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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.

I. INTRODUCTION

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.[1] 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 which entails 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 cannot be dealt with by the torts of passing off, misrepresentation, etc.

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1 Estate of Presley v. Russen, 513 F Supp 1339, 1353 (DNJ 1981) (U.S.).

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 passing off[2] and malicious falsehood[3] will not be elaborated upon.

Publicity rights in India have mostly been dealt with in a manner falling within the ambit of Intellectual Property Rights. The principle reason for this is 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.[4] Thus, there has been very little development of the right to publicity as a facet of right 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 reason that 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.

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2 GATLEY ON LIBEL AND SLANDER 750 (Patrick Mimo *et al.* eds., 11th edn., 2008. The tort of passing off has often been extended by courts to adjudicate matters where publicity rights of celebrities has been in question. To bring a successful action of tort of passing off, the following elements must exist: (1) a misrepresentation, (2) made by defendant in course of trade, (3) to prospective customers of his or to ultimate consumers of goods and services supplied by him, (4) which is calculated (in the sense that this is a reasonably foreseeable consequence) to injure the business or goodwill of another trader and (5) which causes or threatens actual damage to a business or goodwill of the trader y whom such an action has been brought by. See also Edmund Irvine Tidswell Ltd. v Talksport Ltd., [2002] EWHC 367 (Ch) (Eng.) and, on appeal, Irvine & Ors v. Talksport Ltd., [2003] EWCA Civ 423 (Eng.) .

3 GATLEY ON LIBEL AND SLANDER 667 (Patrick Mimo *et al.* eds., 11th edn., 2008). Malicious falsehood is a remedy under common law which requires that the (1) the defendant publish words to a third party that are false (2) that they refer to the claimant, or his property or his business, (3) they were published maliciously, and (4) that special damage has followed as a direct and natural result of their publication.

4 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

II. HISTORY OF PRIVACY AND PUBLICITY RIGHTS

The roots of privacy and the recognition of individuality and protection from intrusion can be traced to ancient European history.[5] The development of this right grew with the establishment of a right to be protected against physical interference with life and property. With the advent of print media and technology, the need for a basic 'right to be left alone' grew, and with it grew the 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,[6] in the 1890 edition of the 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'.[7] 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*,[8] 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

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5 Solove, D. J.: Nothing to Hide: the False Tradeoff between Privacy and Security 4 (2011) "People have cared about privacy since antiquity. The Code of Hammurabi protected the home against intrusion, as did ancient Roman law. The early Hebrews had laws safeguarding against surveillance…. Eavesdropping was long protected against in the English common law, and in 1769, the right to privacy emerged in countries all around the world in many different dimensions… In England, for example, the idea that citizens should be free from certain kinds of intrusive government searches developed during the early 1500s."

6 Samuel D. Warren, & Louis D. Brandeis, The Right to Privacy, 4 Harvard Law Review 193, 207 (1890).

7 Nimmer, The Right of Publicity, 19 Law and Contemporary Problems 203 (1954).

8 William Prosser, Privacy, 48 California Law Review 383, 398-401 (1960).

4) Appropriations for the defendant's advantage of the plaintiff's name or likeness.[9]

The first three categories are considered to be violations of the right to privacy, and the last is considered to be a claim of right to publicity[10]. 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 privacy.[11] The *Restatement of Torts* with its section on privacy invasions acted as model for other legislations and was subsequently followed by the American courts.

The New Jersey Chancery Court in 1907[12] was probably first Court to render a decision on the Right to Publicity as akin to property rights. The Court enjoined the unauthorised use of Thomas Edison's name and picture on a medicine and explained,

> "If a man's name be his own property, as no less an authority than the United States Supreme Court says it is difficult to understand why the peculiar cast of one's features is not also one's property, and why its pecuniary value, if it has one, does not belong to its owner, rather than to the person seeking to make an unauthorized use of it."

However, it is important to note that the first decision that viewed the right to publicity as a part of privacy was a 1905 ruling by the Supreme Court of Georgia in *Pavesich* v. *New England Life Insurance Co*.[13] The term 'Rights of Publicity' was, however, first used only in the later judgment of *Healan Laboratories Inc.* v. *Topps Chewing Gum Inc*.[14]

III. TREATMENT OF PRIVACY AND PUBLICITY RIGHTS BY OTHER JURISDICTIONS

The right to publicity grew concurrently with privacy rights, and originated as a subset of the right to privacy in the United States of America ('USA'). In England and Wales, remedies against unjustified exploitation of a person's image arose out of developments in the law of passing off, breach of

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9 Restatement (Second) of Torts §§ 6521, 652A-652I cmt. a (1977); William Prosser, Privacy, 48 CALIFORNIA LAW REVIEW 383, 398-401 (1960).

10 *Id*.

11 Restatement (Second) of Torts §§ 6521, 652-A-652-I cmt. a (1977).

12 Edison v. Edison Polyform Mfg. Co., 73 NJ Esq 136: 67 A 392, 395 (NJ Ch 1907).

13 122 Ga. 190: 50 S.E. 68 (1905).

14 202 F 2d 866 (2nd Cir 1953).

confidence, partially trademarks, data–protection, and defamation.[15] Therefore, in order to fully understand publicity rights, its application under the right to privacy, and exceptions to the same, we must take into account the treatment of these rights by other countries. Having been primarily evolved in the USA and the United Kingdom ('UK'), we shall mainly focus on the right to publicity in these two jurisdictions.

A. The United States of America

A reading of the history of privacy and publicity rights makes it clear that the development of privacy rights as we now understand them has largely stemmed from the American understanding of the same. Therefore, it is essential to chart the history and development of these rights in America. In the USA, the protection of the right to privacy and the right to publicity is separate. Even though the latter is a subset of the former, it has been developed by judicial precedents in a unique manner, such that it is now a distinct right.

The Supreme Court of Georgia in *Pavesich* v. *New England Life Insurance Co*.[16] was the first court to accept the right to privacy and publicity rights thereunder. This case centered around a claim that had been brought by Mr. Pavesich against New England Life Insurance Co. for the alleged wrongful use of his picture in an advertisement for the Defendant's insurance products. Thereafter, almost every state has addressed the issue either by judicial precedent or by way of a statute. As state laws govern the right to publicity, the degree of recognition of the right varies significantly from one state to another.[17]

Broadly, the right to privacy in the USA can be divided into the same four broad categories of torts as those stated by Prosser in his 1960 paper, of which the fourth category would constitute the right to publicity, and the other three would encompass the right to be left alone.[18]

The development of the right as we know it today began only in 1953 in *Haelan Laboratories Inc.* v. *Topps Chewing Gum Inc*.[19] *Topps Chewing Gum Inc.*, a competing chewing gum manufacturer of the Plaintiff, had used baseball trading cards to help the sale of its chewing gum. While Haelan Laboratories had obtained exclusive licences from a number of players authorising the use of their images on its baseball cards, Topps had sold its chewing gum with photographs of the very same players. Haelan filed a suit against

[15] Rishika Taneja, and Sidhant Kumar, Privacy Law: Principles, Injunctions and Compensation 144 (1st edn., 2014).

[16] 122 Ga 190; 50 SE 68 (1905).

[17] Haelan Laboratories Inc. v. Topps Chewing Gum Inc., 202 F 2d 866 at 870 (2nd Cir 1953).

[18] Restatement (Second) of Torts §§ 6521, 652-A-652-I cmt. a (1977); William Prosser, Privacy, 48 California Law Review 383, 398-401 (1960).

[19] 202 F 2d 866 (2nd Cir 1953).

Topps for being in violation of its 'exclusive rights' to the players' images. Even though the Court held that the Plaintiff could not recover damages under New York's statutory privacy law, it ruled in favour of the Plaintiff based on a new common law right that it dubbed as the "right of publicity".

The Court further held that even though right of publicity was a subset of right to privacy, it had become an independent right and cause of action. This development of the right to publicity as an independent right and cause of action is inline with the distinction created by Nimmer in *The Right of Publicity*.[20] As mentioned above, Nimmer categorically stated that what performers or celebrities required was a right to control the commercial value of their identity, rather than protection against unreasonable intrusions into privacy.[21]

The United States Supreme Court further clarified this separation in *Zacchini* v. *Scripps-Howard Broadcasting Co.*[22] Hugo Zacchini was an entertainer who performed an act, which he called 'The Human Cannon Ball', where he would shoot himself from a cannon towards a net that was 200 meters away. The performance area was made open to only those who bought a ticket for the show, and was unavailable for viewing by bystanders. The Respondent's cameraman came to the performance with a camera, and videotaped the performance without the consent of the Petitioner. The videotape was thereafter aired on the news. The Supreme Court, while ruling in the Petitioner's favour, relied on *New York Times Co.* v. *L.B. Sullivan* [23] and *Time Inc.* v. *J. Hill*,[24] to hold that the right to privacy was a personal right, while right of publicity was a commercial right that had a wider ambit to cover performer's rights. Further, even though the criterion for a breach of the right to privacy and right to publicity remain identical, the distinction lay in the fact that while a personal tort could not be assigned or inherited, the right of publicity being in the nature of a property right was assignable and descendible. The Court, in *Edison* v. *Edison Polyform Mfg. Co.*,[25] on the same lines, extended the term "property rights" to include the use of one's name and pictorial representation. In other words, the right to privacy ends with the death of an individual, but right to publicity may survive.[26] Therefore, even though the right to publicity is a category of right to privacy, its treatment in the USA is on a different footing.

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[20] Nimmer, The Right of Publicity, 19 LAW AND CONTEMPORARY PROBLEMS 203 (1954).

[21] Nimmer, The Right of Publicity, 19 LAW AND CONTEMPORARY PROBLEMS 203 (1954).

[22] 1977 SCC OnLine US SC 153; 53 L Ed 2d 965; 433 US 562 (1977).

[23] 1964 SCC OnLine US SC 43; 11 L Ed 2d 686; 376 US 254 (1964).

[24] 1967 SCC OnLine US SC 1; 17 L Ed 2d 456; 385 US 374 (1967).

[25] 73 NJ Esq 136; 67 A 392, 395 (NJ Ch 1907).

[26] Statutes in certain States of the Unites States of America make an express provision for the survival of rights after death, for example Tennessee recognises the right for another 10 years after the individual's death, while California does so for another 70 years.

However, the right to privacy and the right to publicity in the USA are not free of exceptions. As the jurisprudence on the subject grew, with it came exceptions to the same that were developed with the expansion of jurisprudential thought. These exceptions are as follows:

i. Written Consent: The most basic exception to the rule is the party has volunteered, or allowed the publication of such media relating to him, preferably through written consent, making clear the intention to use the individual's name, likeliness, or image.[27]

ii. Must relate to an individual: The use of pictures and other forms of digital media such as videos is not allowed with respect to buildings and structures, as the right to publicity extends to only individuals and not structures.

iii. The individual must be recognisable: An individual must be recognisable by such media to have a right to bring a claim in this regard.[28] For instance, in *Pesina* v. *Midway Mfg. Co.*,[29] a martial artist hired to model for characters of the coin operated arcade games *Mortal Kombat* and *Mortal Kombat II* alleged that the use of his name and likeness in subsequent home video games violated his common law right of publicity. Midway was able to show that the public did not recognise Pesina within the game. The Court observed the brief use of Pesina's name in the game (for eight seconds only when a player won), although unauthorised, was held not enough to constitute a right of publicity claim.

iv. Newsworthiness: The law permits the use of such media that captures an individual in connection with a newsworthy event.[30] In *Ann-Margaret* v. *High Society Magazine*,[31] the plaintiff, a famous actress, sued the magazine for use of her photo without her consent. The Court held, "And while such an event may not appear overtly important, the scope of what constitutes a newsworthy event has been afforded a broad definition and held to include even matters "entertainment and amusement", concerning interesting phases of human activity in general". In *Martin Luther King* v. *American Heritage Products*[32] as well, the Court held that newsworthiness must be

[27] J. Thomas McCarthy, The Right of Publicity and Privacy, § 10.6 (2003).
[28] *Cheatham* v. *Paisano Publications Inc*., 891 F Supp 381 (WD Ky 1995).
[29] 948 F Supp 40 (ND Ill 1996).
[30] Cheatham v. Paisano Publications Inc., 891 F Supp 381 (WD Ky 1995).
[31] 498 F Supp 401 (SDNY 1980).
[32] 250 Ga 135; 296 SE 2d 697 (Ga 1982).

construed in a wide sense. However, in *Taggart* v. *Wadleigh-Maurice Ltd.*,[33] the Court held that if an individual was an "involuntary performer", then the publication of his private matters would constitute a breach of publicity.

v. Use of public record: In *Matthews* v. *Wozencraft*,[34] the Fifth Circuit U.S. Court of Appeals, applying Texas law, held that a book detailing the author's and her ex-husband's experiences as undercover agents did not violate the privacy or publicity rights of her ex-husband. Information concerning their activities and convictions were the subject of news reports. Thus, it was a matter of public record and considered newsworthy events.

Keeping in mind the aforementioned exceptions, it is further necessary to highlight those circumstances in which the 'publication of private information without consent would constitute a breach of the right to publicity. These circumstances include:

i. Reporting of an individual without their consent: In *Barber* v. *Time Inc.*,[35] a photographer took pictures of Dorothy Barber during delivery without her consent. Ms. Barber filed a suit of invasion of privacy against Times Inc. for unauthorised and forceful entry into her hospital room, and for photographing her despite her protests. Ms. Barber was successful in her suit. The Court further awarded her damages of US$ 3000, and opined that:

> "In publishing details of private matters, the media may report accurately and yet - at least on some occasions – may be found liable for damages. Lawsuits for defamation will not stand where the media have accurately reported the truth, but the media nevertheless could lose an action for invasion of privacy based on similar facts situations. In such instances the truth sometimes hurts."

i. When the purpose for which the interview or pictures was intended is exceeded: In *Multimedia WMAZ Inc.* v. *Kubach*,[36] the Plaintiff agreed to appear in a televised program to give an account on how he contracted AIDS. However, the consent of the Plaintiff was based on the understanding that the Plaintiff's face would be disguised

[33] 489 F 2d 434 (3rd Cir 1973).
[34] 15 F 3d 432 (5th Cir 1994).
[35] 159 SW 2d 291 (Mo 1942).
[36] 212 Ga App 707; 443 SE 2d 491 (Ga App 1994).

digitally so that he could not be identified. Due to the negligence of the television station and its employees, the Plaintiff was recognisable at the beginning of the show. The Court held in favor of the Plaintiff.

The unreasonable public disclosure of embarrassing private facts: This tort applies only where the facts being publicised are not newsworthy, or, even if arguably newsworthy, go beyond the "information to which the public is entitled, and becomes a morbid and sensational prying into private lives for its own sake"[37]. In *Michaels* v. *Internet Entertainment Group Inc.*,[38] singer Bret Michaels and actress Pamela Anderson Lee sought an injunction against the Defendants from disseminating a tape, through the Internet of Michaels and Lee engaging in sexual intercourse. Plaintiffs had two cause of action - one for violation of their right to privacy, and second, the right of publicity. The Defendant argued that Ms. Anderson's nude appearances in multiple magazines, movies, and publicly distributed videotapes rendered the parties' tape to be no longer private. The Court disagreed with the assertions of the Defendant to conclude that the private facts depicted on the video were not public by either the "virtue of Lee's professional appearances or by dissemination of the Tommy Lee videotape". The court dismissed all arguments relating to news worthiness, observing that "where the publicity is so offensive as to constitute a morbid and sensational prying into private lives for its own sake, it serves no legitimate public interest and is not deserving of protection".

B. The United Kingdom

The UK, in contrast to the USA, deals with the right to privacy and the right of publicity in a different manner. Unlike the United States, the law in the UK does not recognise a right of publicity or even a distinct right to protect a person's image or likeness from unauthorized use. In fact, the rejection of privacy as right was expressly stated in *Kaye* v. *Robertson* in 1991.[39] The claim arose out of the unauthorised publication of photographs of Mr. Gorden Kaye, an actor, while he was being treated for injuries in a hospital. A reporter from *The Sunday Sport* barged into his room at the hospital to take pictures of him, and even recorded his answers to their questions. Medical evidence established that Kaye was not in a condition to give informed consent. Lord Justice Glidewell highlighted the law to protect privacy in the UK does not exist. He thus proceeded on the law of malicious falsehood to protect Kaye, and that he had valuable rights to sell the story.

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[37] Virgil v. Time Inc., 527 F 2d 1122 (9th Cir 1975) .

[38] 5 F Supp 2d 823 (DC Cal 1998); See also: Haynes v. Alfred A. Knopf Inc., 8 F 3d 1222 (7th Cir 1993); See also Bollea v. Gawker Media LLC, 913 F Supp 2d 1325 (2012).

[39] 1991 FSR 62.

In many cases, due to the lack of a law protecting one's right to privacy, the courts took recourse to the law relating to breach of confidence.. For example, in an early case, *Pollard* v. *Photographic Co.*,[40] a photographer took a photograph of Mrs. Pollard, and without her permission, used the same on Christmas cards which he sold to the public. The court decided in favor of Mrs. Pollard based on the law of breach of confidence, holding that "the photographer who uses to negative to produce other copies for his own use, without authority, is abusing the power confidentially placed in his hands."

However, the law on the subject in the UK has seen considerable growth and change. This change has mainly been brought about by two factors: *first*, the introduction of the Human Rights Act, 1998, which incorporates the European Convention on Human Rights; and *second*, by specific legislations covering aspects of an individual's right to privacy and the judicial expansion of them.

Under the European Convention of Human Rights ('ECHR'), some provisions helped pave the way for recognising privacy as a right. Article 8 of the Convention provides for the protection of private life. Further, under Article 6, the Convention dictates that the court give regard to the Convention while developing common law. Keeping in conformity with the Convention, the Human Rights Act dictates that a court is a public authority,[41] and must act in a way that is compatible with Articles 8 and 10 of the ECHR.[42] The courts are required, as far as is possible, to give effect to legislation in a way which is compatible with the rights provided by the Convention.[43] Most importantly, the court must take into account any judgments or decisions of the European Court of Human Rights ('ECtHR').[44] These changes have brought about a fast paced development in the treatment of the right to privacy. In fact, other legislations have also been enacted to protect certain aspects of an individual's right to privacy. These include:

- The Protection from Harassment Act, 1997
- The Data Protection Act, 1998
- The Regulation of Investigatory Powers Act, 2000 (received royal assent in 2016)
- Communications Act, 2013

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40 1997 EMLR 444.
41 Section 6(3)(a).
42 Section 6(1).
43 Section 3.
44 Section 2(1)(a).

Further, the ECtHR has made a large impact on the expansion of Article 8 of the ECHR, such as to cover aspects of privacy. In *Peck* v. *United Kingdom*,[45] the Applicant was captured on CCTV footage trying to attempt suicide. The authorities acted upon this footage and saved the applicant from any danger. This footage was further released to the public to demonstrate the effectiveness of CCTVs. The applicant contended that this was a violation of his right to privacy guaranteed under Article 8. The ECtHR held that such a disclosure of information does constitute a violation of one's right to privacy. Further, the ECtHR in cases such as *Pretty* v. *United Kingdom*,[46] which dealt with the right to die, and in *Christine Goodwin* v. *United Kingdom*,[47] which was largely concerned with the privacy of a transgender, has repeatedly expanded the scope of Article 8 of the Convention. It opined that Article 8 is not only limited to the private life in the sense of privacy, but also with private life in the sense of personal autonomy, self-development, and the right to develop relationships with others.

The ECHR coupled with the English Human Rights Act, 1998, and the impact of the decisions of ECtHR judgments, has led to the further development and expansion of the right to privacy in the UK.

Presently, the English have also started developing the right to privacy. The Queen's Bench in *A* v. *B Plc (A company)*,[48] while dealing with the unlawful disclosure of the claimant's extra marital sexual relationship in the public domain expanded the ambit of Articles 8 and 10 to include non-governmental bodies such as newspapers in the same manner as public authorities.[49]

In *Douglas* v. *Hello! Ltd.*,[50] the English Courts made great headway towards developing this law. The claimants, Catherine Zeta-Jones and Michael Douglas, both of whom are famous actors, had signed an exclusive contract with *OK!* Magazine, granting them sole rights to publish photos of their wedding. However, *Hello!* Magazine managed to obtain some photographs from a guest attending the wedding. The couple brought a claim of breach of privacy and sought damages from *Hello!*. The Defendant argued that the couple, by virtue of signing a contract with another magazine, had already exhausted their right of privacy. The Court did not agree with this view, holding that the couple still retained the editorial control that allowed them to choose or reject pictures; the use of any pictures other than those personally chosen by them invaded their privacy. In holding so, Sedley L.J. noted that "the dominant feature of the case

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45 2003 EHRR 287.
46 2002 ECHR 423.
47 2002 ECHR 588.
48 2003 QB 195.
49 Rishika Taneja, and Sidhant Kumar, Privacy Law: Principles, Injunctions and Compensation 129 (1st edn., 2014).
50 2006 QB 125; 2005 EWCA Civ 595.

was the fact that the greater part of that privacy had already been traded and fell to be protected as a commodity".

In *Campbell* v. *MGN Ltd*.,[51] photographs of Naomi Campbell, a super-model, were captured while she was leaving a narcotics clinic. These images were edited, *first*, to add the caption "Therapy: Naomi outside Meeting", and *second*, to include the headline "Naomi: I am a drug addict". The Court found that the photographs contained personal sensitive information about Ms. Campbell, and would not be covered under journalistic purpose. The Court stated that an individual's right to respect for his or her privacy is engaged whenever the circumstances are such to give rise to a reasonable expectation of privacy. Further, it noted that such a "…cause of action has now firmly shaken off the limited constraint of the need for an initial confidential relationship… The essence of the tort is better encapsulated now as misuse of private information."This case, therefore, witnessed the shift from a remedy in tort, stating its essence as being better captured in the right to privacy.

Even though there still remains a considerable amount of uncertainty, it can now be said that there exists some extent of protection under English law for the commercial use of an individual's image and personal information. Individuals control information regarding themselves (whether details of their personal lives or photographic images of a particular event), and they can now protect/enforce it by way of privacy. Alongside the development of publicity rights as a facet of the right to privacy, the other form, as a facet of Intellectual Property Rights, or passing off laws too, have now been acknowledged in the UK in *Irvine Tidswell Ltd.* v. *Talksport Ltd.*[52]

IV. INDIAN TREATMENT OF PRIVACY AND PUBLICITY RIGHTS

India, similar tothe UK, has very recently began the development of both privacy rights and publicity rights. While Indian Courts have accepted publicity 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. This is mainly attributable to the fact that the right to privacy as a Fundamental Right was itself was a debatable right until August 2017. This section will be dealt in two aspects: [A] Right to privacy in India, and [B] Right to publicity falling within the ambit of right to privacy.

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[51] (2004) 2 AC 457.

[52] (2002) 1 WLR 2355: 2002 EWHC 367 (Ch) and, on appeal, Irvine v. Talksport Ltd. (2003) 1 WLR 1576; 2003 EWCA Civ 423.

A. The Right to Privacy in India

The debate on whether right to privacy being a Fundamental Right under Part 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 denied that 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,*[53] an eight-judge bench of the Supreme Court dealt with the issue regarding breach of Article 19(1)(f)[54] and Article 20(3)[55] of the Constitution of India in the search and seizure of certain documents as part of investigations relating to alleged malpractices in the affairs of 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)[56] and Article 20(3)[57] 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 jurisprudence, 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 recognition 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.*,[58] 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,

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53 AIR 1954 SC 300; 1954 SCR 1077.
54 Right to acquire, hold and dispose of property.
55 Protection against self-incrimination.
56 Right to acquire, hold and dispose of property.
57 Protection against self-incrimination.
58 AIR 1963 SC 1295; (1964) 1 SCR 332.

which was done in pursuance of Regulation 236 which authorised six measures constituting 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 bearing on 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, delivered 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 Regulation as constitutionally valid as "the right of privacy is not a guaranteed right under our Constitution, and therefore the attempt to ascertain the movements of an 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 right to privacy as a Fundamental Right, it was based (a) different reasons; (b) on different facts and circumstances; and (c) on different grounds. This was highlighted in the decision of *Gobind* v. *State of M.P.*,[59] 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.*,[60] 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 publishing of the autobiography of a convict, *Auto Shankar*, a famous serial killer

[59] (1975) 2 SCC 148.
[60] (1994) 6 SCC 632.

convicted for killing 6 individuals. Auto Shankar had written his autobiography while in prison, and wished that it be published by the Petitioner. Soon after the magazine made an announcement regarding the publication of his autobiography, the State authorities allegedly had Auto Shankar write a letter to withdraw his consent, opposing the publishing on the ground that it contained 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 originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin (1) the general law of privacy which affords a tort action for 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 matter, his life story is written whether laudatory or otherwise and published 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 guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters. None can publish anything concerning 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 different, if a person voluntarily thrusts himself into controversy or voluntarily 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 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".

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 privacy 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 proposed 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*,[61] 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"[62] 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."[63]

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.

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61 (2017) 10 SCC 1.
62 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
63 K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

The Delhi High Court in its 1995 decision in *Phoolan Devi* v. *Shekhar Kapoor*,[64] 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 issue raised by the Plaintiff was based on the movie's portrayal of the Plaintiff's character being raped in a scene, which she argued to be a false account of facts. The Plaintiff argued that (a) the portrayal of the Plaintiff in such a light 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 persons in the public domain. While placing reliance on the Supreme Court's verdict in the *Auto Shankar case*, the Delhi High Court ruled that the right to privacy must encompass and protect the personal intimacies of the home, family, marriage, 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 Plaintiff being subjected to sexual abuse, as shown in graphic detail in the film.

Apart from the accepted exception of the publication being based on information 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 information, (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 information. 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 constitute 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 publicity (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*,[65] expressly dealt with Publicity Rights as a facet of Privacy Rights, however, in the context of artificial juridical persons and under an action of the tort of passing off. The Respondents, authorised dealers of Philips India Ltd. had a promotional campaign 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

[64] 1994 SCC OnLine Del 722; (1995) 57 DLT 154; (1995) 32 DRJ 142.
[65] 2003 SCC OnLine Del 2; (2003) 26 PTC 245.

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, signature, voice. etc. An individual may acquire the right of publicity 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 Constitution of India - No persona can be monopolized. The right of publicity vests in an individual and he alone is entitled to profit from 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*,[66] the Bombay High Court dealt with a claim for injunction against the release of a film depicting 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 defamation and malicious injurious falsehood, urging that the film would result in a violation of her right to privacy "as the objectionable shots, attempt to expose the 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*,[67] 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 well as his right of publicity, and this is perhaps why the Court diverged from earlier 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

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[66] 2002 SCC OnLine Bom 827; (2003) 2 Bom CR 136.

[67] CS (OS) No. 893 of 2002, decided on 29-4-2010 (Del).

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,*[68] 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,*[69] was posed with the question of whether the publication of private information 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 biography 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 written 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 favour of the plaintiff.

The Madras High Court further propounded on this right in *Shivaji Rao Gaikwad* v. *Varsha Productions*,[70] where, while granting temporary injunction against the producers and directors of the movie *Main Hoon Rajnikanth* for use of 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, speaking 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 by the others… even assuming for a moment that the impugned movie is not a biopic of the plaintiff, since the name found in the title of the impugned movie is identifiable only with the plaintiff, who happens to be a celebrity and not with any

[68] 2012 SCC OnLine Del 2382; (2012) 50 PTC 486.
[69] 2012 SCC OnLine Mad 3263; (2013) 54 PTC 327.
[70] 2015 SCC OnLine Mad 158; (2015) 62 PTC 351.

> 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 of India unanimously held the right to privacy to be a Fundamental Right under Part 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.*,[71] 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 the world 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 without 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 needs to 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 therefore be a breach of privacy. Thus, truthful information that breaches privacy may also require protection."

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[71] 202 F 2d 866 (2nd Cir 1953).

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 person'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.

V. 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 remedy for a breach of a fundamental right.[73]

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,*[74] 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,*[75] has held that:

> "The Constitution postulates every individual as its basic unit. The rights guaranteed under Part III of the Constitution

[72] Kaikhosrou (Chick) Kavasji Framji v. Union of India, 2019 SCC OnLine SC 394. See also: Nabam Rebia v. Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1; Rameshbhai Dabhai Naika v. State of Gujarat, (2012) 3 SCC 400.

[73] Rudul Sah v. State of Bihar, (1983) 4 SCC 141; Nilabati Behera v. State of Orissa, (1993) 2 SCC 746.

[74] 2003 SCC OnLine Del 2; (2003) 26 PTC 245.

[75] 2018 SCC OnLine SC 1690.

> 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, which are listed as follows:

a) Consent: From the decisions in *Selvi J. Jayalalithaa* v. *Penguin Books India,*[76] and *Shivaji Rao Gaikwad* v. *Varsha Productions*,[77] 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 such use.

b) Exceeding consent: Even though a person may have consented to the 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*.[78]

c) Identifiability: A basic element for enforcement of the right of publicity is the 'identifiability' of the person in question. In *Shivaji Rao Gaikwad* v. *Varsha Productions*,[79] the Madras High Court stressed that a cause of action shall only lie if the aggrieved party is identifiable. A similar view was taken by the Delhi High Court in *Titan Industries* v. *Ramkumar Jewellers*.[80]

d) Public Record: The use of public records for publishing media is allowed 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.

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[76] 2012 SCC OnLine Mad 3263; (2013) 54 PTC 327.
[77] 2015 SCC OnLine Mad 158; (2015) 62 PTC 351.
[78] 1994 SCC OnLine Del 722; (1995) 57 DLT 154: (1995) 32 DRJ 142.
[79] 2015 SCC OnLine Mad 158; (2015) 62 PTC 351.
[80] 2012 SCC OnLine Del 2382; (2012) 50 PTC 486.
[81] (1994) 6 SCC 632.

e) Newsworthiness: While allowing the publication of material/information that is 'newsworthy', the Courts in India have taken the consistent view that the same must be within reasonable limits. The Supreme Court in *R. Rajagopal* v. *State of T.N.*[82] has held that there is "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*,[83] while placing reliance on the decision of the Supreme Court in the *Auto Shankar case*, had taken the same view, stating that "the private life of the plaintiff written 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". In fact, even in *Phoolan Devi* v. *Shekhar Kapoor*,[84] 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*,[85] observed 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… 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.*,[86] the Supreme Court held that publications on the basis of public records are subject to the interest of decency when made in 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 indignity 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*,[87] where he noted that "(t)he right of publicity 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".

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82 (1994) 6 SCC 632.
83 2012 SCC OnLine Mad 3263; (2013) 54 PTC 327.
84 1994 SCC OnLine Del 722; (1995) 57 DLT 154: (1995) 32 DRJ 142.
85 (2017) 10 SCC 1.
86 (1994) 6 SCC 632.
87 (2017) 10 SCC 1.

The Unreasonable public disclosure of embarrassing private facts: The courts in *R. Rajagopal* v. *State of T.N.*,[88] *Selvi J. Jayalalithaa* v. *Penguin Books India*,[89] *Phoolan Devi* v. *Shekhar Kapoor*,[90] and Justice Sanjay Kishan Kaul in *K.S. Puttaswamy* v. *Union of India*,[91] have carved out this exception to the right to publicity as well. This exception applies where the facts being publicised are not newsworthy or, even if arguably newsworthy, go beyond the information to which the public is entitled, and becomes a morbid and sensational 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-case basis in India.[92]

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88 (1994) 6 SCC 632.
89 2012 SCC OnLine Mad 3263; (2013) 54 PTC 327.
90 1994 SCC OnLine Del 722; (1995) 57 DLT 154: (1995) 32 DRJ 142.
91 (2017) 10 SCC 1.
92 Gobind v. State of M.P., (1975) 2 SCC 148.