IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

Monday,the 15th day of March 2021/24th Phalguna, 1942

WP(C) No.6687/2017(R)

PETITIONER

XXX

RESPONDENTS

1. UNION OF INDIA,
REPRESENTED BY SECRETARY BY GOVERNMENT,
MINISTRY OF COMMUNICATION AND IT DEPARTMENT OF
ELECTRONIC AND INFORMATION TECHNOLOGY,
ELECTRONICS NIKETAN, 6, CGO COMPLEX,
LODHI ROAD, NEW DELHI - 110 003.
2. GOOGLE INC, 1600,
AMPHIETHEATRE PARKWAY MOUNTAIN VIEW,
CA 94043, USA, REPRESENTED BY ITS MANAGING DIRECTOR.
3. GOOGLE INDIA (PVT) LTD. NO.3,
RM2 INFINITY TOWER E OLD MADRAS ROAD,
4TH AND 5TH FLOOR, BANGALORE - 560 016.
4. THE REGISTRAR GENERAL, HIGH COURT OF KERALA,
HIGH COURT ROAD, ERNAKULAM, KERALA-682 031.

(ADDL. R4 IMPLEADED AS PER ORDER DATED 29-01-2020 IN IA. 3/2019 IN WP(C)6687/2017)

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to pass an interim order directing respondents 2 & 3 to disguise the name of the petitioner in the cause title of Exhibit P1 judgment or to put an anonymous name is the place of the petitioner's name, pending final disposal of the above writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 01/03/2021 and upon hearing the arguments of M/S.DHANYA T.MALLAR, ADARSH MATHEW, DILJITH K.MANOHAR & VIPIN P.VARGHESE, Advocates for the petitioner, SRI.P. VIJAYAKUMAR, ASSISTANT SOLICITOR GENERAL OF INDIA for R1, M/S. C.M.ANDREWS, ADITYA VIKRAM BHAT & ANIND THOMAS, Advocates for R2, SRI.SANTHOSH MATHEW, Advocate for R3 and of SRI.HARINDRANATH, Advocate for R4, the court passed the following:

ANIL K. NARENDRAN, J.

W.P.(C)No.6687 of 2017

Dated this the 15th day of March, 2021

REFERENCE ORDER

The petitioner, who is a permanent resident of Bangalore in Karnataka State has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 2nd respondent-Google Inc., USA and the 3rd respondent-Google India (Pvt.) Ltd., Bangalore to disguise her name in the cause title of Ext.P1 judgment of this Court dated 07.08.2015 in W.P.(C) No.23996 of 2015 or to put an anonymous name. The petitioner has also sought for a writ of mandamus commanding the 1st respondent-Union of India, Ministry of Communication and Information Technology, Department of Electronics and Information Technology, to exercise its powers under the Information Technology Act, 2000 compelling the 2nd respondent-Google Inc., USA to unindex the links in the web page and to secure the petitioner's right to privacy.

2. On 23.02.2017, Registry was directed to number the writ petition on condition that the petitioner will have to satisfy this Court with respect to territorial jurisdiction. On 08.03.2017, when this writ petition came up for admission, the learned Assistant

Solicitor General of India took notice for the 1st respondent-Union of India. Urgent notice by speed post was ordered to respondents 2 and 3, returnable within two weeks.

3. On 06.02.2018, the 3rd respondent filed counter affidavit opposing the reliefs sought for in this writ petition.

4. On 06.11.2019, the petitioner filed I.A.No.2 of 2019 seeking an order to amend the writ petition by incorporating additional statement of facts, grounds and reliefs, as stated in that interlocutory application, and also I.A.No.3 of 2019, seeking an order to implead the Registrar General of this Court as additional 4th respondent. By the order dated 29.01.2020 those applications were allowed and the petitioner was directed to produce amended writ petition, within one week.

5. The additional reliefs sought for are as follows; a writ of mandamus commanding the 4th respondent-Registrar General to redact the judgment in W.P.(C)No.23996 of 2015 by removing the name of the petitioner; and a writ of mandamus commanding the 4th respondent to take necessary steps to mask the name of the petitioner before releasing the judgment in W.P.(C)No.23996 of 2015, for the benefit of any service provider, who may seek a copy of that judgment.

6. On 15.12.2020, the 4th respondent filed counter affidavit, opposing the reliefs sought for in this writ petition.

7. Heard the learned counsel for the petitioner, the learned Assistant Solicitor General of India appearing for the 1st respondent, the respective counsel appearing for respondents 2 and 3 and also the learned Standing Counsel appearing for the 4th respondent.

8. The petitioner had earlier approached this Court in W.P.(C)No.23996 of 2015, seeking consideration of her application for contracting marriage under Section 5 of the Special Marriage Act, 1954 with an American citizen of Indian origin. That writ petition was allowed by Ext.P1 judgment dated 07.08.2015, whereby the Sub Registrar, Ettumanoor was directed to accept the petitioner's application for marriage and permit her to contract the marriage, as intended by her, which shall be solemnised under the provisions of the Special Marriage Act, 1954. After Ext.P1 judgment, that marriage could not be solemnised due to difference of opinion between the parties. The grievance of the petitioner is against publication of Ext.P1 judgment of this Court by Indian Kanoon with her name in the cause title. Consequent to that publication, Ext.P1 judgment has been indexed by the 2nd respondent-Google Inc, USA and the 3rd respondent-Google India (Pvt.) Ltd. Whenever search is

conducted using the name of the petitioner as the keyword in the search engine of the 2nd respondent, the web page of Indian Kanoon showing the above judgment will appear in the search result. According to the petitioner, the exhibition of her name in the cause title of Ext.P1 judgment as well as publication of that judgment has resulted in substantial prejudice. The petitioner is still a spinster because of the indexing and publication of her name in the web page. Marriage prospects of the petitioner have become bleak and blurred. Because of such publication, she was victimised by her friends and relatives. Therefore, the petitioner wants to see that her name is either disguised in the cause title of Ext.P1 judgment or an anonymous name is put or her name is masked. The petitioner would contend that the publication of her name in the cause title of Ext.P1 judgment infringes her personal liberty under Article 21 of the Constitution of India. The petitioner submitted Ext.P3 request dated 12.12.2016 before the 3rd respondent to remove her name from the cause title of Ext.P1 judgment and put some anonymous name in that place or to mask her name. Since, there was no response from the 3rd respondent, the petitioner has approached this Court in this writ petition,

invoking the writ jurisdiction under Article 226 of the Constitution of India, seeking the aforesaid reliefs.

9. In the counter affidavit filed by the 3rd respondent-Google India (Pvt.) Ltd., it is contended that, the said respondent is neither the creator nor the uploader or the publisher of any judgment uploaded by Indian Kanoon. The 3rd respondent neither owns nor controls either the Google search engine or any of the search results appearing on it or any third party to which such results may relate. The Google search engine is in fact provided, managed and administrated by Google LLC, a company incorporated under the laws of USA. Since the 3rd respondent is neither the host nor the uploader of Ext.P1 judgment, the petitioner cannot seek any relief against the said respondent. The 3rd respondent, which is a private entity, will not come under the purview of 'State', within the meaning of Article 12 of the Constitution of India. The judgment of courts are ordinarily a matter of public record, unless specific measures have been taken to safeguard the identity of the litigants/parties in that matter. The High Court is a court of record and in the absence of any special safeguard all judgments and orders of the High Court form part of the public record.

10. In the counter affidavit filed by the 4th respondent-Registrar General it is stated that, Ext.P1 judgment in W.P.(C) No.23996 of 2015 has been published in the official website of this Court and in several other publications. It has also been published in Indian Kanoon. Ext.P1 judgment can be accessed using a simple search with the name of the petitioner. The case status and judgment are uploaded in the official website as per routine office procedure, so that parties in particular and the public in general can have easy access to the court proceedings. The petitioner has not made any specific request to the concerned court to conceal her name or other details in the proceedings, instead, she has come up with the objection stating that publication of her case details infringes her right to privacy enshrined in Article 21 of the Constitution of India. The 4th respondent would contend that the publication of names and other details in the order or judgment of this Court do not infringe one's right to privacy. The only exemption is with regard to victims of a sexual offence, in view of the social object of preventing social victimisation, as held by the Apex Court in **State of Punjab v. Ramdev Singh [(2004) 1 SCC 421]** and reiterated in **Dinesh @ Budha v. State of Rajasthan [(2006) 3 SCC 771]**. Consequently, Circular No.3 of 2017 has been issued by

the 4th respondent, laying down guidelines in the matter. Sub-section (3) of Section 327 of the Criminal Procedure Code, 1973 has imposed certain restrictions with regard to publication of any matter in relation to court proceedings, which are applicable only to inquiry into and trial of rape cases, etc. Similarly, under Section 228A of the Indian Penal Code, 1860, disclosure of identity of victim of sexual offences (under Sections 376 to 376E) is punishable. There is no law prohibiting publication of names and other details of parties in an order/judgment of a court except in the case of victims of a sexual offences. The 4th respondent would point out the pendency of W.P.(C)No.20387 of 2018 before this Court involving similar facts.

11. Section 228A of the Indian Penal Code, 1860 deals with disclosure of identity of the victim of certain offences, etc. As per sub-section (1) of Section 228A, whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB or Section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim)

shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

12. Section 376 of the Indian Penal Code deals with punishment for rape; Section 376A deals with punishment for causing death or resulting in persistent vegetative state of victim; Section 376AB deals with punishment for rape on woman under twelve years of age; Section 376B deals with sexual intercourse by husband upon his wife during separation; Section 376C deals with sexual intercourse by a person in authority; Section 376D deals with gang rape, Section 376DA deals with punishment for gang rape on woman under sixteen years of age; Section 376DB deals with punishment for gang rape on woman under twelve years of age; Section 376E deals with punishment for repeat offenders.

13. As per sub-section (2) of Section 228A, nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is- (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or (b) by, or with the authorisation in writing of, the victim; or (c) where the victim is

dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim. As per the proviso to sub-section (2) of Section 228A, no such authorisation shall be given by the next of kin to anybody other than the Chairman or the Secretary, by whatever name called, of any recognised welfare institution or organisation. As per Explanation to sub-section (2), for the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

14. As per sub-section (3) of Section 228A, whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine. As per Explanation, the printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this Section.

15. As per sub-section (1) of Section 327 of the Criminal Procedure Code, 1973, the place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be

deemed to be an open court to which the public generally may have access, so far as the same can conveniently contain them. As per the proviso to sub-section (1), the Presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the court. As per sub-section (2) of Section 327, notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB or Section 376E of the Indian Penal Code shall be conducted *in camera*. As per the first proviso to sub-section (2), the Presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the court. As per the second proviso to sub-section (2), *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate. As per sub-section (3) of Section 327, where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the

court. As per the proviso to sub-section (3), the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.

16. In **Bhupinder Sharma v. State of Himachal Pradesh [(2003) 8 SCC 551]** the Apex Court noticed that Section 228A of the Indian Penal Code makes disclosure of identity of victim of certain offences punishable. Printing or publishing name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376A, 376B, 376C or 376D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228A has been enacted, it would be appropriate that in the judgments, be it of the Supreme Court, High Court or lower courts, the name of the victim should not be indicated. The Apex Court reiterated the said principle in **State of Karnataka v. Puttaraja [(2004) 1 SCC 475]** and **State of Punjab v. Ramdev Singh [(2004) 1 SCC 421]**.

17. In **Lalit Yadav v. State of Chhattisgarh [(2018) 7 SCC 499]** the Apex Court was dealing with a case in which the petitioner was convicted under Sections 376 and 342 of the Indian Penal Code and sentenced to substantive sentences of seven years and one year respectively. The conviction and sentence of the petitioner has been affirmed by the High Court by dismissing the appeal. The Apex Court found no reason to upset the orders of conviction and sentence and accordingly dismissed the Special Leave Petition. The Apex Court noticed from the judgments of both, the Trial Court and the High Court that the victim in that case, who was examined as PW2, has been named all through. The Apex Court found that such a course is not consistent with Section 228A of the Indian Penal Code, though the explanation makes an exception in favour of the judgments of the superior courts. Nonetheless, every attempt should be made by all the courts not to disclose the identity of the victim in terms of Section 228A of the Indian Penal Code.

18. In **Nipun Saxena v. Union of India [(2019) 2 SCC 703]** the Apex Court noticed that, sub-section (1) of Section 228A of the Indian Penal Code provides that any person who makes known the name and identity of a person who is an alleged victim

of an offence falling under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E commits a criminal offence and shall be punishable for a term which may extend to two years. What is however permitted under sub-section (2) of Section 228A is making known the identity of the victim by printing or publication under certain circumstances described therein. Any person, who publishes any matter in relation to the proceedings before a court with respect to such an offence, without the permission of the court, commits an offence. The Explanation however provides that printing or publication of the judgment of the High Courts or the Supreme Court will not amount to any offence within the meaning of Section 228A. Neither the Indian Penal Code nor the Criminal Procedure Code define the phrase 'identity of any person'. Section 228A of the Indian Penal Code clearly prohibits the printing or publishing "the name or any matter which may make known the identity of the person". It is obvious that not only the publication of the name of the victim is prohibited but also the disclosure of any other matter which may make known the identity of such victim. The phrase "matter which may make known the identity of the person" does not solely mean that only the name of the victim should not be disclosed but it also means that the identity of the

victim should not be discernible from any matter published in the media. The intention of the law makers was that the victim of such offences should not be identifiable so that they do not face any hostile discrimination or harassment in the future.

19. In **Nipun Saxena** the Apex Court noticed that, a victim of rape will face hostile discrimination and social ostracisation in society. Such victim will find it difficult to get a job, will find it difficult to get married and will also find it difficult to get integrated in society like a normal human being. Our criminal jurisprudence does not provide for an adequate witness protection programme and, therefore, the need is much greater to protect the victim and hide her identity. In this regard, the Apex Court made reference to some ways and means where the identity is disclosed without naming the victim. In one case, which made the headlines, though the name of the victim was not given, it was stated that she had topped the State Board Examination and the name of the State was given. In another instance, footage is shown on the electronic media where the face of the victim is blurred but the faces of her relatives, her neighbours, the name of the village, etc. are clearly visible. This also amounts to disclosing the identity of the victim. Therefore, the Apex Court held that no person can print or publish

the name of the victim or disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

20. In **Nipun Saxena** the Apex Court noticed that, sub-section (2) of Section 228A of the Indian Penal Code makes an exception for police officials who may have to record the true identity of the victim in the police station or in the investigation file. In the first information report the name of the victim will have to be disclosed. However, this should not be made public and especially not to the media. The police officers investigating such cases and offences should also as far as possible, either use a pseudonym to describe the victim unless it is absolutely necessary to write down her identity. As far as clause (b) of sub-section (2) of Section 228A is concerned, if an adult victim has no objection to her name being published or identity being disclosed, she can obviously authorise any person in writing to disclose her name. This has to be a voluntary and conscious act of the victim. Nobody can have any objection to the victim disclosing her name as long as the victim is a major. Coming to clause (c) of sub-section (2) of Section 228A, where the victim is a minor, Section 228A will no longer apply because of the enactment of Protection of Children from Sexual

Offences Act, 2012 which deals specifically with minors. In fact, the words 'or minor' should for all intents and purposes be deemed to be deleted from clause (c) of sub-section (2) of Section 228A of the Indian Penal Code.

21. In **Ravishankar v. State of M.P. [(2019) 9 SCC 689]** the Apex Court held that, as noted in **Bhupinder Sharma [(2003) 8 SCC 551]** the mandate of not disclosing identities of the victims of sexual offences under Section 228A of the Indian Penal Code ought to be observed in spirit even by the Supreme Court.

22. In **R. Rajagopal @ R.R.Gopal v. State of Tamil Nadu [(1994) 6 SCC 632]** one of the questions that came up for consideration before the Apex Court was as to whether a citizen of this country can prevent another person from writing his life story or biography? Does such unauthorised writing infringe the citizen's right to privacy? Whether the freedom of press guaranteed by Article 19(1)(a) entitle the press to publish such unauthorised account of a citizen's life and activities and if so to what extent and in what circumstances? What are the remedies open to a citizen of this country in case of infringement of his right to privacy and further in case such writing amounts to defamation? In the said decision, the Apex Court noticed that the right to privacy was first

referred to as a right and elaborated in the celebrated article of Warren and Brandies (later Mr. Justice Brandies) entitled 'The right to privacy' published in 4 Harward Law Review 193, in the year 1890. Though the expression 'right to privacy' was first referred to in **Olmstead v. United States [(1928) 277 US 438 : 72 L Ed 944]**, it came to be fully discussed in **Time Inc. v. Hill [(1967) 385 US 374 : 17 L Ed 2d 456]**. The next relevant decision is **Cox Broadcasting Corporation v. Cohn [(1975) 420 US 469 : 43 L Ed 2d 328]**, in which the Georgia law prohibited and punished the publication of the name of a rape victim. The appellant, a reporter of a newspaper obtained the name of the rape victim from the records of the court and published it. The father of the victim sued for damages. White, J. recognised that 'in this sphere of collision between claims of privacy and those of the free press, the interests on both sides are plainly rooted in the traditions and significant concerns of our society' but chose to decide the case on the narrow question whether the press can be said to have violated the said statute or the right to privacy of the victim by publishing her name, having obtained it from public records. The learned Judge held that the press cannot be said to have violated the Georgia law or the right to privacy if it obtains the name of the rape victim from the

public records and publishes it. The learned Judge held that the freedom of press to publish the information contained in the public records is of critical importance to the system of government prevailing in that country and that, may be, in such matters 'citizenry is the final judge of the proper conduct of public business'.

23. In **R. Rajagopal** the Apex Court summarised the board principles, in Para.26, as follows;

> "26. We may now summarise the broad principles flowing from the above discussion:
>
> (1) 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.
>
> (2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public

records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to

punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media." (underline supplied)

24. In **K.S. Puttaswamy v. Union of India [(2017) 10 SCC 1]** the following two questions came up for consideration before a Nine-Judges Bench of the Apex Court;

(i) Whether there is any fundamental right of privacy under the Constitution of India and if so, where is it located and what are its contours?

(ii) What is the ratio decidendi in **M.P. Sharma v. Satish Chandra [AIR 1954 SC 300]** and **Kharak Singh v. State of U.P. [AIR 1963 SC 1295]** and whether those cases are rightly decided?

25. In **K.S. Puttaswamy** the Nine-Judges Bench answered the reference as follows;

(i) The decision in **M.P. Sharma** which holds that the right to privacy is not protected by the Constitution stands overruled;

(ii) The decision in **Kharak Singh** to the extent that it holds that the right to privacy is not protected by the Constitution stands overruled;

(iii) 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.

(iv) Decisions subsequent to **Kharak Singh** which have enunciated the position in (iii) above lay down the correct position in law. (underline supplied)

26. The conclusions in **K.S. Puttaswamy**, at Paras.316 to 328 of the main judgment authored by D.Y. Chandrachud, J., read thus;

"316. The judgment in **M.P. Sharma** holds essentially that in the absence of a provision similar to the Fourth Amendment to the US Constitution, the right to privacy cannot be read into the provisions of Article 20(3) of the Indian Constitution. The judgment does not specifically adjudicate on whether a right to privacy would arise from any of the other provisions of the rights guaranteed by Part III including Article 21 and Article 19. The observation that privacy is not a right guaranteed by the Indian Constitution is not reflective of the correct position. **M.P. Sharma** is overruled to the extent to which it indicates to the contrary.

317. **Kharak Singh** has correctly held that the content of the expression 'life' under Article 21 means not merely the right to a person's "animal existence" and that the expression "personal liberty" is a guarantee against invasion into the

sanctity of a person's home or an intrusion into personal security. **Kharak Singh** also correctly laid down that the dignity of the individual must lend content to the meaning of "personal liberty". The first part of the decision in **Kharak Singh** which invalidated domiciliary visits at night on the ground that they violated ordered liberty is an implicit recognition of the right to privacy. The second part of the decision, however, which holds that the right to privacy is not a guaranteed right under our Constitution, is not reflective of the correct position. Similarly, **Kharak Singh's** reliance upon the decision of the majority in **A.K. Gopalan v. State of Madras [AIR 1950 SC 27]** is not reflective of the correct position in view of the decisions in **Rustom Cavasjee Cooper v. Union of India [(1970) 1 SCC 248]** and in **Maneka Gandhi v. Union of India [(1978) 1 SCC 248]**. **Kharak Singh** to the extent that it holds that the right to privacy is not protected under the Indian Constitution is overruled.

318. Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.

319. Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in each individual as an intrinsic and inseparable part of the human element which dwells within.

320. Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy

also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III.

321. Judicial recognition of the existence of a constitutional right of privacy is not an exercise in the nature of amending the Constitution nor is the court embarking on a constitutional function of that nature which is entrusted to Parliament.

322. Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.

323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be let alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.

324. This Court has not embarked upon an exhaustive enumeration or a catalogue of entitlements or interests comprised in the right to privacy. The Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law. The meaning of the Constitution cannot be frozen on the perspectives present when it was adopted. Technological change has given rise to concerns which were not present seven decades ago and the rapid growth of technology may render obsolescent many notions of the present. Hence the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features.

325. Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the threefold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them.

326. Privacy has both positive and negative content. The negative content restrains the State from committing an

intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the State to take all necessary measures to protect the privacy of the individual.

327. Decisions rendered by this Court subsequent to **Kharak Singh**, upholding the right to privacy would be read subject to the above principles.

328. Informational privacy is a facet of the right to privacy. The dangers to privacy in an age of information can originate not only from the State but from non-State actors as well. We commend to the Union Government the need to examine and put into place a robust regime for data protection. The creation of such a regime requires a careful and sensitive balance between individual interests and legitimate concerns of the state. The legitimate aims of the State would include for instance protecting national security, preventing and investigating crime, encouraging innovation and the spread of knowledge, and preventing the dissipation of social welfare benefits. These are matters of policy to be considered by the Union Government while designing a carefully structured regime for the protection of the data. Since the Union Government has informed the Court that it has constituted a Committee chaired by Hon'ble Shri Justice B.N. Srikrishna, former Judge of this Court, for that purpose, the matter shall be dealt with appropriately by the Union Government having due regard to what has been set out in this judgment."

(underline supplied)

27. In **K.S. Puttaswamy**, at Paras.297 and 298 of the main judgment authored by D.Y. Chandrachud, J., the Apex Court noticed

that, privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. Privacy is a postulate of human dignity itself. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Privacy lies across the spectrum of protected freedoms. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An

individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. Paras.297 and 298 of the said judgment read thus;

"297. What, then, does privacy postulate? Privacy postulates the reservation of a private space for the individual, described as the right to be let alone. The concept is founded on the autonomy of the individual. The ability of an individual to make choices lies at the core of the human personality. The notion of privacy enables the individual to assert and control the human element which is inseparable from the personality of the individual. The inviolable nature of the human personality is manifested in the ability to make decisions on matters intimate to human life. The autonomy of the individual is associated over matters which can be kept private. These are concerns over which there is a legitimate expectation of privacy. The body and the mind are inseparable elements of the human personality. The integrity of the body and the sanctity of the mind can exist on the foundation that each individual possesses an inalienable ability and right to preserve a private space in which the human personality can develop. Without the ability to make choices, the inviolability of the personality would be in doubt. Recognising a zone of privacy is but an acknowledgment that each individual must be entitled to chart and pursue the course of development of personality. Hence privacy is a postulate of human dignity itself. Thoughts and behavioural patterns which are intimate to an individual are entitled to a zone of privacy where one is free of social expectations. In that zone of privacy, an individual is not judged by others. Privacy enables each individual to take

crucial decisions which find expression in the human personality. It enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity. Privacy is an intrinsic recognition of heterogeneity, of the right of the individual to be different and to stand against the tide of conformity in creating a zone of solitude. Privacy protects the individual from the searching glare of publicity in matters which are personal to his or her life. Privacy attaches to the person and not to the place where it is associated. Privacy constitutes the foundation of all liberty because it is in privacy that the individual can decide how liberty is best exercised. Individual dignity and privacy are inextricably linked in a pattern woven out of a thread of diversity into the fabric of a plural culture.

298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those

fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will

espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination."

28. In **K.S. Puttaswamy**, at Para.315 of the judgment, the Apex Court noticed the constitution of a committee chaired by Justice B.N. Srikrishna, former Judge of the Supreme Court of India to review, inter alia, data protection norms in the country and to make its recommendations. Para.315 of the said judgment reads thus;

"315. During the course of the hearing of these proceedings, the Union Government has placed on the record an Office Memorandum dated 31.07.2017 by which it has constituted a

committee chaired by Justice B.N. Srikrishna, former Judge of the Supreme Court of India to review inter alia data protection norms in the country and to make its recommendations. The terms of reference of the Committee are:

a) To study various issues relating to data protection in India;

b) To make specific suggestions for consideration of the Central Government on principles to be considered for data protection in India and suggest a draft data protection bill.

Since the Government has initiated the process of reviewing the entire area of data protection, it would be appropriate to leave the matter for expert determination so that a robust regime for the protection of data is put into place. We expect that the Union Government shall follow up on its decision by taking all necessary and proper steps." (underline supplied)

29. In **K.S. Puttaswamy**, at Para.61 of the main judgment authored by D.Y. Chandrachud, J., the Apex Court noticed that, in **R. Rajagopal v. State of T.N. [(1994) 6 SCC 632]** a Bench of two Judges recognised that the right to privacy has two aspects: the first affording an action in tort for damages resulting from an unlawful invasion of privacy, while the second is a constitutional right. Paras.61 to 63 of the said decision read thus;

'61. The decision which has assumed some significance is **R. Rajagopal v. State of T.N. [(1994) 6 SCC 632]**. In that case, in a proceeding under Article 32 of the Constitution, a

writ was sought for restraining the State and Prison Authorities from interfering with the publication of an autobiography of a condemned prisoner in a magazine. The Prison Authorities, in a communication to the publisher, denied the claim that the autobiography had been authored by the prisoner while he was confined to jail and opined that a publication in the name of a convict was against Prison Rules. The prisoner in question had been found guilty of six murders and was sentenced to death. Among the questions which were posed by this Court for decision was whether a citizen could prevent another from writing about the life story of the former and whether an unauthorised publication infringes the citizen's right to privacy. Jeevan Reddy, J. speaking for a Bench of two Judges recognised that the right to privacy has two aspects: the first affording an action in tort for damages resulting from an unlawful invasion of privacy, while the second is a constitutional right. The judgment traces the constitutional protection of privacy to the decisions in **Kharak Singh v. State of U.P. [AIR 1963 SC 1295]** and **Gobind v. State of M.P. [(1975) 2 SCC 148]**. This appears from the following observations: [R. Rajagopal, SCC pp. 639-40, para.9]

> "9. … The first decision of this Court dealing with this aspect is **Kharak Singh v. State of U.P. [AIR 1963 SC 1295]**. A more elaborate appraisal of this right took place in a later decision in **Gobind v. State of M.P. [(1975) 2 SCC 148]** wherein Mathew, J. speaking for himself, Krishna Iyer and Goswami, JJ. traced the origins of this right and also pointed out how the

> said right has been dealt with by the United States Supreme Court in two of its well-known decisions in **Griswold v. Connecticut [14 L Ed 2d 510]** and **Roe v. Wade [35 L Ed 2d 147]**."

The decision in **Rajagopal** considers the decisions in **Kharak Singh** and **Gobind** thus: [SCC p. 643, para.13]

> "13. … **Kharak Singh** was a case where the petitioner was put under surveillance as defined in Regulation 236 of the U.P. Police Regulations. … Though right to privacy was referred to, the decision turned on the meaning and content of "personal liberty" and "life" in Article 21. **Gobind** was also a case of surveillance under M.P. Police Regulations. **Kharak Singh** was followed even while at the same time elaborating the right to privacy…."

62. The Court in **Rajagopal** held that neither the State nor can its officials impose prior restrictions on the publication of an autobiography of a convict. In the course of its summary of the decision, the Court held: (SCC pp. 649-50, para.26)

> "(1) 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.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. We are, however, of the opinion that in the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

(3) There is yet another exception to the rule in (1) above - indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is

based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages. It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above. It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and Parliament and legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule."

63. The judgment of Jeevan Reddy, J. regards privacy as implicit in the right to life and personal liberty under Article 21. In coming to the conclusion, the judgment in **Rajagopal** notes that while **Kharak Singh** had referred to the right to privacy, the decision turned on the content of life and personal liberty in Article 21. The decision recognises privacy as a protected constitutional right, while tracing it to Article 21.'

30. In **K.S. Puttaswamy**, at Para.511 of the concurring judgment authored by Rohinton Fali Nariman, J., the Apex Court noticed that in **R. Rajagopal v. State of Tamil Nadu [(1994) 6 SCC 632]** the Apex Court decided on the rights of privacy vis-a-vis the freedom of the press, and in doing so, referred to a large number of decisions and arrived at the conclusions summerised in Para.26 of the said decision [SCC pp.649-51]. The conclusion in Para.536 of the concurring judgment is that, the inalienable fundamental right to privacy resides in Article 21 and other fundamental freedoms contained in Part III of the Constitution of India. **M.P. Sharma** and the majority in **Kharak Singh**, to the extent that they indicate to the contrary, stand overruled. The later judgments of the Apex Court recognising privacy as a fundamental right need not be revisited.

31. In **K.S. Puttaswamy**, at Para.622 of the concurring judgment authored by Sanjay Kishan Kaul, J., the Apex Court noticed that, Samuel Warren and Louis Brandeis in 1890 expressed the belief that an individual should control the degree and type of private -personal information that is made public. This formulation of the right to privacy has particular relevance in today's

information and digital age. Paras.623 to 626 of the said judgment read thus;

> "623. An 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.
>
> 624. There 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.
>
> 625. Every 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.
>
> 626. Aside 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."
>
> (underline supplied)

32. In **K.S. Puttaswamy**, at Para.629 of the concurring judgment authored by Sanjay Kishan Kaul, J., the Apex Court noticed that, the right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet. Whereas, the right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right of privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society. Thus, the European Union Regulation of 2016 has recognised what has been termed as 'the right to be forgotten'. This does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification. If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal

data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Paras.629 to 636 of the said judgment read thus;

"629. The right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet. Needless to say that this would not be an absolute right. The existence of such a right does not imply that a criminal can obliterate his past, but that there are variant degrees of mistakes, small and big, and it cannot be said that a person should be profiled to the nth extent for all and sundry to know.

630. A high school teacher was fired after posting on her Facebook page that she was "so not looking forward to another school year" since the school district's residents were "arrogant and snobby". A flight attendant was fired for posting suggestive photos of herself in the company's uniform In the pre-digital era, such incidents would have never occurred. People could then make mistakes and embarrass themselves, with the comfort that the information will be typically forgotten over time.

631. The impact of the digital age results in information on the internet being permanent. Humans forget, but the internet does not forget and does not let humans forget. Any endeavour to remove information from the internet does not result in its absolute obliteration. The foot prints remain. It is thus, said that in the digital world preservation is the norm and forgetting a struggle.

632. The technology results almost in a sort of a permanent storage in some way or the other making it difficult to begin life again giving up past mistakes. People are not static, they change and grow through their lives. They evolve. They make mistakes. But they are entitled to re-invent themselves and reform and correct their mistakes. It is privacy which nurtures this ability and removes the shackles of unadvisable things which may have been done in the past.

633. Children around the world create perpetual digital footprints on social network websites on a 24/7 basis as they learn their 'ABCs': Apple, Bluetooth, and chat followed by download, e-mail, Facebook, Google, Hotmail, and Instagram They should not be subjected to the consequences of their childish mistakes and naivety, their entire life. Privacy of children will require special protection not just in the context of the virtual world, but also the real world.

634. People change and an individual should be able to determine the path of his life and not be stuck only on a path of which he/she treaded initially. An individual should have the capacity to change his/her beliefs and evolve as a person. Individuals should not live in fear that the views they expressed will forever be associated with them and thus refrain from expressing themselves.

635. Whereas this right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right of privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society.

636. Thus, the European Union Regulation of 2016 has recognised what has been termed as 'the right to be forgotten'. This does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification. If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Such a right cannot be exercised where the information /data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations, for the performance of a task carried out in public interest, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. Such justifications would be valid in all cases of breach of privacy, including breaches of data privacy." (underline supplied)

33. In **Thalappalam Service Co-operative Bank Ltd. v. State of Kerala [(2013) 16 SCC 82]** the Apex Court held that, right to be let alone, as propounded in **Olmstead v. The United States [(1927) 277 US 438]** is the most comprehensive of the rights and most valued by civilised man. Recognising the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put lot of safeguards to protect the

rights under Section 8(1)(j) of the Right to Information Act, 2005. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those informations. If the authority finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution. Paras.63 and 64 of the said judgment read thus;

> "63. Section 8 begins with a non obstante clause, which gives that Section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). Public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(1)(j) of the Right to information Act. Right to be let alone, as propounded in

Olmstead v. The United States reported in **[(1927) 277 US 438]** is the most comprehensive of the rights and most valued by civilised man.

64. Recognising the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(1)(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment of this Court in **Girish Ramchandra Deshpande v. Central Information Commissioner and others [(2013) 1 SCC 212]** wherein this Court held that since there is no bona fide public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution." (underline supplied)

34. In **Navtej Singh Johar v. Union of India [(2018) 10 SCC 1]** a Five-Judges Bench of the Apex Court noticed that, in **R. Rajagopal v. State of T.N. [(1994) 6 SCC 632]**, while discussing the concept of right to privacy, it has been observed that

the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21 and it is a 'right to be let alone', for a citizen has a right to safeguard the privacy of his/her own, his/her family, marriage, procreation, motherhood, child-bearing and education, among other matters.

35. In **Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal [(2020) 5 SCC 481]** a Five-Judges Bench of the Apex Court noticed that, a claim to protect privacy is, in a sense, a claim for the preservation of confidentiality of personal information. With progression of the right to privacy, the underlying values of the law that protects personal information came to be seen differently as the courts recognised that unlike law of confidentiality that is based upon duty of good faith, right to privacy focuses on the protection of human autonomy and dignity by granting the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people. [See: Sedley LJ in Douglas v. Hello Ltd. (2001) QB 967]. In **PJS v. News Group Newspapers Ltd. [(2016) UKSC 26]**, the Supreme Court of the United Kingdom had drawn a distinction between the right to respect private and family life or privacy and claims based upon confidentiality by observing

that the law extends greater protection to privacy rights than rights in relation to confidential matters. In the former case, the claim for misuse of private information can survive even when information is in the public domain as its repetitive use itself leads to violation of the said right. The right to privacy gets the benefit of both the quantitative and the qualitative protection. The former refers to the disclosure already made and what is yet undisclosed, whereas the latter refers to the privateness of the material, invasion of which is an illegal intrusion into the right to privacy. Claim for confidentiality would generally fail when the information is in public domain. The law of privacy is, therefore, not solely concerned with the information, but more concerned with the intrusion and violation of private rights. Citing an instance of how publishing of defamatory material can be remedied by a trial establishing the falsity of such material and award of damages, whereas invasion of privacy cannot be similarly redressed, the court had highlighted the reason why truth or falsity of an allegation or information may be irrelevant when it comes to invasion of privacy. Therefore, claims for protection against invasion of private and family life do not depend upon confidentiality alone.

36. In **Subhash Chandra Agarwal** the Apex Court noticed that, the right to privacy though not expressly guaranteed in the Constitution of India is now recognised as a basic fundamental right vide decision of the Constitutional Bench in **K.S. Puttaswamy** holding that it is an intrinsic part of the right to life and liberty guaranteed under Article 21 of the Constitution and recognised under several international treaties, chief among them being Article 12 of the Universal Declaration of Human Rights, 1948 which states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. The judgment recognises that everyone has a right to the protection of laws against such interference or attack. In **K.S. Puttaswamy** (main judgment authored by D.Y. Chandrachud, J.) has referred to the provisions of Section 8(1)(j) of the Right to Information Act, 2005 to highlight that the right to privacy is entrenched with constitutional status in Part III of the Constitution, thus providing a touchstone on which validity of executive decisions can be assessed and validity of laws can be determined vide judicial review exercised by the courts. This observation highlights the status and importance of the right to privacy as a constitutional right. The ratio as recorded in the two

concurring judgments of the learned Judges (R.F. Nariman and Sanjay Kishan Kaul, JJ.) are similar. It is observed that privacy involves a person's right to his physical body; right to informational privacy which deals with a person's mind; and the right to privacy of choice which protects an individual's autonomy over personal choices. While physical privacy enjoys constitutional recognition in Article 19(1)(d) and (e) read with Article 21, personal informational privacy is relatable to Article 21 and right to privacy of choice is enshrined in Article 19(1) (a) to (c), 20(3), 21 and 25 of the Constitution.

37. In **Subhash Chandra Agarwal** the Apex Court noticed that, privacy, it is uniformly observed in **K.S. Puttaswamy** is essential for liberty and dignity. Therefore, individuals have the need to preserve an intrusion-free zone for their personality and family. This facilitates individual freedom. Privacy and confidentiality encompass a bundle of rights including the right to protect identity and anonymity. Anonymity is where an individual seeks freedom from identification, even when and despite being in a public space. After referring to various judicial precedents, the Five-Judges Bench opined that, personal records, including name, address, physical, mental and psychological status, marks obtained,

grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied.

38. The additional reliefs sought for in this writ petition, by way of amendment, as per the order dated 29.01.2020 in I.A.No.2 of 2019, are as follows; a writ of mandamus commanding the 4th respondent-Registrar General to redact the judgment in W.P.(C)No.23996 of 2015 by removing the name of the petitioner; and a writ of mandamus commanding the 4th respondent to take necessary steps to mask the name of the petitioner before releasing the judgment in W.P.(C)No.23996 of 2015, for the benefit of any service provider, who may seek a copy of that judgment.

39. W.P.(C)No.23996 of 2015 was one filed by the petitioner seeking consideration of her application for contracting marriage under Section 5 of the Special Marriage Act, 1954 with an American citizen of Indian origin. That writ petition was allowed by Ext.P1 judgment dated 07.08.2015, whereby the Sub Registrar, Ettumanoor was directed to accept the petitioner's application for marriage and permit her to contract the marriage, as intended by her, which shall be solemnised under the provisions of the Special Marriage Act, 1954.

40. Section 228A of the Indian Penal Code and Section 327 of the Code of Criminal Procedure impose certain restrictions in disclosing the identity of the victim of an offence under Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB or Section 376E of the Indian Penal Code. Though the Explanation to sub-section (3) of Section 228A makes an exception in favour of the judgments of any High Court or the Supreme Court, in **Bhubinder Sharma [(2003) 8 SCC 551]**, the Apex court held that, keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228A of the Indian Penal Code has been enacted, it would be appropriate that in the

judgments, be it of the Supreme Court, High Court or lower court, the name of the victim should not be indicated. The Apex Court reiterated the said principle in **Puttaraja [(2004) 1 SCC 475]**, **Ram Dev Singh [(2004) 1 SCC 421]**, **Lalit Yadav [(2018) 7 SCC 499]**, **Nipun Saxena [(2019) 2 SCC 703]**, and **Ravishankar [(2019) 9 SCC 689]**.

41. As held by the Apex Court in **R. Rajagopal [(1994) 6 SCC 632]**, 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. The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records.

This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. In the interests of decency [Article 19(2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.

42. In **K.S. Puttaswamy [(2017) 10 SCC 1]** the Nine-Judges Bench of the Apex Court 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. Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Privacy is the constitutional core of human dignity. Privacy also connotes a right to be let alone. Privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being. Like other rights which form part of the fundamental freedoms protected by Part III,

including the right to life and personal liberty under Article 21, privacy is not an absolute right.

43. In **K.S. Puttaswamy**, at Para.315 of the main judgment authored by D.Y. Chandrachud, J., the Apex Court noticed the constitution of a committee chaired by Justice B.N. Srikrishna, former Judge of the Supreme Court of India to review, inter alia, data protection norms in the country and to make its recommendations. Since the Government has initiated the process of reviewing the entire area of data protection, the Apex Court thought it appropriate to leave the matter for expert determination so that a robust regime for the protection of data is put into place.

44. In **K.S. Puttaswamy**, at Para.629 of the concurring judgment authored by Sanjay Kishan Kaul, J., the Apex Court noticed that, the right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet. Whereas, the right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right of privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a

democratic society. Thus, the European Union Regulation of 2016 has recognised what has been termed as 'the right to be forgotten'. This does not mean that all aspects of earlier existence are to be obliterated, as some may have a social ramification. If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest.

45. Article 17 of the General Data Protection Regulation, 2016 of European Union deals with right to erasure (right to be forgotten). As per Article 17(1), the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies: (a) the personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed; (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing; (c) the data

subject objects to the processing pursuant to Article 21(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing pursuant to Article 21(2); (d) the personal data have been unlawfully processed; (e) the personal data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject; (f) the personal data have been collected in relation to the offer of information society services referred to in Article 8(1).

46. The Personal Data Protection Bill, 2019 introduced in Lok Sabha by the Minister of Electronics and Information Technology, on 11.12.2019, seeks to provide for protection of the privacy of individuals relating to their personal data, specify the flow and usage of personal data, create a relationship of trust between persons and entities processing the personal data, protect the rights of individuals whose personal data are processed, to create a framework for organisational and technical measures in processing of data, laying down norms for social media intermediary, cross-border transfer, accountability of entities processing personal data, remedies for unauthorised and harmful processing, and to establish a Data Protection Authority of India for the said purposes and for matters connected therewith or incidental thereto.

47. Section 20 of the Personal Data Protection Bill, 2019 deals with right to be forgotten. As per sub-section (1) of Section 20, the data principal shall have the right to restrict or prevent the continuing disclosure of his personal data by a data fiduciary where such disclosure - (a) has served the purpose for which it was collected or is no longer necessary for the purpose; (b) was made with the consent of the data principal under Section 11 and such consent has since been withdrawn; or (c) was made contrary to the provisions of this Act or any other law for the time being in force. As per sub-section (2) of Section 20, the rights under sub-section (1) may be enforced only on an order of the Adjudicating Officer made on an application filed by the data principal, in such form and manner as may be prescribed, on any of the grounds specified under clauses (a), (b) or clause (c) of that sub-section. As per the proviso to sub-section (2), no order shall be made under this sub-section unless it is shown by the data principal that his right or interest in preventing or restricting the continued disclosure of his personal data overrides the right to freedom of speech and expression and the right to information of any other citizen.

48. The 'right to be forgotten' envisaged under Section 20 of the Personal Data Protection Bill, 2019 confers right on the data

principal to restrict or prevent the continuing disclosure of his personal data by a data fiduciary where such disclosure has served the purpose for which it was collected or is no longer necessary for the purpose; was made with the consent of the data principal under Section 11 and such consent has since been withdrawn; or was made contrary to the provisions of this Act or any other law for the time being in force.

49. The Karnataka High Court in **(Name Redacted) v. Registrar General, High Court of Karnataka [2017 SCC OnLine Kar 424]** has acknowledged 'right to be forgotten', keeping in line with the trend in the western countries, where it is followed as a matter of rule in sensitive cases involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned. In the said case, on the basis of a first information report lodged by the daughter of the petitioner, Crime No.376 of 2014 was registered and investigation was taken up for offences punishable under Sections 463, 468, 469, 471, 366, 387 and 120B read with Section 34 of the Indian Penal Code, 1860 and on conclusion of the investigation, a charge sheet was filed. In the meantime, the daughter of the petitioner had instituted O.S.No.168 of 2014 on the file of the City

Civil Judge, Bangalore, seeking a declaration that there was no marriage between her and the defendant, and to annul the marriage certificate issued by the Sub Registrar. There was also a prayer for grant of perpetual injunction restraining the defendant from claiming any marital rights on her on the basis of the said certificate of marriage. The parties ultimately entered into a compromise and the suit was decreed in terms of the compromise petition on 06.03.2015. One of the terms of the compromise was that the daughter of the petitioner should withdraw her complaint resulting in registration of the crime and should also request to the police to close the case and that she had undertaken not to pursue the said prosecution but extend all co-operation for termination of the complaint. Pursuant to the said decree, the accused in C.C. No. 6881 of 2015 on the file of the II Additional Chief Metropolitan Magistrate, Bangalore preferred Crl.Petn.No.1599 of 2015 before the Karnataka High Court, under Section 482 of the Criminal Procedure Code, seeking that the proceedings be quashed. The daughter of the petitioner was shown as the 2nd respondent in the petition before the High Court and her identity along with the address was specified in the cause title, as was required procedurally. The High Court by its order dated 15.06.2015

quashed the proceedings in C.C. No.6881 of 2015. The name of the petitioner's daughter and identity details are indicated in the cause title to the said order as the 2nd respondent. The apprehension of the petitioner was that, if a name-wise search is carried on by any person through an internet service provider such as google and yahoo, the name of his daughter would be reflected in the result of such search, which would have repercussions even affecting the relationship with her husband and also the reputation she has in the society. Therefore, Registry be directed to mask her name in the cause title of the order passed in Crl.Petn.No.1599 of 2015, which was disposed of on 15.06.2015. Further, if her name is reflected anywhere in the body of the order, apart from the cause title, the Registry shall take steps to mask her name before releasing copy of the order for the benefit of any service provider, who may seek a copy of that order. The High Court has disposed of the writ petition ordering that, it should be the endeavour of the Registry to ensure that any internet search made in the public domain ought not to reflect the name of the petitioner's daughter in the cause title or in the body of the order dated 15.06.2015 in Crl.Petn.No.1599 of 2015. Insofar as the High Court website is concerned, there need not be any such steps taken.

50. The Delhi High Court in **Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd. [2019 SCC OnLine Del 8494]** has also recognised 'right to be forgotten' and 'right to be let alone' as an integral to part of individual's existence. In the said case, the plaintiff filed CS(OS)No.642 of 2018 before the Delhi High Court seeking permanent injunction against the 1st defendant-Quintillion Business Media Pvt. Ltd., the 2nd defendant-its editor and the 3rd defendant-the author, who had written two articles against the plaintiff, on the basis of sexual harassment complaints received by them, against the Plaintiff, as part of #MeToo campaign. The three individuals, who made allegations against the plaintiff, have remained anonymous and have not revealed their identity in the public domain. The stories, which had appeared on 12.10.2018 as also on 31.10.2018 were impugned in the present suit and an injunction was sought against the publication and re-publication of the said two articles. The Plaintiff claimed that he is a well-known personality in the media industry and he is the Managing Director of a media house. It is his case that due to publication of the stories on the 1st defendant's digital/electronic platform www.quint.com he underwent enormous torture and personal grief due to the baseless allegations made against him. On 14.12.2018

the High Court had directed that the said two articles would not be republished till the next date. On 19.12.2018, the defendants submitted that, without prejudice to the defendants' rights, they would pull down/take down the two publications. Recording the said statement, the suit was adjourned to 23.01.2019. It was ordered that the interim order dated 14.12.2018 shall continue in the meantime. On 09.01.2019, the learned counsel for the plaintiff pointed out that the contents of the said two articles, which were originally published on the 1st defendant's digital/electronic portal www.thequint.com have been picked up by another platform by the name www.newsdogapp.com and the same are being attributed to the 1st defendant. The High Court directed that any republication of the content of the originally impugned articles dated 12.10.2018 and 31.10.2018, or any extracts/or excerpts thereof, as also modified versions thereof, on any print or digital/electronic platform shall stand restrained during the pendency of the suit, stating that, 'right to be forgotten' and 'right to be let alone' are inherent aspects of the plaintiff's right to privacy. The High Court permitted the plaintiff to communicate the order dated 09.01.2019 to any print or electronic platform including various search engines in order to ensure that the articles or any excerpts/search results

thereof are not republished in any manner whatsoever. The Plaintiff was also permitted to approach the grievance officers of the electronic platforms and portals to ensure immediate compliance of the said order.

51. In **Dharamraj Bhanushankar Dave v. State of Gujarat [2017 SCC Online Guj 2493]**, in a case involving interpretation of Rule 151 of the Gujarat High Court Rules, 1993, the Gujarat High Court has taken a contrary view. In the said case, the petitioner was the accused in C.R.No.I-27 of 2001 of Panchkoshi Division A Police Station, Jamnagar alleging offences punishable under Sections 34, 120B, 201, 302, 364, 404 of the Penal Code, 1860. Prosecution was launched, charge-sheet was filed and the case was committed to the Sessions Court, Jamnagar as Sessions Case No.82 of 2001. At the end of the trial, by the judgment dated 19.11.2004, the petitioner was acquitted. That judgment was challenged by the State before the High Court of Gujarat as Criminal Appeal No.1691 of 2005 and the judgment of the Sessions Court was confirmed by the Division Bench of the High Court, which has become final. The petitioner wanted to migrate to Australia and when he undertook the procedure for the same, it was found that the 5th respondent-Indian Kanoon through the 6th

respondent-Google India (Pvt.) Ltd. had published the said judgment, even though the judgment was non-reportable. It is the case of the petitioner that because of such publication, the judgment is freely available on the internet and the same is against the classification made by the High Court. The High Court dismissed the petition, holding that, merely publishing the judgment on the website would not amount to same being reported as the word 'reportable' used for judgment is in relation to it being reported in law reporter. Even under the relevant High Court Rules, a third party can get a copy of the said judgment.

52. The Orissa High Court in **Subhranshu Rout v. State of Odisha [2020 SCC OnLine Ori 878]** has noticed that, presently there is no statue which recognises 'right to be forgotten' but it is in sync with the right to privacy, which was hailed by the Apex Court as an integral part of Article 21 of the Constitution of India (right to life) in **K.S. Puttaswamy [(2017) 10 SCC 1]**. However, the Ministry of Law and Justice, on recommendations of Justice B.N. Srikrishna Committee, has included 'right to be forgotten', which refers to the ability of an individual to limit, delink, delete, or correct the disclosure of the personal information on the internet that is misleading, embarrassing, or irrelevant, etc., as a statutory

right in the Personal Data Protection Bill, 2019. In **K.S. Puttaswamy** the Apex Court held 'right to be let alone' as part of essential nature of privacy of an individual.

53. In **Subhranshu Rout** the Orissa High Court has noticed that the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, India's first legal framework recognised the need to protect the privacy of personal data, but it failed to capture the issue of the 'right to be forgotten'. As held by the Apex Court in **K.S. Puttaswamy**, purpose limitation is integral for executive projects involving data collection. Unless prior permission is provided, third parties cannot be provided access to personal data. This principle is embodied in Section 5 of the yet-to-be-implemented Personal Data Protection Bill, 2019. Purpose limitation enhances transparency in data processing and helps to examine the proportionality of the mechanism used to collect data for a specific purpose. Moreover, it prevents the emergence of permanent data architectures based on interlinking databases without consent.

54. In **Subhranshu Rout** the Orissa High Court was dealing with a case in which the petitioner has not only committed forcible sexual intercourse with the victim girl, but has also deviously

recorded the intimate sojourn and uploaded the same on a fake Facebook account. Therefore, the High Court held that, the proposition of purpose limitation is not applicable as the question of seeking consent does not arise at all. No person much less a woman would want to create and display gray shades of her character. In most of the cases, like the present one, the women are the victims. It is their right to enforce the right to be forgotten as a right in rem. Capturing the images and videos with consent of the woman cannot justify the misuse of such content once the relation between the victim and accused gets strained as it happened in the present case. If the right to be forgotten is not recognised in matters like the present one, any accused will surreptitiously outrage the modesty of the woman and misuse the same in the cyber space unhindered. Undoubtedly, such an act will be contrary to the larger interest of the protection of the woman against exploitation and blackmailing, as has happened in the present case. The sloganeering of 'betibachao' and women safety concerns will be trampled. The right of the victim to get those uploaded photos/videos erased from Facebook server still remain unaddressed for want of appropriate legislation. However, allowing such objectionable photos and videos to remain on a social media

platform, without the consent of a woman, is a direct affront on a woman's modesty and, more importantly, her right to privacy. In such cases, either the victim herself or the prosecution may, if so advised, seek appropriate orders to protect the victim's fundamental right to privacy, by seeking appropriate orders to have such offensive posts erased from the public platform, irrespective of the ongoing criminal process.

55. Section 43A of the Information Technology Act, 2000 deals with compensation for failure to protect data. As per Section 43A, where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected. Clause (iii) of Explanation to Section 43A of the Act defines 'sensitive personal data or information' to mean such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit. As per clause (ob) of sub-section (2) of Section 87 of the Act, any rules made by

the Central Government under sub-section (1) of Section 87, may provide for the reasonable security practices and procedures and sensitive personal data or information under Section 43A. In exercise of the powers conferred by clause (ob) of sub-section (2) of Section 87 read with Section 43A of the Information Technology Act, 2000, the Central Government made the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, a legal framework which recognised for the first time the need to protect privacy of personal data.

56. The 'right to be forgotten' in the digital sphere confers right on the 'data principal' - a natural person to whom the personal data relates - to restrict or prevent the continuing disclosure of his 'personal data' by a 'data fiduciary' - any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data - where such disclosure has served the purpose for which it was collected; or is no longer necessary for the purpose; etc. The concept 'right to be forgotten' is alien to the regulatory regime of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or

Information) Rules, 2011, made in exercise of the powers conferred by clause (ob) of sub-section (2) of Section 87 read with Section 43A of the Information Technology Act. Presently, there is no statute which recognises 'right to be forgotten'. The concept 'right to be forgotten' is embodied in Section 20 of the Personal Data Protection Bill, 2019 introduced in Lok Sabha on 11.12.2019, which is yet to become law.

57. Section 22 of the Hindu Marriage Act, 1955 and Section 33 of the Special Marriage Act, 1954, inserted by the Marriage Laws (Amendment) Act, 1976 provide for *in camera* proceedings and impose prohibition in printing or publishing any matter in relation to any proceedings under the respective Act. As per sub-section (1) of Section 22 of the Hindu Marriage Act, 1955, every proceeding under this Act shall be conducted *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court. As per sub-section (2) of Section 22, if any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees. As per sub-section (1) of

Section 33 of the Special Marriage Act, 1954, every proceeding under this Act shall be conducted *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court. As per sub-section (2) of Section 33, if any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees. As per Section 53 of the Divorce Act, 1869, the whole or any part of any proceedings under this Act may be heard, if the Court thinks fit, with closed doors.

58. Section 36 of the Kerala Children Act, 1972 imposed prohibition of publication of names, etc. of children involved in any proceedings under the said Act, which was *pari materia* to Section 36 of the Children Act, 1960. As per sub-section (1) of Section 36 of the Kerala Children Act, no report in any newspaper, magazine or news sheet of any inquiry regarding a child under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the child, nor shall any picture of any such child be published. As per the proviso to sub-section (1) of Section 36, for reasons to be recorded in writing the

authority holding the inquiry may permit such disclosure if in its opinion such disclosure is in the interest of the child. As per sub-section (2) of Section 36, any person contravening the provisions of sub-section (1) shall be punishable with fine which may extend to one thousand rupees. The Juvenile Justice Act, 1986 [Act 53 of 1986] laid down a uniform legal framework for juvenile justice in the country. Section 36 of the Act imposed prohibition of publication of names, etc. of children involved in any proceedings under the said Act. The Juvenile Justice Act, 1986 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000 [Act 56 of 2000]. Section 21 of the Act imposed prohibition of publication of names, etc. of juvenile in conflict with law or child in need of care and protection involved in any proceedings under the said Act.

59. The Juvenile Justice (Care and Protection of Children) Act, 2000 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015 [Act 2 of 2016]. Section 74 of the Act deals with prohibition of disclosure of identity of children. As per sub-section (1) of Section 74, no report in any newspaper, magazine, news-sheet or audio-visual media or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which

may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published. As per the proviso to sub-section (1) of Section 74, for reasons to be recorded in writing, the Board or Committee, as the case may be, holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the best interest of the child. As per sub-section (2) of Section 74, the Police shall not disclose any record of the child for the purpose of character certificate or otherwise in cases where the case has been closed or disposed of. As per sub-section (3) of Section 74, any person contravening the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to two lakh rupees or both.

60. The Madras High Court in **Sukanya R. v. R. Sridhar and others [AIR 2008 Mad. 244]**, after referring to the provisions under Section 22 of the Hindu Marriage Act, 1955; Section 33 of the Special Marriage Act, 1954; Section 36 of the Children Act, 1960; etc., and also the law laid down by the Apex Court in **R. Rajagopal [(1994) 6 SCC 632]**, held that, visualising

the adverse effect on the women and children and exploitation of the vulnerable section of the society, the legislators have imposed reasonable restriction on the freedom of the media and press. Reading of these provisions makes it clear that the intention of the legislation is to maintain secrecy in respect of certain proceedings or inquiry and protect women and children from invasion of their right of privacy. These statutory restrictions are to protect their basic human right to lead life without hindrance from anyone in such of those enumerated matters and the media should not impinge upon the right of privacy, in other words, they should be allowed 'to be let alone'. 'Right of Privacy' is now recognised as a right which flows from right to life and liberty under Article 21 of the Constitution of India. Media attention should be towards exposing corruption, nepotism, law breaking, abuse or arbitrary exercise of power, law and order, economy, health science and technology, etc., which are matters of public interest. The 'lakshman rekha' or the 'line of control', should be that the publication of comments/information should not invade into the privacy of an individual, unless outweighed by bona fide and genuine public interest. Right of information is a facet of freedom of speech and expression, enshrined in Article 19(1)(a) of the

Constitution of India. Right of information has been recognised as a fundamental right and the right of Press to furnish the information or facts or opinion should be only to foster public interest and not to encroach upon the privacy of an individual. The public at large has no fundamental or legal right to get any information or intrude into the personal life of the other individual. Statutes empower the authorities to examine the parties, under exceptional circumstances, contained therein. When the public at large has no legal right to impinge upon the marital privacy, the press or any other media cannot claim a better right to publish in newspaper, magazine or any other form of media, in exercise of freedom of speech and expression. The very inception of the provision, Section 22 in the Hindu Marriage Act makes it clear that matters pertaining to matrimonial affairs are intended to be conducted *in camera* and not intended to be divulged to others, except publication of the judgment with the leave of the court. Right of privacy in matrimonial matters between the parties in a litigation under Marriage Laws is personal to the litigating parties. Thus, it is manifestly clear that the legislature has intended to guard the right of privacy in relation to matrimonial matters and it is a settled legal position that the real meaning and effect should be given to the

words employed in the Statute. In the light of language employed in the Statute, the right of privacy is so fundamental to the individual excepting to the extent provided under the Marriage Laws. Publication of the proceedings meant to be *in camera* will affect the constitutional liberty guaranteed to the individual and it would be an invasion of his right of privacy. When sub-section (1) of Section 22 of the Hindu Marriage Act prohibits printing or publishing any matter in relation to any such proceeding arising under the Act, the Family Court or any other competent court dealing with matrimonial matter, under the said Act, has inherent jurisdiction to issue an order of injunction or any such direction to give full effect to the statutory provision.

61. Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines '<u>human rights</u>' to mean the rights relating to life, liberty, equality and dignity of the individual <u>guaranteed by the constitution</u> or <u>embodied in the international covenants and enforceable by courts in India</u>. Section 2(1)(f) of the Act defines '<u>international covenants</u>' to mean <u>the International Covenant on Civil and Political Rights</u> and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and

such other covenant or convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify. Article 17(1) of the International Covenant on Civil and Political Rights states that, no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Article 17(2) states further that, everyone has the right to the protection of the law against such interference or attacks.

62. As already noticed hereinbefore, the Apex Court in **R. Rajagopal [(1994) 6 SCC 632]** held that 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. However, the position may be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. The rule aforesaid is subject to the exception,

that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. In the interests of dignity an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name being publicised in press/media.

63. In **K.S. Puttaswamy [(2017) 10 SCC 1]** the Apex Court noticed that life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. To live is to live with dignity. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Paras.118 and 119 of the said judgment read thus;

"118. Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to take decisions - the autonomy of the individual - and not to dictate those decisions. 'Life' within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life.

119. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve." (underline supplied)

64. In **K.S. Puttaswamy** the Apex Court held that the right to privacy is an element of human dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of dignity by securing the inner

recesses of the human personality from unwanted intrusion. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfil the liberties and freedoms which are the cornerstone of the Constitution. Para.127 of the said judgment reads thus;

> "127. The submission that recognising the right to privacy is an exercise which would require a constitutional amendment and cannot be a matter of judicial interpretation is not an acceptable doctrinal position. The argument assumes that the right to privacy is independent of the liberties guaranteed by Part III of the Constitution. There lies the error. The right to privacy is an element of human dignity. The sanctity of privacy lies in its functional relationship with dignity. Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion. Privacy recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. In doing so privacy recognises that living a life of dignity is essential for a human being to fulfil the liberties and freedoms which are the cornerstone of the Constitution. To recognise the value of privacy as a constitutional entitlement and interest is not to fashion a new fundamental right by a process of amendment through judicial fiat. Neither are the judges nor is the process of judicial review entrusted with the constitutional responsibility to amend the Constitution. But

judicial review certainly has the task before it of determining the nature and extent of the freedoms available to each person under the fabric of those constitutional guarantees which are protected. Courts have traditionally discharged that function and in the context of Article 21 itself, as we have already noted, a panoply of protections governing different facets of a dignified existence has been held to fall within the protection of Article 21." (underline supplied)

65. In **K.S. Puttaswamy** the Apex Court held that every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects. The sanctity of marriage, the liberty of procreation, the choice of a family life and the dignity of being are matters which concern every individual irrespective of social strata or economic well being. The pursuit of happiness is founded upon autonomy and dignity. Para.271 of the said judgment reads thus;

"271. We need also emphasise the lack of substance in the submission that privacy is a privilege for the few. Every individual in society irrespective of social class or economic status is entitled to the intimacy and autonomy which privacy protects. It is privacy as an intrinsic and core feature of life and personal liberty which enables an individual to stand up against a programme of forced sterilization. Then again, it is privacy which is a powerful guarantee if the State were to introduce compulsory drug trials of non-consenting men or women. The sanctity of marriage, the liberty of procreation, the choice of a

> family life and the dignity of being are matters which concern every individual irrespective of social strata or economic well being. The pursuit of happiness is founded upon autonomy and dignity. Both are essential attributes of privacy which makes no distinction between the birth marks of individuals."
>
> (underline supplied)

66. As held by the Apex Court in **K.S. Puttaswamy**, the right to privacy is an element of human dignity, which ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion. It recognises the autonomy of the individual and the right of every person to make essential choices which affect the course of life. It recognises that living a life of dignity is essential for a human being to fulfil the liberties and freedoms which are the cornerstone of the Constitution. It postulates reservation of a private space for the individual, described as the 'right to be let alone'. It protects the individual from the searching glare of publicity in matters which are personal to his or her life. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty.

67. In writ petitions filed under Article 226 of the Constitution of India seeking a writ of mandamus commanding the statutory authority to consider the application for contracting

marriage under the Special Marriage Act, 1954 or for registration of marriage under the Kerala Registration of Marriages (Common) Rules, 2008; a writ of habeas corpus seeking production of fiancée or minor children under illegal detention; etc., are not matters involving public interest. The public at large has no fundamental right or legal right to intrude into the personal life of the individuals who are parties to such proceedings or to impinge upon their right to privacy, which postulates the reservation of a private space for the individual, described as the 'right to be let alone', a concept founded on the autonomy of the individual.

68. Therefore, the question that has to be considered in this writ petition is as to whether, in writ petitions filed under Article 226 of the Constitution of India seeking a writ of mandamus commanding the statutory authority to consider the application for contracting marriage under the Special Marriage Act, 1954 or for registration of marriage under the Kerala Registration of Marriages (Common) Rules, 2008; a writ of habeas corpus seeking production of fiancée or minor children under illegal detention; etc., which are not matters involving public interest, a party to that proceedings can seek an order to mask his/her name and address and that of the party respondent(s) in the cause title of the judgment and also

his/her name and that of the party respondent(s) in the body of the judgment, in order to protect his/her right to privacy, described as the 'right to be let alone'.

69. The learned Standing Counsel for the 4th respondent has pointed out the pendency of W.P.(C)No.20387 of 2018, before another bench, involving similar facts. Registry has also pointed out the pendency of similar requests before the Division Bench, in O.P.(FC)No.622 of 2016 and O.P.(FC)No.64 of 2019.

70. In such circumstances, in exercise of the powers under Section 3 of the Kerala High Court Act, 1958, this matter is adjourned for being heard and determined by a Bench of two Judges.

71. Subject to final orders to be passed in this writ petition, Registry shall mask the name and address of the petitioner in the cause title of this order.

Registry shall place the matter before the Honourable Chief Justice for necessary orders.

Sd/-
ANIL K. NARENDRAN
JUDGE

YD/bkn

/true copy/ Sd/- ASSISTANT REGISTRAR