

## Case Analysis

Delhi High Court Upholds Right to be Forgotten  
and Right to be Left Alone

### Authored By:



**Nusrat Hassan**  
Co-Managing Partner  
nusrat@linklegal.in



**Meghna Punjabi**  
Associate  
meghna.punjabi@linklegal.in



## Delhi High Court Upholds Right to be Forgotten and Right to be Left Alone: Grants Protection to Bengali Actress from Invasion of Privacy

Recognising that the right to privacy includes the right to be forgotten and right to be left alone, the Delhi High Court (“**Court**”), *vide* order dated August 23, 2021<sup>1</sup>, granted interim relief to a Bengali actress, seeking restraint on publication, streaming and broadcasting of her naked videos on various online platforms including YouTube.

### Facts of the case

The Plaintiff, a well-known Bengali actor, after being approached by Ram Gopal Verma Studios for filming a web-series, was lured into participating in a demonstration video/trailer, comprising of explicit scenes of complete frontal nudity. However, the project fell through, and the web-series was never produced.

In December 2020, the plaintiff came across the demonstration videos which had been uploaded by the producer on his YouTube channel and website. Upon her request, the producer removed the videos, however, the plaintiff claimed that many websites had uploaded her videos, without her consent.

### Arguments



Relying on *Justice KS Puttaswamy v. Union of India*, the counsel for the plaintiff submitted that the plaintiff is entitled to her privacy as a fundamental right. Further, the counsel for the plaintiff also submitted that the plaintiff has a right to be forgotten. Lastly, the counsel for the plaintiff relied upon Rule 3(2)(b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules**”) which mandates the defendants to

remove and disable access to any content that shows an individual in partial or full nudity or in some sexual act or conduct, within 24 hours of receipt of a complaint by such an individual.

On the other hand, the counsel for the defendants claimed that since the demonstration videos were shot voluntarily, they are not under any obligation to prevent its further publication. Further, the counsel submitted that currently there is no right to be forgotten, since there was no statutory law in the country regarding the same. The counsel also submitted that Rule 3(2)(b) of the IT Rules may not be strictly applicable to the facts of the case as it requires a complaint from the victim which was absent in the present case.

<sup>1</sup> [http://delhihighcourt.nic.in/dhcqrydisp\\_o.asp?pn=150606&yr=2021](http://delhihighcourt.nic.in/dhcqrydisp_o.asp?pn=150606&yr=2021)



### Decision of the Court

Following the view taken by another bench of the Court which held that the '*right to be forgotten*' and the '*right to be left alone*' are "inherent aspects" of the "right to privacy", the Court observed that the right to privacy of the plaintiff ought to be protected.

The Court held that the plaintiff is entitled "to be left alone", "to be forgotten" and to protection from invasion of her privacy by strangers and anonymous callers on account of publication/streaming/transmission of the demonstration videos by the defendants and directed the defendants to remove/pull down the suit videos.

### Conclusion

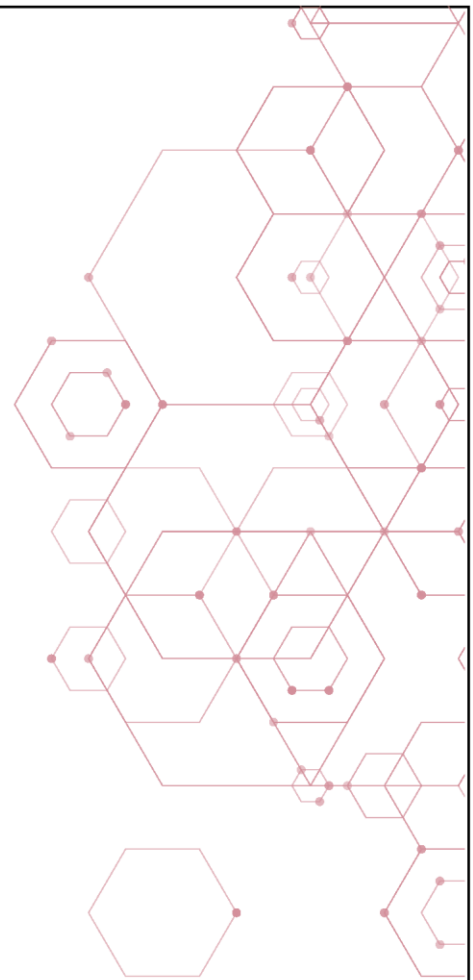
While the final outcome of this case is awaited, *vide* this interim order, the Court has reiterated the legal principle that an individual's '*right to be forgotten*' is part of his/her 'right to privacy', thereby giving an individual the right to restrict or prevent the continuing disclosure of his/her data. Broadly, the right to be forgotten may be considered as a right of individuals "to determine for themselves when, how, and to what extent information about them is communicated to others" or as a right that gives the individual increased control over information about them.

Such a right came to the fore with the decision of the Court of Justice of the European Union ("CJEU") in the Google Spain case of 2014, where the CJEU held that individuals have a right to request that search engines operating in the European Union de-list search results obtained by a search for their name. However, this issue is not limited to Europe, as since the CJEU judgement, several countries outside Europe either have adopted a dedicated "right to be forgotten" law or have been looking to adopt new laws on the subject.

While presently in India, there is no statutory provision that provides for the right to be forgotten, the Personal Data Protection Bill, 2019 ("**PDP Bill**") does recognize such a right. The PDP Bill, in its present form, grants an individual a limited right to be forgotten as the same may be granted *only* once the 'Adjudicating Officer' appointed under the PDP Bill passes a favourable order on an application made by the individual. Hence, the right to be forgotten under the PDP Bill is not an unfettered right and is subject to approval by the Adjudicating Officer.

Once the PDP Bill is passed, it would be interesting to see the final scope of the '*right to be forgotten*' in the Indian context.





## Our Offices

### Delhi

Aiwan-e-Ghalib Complex,  
Mata Sundri Lane,  
New Delhi 110 002, India.  
(P) +91 11 4651 1000  
(F) +91 11 4651 1099  
(E) delhi@linklegal.in

### Mumbai

21/22, 2nd Floor, Free Press House,  
Free Press Journal Road, 215,  
Nariman Point  
Mumbai 400 021, India.  
(P) +91 22 66336791  
(E) mumbai@linklegal.in

### Bengaluru

#10, First Floor, 12th Main,  
Palace Road, Vasanth Nagar,  
Bengaluru 560 052, India.  
(P) +91 80 4123 1072  
(E) bengaluru@linklegal.in

### Hyderabad

401, ABK Olbee Plaza, 8 - 2-618/8 & 9,  
Road No. 1, Banjara Hills,  
Hyderabad 500 034, India.  
(P) +91 40 40211095  
(P) +91 40 42406401  
(E) hyderabad@linklegal.in

### Chennai

1B, First Floor 17-A,  
Diamond Business Center,  
Kalakshetra Road,  
Chennai 600 041, India.  
(P) +91 44 42719731  
(E) chennai@linklegal.in

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