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The Right to Be Forgotten and Open Court Records in India: Privacy, Anonymisation and the Acquitted Accused

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ABSTRACT

The digitisation of judicial records in India has produced a distinctive constitutional dilemma. The name of a person acquitted or discharged of a criminal offence remains permanently accessible online, so that a search by name discloses a record of an allegation the law has found to be unsound. This article examines whether there are circumstances in which an acquitted or discharged accused in India should obtain source-level anonymisation, search engine de-indexing or restriction of name-based access on legal databases, without undermining the constitutional principle of open justice. In May 2026 the Delhi High Court in Laksh Vir Singh Yadav v. Union of India recognised the right to be forgotten as a dimension of informational privacy under Article 21 of the Constitution and built an operational framework for that right, distinguishing de-indexing from deletion and preserving judicial records while restricting name-based accessibility. Earlier scholarship has attended to privacy, reputation, victim anonymity and the general constitutional recognition of the right to be forgotten; the distinct remedial position of the acquitted accused has not been properly separated out. Using doctrinal analysis of the constitutional text, Supreme Court and High Court precedent and the current statutory position, the article contends that the Delhi framework supplies the means of redress but not an accused-specific test. It applies a single standard to all acquittals and is for that reason exposed to a vagueness challenge at the appellate stage, while the pending Supreme Court proceedings in iKanoon v. Karthick Theodore remain undecided. The contribution of the article is a proportionality test that draws the line between acquittal on the merits and acquittal in form, discharge and quashing, maps these against the three means of remedy, and selects the least restrictive one.

Keywords: *Right to be forgotten, open justice, acquittal, de-indexing, source anonymisation, informational privacy*

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I. INTRODUCTION

An acquittal at the end of a criminal prosecution is, in substance, a vindication. Digitisation has weakened that vindication. Trial records, appellate rulings and the copies of both that sit in freely accessible legal databases all surface under the name of the person who was found not guilty. The accusation becomes a permanent fixture, whatever the manner of its disposal in court.¹

The difficulty is not privacy as an abstract principle but the persistent naming and identification of a person whom the criminal process has acquitted. The issue sits between two constitutional commitments: informational privacy under Article 21, recognised in *Justice K.S. Puttaswamy v. Union of India*,² and open justice, affirmed in *Swapnil Tripathi v. Supreme Court of India*.³ In May 2026 the Delhi High Court addressed one part of the problem. In *Laksh Vir Singh Yadav v. Union of India*, decided on 29 May 2026, the court held that the right to be forgotten is a facet of informational privacy.⁴

Indian scholarship on the right to be forgotten has largely concentrated on its constitutional basis, on harms to reputation and dignity, and on the protection of victims and vulnerable parties. The remedial position of the acquitted or discharged accused, and how it changes depending on whether relief is sought from the court, the search engine or the legal database, has not been worked out separately.⁵

This article asks the following question: when an acquittal or a discharge ceases to justify the appearance of a name every time the case file is searched, what must the court do, and through which of the three available forms of relief? It argues that the Delhi framework supplies the basis of relief but not the test that the acquitted accused requires.

¹ *Jorawar Singh Mundy v. Union of India*, W.P. (C) No. 3918 of 2021, 2021 SCC OnLine Del 2306 (Del. H.C.) (India) (interim order directing de-indexing pending final adjudication); see also *Dharamraj Bhanushankar Dave v. State of Gujarat*, 2017 SCC OnLine Guj 2493 (Guj. H.C.) (India) (declining to restrain publication of a judgment of acquittal on a legal database).

² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

³ *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639 (India).

⁴ *Laksh Vir Singh Yadav v. Union of India*, 2026:DHC:4891 (Del. H.C. May 29, 2026) (India).

⁵ Koushiik Kumar, *Privacy vs. Open Justice? The Right to Be Forgotten and Conflicting HC Jurisprudence*, NUALS L.J. Blog (Jan. 5, 2026), <https://nualslawjournal.com/2026/01/05/privacy-vs-open-justice-the-right-to-be-forgotten-and-conflicting-hc-jurisprudence/>; Rakesh Kumar Chaurasiya, *Case Commentary: Laksh Vir Singh Yadav v. Union of India and Connected Matters*, 9(3) INT'L J.L. MGMT. & HUMAN. 2260 (2026).

II. FROM PRIVACY TO THE RIGHT TO BE FORGOTTEN IN INDIAN CONSTITUTIONAL LAW

Informational privacy entered Indian constitutional jurisprudence through the nine-judge decision in *Puttaswamy*, where the Court held that privacy is part of the right to life and personal liberty and that control over the dissemination of personal information is one of its facets. The concurring opinion of Kaul J. spoke of a right to be forgotten as a right to have personal data deleted once it is no longer necessary, relevant or accurate, without permitting the erasure of past facts.⁶

Before *Puttaswamy*, and for some years after it, the High Courts approached the question inconsistently. In *Sri Vasunathan*, the Karnataka High Court directed its Registry to endeavour that an internet search in the public domain would not reflect the name of the petitioner's daughter, either in the cause title or in the body of the order, while expressly declining to alter the High Court website or the certified copy.⁷ The Gujarat High Court in *Dharamraj Bhanushankar Dave* declined to restrain publication of a judgment of acquittal on a legal database, holding that the petitioner had not shown how the publication of what was already a public record violated Article 21, and that a judgment marked non-reportable is merely one that the law reports will not carry.⁸ The Delhi High Court in *Zulfiqar Ahman Khan*, and later in *Jorawar Singh Mundy*, granted interim protection against the continued online availability of personal information, in each case without deciding the question finally.⁹ What was missing was a common test. The right existed; its application to the judicial record did not.

III. OPEN JUSTICE AND THE PUBLIC NATURE OF JUDICIAL RECORDS

Open justice is intrinsic to the Indian process, not a luxury. As the Supreme Court observed in *Swapnil Tripathi*, judicial proceedings are inherently open, and access to them secures accountability and public confidence.¹⁰ Reporting and publication of judgments is itself protected speech. The Kerala High Court in *Vysakh K.G.* held that the reporting and publication of judgments falls within the freedom of speech and expression and cannot lightly be curtailed, and declined to recognise a free-standing right to be forgotten in relation to judgments in the

⁶ *Puttaswamy*, *supra* note 2 (Kaul, J., concurring).

⁷ *Sri Vasunathan v. Registrar General, High Court of Karnataka*, 2017 SCC OnLine Kar 424 (Kar. H.C. Jan. 23, 2017) (India).

⁸ *Dharamraj Bhanushankar Dave*, *supra* note 1.

⁹ *Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.*, 2019 SCC OnLine Del 8494 (Del. H.C. May 9, 2019) (India) (interim order in a suit for injunction); *Jorawar Singh Mundy*, *supra* note 1.

¹⁰ *Swapnil Tripathi*, *supra* note 3.

absence of a statutory basis, while accepting that a court may in a fit case permit de-indexing and the removal of personal information from search engines.¹¹

The older principle is stronger still. In *R. Rajagopal v. State of Tamil Nadu* the Supreme Court held that once a matter has become part of the public record a claim of privacy will ordinarily fail, subject to narrow exceptions such as victims of sexual offences.¹² Read literally, that proposition would defeat every claim brought by an acquitted accused. The tension is therefore real. Access to the judicial record is justified by the openness of the procedure that produced it, and by purposes that do not belong to the parties: precedent, judicial accountability and the preservation of the legal record. Any solution for the acquitted accused must accommodate those purposes rather than set itself against them.

IV. THE ACQUITTED AND DISCHARGED ACCUSED: A DISTINCT PRIVACY PROBLEM

Why is the acquitted accused different? The answer lies in what acquittal means as a legal status. A convicted person carries a determination of guilt which the record accurately reflects, so the interest in accessibility is at its highest and the claim to be forgotten at its lowest. A person still facing trial is covered by a living process whose openness the Constitution protects most strongly. The victim, particularly a child, is protected by statute and by settled exceptions that involve no balancing at all.¹³ The acquitted accused falls into none of these positions. The record continues to show an association with an accusation that has been found untrue.

Acquittal, however, is not a single event in law, and it is here that the emerging doctrine becomes blunt. An acquittal on the merits follows a positive finding that the prosecution has failed to prove its case, and in many instances the person acquitted is exonerated in substance. A technical acquittal may follow from a hostile witness, a defective sanction to prosecute, or the benefit of the doubt. A discharge means that there is no case to answer at all, and so involves no weighing of evidence.¹⁴ Quashing rests on legal grounds, often after a settlement, and determines nothing about the underlying facts. Where a conviction is set aside on appeal the presumption of innocence returns, but an intermediate conviction remains on the record.

¹¹ *Vysakh K.G. v. Union of India*, 2022 SCC OnLine Ker 7337 (Ker. H.C. Dec. 22, 2022) (India).

¹² *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632, para. 26 (India).

¹³ The Bharatiya Nyaya Sanhita, 2023, § 72, No. 45, Acts of Parliament, 2023 (India) (prohibiting disclosure of the identity of a victim of specified sexual offences); see also The Protection of Children from Sexual Offences Act, 2012, § 23, No. 32, Acts of Parliament, 2012 (India).

¹⁴ The Code of Criminal Procedure, 1973, § 227, No. 2, Acts of Parliament, 1974 (India) (discharge), now substituted by The Bharatiya Nagarik Suraksha Sanhita, 2023, § 250, No. 46, Acts of Parliament, 2023 (India).

The distinction matters because harm and public interest run in opposite directions across this spectrum. A person acquitted on the merits has the strongest basis for saying that continued use of the name is disproportionate, because what the record communicates, namely that this person was credibly charged, has been shown in court to be false. A person acquitted on a procedural irregularity has a weaker basis for saying that the public interest in accessibility has fallen away, since the record still serves a genuine informational purpose despite the acquittal.

V. THREE REMEDIES, THREE LEGAL PROBLEMS

The second flattening in the current debate concerns remedy. The word “removal” is used broadly to cover three distinct procedures that differ in their legal character, in their effect on open justice, and in the party against whom they operate. Confusing the three produces over-protection in some cases and under-protection in others.

A. Source-level anonymisation

Source-level anonymisation operates on the official source of the judgment: the name is masked while the judgment, its reasoning and its precedential value are retained. It is the most intrusive of the three remedies because it alters the authoritative text, and for the same reason the most protective of the individual, since once the name is removed at source every subsequent copy carries the masking. *Sri Vasunathan* is the closest Indian illustration, although a carefully limited one. The Karnataka High Court confined its direction to what an internet search in the public domain would reveal, and left the High Court website and the certified copy untouched.¹⁵

B. Search engine de-indexing

De-indexing requires the search engine to stop returning a particular record in response to a name-based query. The record remains where it is and remains reachable by other routes; only the name ceases to work as an identifier. This is the remedy fashioned in *Google Spain*, where the Court of Justice of the European Union distinguished the activity of the search engine operator from that of the publisher and placed the de-listing obligation on the operator as a controller under the 1995 Data Protection Directive; the right to erasure is now codified in Article 17 of the General Data Protection Regulation.¹⁶ De-indexing is less intrusive than anonymisation and operates against a different party.

¹⁵ *Sri Vasunathan*, *supra* note 7.

¹⁶ Case C-131/12, *Google Spain SL v. Agencia Española de Protección de Datos (AEPD)*, ECLI:EU:C:2014:317 (decided under Council Directive 95/46/EC); see Regulation 2016/679, art. 17, 2016 O.J. (L 119) 1 (GDPR).

C. Legal database restriction or takedown

The third remedy concerns databases such as Indian Kanoon, where the choice of technique matters a great deal. Complete takedown deletes the judgment and damages open justice, because these platforms are the practical medium through which the doctrine of precedent is researched. The database is in any event an intermediary, acting on the direction of a court rather than on its own assessment.¹⁷ Blocking name-based retrieval while permitting retrieval by case number, citation, court and date protects the individual just as effectively at a far lower cost, because the judgment remains available to anyone approaching it as law and not as the history of a person. That is precisely the distinction the Delhi High Court drew.¹⁸

VI. THE EMERGING JUDICIAL FRAMEWORK AND ITS LIMITS

The present position is best understood through three developments that must be read together. In *Karthick Theodore*, a Division Bench of the Madras High Court directed a legal database to remove a judgment of acquittal from its portal, and directed the Registry to redact the appellant's identifying details before the judgment was published or uploaded. The Bench discussed the DIGITAL PERSONAL DATA PROTECTION ACT, 2023, under which a court falls within the definition of a data fiduciary but the processing of personal data in the performance of a judicial function is exempted from Chapter III, so that the right of erasure conferred by that Chapter does not operate against courts.¹⁹ The Supreme Court stayed that judgment on 24 July 2024, issued notice and tagged a connected writ petition, so the question is now before it.²⁰ Against that uncertainty, the Delhi High Court in *Laksh Vir Singh Yadav* held in May 2026 that the right to be forgotten is a facet of informational privacy under Article 21, and allowed a batch of writ petitions under Article 226 directed against search engines and legal databases.²¹ It issued calibrated directions: de-indexing from name-based search results, restriction of name-based

¹⁷ *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 (India) (reading down the intermediary provision to require a court order or a government notification); The Information Technology Act, 2000, § 79(3)(b), No. 21, Acts of Parliament, 2000 (India).

¹⁸ *Laksh Vir Singh Yadav*, *supra* note 4; see The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(d), Gazette of India, pt. II sec. 3(i) (Feb. 25, 2021) (India).

¹⁹ *Karthick Theodore v. Registrar General*, W.A. (MD) No. 1901 of 2021 (Mad. H.C., Madurai Bench, Feb. 27, 2024) (India). The single judge had earlier declined relief. *Karthick Theodore v. Registrar General*, W.P. (MD) No. 12015 of 2021 (Mad. H.C. Aug. 3, 2021) (India). See The Digital Personal Data Protection Act, 2023, § 17(1)(b), No. 22, Acts of Parliament, 2023 (India) (disapplying Chapter III, which contains the right of correction and erasure in § 12, to processing by a court or tribunal in the performance of a judicial function). Sections 3 to 17 of the Act were notified on 13 November 2025 to come into force eighteen months thereafter, so the erasure right is not yet operative.

²⁰ *iKanoon Software Development Pvt. Ltd. v. Karthick Theodore*, SLP (C) No. 15311 of 2024, Order (S.C. July 24, 2024) (India) (staying the Madras High Court judgment and issuing notice; tagged with *Alka Malhotra v. Union of India*, W.P. (C) No. 19 of 2024).

²¹ *Kaushal Kishor v. State of Uttar Pradesh*, (2023) 4 SCC 1 (India) (holding that a fundamental right under Articles 19 and 21 may be enforced against persons other than the State).

searching on the database while retrieval by neutral identifiers is preserved, and masking left to the court that rendered the judgment.²² Relief was refused to public figures seeking to erase conduct already in the public domain, and to serious convictions of continuing relevance.

The framework is a significant advance and its remedial calibration is right. Two limits remain so far as the acquitted accused is concerned. First, it treats acquittals, discharges, quashings and settlements as a single eligible category, turning on whether the information is no longer relevant or serves any legitimate public purpose. That criterion does not distinguish an acquittal on the merits from a technical acquittal, and it is now challenged as vague in the pending appeal before a Division Bench, in which the database operator argues that a relevance assessment will produce arbitrary outcomes and burden legal research protected under Article 19(1)(g).²³ Second, the framework rests on the order of a single judge of one High Court, on a ground the Supreme Court has not yet accepted; until *Karthick Theodore* is decided, the position at source level remains open.

VII. A STRUCTURED TEST FOR ACQUITTED AND DISCHARGED ACCUSED

The proposal advanced here retains the remedial structure of the Delhi framework and supplies the accused-specific analysis it lacks. The test proceeds in three stages, and the factors are grouped rather than listed, because they operate together.

The first stage characterises the outcome and the person. The nature of the acquittal matters most: an acquittal on the merits, that is an exoneration, weighs heavily in favour of relief, while a technical acquittal, a discharge for want of a *prima facie* case, or a quashing on the parties' settlement weighs less, since none of these actually falsifies the information the record contains. The gravity and character of the offence enter here, not in order to deny relief as such, but because an offence whose record retains a protective value, particularly where it concerns women or children or a breach of trust, may justify continued identification notwithstanding the acquittal. The status of the claimant is a further consideration at this stage. Public officials, and persons who acted in a public capacity in the matter, must clear a higher threshold for the same reasons.²⁴

The second stage weighs harm against residual public interest over time. The time elapsed since the conclusion of proceedings is critical: the informational value of an aged accusation declines, while the reputational and dignitary harm of its indefinite availability does not, so the passage

²² *Laksh Vir Singh Yadav*, *supra* note 4.

²³ Appeal pending before a Division Bench of the Delhi High Court against *Laksh Vir Singh Yadav*, *supra* note 4 (as of August 2026); see INDIA CONST. art. 19(1)(g).

²⁴ *Laksh Vir Singh Yadav*, *supra* note 4.

of time makes relief progressively easier to justify. Sensitive personal information contained in the judgment weighs in favour of relief; a continuing public interest in the underlying facts weighs against it. The interaction between these factors is significant in itself: a serious and recent offence may retain public interest, while a trivial charge from decades ago plainly will not.

The third stage selects the remedy, and this is where an accused-specific test outperforms a categorical approach. The three remedies are not degrees of a single remedy but different answers to distinct mischiefs, and the court must ask which mischief the claimant actually suffers. If the difficulty is that the name functions as a search key, de-indexing resolves it without touching the record. If the harm persists across every copy because the name sits in the authoritative document, the appropriate remedy is source anonymisation, but only where a merits acquittal or comparable exoneration makes an alteration of the authoritative record necessary. Database restriction should disable name-based searching while leaving retrieval by neutral identifier intact; complete takedown should be a rare remedy of last resort. The strength of the claim established at the first two stages determines how far up the remedial hierarchy a court should go: a merits exoneration causing lasting harm may warrant source anonymisation, whereas a recent technical acquittal may warrant no more than de-indexing.

VIII. THE LEAST RESTRICTIVE REMEDY

Proportionality supplies the discipline that makes the test work. As applied in Indian constitutional law after *Puttaswamy*, it requires that a measure restricting a right be no more restrictive than is necessary to achieve its object.²⁵ In relation to open justice this means that the court's record and the public archive should be disturbed only so far as protection of the privacy interest requires, and that the least restrictive measure capable of achieving that object should always be preferred. De-indexing, which changes nothing at source, should therefore be the default wherever it suffices; source anonymisation, which alters the authoritative text, should be reserved for stronger claims. Takedown, which removes the judgment from the corpus altogether, should be exceptional, and in the case of an acquitted accused it will rarely be justified, because name-based restriction protects both interests at once.

IX. CONCLUSION

The acquitted or discharged accused faces a privacy problem distinct from that of the victim: the persistence of an accusation that the law has found to be unsound. India's courts have moved

²⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India (Aadhaar)*, (2019) 1 SCC 1 (India); *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).

quickly. The Delhi High Court has affirmed the right to be forgotten under Article 21 and, importantly, has separated de-indexing from deletion and kept judicial records reachable through neutral identifiers. That architecture is sound and should stand. What it lacks for the acquitted accused is a test sensitive to the nature of the acquittal, the nature of the offence, the identity of the claimant and the passage of time, against which the choice between the three remedies can be made. The analysis proposed here supplies that without disturbing the logic of the Delhi framework. Whether an acquitted accused should receive anonymisation, de-indexing or database restriction turns on more than the bare fact of acquittal: it requires an understanding of what kind of acquittal it was, what purpose the record may still serve, and which of the three remedies addresses the grievance with the least interference to open justice.
