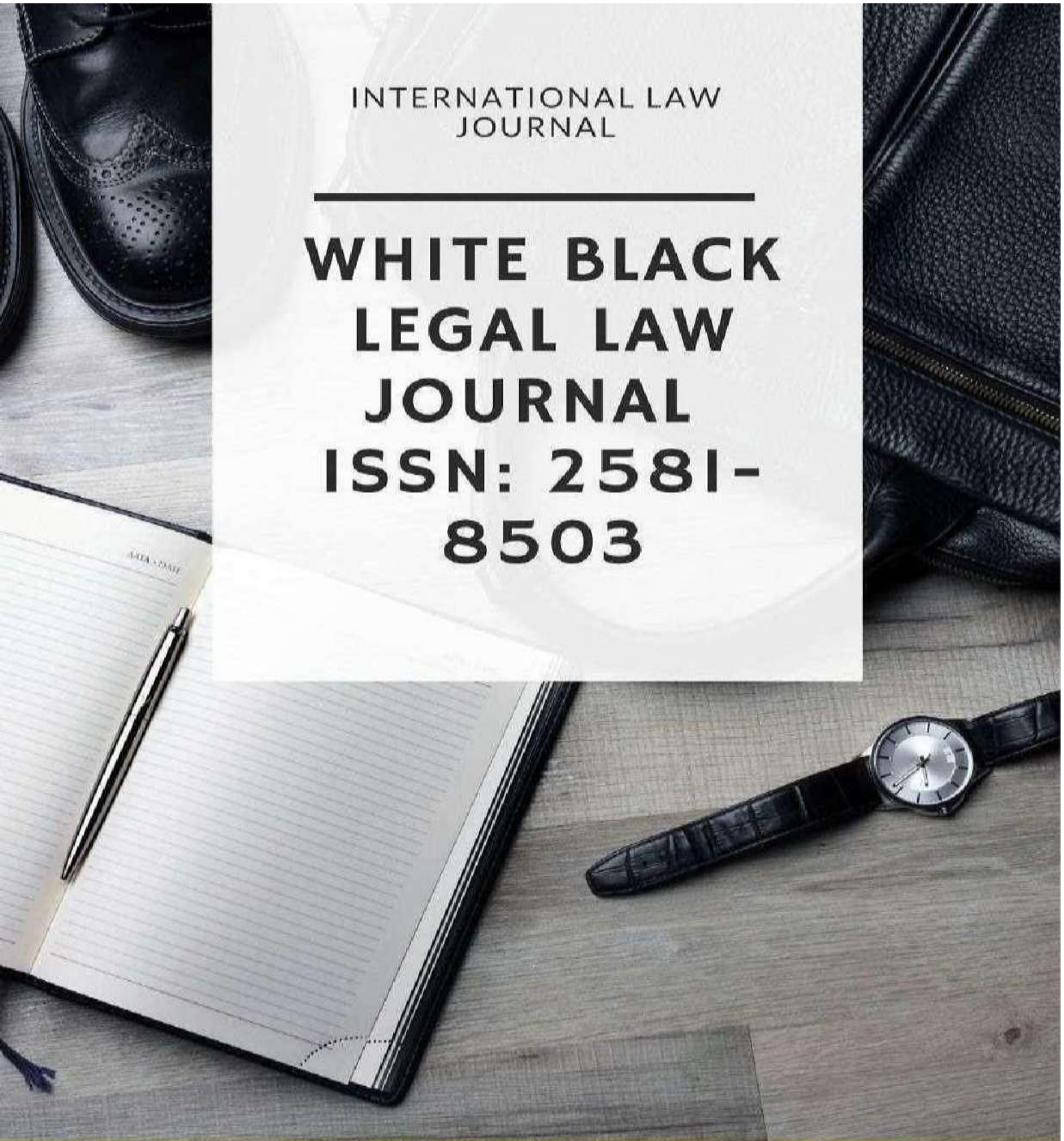




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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"BEHIND CLOSED DOORS: THE CONSTITUTIONAL SANCTITY OF MARITAL PRIVACY"

AUTHORED BY - PRIMA DEY

BBA. LLB (H)

Year 3 Semester 5

Institution Name: Sister Nivedita University

Introduction:

The right of an individual to be free from any person or governments intrusion or involvement into personal matters. It includes the right to keep our personal information private. Acc, to Oxford Dictionary of Law it defines privacy as the “right to be left alone. The right to a private life”. Personal information can include sexual information, professional activities, and secret data about the company etc. The right to privacy can include both physical privacy and privacy related to communications, with the growth of newspapers, television and the internet the right to privacy is more about informational privacy. In India, multiple case has been registered where people raise their concerns over privacy. The Supreme Court of India has given judgements objecting to any violation of the citizen’s right to privacy. The Supreme Court of India in Justice K.S Puttaswamy v. Union of India (2017) defined privacy as:

“The right to be left alone is an intrinsic element of the right of life and personal liberty under Article 21 of the Constitution.”

For the first time the concept of privacy was discussed in Kharak Singh v. State of Uttar Pradesh (1975), here personal liberty under Article 21 was linked by the supreme court. However, it did not explicitly recognize right to privacy as a fundamental right.

Later in the case of Govind v. State of Madhya Pradesh (1975), here the court recognized privacy as a protected right, stating: “Fundamental rights must be a subject to a process of case-by-case development.”

In the landmark Puttaswamy case, a nine-judge bench together held that privacy is a fundamental right. Justice D.Y. Chandrachud wrote:

“Privacy includes the preservation of personal intimacies, the sanctity of family life, marriage, procreation, home, and sexual orientation. “

Through this judgement the scope of privacy was increases and it included areas like data protection and bodily autonomy.

Evolution of Privacy in Legal Jurisprudence: The right to privacy has been evolved from a very blunt philosophical idea to a well-established legal principle. The Western legal thought particularly the work of jurists like John Stuart Mill, who in his work had put emphasis on individual liberty, and William Blackstone, who discussed personal security and property rights is said to be the foundation of the privacy rights.

The recognition of right to privacy as a legal concept was first by the famous article “The Right to Privacy” (1890) by Samuel Warren and Louis Brandeis ¹in the Harvard Law Review. They gave the argument that right to privacy was the “right to be let alone” and this right should be protected against media and technological advancements.

The Supreme Court in the United States gave the groundwork for privacy rights in the case of *Griswold v. Connecticut* (1965) where a “penumbra” of privacy rights was recognized by Justice William O. Douglas within the U.S Constitution.

The Judiciary in India initially was hesitant to recognize privacy as a fundamental right. In the case of *Kharak Singh v. State of Uttar Pradesh* (1962), personal liberty was connected with privacy by the supreme court but it did not declare it as a fundamental right. However, Justice Mathew recognized privacy as a constitutional right, though subject to certain restrictions.

Thus, privacy jurisprudence has been evolved from a basic concept of common law protection to constitutional guarantee.

Importance of privacy in marital relationships: In marital relationship privacy is important for both husband and wife to protect personal dignity, autonomy and sanctity of marriage. Through various judgements the Indian judiciary has recognized the importance of privacy in marriage.

1. **Right to Marital Privacy and Bodily Autonomy:** In *Justice K.S. Puttaswamy v. Union of India* (2017), privacy was held a fundamental right under Article 21 under the Constitution of India encompassing marital relationships by the Supreme Court of India.
2. **Marital rape and Consent:** Although in India, marital rape is not yet fully criminalized, courts have acknowledged the importance of **consent in marriage**.

In the case of *Thought v. Union of India* (2017), it was held by the supreme court that sexual intercourse with a minor wife (below 18 years of age) is a rape even within

¹ https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html

marriage. Justice Madan B. Lokur emphasized: “A girl child’s dignity and bodily integrity cannot be sacrificed at the altar of tradition and family honor.”

3. **Right to Reputation and Non-Interference:** In the case of Sharda v. Dharmpal (2003), it was held by a supreme court that a spouse cannot be forced to undergo medical tests without her consent, ensuring the right to bodily privacy in marital disputes.
4. **Privacy in Divorce and Personal Matters:** In the case of Jehangir M. Ghandy v. Khorshed Banu (1974), it was held by the Bombay High Court that courts should not excessively into marital privacy while adjudicating any maintenance or divorce matters.

Thus, marital privacy is recognized by the Indian courts as a crucial aspect of personal liberty, protecting individuals from unwarranted state and societal interference.

Landmark judgement on privacy in marriage:

1. Suchita Srivastava v. Chandigarh Administration (2009): The woman’s right to reproductive freedom and decisions including abortion was upheld by the supreme court in this case. The court focused and stressed on a woman’s reproductive choices, even within marriage are protected under Article 21.
2. Saroj Rani v. Sudarshan Kumar Chadha (1984): The constitutional validity of the Hindu Marriage Act, 1955 which allows restitution of conjugal rights was put up by the Supreme Court. In this case the court held that marital privacy is not absolute and can be subject to reasonable restrictions.
3. R. Rajagopal v. State of Tamil Nadu (1994) (Auto Shankar Case): The right to privacy under Article 21 was recognized by the Supreme Court.
4. Joseph Shine v. Union of India: Section 497 of IPC² was put down by the Supreme Court decriminalizing adultery and confirming that marriage doesn’t take away individuals right to privacy, dignity and autonomy.
5. X v. Principal Secretary, Health and Family Welfare Department (2022): It was held by the Supreme Court that a woman has equal right to abortion under the Medical Termination of Pregnancy (MTP) Act. It specified that husband’s consent isn’t required for a woman to seek an abortion.

Comparative analysis of Privacy Rights in marriage in different countries: The right to privacy is a basic fundamental of an individual’s life. This comparative study examines privacy

² Adultery

rights of a spouse in the United States, the United Kingdom, India, showcasing their legal protections, challenges.

1. United States: Marital privacy is seen as a fundamental right in the U.S., and protected under constitutional law. In cases like *Griswold v. Connecticut* (1965), the Supreme Court upheld the privacy rights in marriage, which came down with laws for banning contraceptive use by married couple. This concept extends to the issues such as privilege of the spouse in the court, the right of each spouse to make independent reproductive choices. However, in case of domestic abuse privacy is limited.
2. United Kingdom: The right to marital privacy is recognized by the UK law under the framework of the Human Rights Act 1998, under 8 of the European Convention on Human Rights, which showcases the right to respect for private and family life. However, in cases of public interest such as, in cases of domestic violence or financial disputes in divorce proceedings this right to privacy is balanced.
3. India: Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which includes the privacy rights. In the case of *K.S. Puttaswamy v. Union of India* (2017), it showcased right to privacy, extending its implications to marriage. The challenges still exist due to lack of marital rape laws and societal norms that limit women's right to privacy.

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