

## “THE RIGHT TO BE FORGOTTEN: A COMPREHENSIVE CASE STUDY ANALYSIS”

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### ABSTRACT:

Recently, the legal portal called Indian Kanoon filed an appeal in the hon'ble Supreme Court of India<sup>448</sup>, challenging the Madras High Court direction of removing the judgements from websites to protect petitioner's privacy based on "Right to be forgotten". However, Apex court imposed a stay by questioning "we entertain criminal appeals, we may convict or acquit. Once we deliver a judgement, it is a part of public record. If it's a case of child sexual abuse, then names can be masked. But how can the High Court direct a judgement to be pulled down? It will have serious ramification". Whereas, the High court of Delhi, Kerala, Orissa and Karnataka acknowledged and ordered to enforce such right in various cases since 2019, even though India doesn't have robust law for data privacy. Hence, this research aims to critically examine the applicability, issues and challenges of Right to be forgotten through case analysis.

**KEY WORDS:** Right to be forgotten- Right to Erasure- Data Privacy- Supreme and High court cases.



<sup>448</sup> IKanoon Software Development Pvt Ltd Vs. Karthick Theodre & ors [SLP (c) No.15311/2024

## INTRODUCTION:

Right to be forgotten is often confused with Juvenile principle to start afresh by putting their past behind them and reconstructing their life. Right to be forgotten is not just right to oblivion, where the particulars of crimes and their criminal life will be deleted after their imprisonment. The “Right to be forgotten” gives the right to individuals to have their private information removed from the internet, websites or any other public platforms under special circumstances. It was established by the European Union. However, the hon’ble Apex court discussed the importance of autonomy of private information and Data governance in K.S Puttaswamy V. Union of India<sup>449</sup>, significantly right to privacy was recognised as fundamental right under Article 21 of Indian Constitution. India still does not have legislation to enforce right to be forgotten, as Digital Personal Data Protection Act 2023 (yet to implement), was excluded such right from previous 2019 Bill. By relying the above said precedents, courts are flooded with the petitions to redact his names from the judgement, stating it’s affecting their right to privacy.

## JUDICIAL DECISIONS ON ‘RIGHT TO BE FORGOTTEN

Karnataka High Court in **Sri Vasunathan v. Registrar General**<sup>450</sup> recognized “Right to be forgotten” explicitly, though in a limited sense. Petitioner’s request to remove his daughter’s name from a judgment involving claims of marriage and forgery was upheld by the Court. It held that recognizing the right to be forgotten would parallel initiatives by ‘western countries’ which uphold this right when ‘sensitive’ cases concerning the ‘modesty’ or ‘reputation’ of people, especially women, were involved.

In the matter of **Zulfiqar Ahman Khan v/s Quintillion Business Media Pvt. Ltd. and Ors**<sup>451</sup>, the Delhi High Court in an order dated 09.05.2019 recognized the plaintiff’s ‘Right to be Forgotten’.

The issue arose when two articles containing harassment allegations against the plaintiff during #MeToo campaign, were published by the respondent. The court ordered to restrain the re-publication of the said articles during the pendency of the suit<sup>452</sup>. The court also said that the ‘Right to be Forgotten’ and the ‘Right to be Left Alone’ are the inherent facets of ‘Right to Privacy’<sup>453</sup>.

In the case of **Subhranshu Rout @ Gogul Vs. State of Odisha**<sup>454</sup>, The Orissa High Court, an Indian constitutional court, raised the issue of an individual’s right to be forgotten online, advocating for the implementation of Article 21 of the Indian Constitution, which pertains to the Right to Life and Personal Liberty, as a remedy for victims whose compromising information was available online. Denying bail to an accused of allegedly uploading sexually explicit content of a female friend without her consent, Justice SK Panigrahi noted that, despite the accused deleting the obscene material, the victim had no legal recourse to have the content permanently removed from the server of the host platform (social media site) or from the internet. “It is also an undeniable fact that the implementation of the ‘Right to be Forgotten’ is a thorny issue in terms of practicality and technological nuances<sup>455</sup>.”

Orissa H.C. relying on the decision of the Supreme Court on K.S. Puttaswamy (Privacy-9J), Court stated that at present, “...there is no statute which recognizes right to be forgotten but it is in sync with the right to privacy<sup>456</sup>.”

In **Sredharan T v. State of Kerala**<sup>457</sup> In this case, the Kerala High Court recognized the ‘Right to be Forgotten’ as part of the Right to Privacy. In this instance, a writ petition was filed for the

<sup>452</sup> <https://www.indialawjournal.org/a-hustle-over-protecting-personal-data.php>

<sup>453</sup> <https://theguardian.com/right-to-be-forgotten-a-critical-and-comparative-analysis/>

<sup>454</sup> 2020 SCC OnLine Ori 878, decided on 23.11.2020

<sup>455</sup> <https://www.timesnownews.com/india/article/orissa-hc-calls-for-a-debate-on-right-to-be-forgotten-online-why-it-s-time-india-took-this-up-seriously/>

<sup>456</sup> <https://www.sconline.com/blog/post/2020/12/07/orissa-hc-read-how-high-court-emphasised-the-need-of-right-to-be-forgotten-in-cases-of-objectionable-photos-and-videos-of-victims-on-social-media/>

<sup>457</sup> Writ Petition (civil) No. 9478 of 2016

<sup>449</sup> W.P (C) No.494 of 2012; (2017) 10 SCC 1

<sup>450</sup> Writ Petition (civil) No.36555 of 2017

<sup>451</sup> CS (OS) 642 of 2018 [decided on 09.05.2019]

safeguarding of the Right to Privacy under Article 21 of the Constitution, and the petitioner requested that the court remove the rape victim's name and personal information from search engines in order to safeguard her identity. The court ruled in favor of the petitioners, recognizing the 'Right to be Forgotten', and granted an interim order directing the search engine to delete the petitioner's name from orders posted on its website until further orders are passed.

The Karnataka High Court in the case of **Sri Vasunathan v. Registrar General**<sup>458</sup>, upheld a women's 'Right to be forgotten' and Justice Bypareddy had observed that *"This is in line with the trend in western countries of the "Right to be forgotten" in sensitive cases involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned*<sup>459</sup>."

In the case of **Kharak Singh v. State of Uttar Pradesh**<sup>460</sup> held that Right to Life includes personal liberty and thus, right to privacy culled from Article 21 of the Indian constitution.

Petitioner filed a case to the Hon'ble Court for a permanent injunction against the Defendants, who had written two articles against Plaintiff based on harassment allegations they claimed to have received as part of the #MeToo campaign. Despite the defendants' agreement to delete the news pieces, they were reposted on other websites in the meanwhile. The Court noted the Plaintiff's Right to privacy, of which the "Right to be forgotten" and the 'Right to be Left Alone' are inbuilt aspects, and guided that any republishing of the content of the originally disputed articles, or any abstract therefrom, as well as altered forms thereof, on any print or digital/electronic platform be held back during the pendency of the current suit<sup>461</sup>.

Hence, from above judicial pronouncement it is quite clear that Judiciary has at some extent

considered the 'Right to be forgotten' as a fundamental right and it also recognized it an inherent part of privacy which is linked with article 21 of Indian constitution the RTBF is an evolving fundamental right in India.

In **Dave v. State of Gujarat**<sup>462</sup>, petitioner, Dharamraj Bhanushankar Dave, an Indian national, was accused with a number of crimes in 2004 under the Indian Penal Code, 1860, including murder, abduction, criminal conspiracy, common intention, tampering with evidence, and property misappropriation. Following a trial, Dave was found not guilty on all counts by the Jamnagar Sessions Court on November 19, 2004. The Gujarat High Court upheld the acquittal on October 30, 2007, despite the State's appeal of the verdict.

In 2015, Dave expressed his desire to relocate to Australia and learned that, despite the decision being designated as "non-reportable," the High Court ruling had been made publicly available on the internet by IndianKanoon.com, an online database of court rulings. Dave made fruitless attempts to get the verdict taken down from the website by contacting Google India and IndianKanoon.com. subsequently, Dave went to the Gujarat High Court and asked for a ruling directing Google India and Indian Kanoon to "enable permanent restrain of free public exhibition of the judgment." The defendants in the lawsuit were Google India, IndianKanoon.com, the Union of India, the State of Gujarat, and the Registrar General of the Gujarat High Court.

The Court declared that the High Court was a Court of Record and that its rulings may be accessed in accordance with **Rule 151 of the Gujarat High Court Rules, 1993**. It was mentioned that in order to get copies of decisions and other records, third parties might also submit requests to the Assistant Registrar of the Court. Furthermore, the Court emphasized that posting a judgment on an internet website does not equate to "reporting" a judgment;

<sup>458</sup> Writ Petition No.62038 of 2016, [decided on 23.01.2017]

<sup>459</sup> <https://lexinsider.com/a-high-court-gives-life-to-the-right-to-be-forgotten-right/>

<sup>460</sup> MANU/SC/0085/1962

<sup>461</sup> <https://blog.iplleaders.in/the-right-to-be-forgotten/>

<sup>462</sup> [MANU/GJ/0029/2017]



rather, the Court designates a judgment as "non-reportable" only in relation to the publication of the judgment in law reports [paragraph 7].

Additionally, the Court determined that Dave had not demonstrated that his right to life and liberty – protected by article 21 of the Constitution or any other legal requirements had been violated. Accordingly, the Court dismissed the petition and refused to order the removal of the judgment from the internet.

In the case of **Jorawar Singh Mundy v. Union of India and Ors**<sup>463</sup>, an interim order has been issued. The Delhi High Court acknowledged in an interim ruling from April 2021 that the basic right to privacy includes the right to be "forgotten."

A Narcotics and Psychotropic Substances Act 1985 (NDPS) complaint was filed against Mr. Jorawar Singh Mundy, an Indian-origin American citizen who visited India in 2009. The Trial court cleared him in 2011. The Delhi High Court also maintained the acquittal ruling in 2013. Mr. Mundy was found not guilty of any offense. Mr. Mundy stated that when he returned to the United States, he had various difficulties in finding work. He stated he was unable to find work because any background checks by possible employers would result in instances surfacing publicly on sites such as Google. Despite being acquitted, this put him at a disadvantage, causing irreversible discrimination and social shame.

In April 2021, he filed a writ suit in the Delhi High Court, demanding the removal of 2013 rulings from platforms such as Google. In May 2021, the Delhi High Court issued an interim decision recognizing the right to be forgotten, directing Google and other legal websites to delete the case judgment.

In **V. vs. High Court of Karnataka**<sup>464</sup>, The Karnataka High Court recognised 'Right to be forgotten'. The purpose of this case was to

remove the name of the petitioner's daughter from the cause title since it was easily accessible and defame her reputation. The court held in favour of the petitioner and ordered that the name of the petitioner's daughter to be removed from the cause title and the orders. The court held that "this would be consistent with the trend in western countries, where the "Right to be forgotten" is applied as a rule in sensitive cases concerning women in general, as well as particularly sensitive cases involving rape or harming the modesty and reputation of the individual concerned<sup>465</sup>."

Following that in 2021, reality TV star Ashutosh Kaushik – who won the Bigg Boss season in 2008 and MTV Roadies – petitioned the Delhi High Court for the erasure of all posts, videos, and articles from the world wide web that contained details regarding his arrest in 2009 for drunk driving and his 2013 dispute at a Mumbai café, invoking his "Right to Privacy" and "Right to Be Forgotten"<sup>466</sup>.

In the case of **Vysakh K.G. Vs. Union of India and 4 others**<sup>467</sup>, Several petitioners filed writs before the Kerala High Court, requesting that their individual court records be removed online in accordance with a stated right to be forgotten. Two of these were marriage proceedings, while the others were criminal matters. Indian Kanoon was included as a party in the action because the petitioners wanted these court documents removed from Indian Kanoon's database as well. Indian Kanoon contended that the right to be forgotten does not apply to judicial documents. Citing the Supreme Court's decision in **R. Rajagopal v. State of Tamil Nadu**<sup>468</sup>, Indian Kanoon contended that court records are public documents and that the right to privacy cannot be utilized to block their disclosure. Furthermore, the publishing of a court order can only be

<sup>463</sup> 2021 SCC OnLine Del 2306

<sup>464</sup> WP (C)/4159/2020

<sup>465</sup> [https://www.linkedin.com/posts/scjudgments\\_chaitra-nagammanavar-vs-state-of-karnataka-activity-7192070892275834881-O438/](https://www.linkedin.com/posts/scjudgments_chaitra-nagammanavar-vs-state-of-karnataka-activity-7192070892275834881-O438/)

<sup>466</sup> <https://blog.finology.in/constitutional-developments/right-to-be-forgotten>

<sup>467</sup> WP(Civil) No 26500 of 2020

<sup>468</sup> (1994) 6 SCC 632

stopped if the court directly issues such an order or if particular types of orders are prohibited from being published by statute. For example, Section 228A of the Indian Penal Code bans disclosing the identity of victims of sexual abuse. Indian Kanoon eliminates personally identifying information from court orders published on its website. Kerala HC says that 'Right to be Forgotten' is not absolute. The HC noted that informational privacy (i.e., the ability of an individual to manage their personal data) is an essential component of the right to privacy. It is highlighted that plaintiffs may wish to prevent the exposure of personal information such as their names or other material. The HC decided that a balance must be struck between plaintiffs' right to privacy in order to prevent material from being disclosed and the greater public interest of judicial transparency.

The HC ruled that "the mere extension of an Open Court system in a digital space cannot be called a violation of privacy rights in the absence of any law laid down in this regard by Parliament." The Open Court system has already been acknowledged by law." It was also determined that the "right to be forgotten is not an absolute right" and that it is the responsibility of the government to specify the conditions on which a supposed right to be forgotten might be invoked. Given the lack of legislative action, the HC determined that it "cannot step into the shoes of the legislature," but that it might resolve individual issues on a case-by-case basis.

After months of considering both viewpoints, the HC issued the following directions:

- The right to privacy and the right to be forgotten cannot be exercised in an open court justice system.
- The right to be forgotten cannot be invoked in current or recent procedures, and the legislature must specify the criteria for exercising this right. However, in some instances, the court may authorize a party to de-index and delete their personal information from search

engines on an individual basis.

- In family and matrimonial cases, and in other situations where the law does not require an open court system, the court registry must not publish the parties' personal information or allow the publication of their identities on the court's website or other information systems unless the parties request it.

The High Court Registry is also mandated to provide privacy notifications on its website in both English and vernacular languages. This is a crucial decision that protects the freedom of information, which is an essential component of the right to free speech and expression. Out of the nine applications submitted, only two were granted relief. First, in a passport issue resulting from a marriage conflict, and then in a child custody dispute, the name and identify of a minor kid were exposed in the online publication of the judgment. In addition to Indian Kanoon, Google India (Pvt) Ltd. and Google LLC were named as respondents in this action. The HC instructed Google LLC to de-index personal information such as names and identities in the aforementioned situations. Google LLC was told to de-index instead of Google India (Pvt.) Ltd., resulting in worldwide de-indexing under HC directive.

Following that court highlighted that Sections 153-B of the Civil Procedure Code (1908) and 327 of the Criminal Procedure Code (1973), courtrooms are public arenas where anyone can observe proceedings and form opinions.

Referring to Section 22 of the Hindu Marriage Act, 1955, Section 11 of the Family Courts Act, 1984, and Regulation 48 of the Adoption Regulation, 2022, the Court held that the protection afforded to privacy in matrimonial, family disputes, custody, and adoption in a slew of legislations indicates that the legislature does not intend to apply the open justice principle in those matters. The legislature's decision to limit public access to Court functions recognizes the parties' privacy rights.

Furthermore, it stated that Rule 3(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, compels intermediaries to delete information based on a court order.

Thus “It is clear that our observations do not run contrary to the statutory scheme,” said the court

### **The Case of the Rape Survivor’s Right to Be Forgotten:-**

The Petitioner was a 30-year-old rape survivor whose identity was not published by the Court or any of the secondary sources covering this case. The Petitioner filed a Writ Petition with the Kerala High Court, demanding that the Respondent, online law reporter IndianKanoon.org, redact her identity from a 2016 verdict posted on their website relating to rape proceedings. She also requested that search engines such as Google (Respondent No. 4) and Yahoo (Respondent No. 7) delete search results for the case that included her name.

The petitioner claimed that IndianKanoon.org did not obtain her or the Kerala High Court’s permission to publish the judgment containing her name under Rule 5 of the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. Rule 5 mandates that, before publishing any sensitive data on a person, the person or body corporate posting the material get the subject’s written consent. She also cited Section 228A of the Indian Penal Code, 1860, which prohibits the revealing of a rape victims identify without her agreement. Relying the case of **State of Punjab v. Gurmeet Singh and Ors.**<sup>469</sup>, the Supreme Court has held that anonymity can help protect victims of sexual offence from social ostracism.

Hence, the Kerala High Court ordered IndianKanoon.com to erase the identity of a rape survivor from the order uploaded on their website.

<sup>469</sup> MANU/SC/0366/1996

### **Dr. Ishwarprasad Gilada v. Union of India & Ors**<sup>470</sup>.

Dr. Ishwarprasad Gilada, a world-renowned doctor who was the first to raise the alarm about AIDS in India in 1985 and established India’s first AIDS clinic in 1986 at a government-run hospital in Mumbai, was charged with causing death by negligence under section 304A, cheating under section 417, and personating a public servant under section 170 of the Indian Penal Code, 1860. The doctor was accused of obtaining drugs illegally from overseas, providing them to HIV patients in India, and ‘manhandling’ his patients. When one of his patients died, Dr. Ishwarprasad claimed to have been unfairly imprisoned on April 23, 1999, and was granted bail on May 11, 1999.

Based on a trial court decision issued on August 4, 2009, he repeated that there was no evidence against him to prove his involvement in any such crime. Dr. Ishwarprasad approached the Delhi High Court with his plea for the ‘right to be forgotten’, requesting that all news and journal articles published on different internet platforms such as Google, the Press Information Bureau, and the Press Council of India be removed. In his plea, he said that the material was ‘irrelevant’, inflicting ‘severe harm’ to his image and depleting his dignity.

**X** **versus**  
**<https://www.youtube.com/watch?v=IQ6K5Z3ZYS0> & Ors**<sup>471</sup>,

In another recent case, an actress filed the High Court of Delhi, asking the removal of obscene films featuring her. The Court (in an order dated August 23, 2021) gave the victim protection and ruled that a woman has an unrestricted right to be forgotten and is completely entitled to privacy protection from strangers.

Does the right to privacy exist in the context of a court’s judgments and orders?

<sup>470</sup> LawBeat | [Right to be forgotten] Whether de-indexing of publications can be done?: Delhi HC asks Google in Dr Ishwar Gilada’s plea

<sup>471</sup> CS(OS) 392/2021, I.As.10543/2021, 10544/2021, 10545/2021 & 10546/2021



The principles established in the Supreme Court judgment **R. Rajagopal v. State of Tamil Nadu**<sup>472</sup>, were upheld by the 9-judge bench in K.S. Puttaswamy's case. As a result, the right to privacy cannot exist because court decisions are public record. S.K Kaul, J. recognizes this stance in his concurring decision.

In paragraph 636, the learned judge took note of what is now referred to as "the right to be forgotten" and opined as follows:

*"If we recognized a similar right, it would simply mean that an individual who no longer wishes for his personal data to be processed or stored should be able to remove it from the system if the personal data/information is no longer necessary, relevant, or incorrect, and serves no legitimate interest."*

Such a right cannot be exercised where the information/data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations, for the performance of a task carried out in public interest, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes, or for the establishment, exercise, or defense of legal rights. Such reasons would apply to all types of violations of privacy, including data breaches."

The Court ruled that the "right to be forgotten" cannot exist in the administration of justice, particularly in the context of Court rulings. An exception to the aforementioned stance may be found in situations involving victims of rape and other sexual offenses, when the Supreme Court has ordered that the victims' identities not be publicized<sup>473</sup>.

Petitioner's complaint was that the continuous inclusion of his name as an accused in this Court's verdict violated his right to privacy under Article 21 of the Constitution, or, more particularly, its subset, the right to be forgotten.

However, it is a well-established legal principle that a judicial order issued by a court cannot infringe basic rights guaranteed by Part III of the Constitution. The petitioner requested a directive to redact his identity from an order issued by this Court's co-ordinate bench in a routine criminal appeal.

In **State of Punjab versus Gurmit Singh (1996)**, the Supreme Court held that "the anonymity of the victim of the crime must be maintained as far as possible throughout." In another instance, **State of Karnataka versus Putta Raja (2003)**, the Supreme Court referred to the individual who was victimized to a sexual offense as a "victim" rather than stating their name in order to shield them from societal prejudice.

In **Naresh Sridhar Mirajkar v. State of Maharashtra**<sup>474</sup>,

It was firmly determined that a writ does not lie to an order of a Court placed on an equal footing in terms of jurisdiction and Sanctity of an Original Record.

The High Court is a Court of Record under Article 215 of the Constitution. As a superior Court of Record, it is entitled to keep the original record in perpetuity. Thus, the sanctity of an original document can only be amended or handled with in accordance with the law.

No judgment of any Court has been cited to demonstrate that this Court's prerogative power under Article 226 extends to the direct altering of its own records.

This Court honestly believes that our criminal justice system has yet to reach the point where courts can issue orders for the redaction of an accused person's name based on specific objective criteria stipulated by rules or regulations. It would be more reasonable to wait

<sup>472</sup> Ibid 16

<sup>473</sup> Nipun Saxena v. Union of India, (2019), 2 SCC 703

<sup>474</sup> AIR 1967 SC 1

for the Data Protection Act and its accompanying Rules, which may give an objective criterion for dealing with the request of redaction of names of accused people who have been acquitted in criminal proceedings. As a result, the Court declined to provide the remedy requested in the writ petition, and therefore the case was dismissed.

Subsequently, the petitioner filed a writ appeal<sup>475</sup>, to set aside the order passed in **W.P.(MD)No.12015 of 2021** dated 03.08.2021.

The bench issued the finding while hearing an appeal filed by the individual disputing the denial of his petition for the removal of his name from the aforementioned judgment in 2021.

According to the judges, "Being a service institution committed to serving the cause of justice, the courts cannot close their eyes to the concerns of privacy and the right that ensure in the litigations to leave behind parts of their past which are no longer relevant."

In today's digital era, where information is freely distributed and available, an individual's right to privacy must be delicately weighed with the right of the citizen 'to know', according to the bench. As a result, courts must be authorized to offer relief of masking or redaction of material from certified copies released for public circulation on a case-to-case basis, according to the bench.

Although Section 17 of the Digital Personal Data Protection Act, 2023 does not extend the 'Right of Erasure' guaranteed in Section 8(7) to the courts, the judges opine that the courts can still provide assistance to deserving individuals if they are convinced.

Hence, the Hon'ble Madras High Court issued a direction to R4 to take down the judgment in CrI.A. (MD) No.321 of 2011 dated 30.04.2014 forthwith. There is a further direction to R1 to R3 to redact the name and other details of the Writ Petitioner relating to his identity from judgment dated 30.04.2014 in CrI.A.(MD) No.321 of 2011 and

ensure that only the redacted judgment is available for publication or for uploading. Needless to say, the full and unredacted version of the judgment shall continue to be part of the record of the Court<sup>476</sup>.

Finally, in the most recent case on this subject, the Kerala High Court ruled in **Virginia Shylu v. Union of India**<sup>477</sup>, where the Court balanced the right to be forgotten with the reasonable restrictions that would be considered when deciding on a matter concerning data erasure. In this case, the court ruled that "a claim for the protection of personal information based on the right to privacy cannot co-exist in an open court justice system." It went on to state that "it is for the Legislature to fix grounds for the invocation of such a right." However, the Court, having respect to the facts and circumstances of the case and the duration involved in a crime or any other case, may allow a party to exercise the preceding rights to de-index and delete the party's personal information from search engines. In suitable instances, the Court may use the right to erasure principles to authorize a party to remove personal data available online.

#### **Once FIR Is Quashed, It Is Duty of Press to Delete Case-Related News Articles: Gujarat High Court**<sup>478</sup>

In the case of Nithyakalyani Narayanan, his FIR was quashed in December 2022, and subsequently the petitioner sent a legal notice to The Indian Express, The Times of India, and Google, requesting that they erase any URLs to news items referencing his name in relation to the FIR filing. However, the media provided 'evasive' reactions.

CJ Agarwal opined this statement,

*"One cannot expect people to read both the articles simultaneously. People might read the*

<sup>475</sup> W.A.(MD)No.1901 of 2021

<sup>476</sup> <https://www.mhc.tn.gov.in/judis>

<sup>477</sup> W.P.(C) Nos. 26500/2020, 6687/2017, 20387/2018, 7642/2020, 8174/2020, 21917/2020, 2604/2021, 12699/2021 & 29448/2021

<sup>478</sup> Once FIR Is Quashed, It Is Duty of Press To Delete Case-Related News Articles: Gujarat High Court (livelaw.in)



*initial article only and might not read the second one. So, once the case is quashed, it is the duty of the Press to delete the initial article. Because, when there is freedom for the Press then it is required to be transparent as well. It is accountable for what its publishes for the public."*

Furthermore, bench also highlighted the observations made in K.S. Puttaswamy case and recognize the "right to be forgotten" but still court did not incline to order of removal to the respondents instead gave additional time to settle the dispute amicably between the parties.

**Laksh Vir Yadav v. Union of India**<sup>479</sup>

The petitioner sought the Delhi High Court to remove a reportable verdict off the internet concerning a criminal matter involving his wife and mother, claiming that his RTP was being violated and that his work possibilities were being jeopardized. So, this lawsuit concerned the third party's impacted right, which had been pending for more than three years.

In **Miscellaneous Application No.875/2022 in SLP (Crl) No.321/2022**<sup>480</sup>, Supreme Court passed an order in IA No. 68521/2022-CLARIFICATION/DIRECTION as follows, The petitioner claims that the public exhibition of her identity in relation to crimes against women's modesty and Sexually Transmitted Disease (STD) has resulted in enormous damage due to social shame and invasion of her privacy. Even if the name of responder No.1 appears, the result is the same. The petitioner requests that the 'right to be forgotten' and 'right of eraser', as privacy rights, be removed/masked, together with the address, identifying data, and case numbers, so that they are not accessible to search engines.

<sup>479</sup> WP(C) 1021/2016

<sup>480</sup> 2022 LiveLaw (SC) 618

Thus, we call upon the Registry of the Supreme Court to analyse the problem and work out to mask the name and address in the Judgment.

**REVIEW PETITIONS FILED BY THE GOOGLE:**

Batch matter filed by the google against individual claiming for right to be forgotten, in RP No.107 of 2023<sup>481</sup>, 108 of 2023<sup>482</sup>, 109 of 2023<sup>483</sup>, 112 of 2023<sup>484</sup>, 113 of 2023<sup>485</sup>, 114 of 2023<sup>486</sup>, 116 of 2023<sup>487</sup>, 118 of 2023<sup>488</sup> 120 of 2023<sup>489</sup>, where the court referred the Rule 3 (d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) rules, 2021, that the removal or disable access to any information data or communication link within the categories of information specified under this clause is not violative of the sub section 2 of the section 79 of the Act.

Hence, the court did not find any consequences or reasons to expunge the observation from the judgment. Accordingly, all the review petitions are disposed of.

**Jaideep Mirchandani & anr Vs. Union of India**<sup>490</sup>

This case was filed by two petitioners who are dissatisfied with the continuous availability of web stories about their previous arrest and trial, despite having been cleared of the accusations. The petitioners' issue is that the availability of the articles on online platforms/websites and access to them via various search engines is negatively harming not just their work and career aspirations, but also their personal and social lives. Oral request of the parties, respondent 2 was deleted the said article and posted for counter and this was pending before the Delhi High court.

In **W.P No.3499 of 2021**<sup>491</sup>, Hon'ble Bombay High Court ordered in favour of Petitioners and

<sup>481</sup> WP (C) No.6687/2017, Google llc Vs. xxxx & 4 others

<sup>482</sup> WP (C) No.2604/2021, Google llc Vs. xxxxx & 3 others

<sup>483</sup> WP (C) No.7642/2020, Google llc Vs. Dr.Krishna Mohan & 7 others

<sup>484</sup> WP (C) No.20387/2018, Google llc Vs. Vinu John Alexander & 5 others

<sup>485</sup> WP (C) No.12699/2021, Google llc Vs. XXXX & 6 others

<sup>486</sup> WP (C) No. 21917/2020, Google llc Vs. Dr.Nikhil S. Rajan & 4 others

<sup>487</sup> WP (C) No. 29448/2021, Google llc Vs. Adithya Gokul & 2 others

<sup>488</sup> WP (C) No.8174/2020, Google llc Vs. Jomini Samuel & 5 others

<sup>489</sup> WP (C) No.26500/2020, Google llc Vs. Vysakh K.G & 4 others

<sup>490</sup> W.P (C) No. 8557/2021

<sup>491</sup> ABC Vs. Union of India & anr

directed the Registry to completely mask the name of the petitioner in the physical records as also in the CIS.

In the matter of **W.P.(CRL) 1505 of 2021 and CRL.M.As.12645 of 2021 & 811 of 2022**<sup>492</sup>,

Where the Delhi High Court observed "Internet never forgets" once its being uploaded. But still Delhi High Court issues directions to authorities to prevent dissemination of Non-Consensual intimate images attached with the connected FIR's, which violates their privacy.

The "right to be forgotten" is emerging immensely vital, both legally and technically. Due to technical obstacles, legal arrangements for such rights are becoming more complicated. The "Right to be Forgotten" is increasingly being recognized as a component of the right to privacy. When we discuss the "Right to be Forgotten," we assume that the information is correct, so that the "Right to be Forgotten" does not overshadow the right to free speech and dissemination. This argument continues in India, where there is no particular legislation for establishing such a "Right to be Forgotten". India still relies on ad hoc jurisprudence to exercise this right. The Union Government of India is drafting data protection rules, and the Committee has acknowledged this right in Chapter 10 of the White Paper. It is conceivable that the upcoming law would include a provision for this right.

#### **Karthick Theodore v. Madras High Court,**<sup>493</sup>

The present case involves a right to reputation, which is inherent in the right to life protected by Article 21 of the Constitution. It was also argued that an acquittal grants the accused the right to have his name automatically expunged from all records, particularly those in the public domain.

Furthermore, it was noted that even if a person is cleared after facing a criminal trial, their name is reflected in the order or judgment as an accused, which they wish the public to forget. The High Court reached the preliminary

conclusion that an accused person has the right to have their identity deleted from judgments or decisions, particularly those that are in the public domain and accessible through search engines.

To the foregoing, the Court emphasized that there may be implications if such a broad judgment and directives were given. As a result, seeking counsel from the Bar appeared to be an absolute need. The bench elaborated on the foregoing point, stating that the court is required to physically strike the person's name from the order or judgment that recorded the person's acquittal in the criminal proceedings. But now this case direction has been stayed according to the order passed by the Supreme Court.

#### **CONCLUSION:**

*"The impact of the digital age results in information on the internet being permanent. Humans forget, but the internet does not forget and does not let humans forget."*<sup>494</sup>

'Right to be forgotten' is an evolving right in India. Although this fundamental right overlaps with several of the other fundamental rights listed above, it is nevertheless an essential right in the modern period. Everyone has a bad day every now and then, and a stain appears on their character, but when the accused is cleared, no one accepts him as much as they did before. So, there should be a 'Right to be Forgotten' so that no one in the future may dispute his dignity. The current research focused on the significant judgements pronounced by the courts and observations to limelight on the issues to deal by the Indian legislations. An executive body should have the capacity to balance the rights to privacy and freedom of expression in conformity with administrative principles against excessive delegation. It is clearly reflecting in the increased number of cases, without proper

<sup>492</sup> Mrs.X Vs. Union of India & ors

<sup>493</sup> 2021 SCC OnLine Mad 2755, [decided on 03-08-2021]

<sup>494</sup> the Supreme Court of India in K. S. Puttaswamy and Anr. V. UoI



legislation, even the Judiciary faces some hypocrisy. To unveil the ambiguity in enforcing such right, it is necessary to incorporate the right to be forgotten, after considering the amendments and clarification stated in the Report submitted by Joint Parliamentary Committee<sup>495</sup>.



<sup>495</sup> 17<sup>th</sup> Joint Committee on the Personal Data Protection Bill, 2019