

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-PIL-160-2024

Reserved on : 09.08.2024

Date of pronouncement : 20.09.2024

Rohit Mehta @ Rohit Mehta Advocate

.....Petitioner

Versus

Punjab and Haryana High Court, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE

HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Krishan Kanha, Advocate,
Mr. Kshitiz Goel, Advocate,
for the petitioner.

Mr. Amit Jhanji, Senior Advocate, with
Mr. Shobit Phutela, Advocate,
Ms. Zaheen Kaur, Advocate,
Mr. Nandita Verma, Advocate,
for the respondents.

SHEEL NAGU, CHIEF JUSTICE

1. The question which arises in the present PIL is the inter-play between two competing fundamental rights, i.e. right to privacy under Article 21 of the Constitution and right to information, which is concomitant of right to freedom of speech and expression.

2. The petitioner challenges the administrative order dated 21.02.2013 (Annexure P-1) of this Court, prohibiting uploading of judgments/orders relating to offences against women, juveniles and all other cases in which the Presiding Officer so orders, on the E-Courts website for public view.



2.1 A further prayer is made for quashment of administrative order dated 26.11.2015 (Annexure P-4) issued by this Court, directing all District & Sessions Judges in States of Punjab, Haryana and UT Chandigarh, to hide parties' names and not to upload daily orders/judgments on the National Data Grid in cases relating to matrimony, Juvenile Justice Act, Official Secrets Act, cases relating to Intelligence agencies, domestic violence, sexual offences against women and children etc.

2.2 Quashment is further sought of the administrative order dated 23.01.2023 (Annexure P-9) of this Court, whereby directions were issued to prepare a mechanism to hide parties' names in matters relating to Juvenile Justice Act, Official Secrets Act, Intelligence agencies, domestic violence, sexual offences against women and children (except matrimonial matters), in case search, cause list and other search options on the web site of this Court, for public view.

2.3 Challenge is also made to Section 22 of the Hindu Marriage Act, 1955 and Section 33 of Special Marriage Act, 1954 to the extent these provisions prohibit publishing of judgments in matrimonial disputes.

2.4 Vires of Section 73 of the Bharatiya Nyaya Sanhita, 2023, is assailed, which penalises publishing of any matter in relation to any proceeding before the Court with respect to an offence referred to in Section 72 without prior permission of Court, even after personal details of victim being hidden.

2.5 Another challenge is made to Section 366 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which renders unlawful any attempt of printing or publishing any matter in relation to any such proceeding, except



with prior permission of the Court, even after personal details of victim being hidden.

3. This Court has, thus, to resolve the controversy between two conflicting fundamental rights, one of the victims to remain in anonymity and the other of the petitioner's right to know details of the victims.

4. The Constitution Bench decision of Apex Court in **Association for Democratic Reforms and another (Electoral Bond Scheme) Vs. Union of India and others, (2024) 5 SCC 1**, dealt with the controversy between two conflicting fundamental rights, i.e. right to information of victims regarding financial contributions to political parties versus their right to informational privacy of political affiliation (specifically anonymity of financial contributions to political parties). The Apex Court held thus :

*“156. In 2012, a five-Judge Bench of this Court in **Sahara India Real Estate Corpn. Ltd. v. SEBI, (2012) 10 SCC 603**, used a standard which resembled the structured proportionality standard used in **K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1** to balance the conflict between two fundamental rights. This judgment marked the first departure from the series of cases in which this Court balanced two fundamental rights based on doctrinal predominance. In **Sahara**, the petitioner submitted a proposal for the repayment of OFCDs (optionally fully convertible bonds) to the investors. The details of the proposals were published by a news channel. Interlocutory applications were filed in the Court praying for the issuance of guidelines for reporting matters which are sub judice. This Court resolved the conflict between the freedom of press protected under Article 19 (1) (a) and the right to free trial under Article 21 by evolving a neutralising device. This Court held that it has the power to evolve*



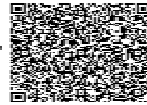
neutralising devices such as the postponement of trial, retrial, change of venue, and in appropriate cases, grant acquittal in case of excessive media prejudicial publicity to neutralise the conflicting rights. This Court followed the Canadian approach in evolving a two-prong standard to balance fundamental rights through neutralising devices which partly resembled the structured proportionality standard. The two-pronged test was as follows :

(a) There is no other reasonable alternative measure available (necessity test); and

(b) The salutary effects of the measure must outweigh the deleterious effects on the fundamental rights (proportionality standard).

157. *Finally, this Court in **K.S. Puttaswamy (Aadhaar-5 J.)** applied the structured proportionality standard to balance two fundamental rights. In this case, a Constitution Bench of this Court while testing the validity of the Aadhaar Act, 2016 had to resolve the conflict between the right to informational privacy and the right to food. Sikri, J. writing for the majority held that the Aadhaar Act fulfils all the four prongs of the proportionality standard. In the final prong of the proportionality stage, that is, the balancing stage, this Court held that one of the considerations was to balance the right to privacy and the right to food. On balancing the fundamental rights, this Court held that the provisions furthering the right to food satisfy a larger public interest whereas the invasion of privacy rights was minimal.”*

5. The concern of the petitioner appears to be that right to information is a concomitant of right to freedom of speech and expression under Article 19 (1) (a) of the Constitution and as such is paramount having over-riding effect over the right to privacy of a victim in crimes against women/juveniles.



5.1 The right to privacy emanates from Article 21 of the Constitution, which protects life and personal liberty and prevents its deprivation, except in accordance with procedure established by law.

5.2 The right of a victim to remain incognito/anonymous is directly relatable to the very existence of the person and dignity of the victim. If identity of the victim is disclosed, especially in crimes against women/juveniles, then harm to the person and dignity of the victim/juvenile that may ensue would outweigh the injury caused to a stranger, whose right to know the identity of the victim is denied.

5.3 In the considered opinion of this Court, the right to life and personal liberty is connected directly to the very existence of a human being. The life contemplated under Article 21 of the Constitution is not mere animal existence but a life of dignity, which the nature has provided to every human being. All other fundamental rights contained in Part III of the Constitution are dwarfed by the right under Article 21.

5.4 As such, there is no manner of doubt that the right to information under Article 19 (1) (a) of the Constitution is subservient to the right to life and personal liberty under Article 21. If there is no life, then the question of right to information does not arise. Thus, right to life takes precedence over right to information.

6. The standard of judging the importance of one fundamental right over the other, as laid down by Apex Court in **Association for Democratic Reforms and another (Electoral Bond Scheme) case** (supra), is founded on public interest, proportionality standards and the doctrine of necessity.

6.1 The importance of Article 21 of the Constitution is visible from the very terminology used. The said Article commences with negative



expression that ‘no person shall be deprived of his life/personal liberty except in accordance with the procedure established by law’, with no further fetters on its exercise.

6.2 Whereas Article 19 (1) (a) of the Constitution, which relates to freedom of speech and expression being the fountainhead of right to information is not couched in negative terminology, which is evident from use of expression ‘all citizens shall have the right to freedom of speech and expression etc.’ However, this right to information is subject to reasonable restrictions imposed by law relating to sovereignty and integrity of India, the security of the State, public order, decency or morality or contempt of court, defamation or incitement to an offence.

6.3 Thus, restrictions over right to information are much more pronounced than over the right to life under Article 21 of the Constitution.

7. The right to information, as sought to be invoked by the petitioner herein, can thus be subject to various restrictions. Disclosure of identity and information about a victim is against morality and decency, since any such disclosure prevents the victim from enjoying a life of dignity. The victims in crimes relating to women and juveniles belong to a special class of citizens who are the most vulnerable stakeholder in the entire transaction of crime and prosecution, and deserve special treatment by making available certain protections and immunities in shape of imposing prohibition for disclosure of identity of the victim, to prevent the victim from suffering any harm to body, mind or reputation.

8. From the conspectuses of the above discussion, what comes out loud and clear is that a victim in crime relating to women/juveniles is entitled to special protection, as provided by different laws, including Section 33 of the



Special Marriage Act, 1954 and Section 22 of the Hindu Marriage Act, 1955 etc. The administrative instructions issued by the High Court from time to time, as challenged by the petitioner, are manifestations of such protections which victims of sexual offences/juveniles are entitled to enjoy. The provision under Section 33 of the Special Marriage Act, 1954 and Section 22 of the Hindu Marriage Act, 1955, and all administrative instructions issued by the High Court, as challenged in this petition, are meant to protect the reputation, dignity and person of the victim of sexual offences/juveniles. As such, these protections available to victims cannot be subjugated to the right to information of the petitioner. The protections available to such class of victims/juveniles stand at a much higher pedestal than the right of petitioner to information.

9. Thus, the right of victim to remain anonymous cannot be allowed to be sacrificed at the altar of right to information of the petitioner.

10. From the conspectuses of the above discussion, no case of interference is made out.

11. Petition stands dismissed without costs.

(SHEEL NAGU)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

September 20, 2024
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No