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PUBLICITY RIGHTS AND THE RIGHT TO PRIVACY IN INDIA

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Abstract: *The right to publicity is the right to protect, control, and profit from one's image, name, or likeness. This right is generally considered as a facet of right to privacy. This article aims to study the concomitant development of right to publicity and right to privacy in different jurisdictions such as the United States, United Kingdom, and India. In the United States, it has been observed that right to publicity has become a right in itself which is independent from right to privacy. In contrast, the United Kingdom does not recognize a right to publicity. The main focus, however, of this article is to understand the development of right to publicity in India. This article finds that though the Indian courts have accepted right to publicity within the paradigm of Intellectual Property Rights, the acceptance of the right to publicity as a facet of right to privacy is still at a nascent stage*

Key Words: *Public, Rights, Privacy*

The right to publicity, popularly known as personality rights, in its most basic sense is the right to protect, control, and profit from one's image, name, or likeness. There are two discernable facets of publicity rights: *first*, the right to protect one's image from being commercially exploited without permission,by treating it as a tort of passing off; and *second*, the right to privacy whichentails one's right to be left alone. Between these, the right to privacy covers damage caused to an individual that is non-economic in nature and which can-not be dealt with by the torts of passing off, misrepresentation, etc.

This paper shall mainly focus on publicity rights in relation to the right to privacy. Publicity Rights and their relation with Intellectual Property Rights,or other forms of relief which can be provided in common law such as passingoff and malicious falsehood will not be elaborated upon.

Publicity rights in India have mostly been dealt with in a manner fallingwithin the ambit of Intellectual Property Rights. The principal reason for thisis that the finality of the right to privacy as a fundamental right had not been settled until very recently, with the August 2017 *Puttaswamy* judgment. Thus, there has been very little development of the right to publicity as a facet ofright to privacy in India.

Traditionally, publicity rights are associated with an individual. They mostly concern celebrities, having created identifiable images for themselves. Thus, the protection of publicity right has often not been granted citing the reasonthat lives of individuals may be "newsworthy" or in the public domain in such a manner that they can be considered to be in public interest. However, the right to one's persona cannot be limited to just celebrities. In this

backdrop, therefore, a few questions arise: a) is the Right to Publicity available under the Right to Privacy in India?; b) If yes, does it extend to all persons?; and c) Do these rights have any exceptions?

In order to answer these questions, we will analyse the Right to Publicity from various facets. We will begin by understanding the history of privacy and publicity rights which will be followed by an understanding of the treatment of these rights in foreign jurisdictions. Drawing from this understanding, we will undertake an analysis of the development and treatment of these rights in India, especially after the recognition of the Right to Privacy.

The roots of privacy and the recognition of individuality and protection from intrusion can be traced to ancient European history. The development ofthis right grew with the establishment of a right to be protected against phys- ical interference with life and property. With the advent of print media andtechnology, the need for a basic 'right to be left alone' grew, and with it grewthe right of publicity concurrently as a subset.

The Right to Privacy, an article written by future United States Supreme Court Justice Louis Brandeis, and Samuel D. Warren, in the 1890 edition ofthe Harvard Law Review called for the recognition of a 'right to be left alone', stating that privacy was "part of the more general right to the immunity of the person, the right to one's personality". The article, further explained a new tort, akin to defamation, which would allow an injured party to claim recovery for the disclosure of truthful information that was unprivileged and non-public.

In 1954, Melville B. Nimmer authored an article, *The Right of Publicity*,which introduced the concept of a 'right of publicity'. Nimmer highlighted that what a celebrity needed was not protection against unreasonable intrusions into privacy, but rather a right to control the commercial value of their identity.

In 1960, William Lloyd Prosser in his article *Privacy*, expanded upon the views of Justice Brandeis and Mr. Warren towards the recognition of a right to privacy. In his article, Prosser created the following four categories of privacy torts:

1. Intrusion upon the plaintiff's seclusion or solitude, or into private affairs;
2. Public disclosure of embarrassing private facts about the plaintiff;
3. Publicity which places the plaintiff in a false light in the public eye;and
4. Appropriations for the defendant's advantage of the plaintiff's nameor likeness.

The first three categories are considered to be violations of the right to pri- vacy, and the last is considered to be a claim of right to publicity. It is pertinent to note that Prosser later authored the *Invasion of Privacy* section in the *Restatement of Torts*, where he reiterated the four categories of torts of priva-cy. The *Restatement of Torts* with its section on privacy invasions acted as model for other legislations and was subsequently followed by the American courts.

India, similar tothe UK, has very recently began the development of both privacy rights and publicity rights. While Indian Courts have accepted public-ity rights as a facet of Intellectual Property Rights, the acceptance of the right of publicity within the right of privacy is still at a nascent stage in India. Thisis mainly attributable to the fact that the right to privacy as a FundamentalRight

was itself was a debatable right until August 2017. This section will bedealt in two aspects: [A] Right to privacy in India, and [B] Right to publicity falling within the ambit of right to privacy.

A. The Right to Privacy in India

The debate on whether right to privacy being a Fundamental Right underPart III of our Constitution can be seen in divergent opinions of the courts at different points and on different factual matrices. Two prominent judgments delivered by constitution benches of the Supreme Court of India that deniedthat the right to privacy could exist in the Indian context were *M.P. Sharma* v. *Satish Chandra* in 1954 and *Kharak Singh* v. *State of U.P.* in 1962. However, between 1954 and 1962, and the years following *Kharak Singh*, a different view was taken by various benches of the Apex Court. These divergent views existed not only in opinion, but also due to factual differences of each case.

In *M.P. Sharma* v. *Satish Chandra,* an eight-judge bench of the Supreme Court dealt with the issue regarding breach of Article 19(1)(f) and Article20(3) of the Constitution of India in the search and seizure of certain docu- ments as part of investigations relating to alleged malpractices in the affairsof Dalmia group of companies. In pursuance of a First Information Report, the District Magistrate issued search and seizure warrants. Aggrieved, the Petitioners preferred a writ petition, challenging the constitutional validity of these searches. They contended that records relating to their private affairs were seized, and that such a seizure was violative of their rights under Articles 19(1)(f) and Article 20(3) of the Constitution of India.

Vide its judgment dated March 15, 1954, the Supreme Court held:

"(A) power of search and seizure is, in any system of juris- prudence, an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by rec- ognition of the fundamental right to privacy, analogous to the American Fourth Amendment, there is no justification for importing into it, a totally different fundamental right by some process of strained construction."

In *Kharak Singh* v. *State of U.P.*, the Petitioner accused of the offence of dacoity, had been discharged of the offence, as no evidence had been found against him. The State thereafter, under Chapter XX of the Uttar Pradesh Police Regulations, brought him under surveillance and started a history sheet, which was done in pursuance of Regulation 236 which authorised six measuresconstituting surveillance. These were as follows:

(a) Secret picketing of the house or approaches to the house of suspects;
(b) Domiciliary visits at night;
(c) Periodic inquiries by officers not below the rank of Sub-inspector into repute, habits, association, income, expenses, and occupation;
(d) Reporting by constable or *chaukidar* of movements and absence from home;
(e) Verification of movements and absences by means of inquiry slips; and
(f) Collection and record on a history sheet of all information bearingon conduct.

Aggrieved, the Petitioner challenged the constitutional validity of Chapter XX as being violative of Article 19(1)(d) and Article 21 of the Constitution

of India. A six-judge bench of the Supreme Court, on 18th December 1962, deliv- ered its judgment where a majority of four judges ruled to strike down only the domiciliary visit at night under Regulation 236 as it violated an individual's right to life and liberty. However, it held the remaining part of the Regulationas constitutionally valid as "the right of privacy is not a guaranteed right under our Constitution, and therefore the attempt to ascertain the movements ofan individual is merely a manner in which privacy is invaded and is not an infringement of a fundamental right guaranteed Part III".

Thus, even though both of the aforementioned cases ruled against the rightto privacy as a Fundamental Right, it was based (a) different reasons; (b) on different facts and circumstances; and (c) on different grounds. This was high- lighted in the decision of *Gobind* v. *State of M.P.*, in 1975, where the Supreme Court held that, "The right to privacy in any event will necessarily have to go through a process of a case-by-case development."

It was only in1994, when a division bench of the Supreme Court, while delivering the judgment in *R. Rajagopal* v. *State of T.N.*, diverged from its previous rulings on the existence of the right to privacy within the Constitution of India. The Petitioner in the case was the Editor of *Nekkheeran*, a reputed magazine with wide readership in the state of Tamil Nadu. The Petitioner approached the Court seeking to restrain the State from interfering in the pub- lishing of the autobiography of a convict, *Auto Shankar*, a famous serial killer convicted for killing 6 individuals. Auto Shankar had written his autobiography while in prison, and wished that it be published by the Petitioner. Soonafter the magazine made an announcement regarding the publication of his autobiography, the State authorities allegedly had Auto Shankar write a letterto withdraw his consent, opposing the publishing on the ground that it con tainted false information, and was in violation of prison rules. The Court on these facts ruled that:

a) "The right to privacy as an independent and distinctive concept orig- inated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was rec- ognised. This right has two aspects which are but two faces of thesame coin (1) the general law of privacy which affords a tort actionfor damages resulting from an unlawful invasion of privacy and (2)the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising or non-advertising purposes or for that mat-ter, his life story is written whether laudatory or otherwise and pub- lished without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status".

b) "The right to privacy is implicit in the right to life and liberty guar- anteed to the citizens of this country by Article 21. It is a "right tobe let alone". A citizen has a right to safeguard the privacy of hisown, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything con- cerning the above matters without his consent whether truthful or otherwise and

whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be differ- ent, if a person voluntarily thrusts himself into controversy or volun- tarily invites or raises a controversy."

c) "….it must be held that the petitioners have a right to publish, what they allege to be the life story/autobiography of Auto Shankar inso-far as it appears from the public records, even without his consent or authorization. But if they go beyond that and publish his life story, they may be invading his right to privacy and will be liable for the consequences in accordance with law".

d) Publication on the basis of Public records are subject to the interest of decency when made in regard to a female who is or has been a victim of a sexual offence, kidnapping, abduction or a like offence as she should not further be subjected to the indignity of having her identity harmed by being associated to such an incident in media.

While this case was centered on the issue of pre-publishing censorship, one must not lose sight of the fact that the decision in the *Auto Shankar case* was the first decision in India where the Supreme Court departed from its previous rulings, in accepting the right to privacy as a Fundamental Right. The Court further went on to highlight certain exceptions, elements, and explanations of this right. These opposing views led to the question of whether the right to pri- vacy exists as a Fundamental Right under Part III of the Constitution.

A decade and a half later, in 2012, Justice (Retd.) K.S. Puttaswamy filed a petition challenging the constitutional validity of the Government's pro- posed scheme for a uniform biometrics-based identity card (Aadhar card), which would be mandatory for access to government services and benefits. The government argued that the right to privacy was not a Fundamental Right in light of previous decisions of the Supreme Court in *M.P. Sharma* v. *Satish Chandra* and *Kharak Singh* v. *State of U.P.*. On August 24, 2017, a nine-judge bench of the Supreme Court of India in *K.S. Puttaswamy* v. *Union of India*, while giving 6 different opinions, unanimously held the right to privacy to be a Fundamental Right under Part III of the Constitution of India. The Court, while observing that the right to privacy "is a right which protects the inner sphere of the individual from interference from both State and non-State actors and allows the individuals to make autonomous life choices" held that: "The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution."

B. The Development of Right to Publicity in India

With regards to the second facet of the right to publicity, i.e., as a facet of the right to privacy, one may note that the debate over right to privacy has only come to a conclusion only in 2017. Thus, the right to publicity has had a very limited development and a substantial portion of precedents in this aspect have been laid down by the High Courts in India.

The Delhi High Court in its 1995 decision in *Phoolan Devi* v. *Shekhar Kapoor*, dealt with the Plaintiff's claim for an injunction against the release of

the movie *Bandit Queen*, based on her life of banditry in India. The issueraised by the Plaintiff was based on the movie's portrayal of the Plaintiff'scharacter being raped in a scene, which she argued to be a false accountof facts. The Plaintiff argued that (a) the portrayal of the Plaintiff in such alight was violative of her right to privacy guaranteed under Article 21 of the Constitution; (b) outside of the agreement between the parties; and (c) it was nonetheless be covered under the Copyright Act, 1957. The Defendant, on the other hand, argued that an individual who had attained celebrity status would not have the right to privacy, having chosen to live his/her life open to personsin the public domain. While placing reliance on the Supreme Court's verdictin the *Auto Shankar case*, the Delhi High Court ruled that the right to privacymust encompass and protect the personal intimacies of the home, family, mar- riage, motherhood, procreation, and child rearing, irrespective of whether the person is a public figure. The Court, while taking note of the documents and evidence on record, concluded that the Plaintiff had, in fact, not consented and given license to the defendants to make the film in any manner that they wished. Thus, the Defendant did not have the liberty to exhibit the Plaintiffbeing subjected to sexual abuse, as shown in graphic detail in the film.

Apart from the accepted exception of the publication being based on infor- mation that is public record, the Court further carved out exceptions to the right to privacy: (1) The general public has a legitimate interest in the informa- tion, (2) The information should not relate to the celebrity's private life, and (3) There should be no commercial motives involved in dealing with such infor- mation. In this regard, the Court held that books and interviews upon which the scene was based, are not considered to be public records and gathering of information from third persons or from a weekly/magazine does not consti- tute a public record. On these grounds, the Delhi High Court prohibited the exhibition of the film stating that it violated the privacy of Plaintiff's body and person. The Delhi High Court, thus, impliedly touched upon the right to pub- licity (by highlighting the commercial aspect of the right), encompassing it as a facet of an individual's right to privacy.

It was only 8 years later, in 2003, that the Delhi High Court in *ICC Development (International) Ltd.* v. *Arvee Enterprises*, expressly dealt withPublicity Rights as a facet of Privacy Rights, however, in the context of arti- ficial juridical persons and under an action of the tort of passing off. The Respondents, authorised dealers of Philips India Ltd. had a promotional cam- paign whereunder the winners were to get free tickets to the International Cricket Council's ('ICC') Cricket World Cup, scheduled to be held in South Africa. However, there existed no formal agreement either between ICC or the United South Africa Cricket Board with the Respondents for this promotional campaign. The Court held that:

"(the) right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like his name, personality trait, signa- ture, voice. etc. An individual may acquire the right of pub- licity by virtue of his association with an event, sport, movie, etc… Any effort to take away the right of publicity from the individuals, to the organizer /non-human entity of the event would be violative of Articles 19 and 2l of the Constitutionof India - No persona

can be monopolized. The right of publicity vests in an individual and he alone is entitled to profitfrom it".

Here, it is pertinent to note that this is the first decision to expressly deal with right to publicity in India.

The same year, in *Manisha Koirala* v. *Shashilal Nair*, the Bombay High Court dealt with a claim for injunction against the release of a film depict- ing an actress in a nude state (through a body double). The plot was initially agreed upon by the Plaintiff but subsequently objected to. She alleged defama- tion and malicious injurious falsehood, urging that the film would result in a violation of her right to privacy "as the objectionable shots, attempt to exposethe body of a female which is suggested to be that of the Plaintiff". While the Petitioner did not invoke the Copyright Act in this case, there existed questions of reputational anxieties stemming from *Phoolan Devi case*.

The Delhi High Court, in *D.M. Entertainment (P) Ltd.* v. *Baby Gift House*, highlighted the fact that the right of publicity strikes at the individuals very persona. This case dealt with the misuse of Daler Mehndi's trademark as wellas his right of publicity, and this is perhaps why the Court diverged from ear- lier view to interpret the infringement of the right of publicity as a passing off action, and did not touch upon the constitutional perspective. Interestingly, the Delhi High Court observed:

"The right of publicity can, in a jurisprudential sense, be located with the individual's right and autonomy to permit or not permit the commercial exploitation of his likeness or some attributes of his personality."

In doing so, the Delhi High Court expanded this right that had been a matter of debate since more than a decade, bringing within its ambit not only the right in matters of person or body, but also those of likeness or some attributes of the personality of an individual.

While the courts once again dealt with the publicity rights of celebrities in *Titan Industries Ltd.* v. *Ramkumar Jewellers,* it was observed that the basic elements comprising the liability for infringement of the right of publicity are (1) Validity, that is, the Plaintiff must own an enforceable right in the identity or persona of a human being and (2) Identifiability of the 'celebrity' in question. Therefore, while the Court did not delve into the aspect of the right to publicity as a facet of privacy rights, it did however, propound upon the basic elements to establish infringement of the right to publicity, which it explained narrowly as "(t)he right to control commercial use of human identity."

The Madras High Court in *Selvi J. Jayalalithaa* v. *Penguin Books India,* was posed with the question of whether the publication of private informa- tion of a celebrity without her consent would constitute a breach of her right to privacy. Even though the Court's answer was in the affirmative, it did not expressly deal with the right to publicity. The plaintiff approached the Court seeking an injunction on a book *Jayalalitha: A Portrait*, a supposed biogra-phy of the Plaintiff, which was written without her permission and was bereft of any reasonable verification. News articles and clippings were used as basis for writing the same. While noting that "the private life of the plaintiff writ-ten was not involved with the public activities, which is an exception as per the judgment of the Hon'ble Apex Court in Auto Shankar's case", the Madras High Court granted an injunction against the

publishing of the book in favourof the plaintiff.

The Madras High Court further propounded on this right in *Shivaji Rao Gaikwad* v. *Varsha Productions*, where, while granting temporary injunction against the producers and directors of the movie *Main Hoon Rajnikanth* for useof the Petitioner's name without his consent, the Court held that "(I)nfringement of right of publicity requires no proof of falsity, confusion, or deception, especially when the celebrity is identifiable." The Madras High Court, speak- ing through Justice R. Subbiah, went a step further, observing that:

"If any person uses the name of a celebrity, without his or her permission, the celebrity is entitled for injunction, if the said celebrity could be easily identified by the use of his name bythe others… even assuming for a moment that the impugned movie is not a biopic of the plaintiff, since the name foundin the title of the impugned movie is identifiable only withthe plaintiff, who happens to be a celebrity and not with any other person, the defendant is not entitled to use the said name without the permission of the plaintiff/celebrity".

Finally, on August 24, 2017, a nine judge bench of the Supreme Court ofIndia unanimously held the right to privacy to be a Fundamental Right underPart III of the Constitution of India in the *Puttaswamy judgment*. However, only Justice Sanjay Kishan Kaul, in his concurring opinion, brought publicity rights within the ambit of the right to privacy.

Citing the Second Circuit's decision in *Haelan Laboratories Inc.* v. *Topps Chewing Gum Inc.*, he observed that:

"(e)very individual should have a right to be able to exercise control over his/her own life and image as portrayed to theworld and to control commercial use of his/her identity. This also means that an individual may be permitted to prevent others from using his image, name and other aspects of his/her personal life and identity for commercial purposes with- out his/her consent."

Further extending this right to all individuals alike, whether celebrity or not,he noted that:

"(a)n individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needsto exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives – people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments."

As regards the exception of newsworthiness, he noted that:

"(t)here is no justification for making all truthful information available to the public. The public does not have an interest in knowing all information that is true. Which celebrity has had sexual relationships with whom might be of interest to the public but has no element of public interest and may there-fore be a breach of privacy. Thus, truthful information that breaches privacy may also require protection."

Citing *The Right of Publicity and Autonomous Self-Definition* by Mark P. McKenna, he noted that:

"(a)side from the economic justifications for such a right, it is also justified as protecting individual autonomy and personal dignity. The right

protects an individual's free, personal conception of the 'self.' The right of publicity implicates a per- son's interest in autonomous self-definition, which prevents others from interfering with the meanings and values that the public associates with her."

However, Justice Sanjay Kishan Kaul's opinion, while concurring, did not constitute the 'lead judgment' or the 'leading judgment'. Therefore, unfortunately for the fate of publicity rights in India, it would not afford binding value, being merely persuasive in nature,[72] and leaving these rights still in an undeterminable and undeveloped state.

Conclusion

Even though the opinion of Justice Sanjay Kishan Kaul in the *Puttaswamy Judgment* is only persuasive in nature, coupled with the decisions of High Courts as discussed prior, it can safely be argued that right to publicity does fall under the right to privacy. Another concern that arises is whether the remedy of damages exists for such a violation of Fundamental Rights? This question arises as the right to publicity stems from the right to protect the commercial exploitation of one's persona or likeness. According to multiple decisions of the Supreme Court of India, monetary compensation can be a rem- edy for a breach of a fundamental right.

The second question that arises is whether the right to publicity extends to every person. According to Justice Sanjay Kishan Kaul's opinion, the right to publicity extends to all persons. However, the Delhi High Court in *ICC Development International Ltd.* v. *Arvee Enterprises,* held that the right to publicity is inherent to a person and does not extend to an event. Further, Justice Dhananjay Chandrachud in his separate opinion in *Indian Young Lawyers Assn.* v. *State of Kerala,* has held that: are geared towards the recognition of the individual as its basic unit. The individual is the bearer of rights under Part III of the Constitution."

Therefore, the right to publicity extends to "all persons" but the facts and circumstances of each case would dictate whether the protection of Fundamental Rights should be granted to the aggrieved party or not.

Like the right granted in other jurisdictions, the right to publicity will be subject to certain restrictions and exceptions. We can infer these restrictions and exceptions from the aforementioned decisions of the courts in India, whichare listed as follows:

a) Consent: From the decisions in *Selvi J. Jayalalithaa* v. *Penguin Books India,* and *Shivaji Rao Gaikwad* v. *Varsha Productions*, it can be inferred that when a person has consented to the use of his persona or likeness, he loses the right to bring action against suchuse.
b) Exceeding consent: Even though a person may have consented tothe use of his persona or likeness, he would still possess the right to bring action for use that was not consented to, that is, if the consent has been exceeded. The same can be inferred from the decision in *Phoolan Devi* v. *Shekhar Kapoor*.
c) Identifiability: A basic element for enforcement of the right of pub- licity is the 'identifiability' of the person in question. In *Shivaji Rao Gaikwad* v. *Varsha Productions*, the Madras High Court stressedthat a cause of action shall only lie if the aggrieved party is identi- fiable. A similar view was taken by the Delhi High Court in *Titan Industries* v. *Ramkumar Jewellers*.

d) Public Record: The use of public records for publishing media isallowed as the information is considered to be in the public domain. The same is evident from the decision of the Supreme Court in *R. Rajagopal* v. *State of T.N.*[81] *(*popularly known as the *Auto Shankar Case)*, where the Court allowed publication without consent until the point that it was a part of public records.

e) Newsworthiness: While allowing the publication of material/infor- mation that is 'newsworthy', the Courts in India have taken the con- sistent view that the same must be within reasonable limits. The Supreme Court in *R. Rajagopal* v. *State of T.N.* has held that thereis "a right to publish, insofar as it appears from the public records, even without his consent or authorization. But if they go beyond that and publish his life story, they may be invading his right to privacy and will be liable for the consequences in accordance with law." Further, the Madras High Court in *Selvi J. Jayalalithaa* v. *Penguin Books India*, while placing reliance on the decision of the Supreme Court in the *Auto Shankar case*, had taken the same view, statingthat "the private life of the plaintiff written was not involved withthe public activities, which is an exception as per the judgment ofthe Hon'ble Apex Court in Auto Shankar's case". In fact, even in *Phoolan Devi* v. *Shekhar Kapoor*, the Delhi High Court placed reliance on the *Autoshankar case* to take a similar view. Lastly, Justice Kaul, in his opinion in *K.S. Puttaswamy* v. *Union of India*, observed that "(t)here is no justification for making all truthful infor- mation available to the public. The public does not have an interest in knowing all information that is true… Thus, truthful information that breaches privacy may also require protection."

Protection of women even if public record: The Courts in India have carved out another exception to publication on the basis of public record. In *R. Rajagopal* v. *State of T.N.*, the Supreme Court held that publications on the basis of public records are subject to the interest of decency when madein regards to a female who has been a victim of a sexual offence, kidnapping, abduction, or a like offence as she should not further be subjected to the indig-nity of having her identity harmed by being associated to such an incident in media. In fact, even Justice Kaul dealt with this exception in his opinion in *K.S. Puttaswamy* v. *Union of India*, where he noted that "(t)he right of public-ity implicates a person's interest in autonomous self-definition, which prevents others from interfering with the meanings and values that the public associates with her".

The Unreasonable public disclosure of embarrassing private facts: The courts in *R. Rajagopal* v. *State of T.N.*, *Selvi J. Jayalalithaa* v. *Penguin Books India*, *Phoolan Devi* v. *Shekhar Kapoor*, and Justice Sanjay Kishan Kaul in *K.S. Puttaswamy* v. *Union of India*, have carved out this exception to the right to publicity as well. This exception applies where the facts being pub-licised are not newsworthy or, even if arguably newsworthy, go beyond theinformation to which the public is entitled, and becomes a morbid and sensa- tional prying into one's private life.

However, we must not lose sight of the fact that as a facet of Privacy, the contours of the Right to Publicity would be tested factually on a case-to-casebasis

in India.

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