Page 2222 - 2227 **DOI:** *https://doij.org/10.10000/IJLMH.1110164*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

Right to Privacy in Public

ISHA GHAI[1]

ABSTRACT

Privacy is an inalienable right which gives true meaning to human existence. Today, we are living in a world where every private act whether in seclusion or in public- is a share or tweet away from becoming content for public consumption. In such a scenario, law ought to emerge as the saviour- in letter as much as in spirit. A monumental judgment of the Hon'ble Supreme Court which reinforced the right to privacy of individuals and upheld it as a fundamental right was Justice K.S. Puttaswamy (Retd.) v. Union of India, (2019) 1 SCC 1. However, while the K.S. Puttaswamy Judgment recognized the right to privacy of individuals, it fell short of advocating for this right in public spaces, perhaps due to lack of adequate statutory backing. It is thus observed that while actions under tort law and criminal statutes do exist, in the Indian legal paradigm, there are no specific tests or standards to measure breach of privacy in day-to-day life, eg. in scenarios where one is simply walking down the road, sitting in a metro or even if one is a celebrity stepping out for chores. In this light, practices in countries like UK, Brazil and Argentina where even publication of pictures without consent is a civil infraction must be studied. A more progressive approach adopted by the House of Lords is the twin test of reasonable expectation of privacy and the balancing of the aim of publication against the proportional harm caused. It is critical that the ever-blurring lines between home and public spaces are factored in by legislators and courts alike, especially with the takeover of technology. After all, the right to privacy rests in a 'person', not in a 'place'.

I. INTRODUCTION

We are living in an era where every person is a celebrity and a reporter in his/her own might. We are generating and consuming content at the rate of an easy 10 posts per minute. However, little do we realise that more often than not 'we' end up becoming that 'content'. Be it a passer-by on the road, a quirky person in the metro or an underconfident practitioner in a public or a not-so-public profession, everything and everyone has taken the shape of content meant to generate humor, sarcasm, debate, judgment, empathy and callous trolling for views. Walking on the road is no longer safe, thanks to the invasion of technology. The moot question that I boil down to is- *Where does that share/tweet stop?*

[1] Author is an Advocate at Supreme Court of India and High Court of Delhi, India.

 [ISSN 2581-5369]

II. UNDERSTANDING PRIVACY IN PUBLIC: K.S. PUTTASWAMY JUDGMENT

Privacy is an inalienable fundamental right which inheres in every individual. In the simplest of words, privacy is a right to be left alone and to control all aspects pertaining to one's day-to-day life. Privacy is not merely restricted to the body but also extends to the mind and the spirit. Thus, any unsanctioned intrusion into one's privacy warrants action in the nature of damages, penalties and in more grave cases, imprisonment. In the Indian context, right to privacy in private and public places is duly recognized. However, its true effect is yet to be achieved.

Notably, privacy in public spaces may be recognized in India but is not specifically regulated barring specific cases of informational privacy, tort and criminal action. Pertinently, the Hon'ble Supreme Court in the judgment of ***Justice K.S. Puttaswamy (Retd.) v. Union of India[2],*** (hereinafter referred to as "K.S. Puttaswamy Judgment") while reaffirming the concept of privacy in public also observed that *'Privacy has a deep affinity with seclusion (of our physical persons and things) as well as such ideas as repose, solitude, confidentiality and secrecy (in our communications), and intimacy. But this is not to suggest that solitude is always essential to privacy.'*

While the ***K.S. Puttaswamy Judgment*** unequivocally upheld the right to privacy as a fundamental right, it did not dig deeper into the concept of privacy in public places. In this case, a reference was made to the judgment of the Queen's Bench in ***Mosley v. News Group Papers Ltd.*** [3] wherein the Court held as under:

> *"131.* When the courts identify an infringement of a person's Article 8 rights, and in particular in the context of his freedom to conduct his sex life and personal relationships as he wishes, it is right to afford a remedy and to vindicate that right. The only permitted exception is where there is a countervailing public interest which in the particular circumstances is strong enough to outweigh it; that is to say, because one at least of the established "limiting principles" comes into play. Was it necessary and proportionate for the intrusion to take place, for example, in order to expose illegal activity or to prevent the public from being significantly misled by public claims hitherto made by the individual concerned (as with Naomi Campbell's public denials of drug-taking)? Or was it necessary because the information, in the words of the Strasbourg Court in *Von Hannover* [*Von Hannover* v. *Germany*, (2004) 40 EHRR 1] at

[2] Justice K.S. Puttaswamy (Retd.) v. Union of India**,** (2019) 1 SCC 1
[3] Mosley v. News Group Papers Ltd., 333 (2008) EWHS 1777 (QB)

> pp. 60 and 76, would make a contribution to "a debate of general interest"? **That is, of course, a very high test, it is yet to be determined how far that doctrine will be taken in the courts of this jurisdiction in relation to photography in public places. If taken literally, it would mean a very significant change in what is permitted. It would have a profound effect on the tabloid and celebrity culture to which we have become accustomed in recent years.**'" [Emphasis supplied]

A plain reading of the above paragraph clarifies that the question – '*What is privacy in public spaces?'* does not have a simple answer. Thus, the threshold for violation of such privacy would also be much higher as it involves the intersection of millions of personal rights.

However, while in one breath the ***K.S. Puttaswamy Judgment*** appreciated the concept of privacy in public spaces, it could not provide any clear demarcation pertaining to this right and the implications for violations thereof. A possible cause for the same could be the lack of any legislative backing to that effect.

III. PUBLIC INTEREST OVERRIDES PRIVACY

It is trite law that privacy and autonomy cannot be taken as absolute concepts. The said aspect carries even more significance in public setups. Thus, privacy must give way to public interest, law and enforcement, and social welfare. It is for this reason that CCTV cameras attached to buildings, data mining for proper deployment of resources to beneficiaries and search and investigation procedures by enforcement authorities are allowed to be carried out without many restrictions.

IV. PRIVACY OVERRIDES UNFETTERED PERSONAL FREEDOMS

The challenges crop up when social media gratification for one becomes unnecessary and unwanted attention or invasion for the other. Actions that are neither meant to serve the public interest nor are initiated for the exercise of personal safety become needless unchecked and unfettered acts with consequences for others.

While understanding privacy, we often attempt to pit individual freedoms against State action. A key aspect that is often forgotten is weighing the right to privacy of an individual against the personal freedoms of another individual in the public sphere. It is here that the law has to jump in to come to the aid of each individual alike. This becomes even more pertinent in the light of the fact that individuals as young as a few months old and citizens who have never had any interaction with computer technologies are becoming subjects of social media attention.

 [ISSN 2581-5369]

Thus, privacy, just like any other constitutional freedom cannot be a static concept. In times when the lines between homes and public places are blurred, right to privacy has to be given its due recognition by the legal system.

V. INDIAN LAW ON PRIVACY IN PUBLIC PLACES

It would be incorrect to state that the Indian law does not provide any rules pertaining to public spaces and public data. In the Indian scenario, right to privacy in public places manifests itself in the form of several offences under the Criminal Laws such as Section 77 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as, "BNS") i.e. Voyeurism, Section 78 BNS i.e. Stalking, Section 79 i.e. insulting the modesty of a woman, Section 270 BNS i.e. public nuisance, et al. However, the said offences are specific to cases where the victim feels threatened, sexually offended or harmed in some manner. Further, Section 43 A of the Information Technology Act, 2000 (hereinafter referred to as, "IT Act")[to be replaced by the Digital Personal Data Protection Act, 2023] provides a penalty for breach of sensitive personal data by a data fiduciary and Section 72A of the IT Act deals with a penalty for unauthorized disclosure of personal data or information.

A welcome move in the Indian legal paradigm is the Digital Personal Data Protection Act, 2023 ("hereinafter referred to as "DPDPA, 2023"). This Act recognises both, the right of individuals to protect their personal data and the need to process such personal data for lawful purposes. However, it is pertinent to note that the DPDPA, 2023 specifically excludes:

(i) personal data processed by an individual for any personal or domestic purpose; and

(ii) personal data that is made or caused to be made publicly available by— (A) the Data Principal to whom such personal data relates; or (B) any other person who is under an obligation under any law for the time being in force in India to make such personal data publicly available.

In other words, sharing views while blogging, or making data public for personal or domestic purposes is not protected by the DPDPA, 2023. Thus, personal data posted for domestic purposes on social media, which is growing increasingly, virtually remains unregulated. For instance, what about the scenario when a person takes a picture of another individual carrying out a regular activity in the public sphere eg. walking or driving and translates it into a meme? Would DPDPA, 2023 come to the victim's rescue? The answer to the same may be negative.

It is pertinent to note that the ***K.S. Puttaswamy judgment*** also upheld the right to privacy not only against the State but also Non-State actors. As per the judgment, so far as an interference

in the right to privacy of a person by a Non-State actor is concerned, an action in common law would lie in an ordinary court. The Hon'ble Supreme Court in this judgment, however, also stated that the enforcement of claims *qua* the Non-State actors may require legislative intervention.

In this light, the judgment of the Hon'ble High Court of Delhi in the matter of ***Kailash Gahlot v. Vijender Gupta and Ors*** [4] is noteworthy. Pertinently, the Hon'ble Court while considering the right to privacy of public figures held that unless an act of breach of privacy amounts to harassment and invasion in the private life of the family of the public personality, the same cannot be barred by law.

Clearly, the law on right to privacy of public figures and commoners in the public realm is still in its nascent stages in India.

VI. INTERNATIONAL PERSPECTIVE ON PRIVACY IN PUBLIC PLACES

A test that has been propounded in the United Kingdom and often discussed in Indian Courts is the test of reasonable expectation of privacy. This test primarily involves an examination of whether the information made public is within the scope of protectable information. The application of reasonable expectation of privacy test coupled with the balancing test has, in the case of ***Campbell v Mirror Group Newspapers***[5], been upheld by the House of Lords as the criteria for evaluating the infringement of right to privacy in public. The balancing test mentioned hereinabove also involves consideration of two questions:

i. Whether the publication of the material pursues a legitimate aim? and

ii. Whether the benefits that will be achieved by its publication are proportionate to the harm that may be done by the interference with the right to privacy?

It is only when apart from the existence of a reasonable expectation of privacy, the two questions under the balancing test are answered in affirmative that a case qualifies as one of breach of privacy.

In the case of ***McKennitt v Ash*** [6] as well the Court of Appeal (UK) had held that the mere fact that the subject had a public profile did not mean that the publication of information about his or her private life was "in the public interest".

In other countries like Brazil[7] and Argentina[8], publishing pictures without consent is also

[4] Kailash Gahlot v. Vijender Gupta and Ors., 2022 SCC OnLine Del 679
[5] Campbell v Mirror Group Newspapers, [2004] UKHL 22
[6] McKennitt v Ash [2006], EWCA Civ 1714
[7] AT ICL Project, https://www.servat.unibe.ch/icl/br00000_.html (last visited May 30, 2025).

 [ISSN 2581-5369]

considered a civil infraction. Thus, our lawmakers must examine the various definitions of privacy and the tests propounded across jurisdictions to keep up with the changing times.

VII. WAY FORWARD

It has been held time and again that the concept of right to privacy rests in a 'person' and not a 'place.' Thus, the increasingly blurring lines between one's home and public spaces ought to be dealt with by legislative safeguards. While technology is an unruly horse owned by the aware and unaware alike, law ought to come to the refuge of those facing the risk of being trampled upon by this unruly horse. The need of the hour is that privacy should not merely be bestowed upon individuals as a right to be exercised, but also be imposed upon them as a duty to safeguard.

*****

[8] *State of Privacy Argentina*, Privacy International (Jan. 23, 2019), https://www.privacyinternational.org/state-privacy/57/state-privacy-argentina.

 [ISSN 2581-5369]