**X v. https://www.youtube.com/watch?v=iQ6K5Z3zyS0 and Ors.**

**Date of Judgment:** August 23, 2021

**Case Number:** CS(OS) 392/2021

**Judicial Body:** High Court, New Delhi

**Type of law:** Civil law

**Themes:** right to privacy, intermediary liability

**Tags:** privacy, right to be forgotten, intermediary liability, personal liberty

**Status:** Interim decision

**Mode of Expression:** videos on the internet, digital

**Outcome:** Motion granted

**Case Summary and Outcome**

In an interim decision in a suit filed by an unnamed actress, the Delhi High Court, a constitutional court of India, upheld and reiterated that right to be forgotten and right to be left alone as essential and inherent parts of right to privacy. This decision is the third in a row of decisions by the Delhi High Court recognising an individual's right to be forgotten. The judgment adds to the developing jurisprudence where right to be privacy, particularly right to be forgotten, though not statutorily protected, is being increasingly recognised and enforced by the judiciary in special circumstances. The Court categorically held that the right to privacy of the Plaintiff has to be protected, ‘*especially when it is her person that is being exhibited, and against her will*’.

**Facts**

Plaintiff is an actor of repute in the Indian television and film industry. She was approached by a renowned Indian film producer for filming of a web series. With the promise of a lead role, the Plaintiff was lured into participating in a demonstration video/trailer comprising explicit scenes of complete, frontal nudity (**Suit Video/s**). The series, however, was never produced as the project was shelved. (para. 6)

In December 2020, Plaintiff came across the Suit Videos which were uploaded by the producer on its YouTube channel and website. Plaintiff immediately reached out to the producer, requesting the latter to remove the Suit Videos. The producer removed the Suit Videos. Despite removal of content by the producer and without the Plaintiff’s consent, websites namely, Defendant Nos. 1-36 in the suit, uploaded the Suit Videos. Some of the said websites also communicate obscene, objectionable and pornographic content to viewers. Plaintiff had to face constant harassment by anonymous callers due to the Suit Videos which were being circulated on the internet. Suit Videos resulted in loss of reputation, causing grave prejudice to the Plaintiff’s professional endeavours. This lead to the present suit where the Plaintiff sued the Defendants anonymously, seeking a complete take down of the Suit Videos. (para. 7)

Plaintiff argued that right to be forgotten has been recognised as an inherent and integral aspect of right to privacy by the Indian Supreme Court in *Justice KS Puttuswamy and Anr. v. UOI and Ors.,* (2017) 10 SCC 1(para. 297, 307 & 323).Plaintiff submitted that different Indian High Courts have recognised this right and granted interim reliefs, even in suits. (Reliance on: *Jorawer Singh Mundy v. Union of India*, 2021 SCC OnLine Del 2306 (para. 9 – 12), *Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd.,* 2019 SCC Online Del 8494 (para. 7-11), *Subhranshu Rout v. State of Odisha* (2020) SCC Online Ori 878(paras. 10- 14, 16)) (para. 9)

The Plaintiff further relied on Rule 3 (2)(b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**Rules 2021**), which obligated intermediaries including the Defendant websites i.e., Defendant Nos. 1-36, internet service providers (**ISP**) i.e., Defendant No. 37-68 and search engines i.e., Defendant No. 69 & 70 (Google search engine) to remove ‘*any content which is in the nature of any material which exposes the private area of such individual’,* within 24 hours from the receipt of such a compliant from any individual. In view of the aforesaid legal mandate, Defendants were obliged to remove the Suit Videos which prima facie show the Plaintiff in ‘full nudity’. Lastly, the Plaintiff also relied upon the Delhi High Court decision in *X. v. Union of India and Ors.*, W.P.(CRL) 1082/2020, where the Defendants, including Google, were directed to remove the URLs/ websites within 24 hours. The Plaintiff summarised that the three-part test for grant of interim injunction i.e., (a) prima facie case, (b) balance of convenience and (c) irreparable injury were satisfied by the Plaintiff. Therefore, the Court ought to issue an interim injunction order in favour of the Plaintiff and against the Defendants. (para. 10)

Google, the only contesting Defendant, argued against grant of any interim relief as: (a) the Defendants were not aware of any agreement that permitted the broadcast of the Suit Videos and (b) in view of the Plaintiff’s consent to the filming of the Suit Video, it was necessary to see if the Defendants were under any obligation to prevent its re-publication. (para. 11) It was further argued that the suit was not maintainable as there is no statutory protection granted to the Plaintiff for enforcing right to be forgotten. Therefore, the Plaintiff ought to approach the publishing platforms to take down the Suit Videos. (Reliance on: *Karthick Theodre v. Registrar General*, 2021 SCC OnLine Mad 2755, *Subhranshu Rout (Supra*)) Defendant relied on multiple judgments to submit that the right to seek disablement of search results in the manner sought by the Plaintiff has been rejected by courts in different cases. (Reliance on: *Dharamraj Bhanushankar Dave v. State of Gujarat,* 2017 SCC OnLine Guj 2493 and *Anchit Chawla v. Google India and Ors*., WP(C) 13921/2018) (para. 12)

Defendant also argued that the Plaintiff, having consented to the shooting of the Suit Video, could not rely upon right to be forgotten or Rule 3(2)(b) of the Rules 2021 for take down of the video. It was further submitted that Rule 3(2)(b) of the Rules 2021 was to be read along with Sections 67 and 67A of the Information Technology Act, 2000, which excluded material that was published in the interest of science, literature, art or learning or other objects of general concern. (para. 13)

**Decision Overview**

Asha Menon, J delivered the judgment in favour of the Plaintiff. The Court was cognizant of the fact that the matter involves legal issues which require consideration in greater depth. The Court opined that the issue of maintainability of the suit was subject matter of determination at a later stage of trial. However, in view of the explicit content of the Suit Videos, the same fell foul of Rule 3(2)(b) of the Rules 2021. Negating the Defendant’s argument, the Court held that even if the Plaintiff consented to the shooting of the Suit Videos earlier, the fact that the producer of the Suit Videos took down the content upon objections being raised by the Plaintiff was sufficient to prove a case in favour of the Plaintiff at the interim stage. (para. 14 & 15)

The Court observed that the circulation of the explicit content by way of the Suit Videos has a clear and immediate impact on the Plaintiff’s reputation. Particularly in view of the fact that producer has respected the Plaintiff’s withdrawal of consent and removed the Suit Videos, it was not in favour of the Defendant to argue that the Plaintiff had earlier consented to filming of the Suit Videos. (para. 16) Court recognised the fact that there is no statutory protection afforded to right to be forgotten in India. However, in view of decisions of the co-ordinate bench which recognises right to be forgotten as an inherent aspect of the fundamental right to privacy, the Court ultimately held that the Plaintiff’s right to privacy required protection, more so, when the Plaintiff is being exhibited against her will. (Reliance on: *Zulfiqar Ahman Khan (supra*)) (para. 17 & 18)

By way of the interim order, all the Defendants including Google have been directed to take down the Suit Videos or part thereof from their platforms as well as any mirror/ redirect websites created by Defendant Nos. 1-36, within 36 hours of the receipt of the order. The Defendant ISPs have been directed to disclose details of all servers being used by the Defendant website that are found to be indulging in the broadcast/ transmission of the Suit Videos to the public. The Court further permitted the Plaintiff to communicate its order to any other platform which is not arrayed to the suit but is found publishing/ streaming the Suit Videos. (para. 19)

**Decision Direction**

Expands Freedom

The Court was conscious that there is no statutory right to be forgotten (presently it is only a draft provision under the Personal Data Protection Bill 2019). However, in view of the facts of the case where the Plaintiff’s explicit video clips are being circulated, the Court observed that there is a clear and immediate effect on the reputation of the Plaintiff, requiring the grant of an interim relief to the Plaintiff. The Court categorically held that the right to privacy of the Plaintiff has to be protected, ‘*especially when it is her person that is being exhibited, and against her will*’. While the Plaintiff may have consented to the shooting, the consent was expressly withdrawn as the producer of the series had also removed the videos upon the Plaintiff’s request. Furthermore, the Court also relied upon Rule 3(2)(b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which obligate intermediaries including search engines to, within 24 hours of receipt of the complaint made by any individual/person in relation to any content which shows the individual in partial or full nudity or in some sexual act or conduct, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it.

**Global Perspective**

**National Standards, Law and Jurisprudence**

[India, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 3(2)](https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf)

[India, Information Technology Act, 2000, Section 67 B](https://www.itlaw.in/section-67b-punishment-for-publishing-or-transmitting-of-material-depicting-children-in-sexually-explicit-act-etc-in-electronic-form/)

India, Justice KS Puttuswamy and Anr. v. UOI and Ors., (2017) 10 SCC 1

India, Jorawer Singh Mundy v. Union of India, 2021 SCC OnLine Del 2306

India, Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd., 2019 SCC Online Del 8494

India, Subhranshu Rout v. State of Odisha (2020) SCC Online Ori 878

India, Karthick Theodre v. Registrar General, 2021 SCC OnLine Mad 2755

India, Dharamraj Bhanushankar Dave v. State of Gujarat, 2017 SCC OnLine Guj 2493

India, Anchit Chawla v. Google India and Ors., WP(C) 13921/2018

**Case Significance**

This interim decision of the High Court has significant importance untill appealed against and modified by a larger bench of the High Court. The decision considers right to be forgotten as an essential and inherent aspect of an individual’s right to privacy which is recognised as a fundamental right under Article 21 of the Indian Constitution. The decision has a significant impact and influence on all other constitutional as well as lower courts which are faced with the legal issue of enforcing right to be forgotten, particularly in sensitive cases, despite the absence of any statutory protection to the right. The case also casts an impact on the legislature, highlighting the need to enforce and implement the Personal Data Protection Bill 2019 so that right to be forgotten can be effectively given effect to, without it being merely an exception in cases of judicial intervention.