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Q12

Right to privacy is intrinsic to life and personal liberty and is inherently protected under Article 21 of the constitution. Explain. In this reference discuss the law relating to D.N.A. testing of child in the womb to establish its paternity.

UPSC Civil Services Mains 2024 · GS II · 15 marks · Indian Constitution

Indian Constitution - historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Core demand of the question

- Explain why the right to privacy is intrinsic to life and personal liberty under **Article 21**
- State the law on DNA tests to establish paternity of a born child
- Apply that law to DNA testing of a child in the womb
- Balance the child's identity, the woman's bodily autonomy and legitimacy

Revision summary

Puttaswamy held that privacy is part of **Article 21** and that any restriction must be legal, necessary and proportionate.

Section 112 of the Evidence Act treats a child born in a valid marriage as legitimate unless non-access is proved.

Goutam Kundu and later cases refused to make DNA a routine paternity weapon in a private quarrel.

A test on a child still in the womb adds miscarriage risk and collides with the woman's bodily autonomy.

Suchita Srivastava had already linked reproductive choice to personal liberty.

Proportionality will rarely justify a prenatal paternity expedition.

The law of paternity is not a right to inspect a womb.

Introduction

K.S. Puttaswamy v. Union of India held that privacy is not a foreign graft on **Article 21**. It is intrinsic to life and personal liberty: dignity, bodily autonomy, informational self-control. A demand that a pregnant woman submit her foetus to a **paternity DNA test** sits at the hardest edge of that holding. Indian evidence law was already cautious about DNA even after birth.

Body**Privacy under **Article 21****

Privacy is a fundamental right; any restriction must pass legality, legitimate aim and proportionality.

- **Peg:** **Maneka Gandhi v. Union of India** held that the procedure which takes away personal liberty must be fair, just and reasonable, not merely a form in a statute.
- **Peg:** The nine-judge Bench in **Puttaswamy (2017)** held that privacy is a fundamental right covering the body, the home and personal data.
- **Peg:** **Suchita Srivastava v. Chandigarh Administration** treated a woman's reproductive choice as a dimension of personal liberty; a forced medical procedure is a search of the body.
- **Peg:** After Puttaswamy, a court order compelling such a procedure is still State action; the party who wants it must show an aim that cannot be met by a milder means.

DNA and paternity after birth

Legitimacy is a rule of evidence, not a husband's right to a laboratory.

- **Peg:** **Section 112** of the **Indian Evidence Act** - and the matching provision of the Bharatiya Sakshya Adhiniyam - says a child born during a valid marriage is **conclusive proof** of legitimacy unless non-access is proved.
- **Peg:** **Goutam Kundu v. State of West Bengal** warned that courts should not order tests that "bastardise" a child to satisfy suspicion.
- **Peg:** Later Benches in **Bhabani Prasad Jena**, **Dipanwita Roy v. Ronobroto Roy** and related cases allowed a test only when the interest of justice clearly required it, with a possible adverse inference on refusal - not a routine swab in every maintenance fight.
- **Peg:** The child's legitimacy, dignity and privacy do not belong to curiosity.

The child in the womb

A prenatal paternity expedition adds miscarriage risk to an already exceptional power.

- **Peg:** Amniocentesis or chorionic sampling carries a **risk of miscarriage**; it is more invasive than a swab after birth.
- **Peg:** Indian law does not treat the foetus as a full constitutional person in the way it treats a born child; the **pregnant woman's** health and privacy are the primary rights on the table.
- **Peg:** Using the second trimester as a device to prove adultery will almost always fail **proportionality**.
- **Peg:** A rare case of serious crime, or a procedure already needed for the woman's health, is imaginable; a private paternity quarrel is not.

Flow diagram

Puttaswamy Art 21 -> Bodily autonomy
 s.112 legitimacy -> Born child
 In-utero DNA -> Risk to woman and foetus
 Risk to woman and foetus -> Usually no order
 Bodily autonomy -> Usually no order
 Born child -> Usually no order

Conclusion

Privacy is part of **Article 21**. DNA paternity tests are exceptional, not routine, because of **Section 112** and the child's dignity. A test on the unborn child for paternity will almost always fail proportionality against the woman's bodily autonomy.

Facts & figures

K.S. Puttaswamy v. Union of India (2017)

Nine-judge Bench: privacy is a fundamental right under **Article 21** and other freedoms, limited by proportionality.

Section 112, Indian Evidence Act, 1872

Conclusive proof of legitimacy of a child born during a valid marriage, rebuttable only by proof of non-access.

Goutam Kundu v. State of West Bengal

Warned against routine DNA tests that bastardise a child to satisfy a private dispute.

Suchita Srivastava v. Chandigarh Administration

Reproductive choice is a dimension of personal liberty; the woman's bodily autonomy is not a third-party exhibit.

Dipanwita Roy v. Ronobroto Roy

DNA may be ordered in a narrow class of cases, with adverse inference on refusal - still not a routine marital weapon.

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