves together with the legitimate concerns of the State. One of the chief concerns which the formulation of a data protection regime has to take into account is that while the web is a source of lawful activity—both personal and commercial, concerns of national security intervene since the seamless structure of the web can be exploited by terrorists to wreak havoc and destruction on civilised societies. Cyber attacks can threaten financial systems. Richard A. Posner, in an illuminating article, has observed:

"Privacy is the terrorist's best friend, and the terrorist's privacy has been enhanced by the same technological developments that have both made data mining feasible and elicited vast quantities of personal information from innocents: the internet, with its anonymity, and the secure encryption of digitized data which, when combined with that anonymity, make the internet a powerful tool of

conspiracy. The government has a compelling need to exploit digitization in defense of national security...." [Richard A. Posner, "Privacy, Surveillance, and Law", The University of Chicago Law Review (2008), Vol. 75, at p. 251.]

Posner notes that while "people value their informational privacy", yet "they surrender it at the drop of a hat" by readily sharing personal data in the course of simple daily transactions. The paradox, he observes, can be resolved by noting that as long as people do not expect that the details of their health, intimacies and finances among others will be used to harm them in interaction with other people, they are content to reveal those details when they derive benefits from the revelation. [Richard A. Posner, "Privacy, Surveillance, and Law", The University of Chicago Law Review (2008), Vol. 75, at p. 251.] As long as intelligence personnel can be trusted to use the knowledge gained only for the defence of the nation, "the public will be compensated for the costs of diminished privacy in increased security from terrorist attacks" [Richard A. Posner, "Privacy, Surveillance, and Law", The University of Chicago Law Review (2008), Vol. 75, at p. 251.] . Posner's formulation would indicate that the State does have a legitimate interest when it monitors the web to secure the nation against cyber attacks and the activities of terrorists.

310. While it intervenes to protect legitimate State interests, the State must nevertheless put into place a robust regime that ensures the fulfilment of a threefold requirement. These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Second, the requirement of a need, in terms of a legitimate State aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary State action. The pursuit of a legitimate State aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not reappreciate or second guess the value judgment of

the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary State action because it ensures that the nature and quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the threefold requirement for a valid law arises out of the mutual interdependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms.

318. Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.

319. Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within."

22. It is very strange that the prayer of the petitioner is to give a medical certificate, at the time of registration of marriage, which is after marriage and not before. There is no public interest to compel a person to reveal his ailments, in a medical certificate after the marriage has taken place. The problem which the petitioner highlighting is about non-disclosure of the disease, prior to the marriage, whereas disclosure, which is now sought for, is after the marriage. Dignity of a person cannot be compromised and a person cannot be forced to reveal the details of his health in public domain.

23. The writ petition cannot said to be in public interest. Accordingly, writ petition is dismissed. No Costs.

dm

Sd/-

Assistant Registrar(CS-CCC)

// True Copy//

Sub Assistant Registrar

To

1.The Chief Secretary,
State of Tamilnadu,
Secretariat, Fort St. George, Chennai-109.

2.The Secretary,
Department of Registration,
Government of Tamilnadu,
Secretariat, Fort St.George, Chennai-109.

3.The Union of India,
Represented by its Chief Secretary,
Raisina Hill, New Delhi.

+ 1 CC TO MR.S.SATHISH RAJAN, (CGSC) ADVOCATE SR 62048

+ 1 CC TO THE GOVT. PLEADER, SR 62185

KR/9/10/18

W.P.No.2839 of 2018



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