

'Right to be forgotten' vis-à-vis 'right to privacy' under Article 21 of the Constitution of India and under the Digital Personal Data Protection Act, 2023 and its applicability on courts

In a recent judgment, the Hon'ble High Court of Madras, Madurai bench ("**Madras HC**") in *Karthick Theodore vs. The Registrar General, Madras HC, IKanoon Software Development Private Limited, and Ors*¹, made a significant ruling examining:

1. the 'right to forgotten' / 'right to be remembered well' vis-à-vis 'right to privacy' of an individual under Article 21 of the Constitution of India ("**Constitution**") and under the Digital Personal Data Protection Act, 2023 ("**DPDPA**"); and
2. applicability of the DPDPA on courts in India, with an emphasis on courts maintaining a fine balance between aggregation of data required to perform their functions and protection of personal data so collected.

The judgment also analyses the framework of the DPDPA, privacy concerns in the Internet age, and the proactive approach the courts must adopt to safeguard individuals' privacy while carefully considering personal interest vis-à-vis public interest.

In an appeal by Ikanoon Software Development Private Limited before the Hon'ble Supreme Court of India ("**Supreme Court**"), the Supreme Court passed a stay order on the directions contained in the impugned judgment of the Madras HC. Further, the Supreme Court has clubbed the appeal with another matter pending before itself namely *Alka Malhotra vs. Union of India and Ors*² dealing with a similar issue.

Brief facts

The instant case arises out of a writ of mandamus filed by Mr. Karthick Theodore (the "**Appellant**"), seeking redaction of his name and personal details from a publicly accessible judgment dated April 30, 2014, in which he was acquitted of charges under Sections 417 and 376 of the Indian Penal Code, 1860 ("**Judgment**"). The Appellant argued that the continued availability of the Judgment online was causing significant harm to his personal and professional life, including the denial of a visa application. He claimed protection under the right to privacy, particularly the right to be forgotten. He also challenged Madras HC's previous order rejecting his plea for redaction. The Appellant argued that the unredacted Judgment's online presence served no public interest and unjustly affected his current life.

The Appellant cited the landmark judgment of the Hon'ble Supreme Court of India in *K.S. Puttaswamy and Anr vs. Union of India and Ors*³, ("**Puttaswamy Judgment**"), asserting that the right to privacy is a fundamental right enshrined

¹ W.A.(MD)No.1901 of 2021

² W.P.(C) No. 000019 - / 2024

³ 1 (2017) 10 SCC 1

under Article 21 of the Constitution and includes the right to be forgotten. The Appellant also referred to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which supports the removal of information by an intermediary that is invasive of an individual's privacy in specific circumstances.

The Appellant also placed emphasis on the judgment of the Hon'ble Supreme Court of India in the case of *XYZ Hospital*⁴, wherein the court directed that the masking of personally identifiable information be done.

The respondents, on the other hand, emphasized the importance of public access to judicial records and argued that the court, as an institution of record, must preserve its judgments in their entirety and that the principle of open justice should prevail. Further, the reliance was placed on Madras HC's judgment in the case of *R. Rajagopal vs. State of Tamil Nadu*⁵, where the Madras HC opined that '*the rule of privacy is subject to exception that publication becomes unobjectionable if it is based upon public records including court records*'.

Key issues

The Madras HC considered and analysed 3 (three) key issues:

1. Whether the Appellant's right to privacy under Article 21 of the Constitution and right to erasure of data under the DPDPA, include the right to have his name and details redacted from the Judgment?
2. What is the relevance and application of the newly enacted DPDPA on courts in the context of judicial records and privacy rights?
3. Does the principle of open justice and public access to court records override the Appellant's privacy concerns?

Analysis

The Madras HC, after careful consideration of the arguments advanced, the objective of the DPDPA and its applicability on the courts, and placing reliance on the Puttaswamy Judgment, allowed the writ appeal and ordered the respondents to take down the Judgment wherein the personal details of the Appellant were publicly available online and redact the name and other details of the Appellant relating to his identity from the said Judgment and ensure that only the redacted Judgment is available for publication or for uploading online. The Madras HC also ordered that the full and unredacted version of the Judgment will continue to be part of the court record.

Key findings of the Madras HC

1. **The Puttaswamy Judgment:** The Madras HC specifically referred to paragraphs 615, 631 and 636 and paragraph 526 in the concurring opinions of Hon'ble Nariman J and Sanjay Kishan Kaul J, respectively, where the right to be forgotten was discussed in detail. The Madras HC held that the 'right to be forgotten' is an integral part of the 'right to privacy' under Article 21 of the Constitution. It further analysed in detail a data principal's right to erasure of personal data and a data fiduciary's obligation to erase personal data when the data principal withdraws consent or as soon as the purpose for which it was collected is no longer being served.
2. **Applicability of the DPDPA on courts:** The Madras HC held that a decision on the applicability of the DPDPA must lean in favour of inclusion rather than exclusion. It examined the non-applicability of the DPDPA and referring to Section 3(c)(ii)(B), held that for the DPDPA not to apply a court must be a person as defined under the DPDPA and should have an obligation for disclosure of personal data held by it. In the present case, the Madras HC was considered to be a person as defined under the DPDPA, but since it did not have an obligation to disclose personal data held by it, i.e., personal data belonging to the Appellant, it was held that the DPDPA would apply to courts. The Madras HC emphasized upon the court's discretion to decide whether data held by it in its record can

⁴ (1988 8 SCC 296)

⁵ (1994 6 SCC 632)

be made publicly available and ruled that courts are expected to perform a fine balancing act between aggregating data required to perform its functions and protecting personal data so collected.

The Madras HC further considered courts to be ‘data fiduciaries’ under the DPDPA. However, it noted that the exemption provided under Section 17(1)(b) of the DPDPA makes Section 8(7), which provides for the erasure of personal data, inapplicable to courts, tribunals, and quasi-judicial authorities. However, it placed significance on the discretionary powers of the courts that they must exercise while making personal data available to the public.

3. **Balancing Privacy and Public Interest:** The Madras HC acknowledged that while the principle of open justice is crucial, it does not automatically override the Appellant’s privacy concerns, especially in the digital age where the permanence of online information can cause ongoing harm to an individual. The Madras HC recognised that the right to privacy, protected under Article 21 of the Constitution, must be considered in cases where the public availability of court records no longer serves a legitimate interest and may harm the individual’s personal and professional life.

Conclusion

The appeal by Ikanoon Software Development Private Limited before the Hon’ble Supreme Court of India opens an interesting debate about the right to be forgotten (personal interest) vs. public interest (documents available in court’s record) in the context of ever evolving Indian privacy laws. The Supreme Court’s final verdict in this regard will be crucial to answer the substantial question of law concerning personal interest versus public interest, especially considering India has a system of open courts, forming part of the public sphere where individuals’ claims of privacy do not subsist. Various High Courts have given conflicting decisions on this matter.

As India continues to develop its privacy framework, this decision of the Supreme Court will serve as a clear judicial approach with respect to public records and privacy rights.

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