Page 1729 - 1737 **DOI:** *https://doi.org/10.63108/IJLMH.13304*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 6

2026

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Right to be Forgotten v Right to Information: Need for a More Balanced Approach

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ABSTRACT

A person is charged with an offence, and later, after the trial, it turns out that the accused was innocent and had no involvement in the crime whatsoever. This gives such a person the relief of not being imprisoned or penalised, but the harm caused to the person's reputation still looms. Years later, if somebody searches for that name on the internet, the person is presented as an accused, with the mention of the acquittal by the court nowhere to be found. This permanence of false information against a private individual who has never asked for his life to be public poses a big challenge in the era of digital media, where once a thing is out it cannot be forgotten. This everlasting nature of information seems logical for people who have signed themselves up to be in the public eye or the nature of whose job makes it necessary. There is a need for a law that protects an individual's dignity, which is hampered by the everlasting nature of information in the digital age. However, a distinction should be drawn between the people who remain in the public eye and the ones who choose to keep their life private. Together with the right to information and the right to know, the right to privacy should also be given due importance.

Keywords: *Privacy, Cyberspace*

I. INTRODUCTION

Back in the days when print media was the main source of information, the right to be forgotten was not an issue. Times have since changed: a lot of the information that is received today comes through digital media, and the good or bad things written about an individual remain perpetually in cyberspace. Even if something is deleted from a particular website, it never gets completely obscured; some other web source will have preserved it, because, apart from the duty of an intermediary to act on an order of a court or on a reasoned intimation from the appropriate Government, there is no general legal obligation to remove such information.[1] This

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[1] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E) (Feb. 25, 2021), r. 3(1)(d), *substituted by* G.S.R. 775(E) (Oct. 22, 2025), *amended by* G.S.R. 120(E) (Feb. 10, 2026) (India).

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becomes a major issue when false information against an individual is uploaded digitally and tarnishes his reputation, and he is left with few options to eradicate it.

This permanence of information in the digital space sits uneasily with an individual's right to privacy, which has been recognised as an integral part of the right to life and personal liberty under Article 21 of the Constitution of India. In the landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the Supreme Court held privacy to be a constitutionally protected right which emerges primarily from Article 21.[2] Moreover, the opinion of Justice Kaul in that case laid the foundation for the right to be forgotten as a right. He stated that the right of an individual to exercise control over his personal data would also encompass a right to control his existence on the internet; he considered that people make mistakes, but that they are entitled to reform and correct them and should not be stuck on a path which they trod initially. He also made it a point that the right cannot be absolute, that its existence does not imply that a criminal can obliterate his past, and that it has to be balanced against other fundamental rights such as the freedom of expression.[3]

The right to be forgotten seems to be very logical and easily achievable, but the constitutional guarantee from which the right to know and to receive information is drawn acts as a hindrance in implementing it in its true essence.[4] The Digital Personal Data Protection Act, 2023 (the DPDP Act) has a provision for the erasure of personal data, but it has certain major loopholes. The right to erasure extends only to personal data for the processing of which the individual has previously given consent, and the request has to be made to the particular data fiduciary that holds the data.[5] It does not deal with search engine de-indexing, so that the information is allowed to remain in cyberspace in some way or the other. Section 17 of the Act exempts, among others, processing by courts and tribunals, processing in the interest of the prevention, detection, investigation or prosecution of offences, and processing, in the interests of the security of the State and other specified interests, by such instrumentalities of the State as the Central Government may notify, and it relieves the State of the duty to erase on request. It may be

[2] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1, ¶¶ 298, 320 (India) [hereinafter *Puttaswamy*].
[3] *Id.* ¶¶ 629, 632, 634-636 (S.K. Kaul, J., concurring).
[4] INDIA CONST. art. 19, cl. 1(a); *Laksh Vir Singh Yadav v. Union of India*, 2026:DHC:4891, 2026 SCC OnLine Del 4491, ¶ 154 (India) [hereinafter *Laksh Vir Singh Yadav*]. The judgment is under appeal; the appeals were part heard and, on November 20, 2026, were adjourned to December 11, 2026. *iKanoon Software Development Pvt. Ltd. v. Laksh Vir Singh Yadav*, LPA 506/2026 and connected matters, order dated Nov. 20, 2026 (Delhi HC) (India).
[5] The Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023, § 12(1), (3) (India) [hereinafter DPDP Act]. Sections 8, 12, 13, 17, 28, 29 and 34, among others, and section 27 except clause (d) of sub-section (1), come into force eighteen months after the publication of the notification of November 13, 2025, that is, in May 2027. MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY, Notification G.S.R. 843(E), GAZETTE OF INDIA, Extraordinary, pt. II, sec. 3(i) (Nov. 13, 2025) [hereinafter G.S.R. 843(E)].

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argued that this creates an unreasonable distinction between ordinary people and the Government and weakens the very purpose of the provision on erasure.[6]

Once information is put out on the internet, it tends to remain available online. Merely removing it from the platform that uploaded it will not suffice, as other platforms can still showcase the information; what is required is a remedy that reaches across the internet, so that none of the platforms uses the information wrongly. The Delhi High Court has gone some way in this direction: although it did not order erasure of the record, it held that a direction to de-index must operate globally, across all versions and domains of the search engine concerned.[7] While information available in cyberspace should not be permanent and one should have the right to get it removed, a balance also has to be struck so that the rights of individuals regarding access to information are not hampered.[8]

II. INTERNATIONAL FRAMEWORK FOR THE RIGHT TO BE FORGOTTEN

Under Article 17 of the European Union's General Data Protection Regulation (GDPR), the right to be forgotten has been recognised as the right to erasure. It does not stop at the removal of information from a particular website: a controller that has made the personal data public and is obliged to erase them must also take reasonable steps to inform other controllers that the data subject has requested the erasure of any links to, or copies or replications of, those data. The grounds that allow for erasure include that the data are no longer necessary for the purpose for which they were collected or processed, and that the data have been unlawfully processed.[9] However, this is not an absolute right, and there are certain exceptional situations in which erasure cannot be demanded, as where the processing is necessary for exercising the right of freedom of expression and information, with which Member States must reconcile data protection, including in relation to processing for journalistic purposes, or for archiving in the public interest or for scientific, historical or statistical research in so far as erasure would be likely to render impossible or seriously impair the achievement of the objectives of that processing.[10]

The leading decision, *Google Spain*, was given before the GDPR, under Directive 95/46/EC. Announcements had been published in a newspaper regarding the auction of real estate in connection with proceedings against a person for the recovery of social security debts. He said

[6] DPDP Act, *supra* note 5, § 17(1)(b)-(c), (2)(a), (4).
[7] *Laksh Vir Singh Yadav*, *supra* note 4, ¶¶ 189, 208-209.
[8] *Puttaswamy*, *supra* note 2, ¶ 635 (S.K. Kaul, J., concurring).
[9] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, art. 17(1)-(2), 2016 O.J. (L 119) 1.
[10] *Id.* arts. 17(3)(a), (d), 85(1).

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that the matter had been fully resolved for a number of years and that reference to it was now entirely irrelevant.[11] On a reference from the Spanish court, the Court of Justice held that the operator of a search engine may be obliged to remove, from the results of a search made on a person's name, links to web pages containing information that is inadequate, irrelevant or no longer relevant, or excessive, even where its publication on those pages is itself lawful. The Court added that the data subject's rights override, as a rule, the interest of the general public in finding that information on a search of his name, barring particular reasons such as the role played by him in public life.[12] The complaint against the newspaper itself had been rejected by the Spanish data protection authority, so that the remedy in question lay against the search engine and not against the original publication.[13]

III. THE POSITION IN INDIA

The DPDP Act provides that it shall not apply where a notified instrumentality of the State processes personal data in the interests of, among others, the security of the State, or where the processing is necessary for research, archiving or statistical purposes and certain conditions are met.[14] The Act itself says nothing about public figures; that limit has come from the courts, which treat the conduct of a public figure in a public capacity as a matter of legitimate public interest.[15] However, the Act does not provide any specific mechanism for the removal of information published by others about a normal individual against whom an allegation is made which, after trial, is not proved and which tarnishes his reputation. The Delhi High Court has itself noticed that India presently lacks a comprehensive statutory framework explicitly governing the right to be forgotten.[16] A specific mechanism for the removal of such information needs to be devised under Indian law.

An individual who seeks the removal of information of this kind from the internet or from a particular website in India has had to approach the High Court, which is a constitutional court dealing with several important matters. The DPDP Act, once its remaining provisions come into force, will provide a ladder of remedies: a grievance to the data fiduciary, which must be exhausted first, a complaint to the Data Protection Board of India, and an appeal to the Appellate Tribunal.[17] That ladder, however, is confined to breaches of the Act. A similar mechanism of

[11] Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos (AEPD)*, ECLI:EU:C:2014:317, ¶¶ 14-15 (May 13, 2014).
[12] *Id.* ¶¶ 88, 94, 97-99.
[13] *Id.* ¶¶ 16-17.
[14] DPDP Act, *supra* note 5, § 17(2).
[15] *Laksh Vir Singh Yadav*, *supra* note 4, ¶¶ 202-203.
[16] *Id.* ¶ 146.
[17] DPDP Act, *supra* note 5, §§ 13, 18-26, 27(1)(b), 29(1); G.S.R. 843(E), *supra* note 5, cl. (c).

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dispute resolution should be developed for the right to be forgotten, wherein the person should first ask the data fiduciary to remove the information and should then be able to approach a superior authority, from whose decision an appeal should lie to an appellate body, and the constitutional courts should operate only as the last option.

Spent conviction is a concept of criminal jurisprudence under which, once a person has served his sentence and a specified rehabilitation period has passed, the conviction is treated as spent. In England and Wales, where the concept is statutory, a rehabilitated person is, subject to exceptions, to be treated for all purposes in law as a person who has not committed or been convicted of the offence.[18] The High Court of England and Wales has held that the fact that a conviction is spent will normally be a weighty factor against the further use or disclosure of information about it, though the competing rights must still be weighed in each case.[19] Once an individual has undergone the punishment for his wrong deeds, the continued availability of information about him damages his reputation, which in a way will amount to a violation of the principle of double jeopardy, under which no person shall be prosecuted and punished for the same offence more than once.[20]

In this case, even though the person is not in the technical sense being prosecuted more than once, he is in some other way bearing the brunt of a wrong for which he has already served the punishment. However, in the age of the internet this concept is difficult to follow, as once information is put online it is hard to trace it and to ensure that it gets deleted permanently from the entire cyberspace.[21] Certain provisions should be brought into the DPDP Act that secure the application of the concept of spent conviction in the digital age.

The Delhi High Court has gone only a part of the way towards the idea of spent conviction. It considered the right to be forgotten to flow from the recognition of informational privacy under Article 21 of the Constitution of India, but the relief it framed is mainly for persons who have been acquitted or discharged, or whose proceedings have been quashed, settled or compounded, and for private civil and matrimonial disputes.[22] On convictions, it accepted that a conviction may lose its continuing relevance with the passage of a sufficient period of time, but declined relief on the facts to a person convicted of serious offences, holding that the right cannot be invoked as a means to efface serious criminal culpability.[23] It also drew exceptions for

[18] Rehabilitation of Offenders Act 1974, c. 53, §§ 1, 4(1) (UK).
[19] *NT 1 & NT 2 v. Google LLC* [2018] EWHC (QB) 799, [166(2)] (Eng.).
[20] INDIA CONST. art. 20, cl. 2.
[21] VIKTOR MAYER-SCHÖNBERGER, DELETE: THE VIRTUE OF FORGETTING IN THE DIGITAL AGE 85-110 (2009).
[22] *Laksh Vir Singh Yadav*, *supra* note 4, ¶¶ 141, 199-201, 224.
[23] *Id.* ¶ 280.

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convictions for offences against women or children and for offences involving breach of public trust.[24]

IV. JUDICIAL RECOGNITION AWAITING LEGISLATION

As per the concept of the rule of law given by A.V. Dicey, a British jurist, law is not restricted to the legislation drafted by the legislature but also includes the law that results from judgments delivered by judges. He described the general principles of the English constitution as the result of judicial decisions determining the rights of private persons in particular cases, and the constitution itself as a judge-made constitution.[25] The application of this idea, which is often discussed in India as judicial activism, can be seen in the case of the right to be forgotten. In India, the de-indexing of information is yet to be recognised as a statutory right. However, in judgments of the Supreme Court and the High Courts, due importance has been given to the right to be forgotten as an element of the right to privacy recognised under Article 21 of the Constitution of India.[26]

Puttaswamy arose out of the challenge to the Aadhaar scheme, but the nine-judge Bench was concerned only with whether privacy is a fundamental right; the validity of Aadhaar was decided separately in 2018.[27] The Court very clearly held that privacy is an essential aspect of dignity.[28] In *Kharak Singh v. State of U.P.*, it had been said that the word "life" in Article 21 is not restricted to mere animal existence, and the dignity of the individual had been referred to in construing personal liberty.[29] *Puttaswamy* built on that understanding while overruling *Kharak Singh* to the extent that it held that the right to privacy is not protected by the Constitution.[30] While privacy was considered an integral part of the right to live with dignity, the opinion of Justice Kaul considered the right to be forgotten to be a part of the larger right to privacy, therefore laying a foundation for the legislature and the High Courts to draw inspiration from.[31] Following in the footsteps of the Supreme Court, the Delhi High Court in *Jorawer Singh Mundy v. Union of India* directed, as an interim measure, that a judgment by which the petitioner's acquittal in a criminal case had been upheld be removed from search results and be blocked from access through search engines. It did so on the *prima facie* view that, despite the acquittal,

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[24] *Id.* ¶ 206.
[25] A.V. DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 191-92 (8th ed. 1915).
[26] *Puttaswamy*, *supra* note 2, ¶¶ 629, 635-636 (S.K. Kaul, J., concurring); *Laksh Vir Singh Yadav*, *supra* note 4, ¶¶ 141, 146, 166.
[27] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2019) 1 SCC 1 (India).
[28] *Puttaswamy*, *supra* note 2, ¶ 298.
[29] *Kharak Singh v. State of U.P.*, (1964) 1 SCR 332, 347-48 (India).
[30] *Puttaswamy*, *supra* note 2, ¶ 652.2.
[31] *Id.* ¶¶ 635-636 (S.K. Kaul, J., concurring).

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irreparable prejudice might be caused to his social life and career prospects.[32] That petition was finally decided in the batch discussed next, where the petitioner, a private individual acquitted by the concurrent findings of two courts, was held entitled to de-indexing.[33]

The right to be forgotten was emphasised by the High Court of Delhi in the recent judgment in *Laksh Vir Singh Yadav v. Union of India*, wherein, while dealing with a batch of thirty-eight petitions, it held that persons who have been acquitted or discharged, or whose proceedings have been quashed, are entitled to have that determination reflected in their digital identity, and that the question in each case is whether a specific competing interest qualifies or limits that entitlement.[34] Where relief was granted, it directed that the relevant records be de-indexed from name-based search results.[35] It also made it a point that the names of the individuals concerned can be masked with neutral references, so that the relevant data of cases remain preserved while still protecting the reputation and privacy of the individuals; it left the petitioners in whose favour de-indexing was directed at liberty to seek masking from the court that rendered the order or judgment.[36] However, it said that the complete and un-redacted versions of the judgments are to be preserved in the internal records of the court, which ensures the proper maintenance of judicial records.[37] It also carved out certain categories in which such relief may not be appropriate: convictions for offences against women or children, convictions for offences involving breach of public trust, including those by public servants and elected representatives, and the conduct of public figures in their public capacity.[38]

V. Conclusion and Suggestions

While the judiciary has been actively recognising the right to be forgotten as an essential element of the right to privacy, and therefore of the right to life under Article 21 of the Constitution of India, there still remains a gap to be bridged between the judiciary and the legislature as far as the right to be forgotten as a statutory right is concerned. It is not that the Indian legislature has not taken any step in this direction, but its way of doing it is quite distinct from that of Article 17 of the GDPR. Section 12 of the DPDP Act does provide that personal data be erased on request unless their retention is necessary for the specified purpose or for compliance with law, and section 8(7) requires erasure once it is reasonable to assume that the specified purpose is no longer being served, but the Act maintains it as a matter between the

[32] *Jorawer Singh Mundy v. Union of India*, 2021 SCC OnLine Del 2306, ¶¶ 11-12 (India).
[33] *Laksh Vir Singh Yadav*, *supra* note 4, ¶ 225.
[34] *Id.* ¶¶ 223-224.
[35] *Id.* ¶¶ 284-285.
[36] *Id.* ¶¶ 211-213, 221, 286.
[37] *Id.* ¶ 220.
[38] *Id.* ¶¶ 202-203, 206, 217.

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data fiduciary and the data principal.[39] It lacks a mechanism to resolve the conflict that arises between the right to privacy under Article 21 and the freedom of information under Article 19 of the Constitution. Another change that needs to be made to the Indian law on data privacy is that the amount recovered by way of penalty should, rather than being credited to the Consolidated Fund of India, be paid to the party whose rights have been violated.[40]

The Data Protection Board of India, the body that resolves disputes under the DPDP Act, is composed of members drawn from several fields, such as data governance, consumer protection, dispute resolution and information technology, and only one of them is required to be an expert in the field of law.[41] In order to come to more nuanced and profound conclusions, it would be better if the body comprised members who are specialised in constitutional law and cyber law. The way in which the Board is to operate is merely reactive: it acts on an intimation, a complaint, a reference or the directions of a court, and its directions are addressed to the person concerned.[42] It is not given a power to issue general guidelines which need to be followed by the bodies working in cyberspace. The Chairperson and Members are appointed by the Central Government, after considering the recommendation of a Search-cum-Selection Committee that consists of Secretaries to the Government and experts, and may be removed by the Central Government after an opportunity of being heard.[43] The Act declares that the Board shall function as an independent body, but it may be argued that this arrangement could hinder the independence with which the members work.[44] The selection committee should consist of members from the executive as well as the judiciary to allow the Board to perform its duties without any bias.

One of the crucial conditions for an individual to work without any bias is that he is not seeking any personal benefit and is not lured by the chance of reappointment to the office. Under the DPDP Act, the Chairperson and Members hold office for two years and are eligible for reappointment, and the appointment is made by the Central Government.[45] This could put them in a position in which the prospect of reappointment weighs on decisions involving the Government. Currently, the law governing the protection of digital data in India works on an all-or-nothing approach wherein either the data are kept or they are removed altogether. A more suitable approach could be to keep the information anonymous by changing the names of the

[39] DPDP Act, *supra* note 5, §§ 8(7), 12(3).
[40] *Id.* § 34.
[41] *Id.* § 19(3).
[42] *Id.* §§ 27(1)-(2), 28(2).
[43] *Id.* §§ 19(2), 21; Digital Personal Data Protection Rules, 2025, G.S.R. 846(E), r. 17 (Nov. 13, 2025) (India).
[44] DPDP Act, *supra* note 5, § 28(1).
[45] *Id.* §§ 19(2), 20(2).

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people involved in the matter; this would ensure that the information is kept intact for records and would not harm the reputation of the persons involved.

Under section 8(1)(j) of the Right to Information Act, 2005, as it stood earlier, personal information whose disclosure had no relationship to any public activity or interest, or would cause an unwarranted invasion of privacy, could be refused unless the larger public interest justified its disclosure.[46] However, section 44(3) of the DPDP Act, brought into force in November 2025, substituted this clause, so that it now covers simply "information which relates to personal information".[47] The public interest test within the clause has thus gone, although section 8(2) still permits a public authority to allow access if the public interest in disclosure outweighs the harm to the protected interests.[48] The concern is that privacy, rather than being used as a shield, could also be used as a sword, and that information concerning individuals involved in corruption cases could be withheld in the name of the right to privacy.

Mahatma Gandhi called "Hate the sin and not the sinner" a precept which, though easy enough to understand, is rarely practised.[49] Accordingly, a concept of spent conviction should be followed, wherein once a person has spent the requisite number of years inside a prison he should no longer be subjected to the hardships that come along with it. For minor offences, or matters which have been decided by the court and in which the person has already been subjected to a penalty or imprisonment, the data should not remain available in cyberspace forever, as it operates as an obstacle for the individual mentioned in those articles or publications in finding a job.

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[46] The Right to Information Act, 2005, No. 22, Acts of Parliament, 2005, § 8(1)(j) (India) (before its substitution in 2025).
[47] DPDP Act, *supra* note 5, § 44(3); G.S.R. 843(E), *supra* note 5, cl. (a).
[48] The Right to Information Act, 2005, *supra* note 46, § 8(2).
[49] M.K. GANDHI, AN AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH pt. IV, ch. IX (Mahadev Desai trans.), https://franpritchett.com/00litlinks/gandhi/part4/409chapter.html.

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