THE RIGHT TO BE FORGOTTEN FOR CHILDREN IN INDIA: CAN JUVENILES EVER ESCAPE THEIR DIGITAL PAST?

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ABSTRACT

Both India's data protection and juvenile justice regimes offer a fresh start for children, but neither in a digitally networked society. The Digital Personal Data Protection Act, 2023, is mainly designed to protect children in the context of data collection, with the presumption that data processing will be made only with the consent of the parents, and bans behavioral tracking and targeted advertising for children. The Juvenile Justice (Care and Protection of Children) Act, 2015, provides for the protection of children following adjudication, the sealing of records and the non-identification of children in conflict with the law in a report. Both laws are limited to institutional actors such as data fiduciaries, courts, police, as well as media outlets and do not offer any means to force deleting or de-indexing of data that third parties have already made public or shared about an identifiable child. This note investigates the issues with this implementation. It asserts that the erasure right in the DPDP Act is not mandatory, but rather based on consent, that the confidentiality requirement in the Juvenile Justice Act only applies to certain institutional parties, and that there is no statutory connection between a Juvenile Justice Board's rehabilitation or closure order and a takedown requirement on platforms that publish identifying content.. The idea offered in the note is quite limited and easy to put into practice, a statutory presumption of de-indexing that is triggered automatically when a Board is closed, and is instead a power for the Board to call for, not the person, who is now an adult. This shifts the focus to those the law is supposed to protect and makes the best interests of the child a legal criterion rather than an aspirational one.

I. THE PROBLEM

After two years of counselling and skill training, a fourteen-year-old is caught for an offence, brought before a Juvenile Justice Board and discharged with a formal finding of successful rehabilitation. Under the law, it is closure, that means, her identity never should have been released in a report, and her conviction record will be sealed. However, when she was detained, she was featured in a local news site along with her locality; the picture was screenshotted and shared in a neighbourhood WhatsApp group, and a stranger re-posted it months later in a discussion about "juvenile crime trends. Now she is 22 and applying for a teaching job. The potential employer's background check reveals the old post within seconds. For all intents and purposes, the Juvenile Justice Board's sealing of her record is immaterial what the rest of the world looks at is not a record she had before the Board. This is not an isolated incident, or an exception or a special case; it is simply what one would expect when using a paper-based confidentiality model in a networked information world. In the case file, a child's statutory fresh start resides. It cannot be found on the internet.

II. WHAT THE CURRENT SYSTEM OF LAWS PROMISES

There are two statutes addressing this issue, though neither was written with this problem in mind. The older and more direct one is in the Juvenile Justice Act, 2015. No child in conflict with law, child victim or child witness may have his or her name, address, school, or any particulars that would lead to the identification of the child disclosed, in any newspaper, magazine, news-sheet, audio-visual media or on any internet or other electronic platform, or his or her picture shown in association with any report, and the name, address, school, or any particulars of a child in conflict with law, child victim, or child witness shall not be disclosed in any newspaper, magazine, news-sheet, audio-visual media or any internet or other electronic platform or shown in connection with any report in such media.[1] A child dealt with under the Act shall not be disqualified as a result of such a handling. Under another exception, the record shall be destroyed after the time prescribed, except in the case of a child dealt with as an adult for a heinous offence.[2] Together, these stipulations envision a state that will not remember and a media that will not allow the child to be remembered.

The Digital Personal Data Protection Act, 2023, takes the opposite approach: not on the

[1] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 74, INDIA CODE (2015).
[2] *Id.* § 24.

consequences of an adjudication, but on where data is collected. A data fiduciary must obtain the verifiable consent of the parent/guardian before processing a child's personal data under Section 9, and must refrain from tracking, behavioural monitoring, and targeted advertising of a child.[3] Section 12 gives a data principal the right to correction and the right to be erased by the data fiduciary, who is obligated to delete personal data when consent is withdrawn or the purpose for which it was collected no longer exists, unless the law requires otherwise.[4] The closest statutory parallel in India to a 'right to be forgotten' is the 'right to have one's information deleted' as enshrined in the Act, albeit in different words and not as a standalone right, separate from the 'consent' relationship. The two statutes complement each other on the paper, with the data collected with consent protected by the DPDP Act and the institutional record protected by the JJ Act. However, between them is just the type of harm that is most enduring.

III. WHERE IMPLEMENTATION FAILS

Three gaps stand out. Firstly, the confidentiality requirement in the JJ Act applies to a limited group of actors and does not have "digital enforcement teeth" in it. Section 74 refers to newspapers and magazines, and to the media as a whole; the penalty provision pertains to institutional publishers.[5] It does not say anything about the private citizen who snaps a news report and posts it years later, the online forum on which it is posted, or the search engine that indexes both. No statute allows a board that ordered confidentiality or record-sealing to compel a platform to remove material that would violate the spirit of the order. The Board's writ does not extend to the internet; it extends to the case file.

This restriction is not just hypothetical. In ***Sri Vasunathan v. Registrar General***,[6] the Karnataka High Court itself identified a version of this issue, by stating that it would keep a daughter's name "out of the Internet searchable version" of an order, but emphatically refused to change the "certified copy" and limited the relief to "sensitive cases involving women... or affecting the modesty and reputation of the person concerned". It also noted that even the constitutional court considered de-indexing an exception to be carved out on a case-by-case basis and not an automatic right to the benefit of the closed proceeding, as in the juvenile context, there has yet

[3] Digital Personal Data Protection Act, No. 22 of 2023, § 9, INDIA CODE (2023)
[4] *Id.* § 12
[5] Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, § 74, INDIA CODE (2015); *see supra* note 1
[6] Sri Vasunathan v. Registrar Gen., 2017 SCC OnLine Kar 424 (India).

to be any effort to seek judicial intervention.

Secondly, the right to erasure under the DPDP Act is not automatic but rather based on consent; thirdly, it is not clearly applicable to third-party content relating to a child. There are two triggers for erasure: withdrawing consent or the data no longer being needed for the purpose for which it was collected, which outlines the relationship between a data principal and a data fiduciary who collected the data first-hand. It does not particularly apply to a photograph or report by a third party, a journalist, a peer, or an anonymous poster who created and published something about the child without consent; a consent relationship cannot be withdrawn. As the DPDP Act is currently constructed, there is no straightforward right of erasure for the juvenile in these cases against the press or the classmate who reports the case to the press, because the Act's architecture assumes a data-fiduciary relationship, which is not present in these cases.[7]

This is NOT a theoretical deficiency. In ***Dharamraj Bhanushankar Dave v. State of Gujarat***,[8] the High Court did not acknowledge any right to be forgotten, stating that the statutory provisions were necessary to define the contours of the right and that judicial records cannot be selectively taken away only because a litigant wants to preserve his/her image. Since that time, no legislature has responded to that call for children, although the case for a rehabilitated juvenile is far stronger than for an adult litigant seeking reputational relief.

Thirdly, and most significantly, there is no coordination mechanism between the two regimes. The Juvenile Justice Board's closure or rehabilitation order is the logical basis for a new beginning; it is the moment when the state officially declares the child's case closed. However, nowhere is there a link to any duty on a platform, search engine, or even the initial publisher, to de-index or remove related content. The record is then left for the child (now, usually, an adult) to find on her own, and, if she can find a remedy, it is the general and broad one of tort, defamation, or ad hoc right-to-be-forgotten remedy remedies that are in use by adults, but which are far more likely to be unavailable to the scheme's own beneficiaries.[8] The cumulative effect is that India's child-specific protections are the strongest at the point where risk is least, namely at the point of institutional record keeping, and are weakest at the point where risk is greatest, namely in the uncontrolled, decentralised realm of media reporting, screenshots and re-shares, free from any court order.

[7] Digital Personal Data Protection Act, No. 22 of 2023, § 12, INDIA CODE (2023); *see supra* note 4.
[8] Dharamraj Bhanushankar Dave v. State of Gujarat, S.C.A. No. 1854 of 2014 (Guj. H.C.) (India).

Those who have had relief have done so under ordinary tort and privacy law, not under any codified right. In the case of ***Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd***,[9] the Delhi High Court granted interim injunctive relief on general privacy and defamation grounds, which is a clear example of the fact that the only remedy presently on offer is in the hands of the aggrieved party. The entire object of the JJ Act is to keep such individualised and public litigation proceedings away from this type of juvenile.

IV. WHAT A FIX WOULD LOOK LIKE

There is no need for a comprehensive new law to address a viable solution. It demands a narrow and specific amendment so that the Juvenile Justice Board's order of closure, discharge, or successful completion of a plan of rehabilitation under the JJ Act will automatically lead to a presumption of de-indexing and takedown, which will apply to intermediaries and platforms, and not just the child. There are three important design features. The trigger should be the Board's order, not a renewed application from the person; in other words, remove the requirement to reapply from the person whose application is intended to keep the Board safe. The duty must be imposed on intermediaries who host or index content, not on actors who have no role in hosting or indexing, and should be enforced through the existing "actual knowledge" and takedown regime, as is the case under intermediary liability law.[10] The presumption should be rebuttable based on narrow public interest considerations – meaning if there is an existing case pending against the person for a subsequent criminal act as an adult, then that case should be pressed – otherwise, the fresh start would not be a fresh start, but rather a cloak for future actions unrelated to the initial offence. Such an amendment would not involve re-engineering either of the two statutes underlying philosophy. It would simply fulfil a pledge already made – in principle, at least – by both the state and the press and a stranger's forum post: that a child who has gone through the juvenile justice system and been determined to have been rehabilitated without success should be left alone.

V. CONCLUSION

A juvenile record can be sealed. A screenshot cannot.

That, in essence, is the failure this note has traced. India has enacted two careful, well-

[9] Zulfiqar Ahman Khan v. Quintillion Bus. Media Pvt. Ltd., 2019 SCC OnLine Del 8494 (India).
[10] Information Technology Act, No. 21 of 2000, § 79, INDIA CODE (2000); Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(d) (India)

intentioned statutes around the idea that a child deserves to outgrow their worst moment: the Juvenile Justice Act, which seals the file, and the Digital Personal Data Protection Act, which governs data.

A Board can order silence. It cannot order forgetting.

The missing ingredient is not a new right. It is just one working part, a regulation that will allow the Board's closure order to extend beyond the courtroom to the other platforms. If it is not done, the law can say: "He is rehabilitated," but the internet cannot say: "Yes, he is rehabilitated."

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