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From Privacy to Erasure: Expanding the Horizons of Article 21 in the Digital Age

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This essay examines how the constitutional right to privacy under Article 21 of the Constitution of India has, within less than a decade, expanded from a right to be shielded from state intrusion into an emerging right to erasure – the ability of an individual to disappear from the searchable memory of the internet. It traces this evolution from the nine-judge decision in Justice K.S. Puttaswamy v Union of India through a fragmented line of High Court decisions, into the Digital Personal Data Protection Act, 2023, and culminates in the Delhi High Court's 2026 ruling in Laksh Vir Singh Yadav v Union of India, which for the first time constructs a comprehensive constitutional framework for de-indexing and masking judicial records. The essay argues that India's right to be forgotten has developed backwards: courts have built doctrine before Parliament built law, producing a right that is available in some High Courts, while absent in others, and dependent on which litigant reaches which forum. It contends that this judicial improvisation, however necessary given legislative silence, sits uneasily with open justice, press freedom, and the discipline against ad hoc constitutional lawmaking, and that continued reliance on Article 21 alone without any legislative right to erasure enforceable against private search engines risks producing a right whose availability depends on postal codes rather than the principle. The essay closes by proposing a modest legislative amendment, informed by comparative experience under the General Data Protection Regulation, to anchor the emerging right on a durable statutory footing.

Keywords: right to privacy, right to be forgotten, informational self-determination, data erasure.

INTRODUCTION

The words that anchor most of Indian constitutional privacy law: no person shall be deprived of his life or personal liberty except according to procedure established by law.¹ Yet in the space of under a decade, these words have been read to protect bodily integrity, sexual autonomy, informational privacy, and now tentatively the right to vanish from a Google search. This essay is about the third and least examined of these developments: the passage from a right to privacy to a right to erasure, and what that passage reveals about the relationship between courts, legislatures, and the memory of the internet.

The Supreme Court's 2017 decision in *Puttaswamy* declared privacy a fundamental right nestled within Article 21.² What the Court did not do because the case before it concerned the Aadhaar biometric scheme, not the search engines, was specify what privacy meant for the accurate information, lawfully published, and permanently retrievable. That question has instead been answered piecemeal, by roughly a dozen High Courts, using inconsistent reasoning, over roughly a decade, culminating for now in the Delhi High Court's sprawling 144-page judgment in *Laksh Vir Singh Yadav v Union of India*, delivered in May 2026, which is the most serious attempt yet to give the right to be forgotten a coherent constitutional shape.³

This essay argues that the manner in which India has arrived at a right to erasure – through the accretion of individual High Court orders rather than the legislative design – is itself a problem worth taking seriously, independent of whether one thinks the right ought to exist at all. Part I traces the doctrinal foundation laid by *Puttaswamy*. Part II surveys the fractured pre-2023 case law. Part III examines why the Digital Personal Data Protection Act, 2023 left the right undefined. Part IV analyses the Delhi High Court's 2026 framework. Part V situates India's trajectory against the European Union's Article 17 right to erasure and the foundational *Google Spain* judgment. Part VI identifies the structural tensions the judicial route has produced. Part VII proposes a modest legislative response.

¹ The Constitution of India 1950, art 21

² *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

³ *Laksh Vir Singh Yadav v Union of India & Ors* (2026) DHC 4891

THE PUTTASWAMY TURN: PRIVACY AS THE BEDROCK OF ARTICLE 21

Before 2017, Indian privacy law rested on unstable ground. In *M.P. Sharma v Satish Chandra*,⁴ an eight-judge bench held that the framers of the Constitution had deliberately declined to import an American Fourth-Amendment-style privacy guarantee, i.e., a fundamental right to privacy and that search and seizure operations by authorities do not violate the constitutional protection against self-incrimination. In *Kharak Singh v State of UP*,⁵ a six-judge bench went further and denied the privacy status of a distinct fundamental right, even as a minority opinion by Justice Subba Rao dissented forcefully on the point. For over five decades, smaller benches, most notably in *Gobind v State of Madhya Pradesh*⁶ and *R Rajagopal v State of Tamil Nadu*,⁷ chipped away at this position without ever formally overturning it, producing a doctrine that the Supreme Court itself would later describe as riddled with unresolved contradiction.

Puttaswamy resolved the contradiction. A nine-judge bench unanimously overruled *M.P. Sharma* and the majority in *Kharak Singh*, holding that privacy is intrinsic to the right to life and personal liberty guaranteed by Article 21.⁸ Justice Chandrachud's plurality opinion went further than the immediate facts strictly required, discussing at length what would later become the doctrinal seed of the right to be forgotten: the idea that individuals retain an interest in controlling how information about them, once true and even once lawfully disclosed, continues to be disseminated over time. The judgment never used the phrase 'right to be forgotten', and did not need to; it supplied the underlying architecture instead: privacy understood as informational self-determination, not merely as secrecy.

That architecture proved capacious enough to be invoked by litigants seeking something Puttaswamy never contemplated: removal of true, judicially certified information acquittals, quashed FIRs, matrimonial decrees from search engine indexes, and not from court records.

⁴ *M P Sharma & Ors v Satish Chandra, District Magistrate Delhi & Ors* AIR 1954 SC 300

⁵ *Kharak Singh v State of UP & Ors* AIR 1963 SC 1295

⁶ *Govind v State of Madhya Pradesh & Anr* (1975) 2 SCC 148

⁷ *R Rajagopal v State of Tamil Nadu* (1994) 6 SCC 632

⁸ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

FROM RECOGNITION TO APPLICATION: THE FRACTURED RISE OF THE RIGHT TO BE FORGOTTEN

The first Indian court to confront a request resembling the right to be forgotten was, ironically, the one that refused it. In *Dharmaraj Bhanushankar Dave v State of Gujarat*,⁹ an applicant seeking to migrate to Australia discovered that his acquittal judgment, a non-reportable order, remained indexed on Indian Kanoon and searchable through Google. The Gujarat High Court declined relief, holding that judgments are public records of a court of record and that the petitioner had pointed to no specific statutory provision that had been breached.

Within months, the Karnataka High Court took the opposite view. In *Sri Vasunathan v Registrar General*,¹⁰ the Court permitted a mother's name to be redacted from the cause title of a matrimonial and forgery dispute concerning her daughter, reasoning that Indian courts should follow the trend, as the Court put it, in 'western countries' of protecting the modesty and reputation of women in sensitive proceedings. The order was narrow, confined to the cause title, but it was the first explicit judicial use of the phrase 'right to be forgotten' in India.

The Orissa High Court, in *Subhranshu Rout v State of Odisha*,¹¹ went further still, outside the context of judicial records altogether. Denying bail to an accused charged with circulating non-consensual intimate images of the complainant, Justice Panigrahi held that the right to be forgotten was consistent with the right to privacy recognised in *Puttaswamy*, notwithstanding the continued absence of enabling legislation, and drew directly on Article 17 of the GDPR for comparative content.

The most consequential of the pre-2023 decisions was the Delhi High Court's interim order in *Jorawer Singh Mundy v Union of India*.¹² An American citizen of Indian origin, acquitted of narcotics charges after a protracted trial, found that prospective employers routinely encountered the judgment when they searched his name online. Justice Prathiba Singh directed Google and Indian Kanoon to block the judgment from search results pending final disposal – the first order treating search-engine indexing itself, rather than the underlying

⁹ *Dharmaraj Bhanushankar Dave v State of Gujarat & Ors* Special Civil App No 1854/2015

¹⁰ *Sri Vasunathan v Registrar General, High Court of Karnataka & Ors* (2017) SCC OnLine Kar 424

¹¹ *Subhranshu Rout v State of Odisha* (2020) SCC OnLine Ori 878

¹² *Jorawer Singh Mundy v Union of India & Ors* (2021) SCC OnLine Del 2306

record, as the proper target of relief. The distinction between removing a judgment and merely de-indexing it from name-based search would later become the organising principle of the 2026 Delhi High Court framework.

By 2022, the Kerala High Court in *Vysakh K.G. v Union of India*¹³ had extended similar relief to litigants in concluded, rather than ongoing, proceedings, while cautioning that the right applied more readily to past matters than to live ones. What emerged by the early 2020s, then, was not a right but a patchwork: available in Karnataka, Delhi, Kerala, and Odisha in varying forms, unavailable on near-identical facts in Gujarat, and entirely dependent on which High Court a petitioner happened to approach.

THE STATUTORY VOID: WHAT THE DPDP ACT, 2023 LEAVES UNSAID

The enactment of the Digital Personal Data Protection Act, 2023 was billed as the moment India would finally legislate a data protection framework comparable to the GDPR. Early drafts of its predecessor, the Personal Data Protection Bill 2019, had in fact proposed an express right to be forgotten, permitting data principals to restrict continuing disclosure of personal information.¹⁴ That language did not survive into the final Act. Section 12 of the DPDP Act instead confers a narrower ‘right to correction and erasure’, allowing a data principal to seek erasure of personal data once it is no longer necessary for the purpose for which it was processed, or once consent has been withdrawn.¹⁵

The gap between Section 12 and a genuine right to be forgotten is not merely semantic. Three limitations matter. First, Section 12 operates only against ‘data fiduciaries’ who process personal data under the Act’s consent architecture; it says nothing about judicial records, which are not processed by any data fiduciary in the statutory sense, and nothing about search engines indexing third-party publications, which arguably are not fiduciaries with respect to that content either. Section 12 was not drafted with judicial records in mind. Second, the right is triggered by withdrawal of consent or exhaustion of purpose – concepts poorly suited to a court judgment, which was never ‘consented to’ by the accused in the first place. So, the legal triggers in Section 12 do not easily apply. Third, the Act carves out broad

¹³ *Vysakh K G v Union of India Represented by the Secretary to the Government of India & Ors* (2022) SCC OnLine Ker 7337

¹⁴ Personal Data Protection Bill 2019, cl 20; Digital Personal Data Protection Act 2023

¹⁵ Digital Personal Data Protection Act 2023, s 12

exemptions for archival, journalistic, and research purposes, precisely the categories under which a legal database such as Indian Kanoon would plausibly claim shelter. In short, Parliament built a right to erasure for commercial and consumer data relationships and left the far harder question of what happens when the information a person wants forgotten is a true, public, judicially generated record almost entirely unaddressed. As a result, the difficult balance between privacy under Article 21, open justice, and the public's right to access judicial records continues to be governed primarily by constitutional principles and judicial decisions rather than by the DPDP Act itself.

This is not necessarily legislative negligence. The tension between a right to be forgotten and open justice is genuinely difficult, and Parliament may reasonably have preferred silence to a premature answer. But silence has a cost: it does not stop litigation; it merely relocates the question from Parliament to whichever High Court a litigant happens to select.

LAKSH VIR SINGH YADAV: A CONSTITUTIONAL COURT THAT FILLS THE GAP

That relocation reached its fullest expression in May 2026, when Justice Sachin Datta of the Delhi High Court decided a consolidated batch of more than thirty writ petitions, some pending since 2016, in *Laksh Vir Singh Yadav v Union of India*.¹⁶ The petitioners included acquitted and discharged accused, parties to concluded matrimonial disputes, and persons who appeared only incidentally in reported proceedings. Their common grievance was that name-based searches on Google and Indian Kanoon continued to surface their association with resolved litigation years or decades later.

The judgment's central analytical move is to separate three remedies that earlier orders had tended to conflate:

- Takedown, meaning removal of the judgment itself;
- De-indexing, meaning suppression of a judgment's appearance in name-based search results while leaving it fully accessible by case number, citation, or subject-matter; and
- Masking, meaning the replacement of identifying details in the publicly displayed version of a judgment while an unredacted version is preserved in the court's own records.

¹⁶ *Laksh Vir Singh Yadav v Union of India & Ors* (2026) DHC 4891

The Court held that Article 21 does not support the first remedy, that judgments remain part of the permanent judicial record, but does support the second, and in appropriate cases the third. Drawing on the European Court of Human Rights' reasoning in *Hurbain v Belgium*,¹⁷ the Court characterised de-indexing as the least restrictive means of reconciling privacy with institutional transparency, since the underlying record survives untouched for anyone who already knows what they are looking for.

Doctrinally, the judgment's most ambitious contribution is its import of 'informational self-determination', a concept the Court traced to the German Federal Constitutional Court, as the theoretical bridge between Puttaswamy's abstract recognition of privacy and a concrete remedy against a private search engine.¹⁸ The Court reasoned that privacy in the digital age is not secrecy but control over the dissemination of personal information, and that indiscriminate name-based retrieval by a search engine defeats the control regardless of whether the underlying record remains technically public. On this basis, it directed de-indexing on a global basis, not merely on Indian domains, and directed the Ministry of Electronics and Information Technology to secure compliance from search engine operators and legal databases, while denying relief to convicted persons, public figures, and matters of continuing public interest.

Whatever its merits, *Laksh Vir Singh Yadav* performs, almost explicitly, the function Parliament left undone. The Court itself anticipated the objection, observing that it was not legislating but applying constitutional principles to fill a gap the legislature had not yet addressed.¹⁹ That formulation is doing a great deal of work, and Part VI returns to whether it can bear the weight placed on it.

BORROWED DOCTRINE: INDIA ALONGSIDE THE GDPR AND GOOGLE SPAIN

India's jurisprudence on the right to be forgotten is, self-consciously, an import. The doctrine's modern origin lies in the Court of Justice of the European Union's 2014 decision in *Google Spain SL v Agencia Española de Protección de Datos*,²⁰ where a Spanish citizen

¹⁷ *Hurbain v Belgium* [2023] App No 57292/16 (ECtHR, Grand Chamber)

¹⁸ *Laksh Vir Singh Yadav v Union of India & Ors* (2026) DHC 4891; Atul Kumar, 'Right to Be Forgotten Is a Facet of Article 21: In-Depth Analysis of Delhi HC's Comprehensive Framework on De-Indexing, Masking and Informational Privacy in the Digital Age' (SCC Online, 03 June 2026) <<https://www.scconline.com/blog/post/2026/06/03/del-hc-verdict-on-de-indexing-masking-and-right-to-be-forgotten/right-to-be-forgotten-2/>> accessed 11 June 2026

²⁰ *Google Spain SL and Google Inc v Agencia Española de Protección de Datos* [2014] Case C-131/12

sought removal of search results linking his name to a sixteen-year-old debt notice. The Court of Justice held that a search engine operator processes personal data within the meaning of EU data protection law and can be required to delist results that are inadequate, irrelevant, or no longer relevant, even where the underlying newspaper article remains lawfully published. That reasoning controller status for search engines, and a proportionality balance rather than an absolute right, was subsequently codified in Article 17 of the General Data Protection Regulation, which grants a right to erasure subject to enumerated exceptions including freedom of expression and legal compliance.²¹

Indian courts, including the Orissa High Court in *Subhranshu Rout* and the Delhi High Court in *Laksh Vir Singh Yadav*, have both cited the GDPR and *Google Spain* as persuasive authority. Yet the transplant is imperfect in one crucial respect: the GDPR right operates against private search engines and data controllers by the direct force of legislation, whereas the Indian right operates, so far, only through Article 21, a provision historically understood as binding the State primarily, not private search-engine operators headquartered outside India.²² The Delhi High Court addressed this by treating intermediaries as bound through the Information Technology Act's intermediary rules and by routing compliance through a government ministry rather than through a direct constitutional obligation on Google. This is a workable practical solution, but it is also, candidly, a workaround for the absence of a horizontally applicable statutory right precisely what Article 17 of the GDPR supplies and Section 12 of the DPDP Act does not.

THE FAULT LINES: OPEN JUSTICE, PRESS FREEDOM, AND AD HOC CONSTITUTIONALISM

Three difficulties trail the judicial construction of India's right to be forgotten.

The first is open justice. Indian courts have long treated public accessibility of judgments as integral to the fairness and accountability of adjudication.²³ De-indexing is designed to preserve this in form; the judgment remains on the court's website, while conceding that, in substance, a judgment nobody can find by name is a judgment few besides researchers and litigants will ever encounter. Whether that trade-off is acceptable is a genuinely contestable

²¹ General Data Protection Regulation 2016, art 17

²² *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

²³ *Swapnil Tripathi v Supreme Court of India* (2018) 10 SCC 639

value judgment, and reasonable High Courts have differed on it, from the Gujarat High Court's refusal in *Dharmaraj Dave* to the Delhi High Court's expansive 2026 framework.

The second is press freedom. The Supreme Court itself has signalled discomfort with extending the right to be forgotten to accurate news reportage: in February 2026, a bench of Justices B.V. Nagarathna and Ujjal Bhuyan stayed a separate Delhi High Court order de-indexing news reports about a banker following his discharge, and the Court is simultaneously seized of a related challenge, arising from a Madras High Court direction, concerning a legal database's obligation to remove an acquittal judgment altogether.²⁴ *Laksh Vir Singh Yadav* concerns judicial databases rather than newsrooms, but the underlying tension – between an individual's interest in being forgotten and the public's interest in an accessible historical record – is identical, and the Supreme Court's eventual view on news reportage may cut back significantly on what High Courts have so far allowed.²⁵

The third, and most structural, difficulty is institutional legitimacy. Parliament considered, and declined to enact, an explicit right to be forgotten when it passed the DPDP Act in 2023. A constitutional court subsequently built one anyway, reasoning from the general text of Article 21 rather than from any specific statutory hook. There is a respectable constitutional answer to this: fundamental rights do not require enabling legislation to be enforced, and courts have filled comparable legislative silences before. But there is also a genuine cost. A right built entirely by judicial elaboration is a right whose contours who qualifies, what counts as no longer relevant, how convictions are distinguished from acquittals, whether media reportage is covered are being worked out case by case, petition by petition, without the deliberative scrutiny, definitional precision, or democratic accountability that primary legislation would supply.

The observation, made by some commentators, that the Delhi High Court's framework treats every acquittal as equivalent to exoneration, when acquittals in fact arise from causes ranging from genuine innocence to a witness turning hostile to prosecutorial failure, is really a complaint about the limits of settling general policy through the medium of individual writ petitions.

²⁴ *IKanoon Software Development Pvt Ltd v Karthick Theodore & Ors* (2024) SCC OnLine SC 3287

²⁵ V Venkatesan, 'When a name becomes a sentence' (*Supreme Court Observer*, 11 June 2026)

<<https://www.scobserver.in/journal/when-a-name-becomes-a-sentence/>> accessed 11 June 2026

TOWARDS A COHERENT FRAMEWORK

None of these counsels abandoning the right; it counsels giving it a statutory home. Three modest legislative steps would go a considerable distance toward resolving the fault lines identified above.

First, Parliament should amend the DPDP Act, or enact a standalone provision, to extend a right of de-indexing, as distinct from takedown, explicitly to search engines and legal databases with respect to judicial records satisfying defined criteria: final acquittal, discharge, or FIR quashing; the passage of a minimum period since disposal; and the absence of continuing public interest, defined narrowly to include only ongoing proceedings, public office, or matters of demonstrated contemporary relevance. This would convert the Delhi High Court's case-by-case criteria into a stable, prospectively knowable rule, available uniformly rather than to whichever litigant happens to reach whichever High Court.

Second, any statutory right should expressly preserve press freedom by excluding contemporaneous news reportage of an offence, while permitting de-indexing of stale reportage that continues to surface an individual's name years after resolution, mirroring the distinction the Court of Justice of the European Union drew in *Google Spain* between original publication and indefinite searchability.

Third, adjudication of contested erasure requests should ordinarily be routed to the Data Protection Board established under the DPDP Act rather than directly to writ courts, reserving constitutional litigation for genuinely novel questions. This would relieve High Courts of a caseload for which they are institutionally ill-suited, while preserving judicial review as a backstop.

CONCLUSION

Article 21 has proved an unusually elastic constitutional home over the past decade, and its extension from privacy to erasure is, on one view, simply *Puttaswamy* working itself out to its logical end. But the manner of that extension through a decade of scattered, sometimes contradictory High Court orders, and now through a comprehensive but singular Delhi High Court framework built explicitly to fill a legislative gap, should trouble anyone who cares about a right's coherence and predictability as much as its existence. India does not yet have

a right to be forgotten so much as it has several different rights to be forgotten, available in different measure in different courts, awaiting whatever the Supreme Court eventually decides in the pending challenges to the Delhi and Madras High Court orders. A society that never forgets on the internet needs a law, not merely a judgment, to decide what its citizens are entitled to leave behind.