
THE RIGHT TO BE FORGOTTEN IN THIS NEW ERA OF DIGITALIZATION

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ABSTRACT

The emergence of the “Right to be Forgotten” as a judicially enforceable constitutional right in the Indian law marks a significant change in the privacy. This article critically analyses the Delhi High Court’s landmark decision in *Laksh Vir Singh Yadav v. Union of India*, 2026:DHC:4891, delivered by the Hon’ble Mr. Justice Sachin Datta. The Hon’ble Justice, while deciding the future of the Right to be Forgotten, also took into the consideration by the decisions of the foreign Courts. Further, this article explores the foundational basis of the right to be forgotten, rooted in right to the privacy which is enshrined as fundamental right under Article 21 of the Constitution of India. The hon’ble justice Datta has given light on the judgement of Justice K.S Puttaswamy Vs. Union of India from where the concept of the privacy have been evolved and recognised and a status of the fundamental right is being given by widening the ambit of the Article 21 right to life with liberty.

Keywords: Right to be Forgotten, Privacy, Online Realm, Article 21.

INTRODUCTION

The present and new right of Right to be Forgotten was recently been talked in the *Laksh Vir Singh Yadav v. Union of India & Connected Matters*. The present judgement was delivered by the Justice Sachin Datta, the issue which was being addressed by the hon'ble Justice was the forgetting something in this new digital era where the information once uploaded on the internet can never be deleted as the resharing in this digital era is so fast. The Delhi High Court has answered with a resounding no- and in doing so, has laid down a comprehensive, first-of-its-kind framework for the enforcement of the Right to be forgotten in India.

BACKGROUND: THE PROBLEM OF DIGITALISATION

The internet, for all its utility, has a very worrying feature as the tendency of not forgetting anything which comes under its purview. Like we know that the news, Court orders, FIRs and all other judicial reasonings which are being uploaded can't be deleted once it is shared as it tends to appear there for the longest period of time. For the most purposes, this permanence is a virtue- its fosters transparency, accountability and free flow of information. However, as the person who had suffered something or some miss happening have took place it becomes a permanent source of suffering for the lifelong.

For instance, considering a case where a person is accused and subsequently convicted of the rape of a minor child, the conviction receives a large media attention. This results in huge dissemination of this information across different platforms thereby making that person's identity known in the public. However, several years later, conviction is overturned, or the individual gets acquitted after establishing his innocence. Now, despite this significant legal development, the acquittal often receives comparatively less media attention than the original conviction. Resultantly, online searches of the individual's name may continue to display reports of earlier conviction while the information related to the acquittal remains in the dark. This inequality can cause severe reputational harm, adversely affecting the individual's social standing and professional opportunities. This may also subject his family members to continued bullying and stigma, irrespective of judicial determination of his innocence.

This phenomenon of the holding or recording the information digitally is known as "Digital Memory" as it holds the information digitally and shows to the general public whether that information is relevant to the general public or not in the present context or whether the

information is socially useful or not. In the present legal scenario if a person is accused of certain offence whether previously he was convicted or not but his name will always be associated with criminal proceedings that had since ended in their favour, or in matters that had been settled, quashed, or were otherwise resolved.

THE CONSTITUTIONAL BASIS: ARTICLE 21 OF THE CONSTITUTION AND THE RIGHT TO PRIVACY

The constitutional basis for the right to be forgotten have been drawing its power from one of the most landmark Judgement of the Hon'ble Supreme Court of India in *Justice K.S Puttaswamy (Retd.) v. Union of India*, which equivocally included the right to privacy under the ambit the article 21, i.e. Right to life with personal Liberty which intact includes a person has every right to control any information about themselves to be shown in the general public.

The Hon'ble Justice Sachin Datta, relying on same judgement has observed that the right to privacy also includes the right to control the personal information which is to be circulated about that person or to curtail down the information which is available there. The Court during the proceedings have evolved the concept of the "Informational self- Determination". The right of every person is there to control what is being shown about them digitally or the social media.

Crucially, the Court held that the right to informational self-determination extends to the judicial records which is there in the public domain. The mere fact that any information has originated from the Court does not differentiate it from the general public information. Suppose if a general person gets acquitted over or discharge.

The High Court also clarified one of the constitutional lacunas which is the legal status of the right to be forgotten while observing the present case the Hon'ble Justice has held that there is no limitation on the constitutional Courts as to recognise the right to be forgotten as a legal right. As there are already the Courts and the government had given the consent to the Digital Data Protection Bill and this advancement in the same direction would help people to get the right which they have been looking for as initially there was no such law in place and later this development of a constitutional right would grant more privacy to the general public.

DOCTRINE OF OPEN JUSTICE: A VIEING PROPOSITION

The Doctrine of the open justice is one of the important and integral part of the rule of law. The

most significant change which occurred due to open justice is the accessibility, scrutinisation of the state power and an immediate stoppage to arbitrariness of any sort. This principle of open Justice contributes in building the confidence of the general mass in the Judiciary and the legal system as they can generally see what is happening in the which type of cases. The Hon'ble Delhi High Court, while deciding the present issue, did not part way from the tension. Hon'ble Justice Datta have somewhere acknowledged that the right to be forgotten, he also pressed on the issue of the confliction of present right with the open Justice system. The Court's role also becomes very important as to balance the right to be forgotten and principle of the Open Justice. As to balance the right and the principle the court's uses multiple tools like de-indexing, masking and other different forms of tools to create and maintain the balance. In articulating the balance, the Court drew its attention to one of the landmark judgement of the European Court, i.e. *Hurbain v. Belgium* in which the Grand Chamber of the European Court of Human Rights (ECtHR) ruled that a Court order requiring a newspaper to anonymise its online archives to protect an individual's "Right To be Forgotten" did not violate freedom of expression.

The Delhi High Court Adopted this approach in the Context to the Indian market and observed that "the rule order or judgement which is there on any site of the Indian Court or on any private site whichever platform hosts it. It remains accessible to all the people whosoever knows the case number, the citation, the Court or any other purposeful identifier."

THE REMEDIES: DE-INDEXING, DE-LINKING, AND MASKING

A. De- Indexing

This is one of the significant machineries recognised and used by the Courts to remove a particular information. By using the present machinery, the Court gave direction to search engine like google, chrome etc. to remove the content which is available on their sites from name-based search results in cases where relief has been granted and the Court also clarified that de-indexing must operate across all domain variants of a search engine. For instance- if a Court gives direction to de-index certain information from one site it will directly include the cross-domain applicability of that search engine to remove that information from all the connected sites.

The search engine argued that they act as only intermediary and they also as a site, merely

surfacing existing information rather than creating it but however, Justice Datta rejected this plea of the search engines and observed that the active participation of the intermediaries.

B. Restrictions on all the intermediaries

Indian kanoon and all other intermediaries which is being used by the Online repository of all the judicial decisions, was also directed to restrict name-based search functionality in respect of the concerned petitioners. Critically, however, the Court did not direct any of the intermediary to remove the judgments themselves. The decisions remain fully accessible through alternative search parameters- case number, citation, Court name etc.

Masking

The Court also recognised masking as a separate and distinct remedy. Masking is the process through which the person's identity details are being hidden- like names, addresses, identifiers – within the text of judgements hosted on digital platforms, so that the legal reasoning, findings, and precedential value of decision remain intact it publicly accessible. Justice Datta especially had putted emphasis on the purpose of the masking is to prevent the person's name from becoming a permanent searchable key that unlocks sensitive judicial records for casual public access.

Categories of Cases and Limitations

The problem with this sort of system is that these kinds of remedies like De-indexing or masking cannot be granted in each and every situation. Justice Datta carefully identified the situations in which these remedies can be granted like the situation where larger public will be benefitted then their will the availability of Judicial records will be their. These cases are basically the offences against the women or children, cases involving breaches of public trust, matters of significant public interest where the identity of the parties form a integral part of public record.

This ruling also outlined the elements that must be taken into account when assessing a request for de-indexing or masking: the type of initial proceedings and the alleged offense; the amount of time that has passed since the matter's conclusion; whether the person was ultimately cleared, acquitted, or released; the information's ongoing relevance to any current public interest; the extent of harm caused by ongoing digital accessibility; and whether the requested relief is

commensurate with the privacy interest being protected.

According to the Bench, "where continued public accessibility no longer serves any legitimate public interest and disproportionately infringes dignity, autonomy, and informational privacy," reliefs like de-indexing and masking may be granted. This proportionality test prevents the right to be forgotten from being abused as a means of stifling acceptable public conversation while placing it on a fundamental constitutional basis.

Implications for Digital Rights and Professional Regulation

The Delhi High Court's ruling is significant in ways that go far beyond the strict definition of privacy legislation. The digital persistence of prior accusations can have disastrous effects on livelihood and professional status for professions who are subject to regulatory "fit and proper" examinations, such as attorneys, chartered accountants, stock brokers, financial advisers, and others.

The Securities and Exchange Board of India (SEBI) concurrently changed its Intermediaries Regulations in 2026 to eliminate automatic disqualification triggers for individuals against whose criminal allegations or FIRs were just pending, without any conviction, in a startling convergence of circumstances. This change in regulations reflects the same fundamental idea: professional and economic involvement shouldn't be permanently barred by the mere fact that an accusation is pending, much alone a completed case that results in an acquittal. The ruling also affects survivors of marital disputes' digital rights. The Court received several petitions from people whose names had been involved in long-since-resolved marriage or custody cases. The Court acknowledged that private conflicts settled by the parties and the court should not be kept as permanent public spectacles in the digital realm by holding that such individuals may seek relief from perpetual digital affiliation with those proceedings.

A CRITICAL ASSESSMENT

The Delhi High Court's decision represents a very subtle and strong stand on one of the genuinely difficult constitutional issue. It lays down that the right to be forgotten is covered under the principle of right to privacy which was recognised in the *Justice K.S Puttaswamy* decision. The Right to Privacy has been recognised as the Fundamental Right under the Article 21 of the Indian Constitution. This recent judgement of the Hon'ble Delhi High Court is a master piece in balancing the Right to be forgotten and the open Justice system. The most

difficult part in the right to be forgotten is the enforcement of this right as multiple of the search engines are based in different countries and this law being the law of a High Court does not have that much effect on the foreign countries and the intermediaries cannot be compelled to be comply with the directions.

And one of the most difficult part in implementing this the absence of any complete statutory framework and also the problem to the general mass is the Accessibility as the remedies which are there for enforcement are not accessible to the general public and one of the most important thing is that the relief is only granted to the petitioners what about the persons who were not the part of the petition and have suffered.

Conclusion

"The shadow of crime should not be allowed to replace the shadow of dignity after the legal process has vindicated an individual" is a paragraph from Justice Datta's ruling that effectively conveys the human reality that drives the entire process. It's a formulation worth keeping in mind. When a person is found not guilty, the law solemnly declares that they are innocent in the eyes of justice. That proclamation is subtly weakened by the digital era, not by the courts but by search algorithms that bring up previous accusations more quickly than recent rulings. The Delhi High Court's ruling on May 29, 2026, is a sincere and morally sound attempt to reconcile what the law says with what the digital world keeps saying as there is a long path ahead to establish a practical, scalable structure, legislative action is required. Technology businesses need to have a real conversation about their responsibilities to the people whose data they handle and benefit from.

And the legal system needs to figure out how to make the right to be forgotten available to everyone who has been vindicated by the legal system and deserves to start over without the internet's unwavering memory following them for the rest of their lives, not just those who can navigate the High Court. The ruling in *Laksh Vir Singh Yadav* is not final. In the most optimistic interpretation, it is just the beginning.