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# Forgetting by Design: Digital Punishment, Open Justice, and the Constitutionalisation of the Right to be Forgotten after *Laksh Vir Singh Yadav v. Union of India*

Saleha Haneef
*Law Student,*
*5th Year, BA.LL.B.,*
*Faculty of Law, Integral University, Lucknow*

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# Forgetting by Design: Digital Punishment, Open Justice, and the Constitutionalisation of the Right to be Forgotten after Laksh Vir Singh Yadav v. Union of India

*Laksh Vir Singh Yadav v. Union of India & Ors., W.P.(C) 1021/2016 & Connected Matters, Neutral Citation 2026:DHC:4891 (Delhi High Court, Datta, J., decided 29-05-2026).*[1]

## INTRODUCTION

For a person who has been acquitted, the law says the matter is closed. The search engine disagrees. Type a name into a search bar years after an FIR has been quashed, a marriage dissolved, or a trial has ended in acquittal, and it is often the arrest, not the vindication, that surfaces first. On 29 May 2026, the Delhi High Court, disposing of thirty-five connected writ petitions in a 144-page judgment, confronted this gap between legal finality and digital permanence.[2] Justice Sachin Datta held that the "right to be forgotten" is a facet of the informational privacy guaranteed under Article 21 of the Constitution, and laid down a two-tier framework of "de-indexing" and "masking" to govern when an individual may restrict the name-based discoverability of judicial records concerning them.[3]

The judgment matters for three reasons. First, it is the most comprehensive judicial articulation of the right to be forgotten ("RTBF") in India yet, filling a vacuum left by a Digital Personal Data Protection Act, 2023 that remains without operational rules and does not squarely address court records.[4] Second, it resolves or purports to resolve a maintainability question of first importance: whether Article 21 can be enforced through a writ under Article 226 against private, non-State actors such as Google and Indian Kanoon. Third, it does so while the Supreme Court is seized of closely related questions, having stayed a High Court order de-indexing accurate news reportage and a Madras High Court direction concerning Indian Kanoon, and while Indian

[1] *Laksh Vir Singh Yadav v. Union of India & Ors.*, *available at:* https://delhihighcourt.nic.in/app/showFileJudgment/58729052026CW10212016_213540.pdf (last visited 20-08-2026).
[2] *Id.,* paras 1-3.
[3] Nupur Thapliyal, "Delhi High Court Recognises Right To Be Forgotten, Lays Down Framework For De-Indexing Judicial Records", *available at:* https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-recognises-right-to-be-forgotten-lays-down-framework-for-de-indexing-judicial-records-536376 (last visited 20-08-2026).
[4] "Right to Be Forgotten Is a Facet of Article 21...", *available at:* https://www.scconline.com/blog/post/2026/06/03/del-hc-verdict-on-de-indexing-masking-and-right-to-be-forgotten/ (last visited 20-08-2026).

Kanoon's own appeal against this very judgment is pending before a Division Bench.[5] This comment examines the judgment's reasoning, tests its coherence against the maintainability, horizontality and press-freedom questions it leaves open, and situates it within comparative RTBF jurisprudence to assess whether the framework is, in truth, future-ready.

## FACTS OF THE CASE

The lead petition was filed by Laksh Vir Singh Yadav, whose name appeared in a 2015 NDPS order only incidentally, as the husband of an accused; he was never himself a party to the criminal proceedings.[6] Over the following decade, thirty-four further petitions were tagged to it, producing a docket spanning the full range of RTBF grievances: persons acquitted or discharged after trial, beneficiaries of quashed FIRs, parties to settled matrimonial and family disputes, a victim of sexual offences whose identity had been published without redaction, and the family of a deceased man whose bail order continued to surface his identity years after his death.[7] The common thread was that Google's index and Indian Kanoon's database continued to return these records on a name-based search long after the underlying proceedings had attained finality, with petitioners deposing to lost employment, broken engagements and reputational harm. Respondents included the Union of India, MEITY, Google LLC, Indian Kanoon, several media houses, X Corp, Microsoft, and the Registrar General of the Delhi High Court; the Internet Freedom Foundation intervened, cautioning that an expansive RTBF could curtail access to public records.[8]

## ISSUES BEFORE THE COURT

Two questions dominated the judgment. First, a threshold question of maintainability: could writ jurisdiction under Article 226 ordinarily confined to bodies discharging public functions be invoked against private commercial entities, given the Court's own recent holding in Sanchit Gupta v. Union of India that a private social-media platform did not perform a "public function"?[9] Second, and substantively, whether an RTBF is embedded in Article 21, and how it is to be reconciled with the

[5] V. Venkatesan, "When a name becomes a sentence", *available at:* https://www.scobserver.in/journal/when-a-name-becomes-a-sentence/ (last visited 20-08-2026).
[6] *Supra* note 1 at para 5.
[7] *Id.*, paras 6-66.
[8] Internet Freedom Foundation, "Intervention in the High Court of Delhi on the Right to be Forgotten", *available at:* https://internetfreedom.in/intervention-in-the-high-court-of-delhi-on-the-right-to-be-forgotten/ (last visited 20-08-2026).
[9] *Sanchit Gupta v. Union of India,* 2024 SCC OnLine Del 5880.

principle of open justice and the freedom of speech and press under Article 19(1)(a). A subsidiary but consequential issue was operational: what legal test should govern de-indexing as against masking, and what territorial reach such directions should carry questions that matter because a right without a workable test is not, in practice, a right at all.

## ARGUMENTS OF THE PARTIES

The petitioners argued that Puttaswamy's recognition of informational privacy applies with equal force to non-State actors, since digital platforms are today the primary threat to that privacy; that search engines are active, commercial aggregators of information rather than passive conduits; and that the "apparent immortality" of information online, absent any statutory equivalent of a "spent conviction", causes harm disproportionate to, and untethered from, the legal outcome of the underlying proceedings.[10]

Google, the media respondents and Indian Kanoon resisted on three fronts: that writ jurisdiction does not lie against private, non-State bodies; that information forming part of the public judicial record loses privacy protection under R. Rajagopal, so that de-indexing amounts to private censorship of public documents contrary to Article 19(1)(a); and that RTBF jurisprudence from the European Union rests on a statutory foundation, the GDPR that has no Indian equivalent, with the DPDPA, 2023 leaving court records outside its scope. The Union of India took a more equivocal position, accepting an evolving RTBF doctrine while emphasising the statutory blocking mechanism under Section 69A of the IT Act, 2000 as the more institutionally appropriate route.[11]

## JUDICIAL REASONING

On maintainability, the Court distinguished Sanchit Gupta on the ground that the grievance there sounded in private contract, whereas the present proceedings sought to enforce a fundamental right.[12] Relying on Puttaswamy's holding that privacy claims may be asserted against non-State entities, and on the Constitution Bench ruling in Kaushal Kishore that Articles 19 and 21 can be enforced against private persons, Datta, J. held that a writ would lie: if informational privacy binds only the State, the right becomes illusory precisely where it is most acutely threatened the digital domain.[13] The Court found an additional, independent jurisdictional basis in Rule 3(1)(d) of the IT Rules, 2021, under which

[10] *Supra* note 1 at paras 67-77.
[11] *Id*., paras 78-114.
[12] *Id*., para 121.
[13] *K.S. Puttaswamy (Privacy-9J.) v. Union of India,* (2017) 10 SCC 1, para 367; *Kaushal Kishore v. State of U.P.,* (2023) 4 SCC 1.

intermediaries must act upon the order of a competent court.

On the substantive question, the Court traced informational privacy through R. Rajagopal, PUCL, Mr 'X' v. Hospital 'Z', Canara Bank and Puttaswamy, and held that the RTBF flows naturally from that lineage.[14] It invoked Justice Kaul's observation in Puttaswamy that human beings forget but the internet does not, reasoning that permanent name-based searchability is not a feature of open justice but an artefact of how search engines rank results — an old acquittal cannot be allowed to remain buried beneath a prominent arrest report.[15] For treating search engines as active, commercial processors rather than neutral indices, the Court relied heavily on the CJEU's reasoning in Google Spain.[16]

The operative framework bifurcates the remedy. De-indexing operates against search engines and legal databases: the underlying record survives and remains accessible by citation, case number and date, but is withdrawn from name-based retrieval a distinction the Court drew, with reference to the ECtHR Grand Chamber's ruling in Hurbain v. Belgium, from outright deletion.[17] Masking is a narrower, source-level remedy obtainable from the court that authored the original judgment, replacing names with neutral identifiers in the public version while the unredacted record remains in official custody. Eligibility turns on a three-part test: the character and outcome of the underlying proceeding; the public role of the individual, public figures receiving less protection for matters touching their public duties; and the continuing accuracy and relevance of the information, a standard again borrowed from Google Spain.[18] The Court carved out two categorical exclusions, convictions for offences against women and children, and convictions involving breach of public trust by public servants and, controversially, ordered de-indexing on a global rather than India-specific basis, directing MEITY to secure compliance from Google, Indian Kanoon and other intermediaries within two weeks.[19]

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[14] *R. Rajagopal v. State of T.N.*, (1994) 6 SCC 632; *PUCL v. Union of India,* (1997) 1 SCC 301; *Mr 'X' v. Hospital 'Z'*, (1998) 8 SCC 296; *District Registrar and Collector v. Canara Bank*, (2005) 1 SCC 496.

[15] *Supra* note 13.

[16] *Google Spain SL v. AEPD and Mario Costeja González*, Case C-131/12, 2014 E.C.R. (CJEU).

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

[18] *Supra* note 16.

[19] Protection of Children from Sexual Offences Act, 2012; The Constitution of India, art. 15(3); "Delhi HC Lays Down Framework for De-indexing Judicial Records, Grants Right to Be Forgotten Relief Across 40-Plus Petitions", *available at*: https://www.legalrepublic.in/high-courts/delhi-hc/delhi-hc-right-to-be-forgotten-de-indexing-judicial-records-laksh-vir-singh-yadav-v-union-of-india/ (last visited 20-08-2026).

## CRITICAL ANALYSIS

The judgment's central achievement refusing to let acquittal remain a hollow formality while the internet perpetuates the accusation is difficult to fault in principle. Its execution, however, raises at least five distinct difficulties.

First, the horizontality reasoning is asserted more than demonstrated. Puttaswamy left open, deliberately, whether Article 21 binds private search engines with the same force as the State; the plurality's observations on non-State threats to privacy described the problem rather than settling its enforceability.[20] Datta, J. converts that description into a rule of law across a few paragraphs, without addressing what standard governs a private actor's Article 21 obligation the same "procedure established by law" test applicable to the State, or something calibrated to a commercial intermediary's more limited institutional capacity. The judgment's own reliance on Rule 3(1)(d) as an "independent" basis suggests an awareness that the constitutional route alone might not bear the full weight placed on it.

Second, the "every acquittal" problem. The three-part test does not distinguish an acquittal on merits from one secured through a hostile witness, an investigative failure, or a settlement that leaves the underlying allegation factually unresolved.[21] Because "no longer relevant" and "legitimate public purpose" are left undefined, the framework risks converting search-engine takedown into a routine post-acquittal formality rather than a considered balancing exercise precisely the objection Indian Kanoon has since pressed in its Division Bench appeal.[22]

Third, global de-indexing sits uneasily with the judgment's own comparative method. Having drawn extensively on EU jurisprudence to build its substantive test, the Court declines to follow the CJEU's resolution of the territorial question: in Google LLC v. CNIL, the CJEU confined de-referencing obligations to EU domains precisely to avoid one jurisdiction dictating global search results.[23] A domestic constitutional remedy ordering worldwide suppression raises real questions of extraterritorial reach that the judgment addresses only by asserting that a domain-limited order would be easily circumvented.

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[20] *Supra* note 13 at para 328.
[21] *Supra* note 1 at paras 106-111.
[22] "Right to Be Forgotten in India: What Indian Kanoon's Appeal Against the Delhi High Court Means for Court Records", *available at:* https://www.aristolegal.co.in/post/right-to-be-forgotten-in-india-what-indian-kanoon-s-appeal-against-the-delhi-high-court-means-for-c (last visited 20-08-2026).
[23] *Google LLC v. Commission Nationale de l'Informatique et des Libertés* Case C-507/17 (CJEU 2019).

Fourth, the press-freedom fault line is under-addressed rather than resolved. The Court insists this is not a restraint on reporting, only on searchability. But the Supreme Court's own stay, in February 2026, of a related order de-indexing accurate news reportage about a banker after his discharge shows that the line between "the record stays, only findability shrinks" and "the practical effect is erasure from public memory" remains genuinely contested.[24] Unlike a court record, journalism has no institutional custodian obliged to preserve an "unmasked" version, so a broad de-indexing order against media platforms functions, in practice, closer to suppression than the judgment's own framing allows.[25]

Fifth, institutional capacity. The judgment leaves the operational mechanics of masking applications, eligibility verification, and platform-level implementation at scale to future litigation and administrative practice. Indian Kanoon's appeal argues, with some force, that name-based search is how the legal profession itself locates precedent, and that restricting it at scale without clarity of process burdens legitimate legal research to a degree the judgment does not quantify.[26] A workable constitutional right ought to anticipate its own implementation architecture; here that task is deferred wholesale. Together, these are not reasons to regret the judgment's core holding, but reasons to doubt that its reasoning is, in the fullest sense, future-ready: the Court has done the harder work of naming a real harm, and comparatively less of the harder work of building a standard resistant to both under-inclusion and over-inclusion.

## COMPARATIVE PERSPECTIVE

The judgment's comparative borrowings are extensive but selective. From Google Spain it takes the "inadequate, irrelevant or excessive" standard and the characterisation of search engines as active data controllers;[27] from Hurbain v. Belgium, the de-indexing/deletion distinction, developed by the ECtHR to balance Article 8 privacy against Article 10 expression under the European Convention.[28] Yet it does not follow Google LLC v. CNIL's territorial restraint, nor does it reckon with the statutory scaffolding Article 17 GDPR, a dedicated data-protection authority, a right of appeal that gives the European right to erasure

[24] *Supra* note 5.
[25] "Why two recent Delhi High Court orders should worry every journalist", *available at:* https://www.newslaundry.com/2026/07/14/scrubbed-and-sued-the-delhi-high-courts-two-pronged-attack-on-journalism (last visited 20-08-2026).
[26] *Supra* note 22.
[27] *Supra* note 16.
[28] *Supra* note 17.

procedural guardrails Indian litigants presently lack.[29] Domestically, the judgment builds on, rather than departs from, the trajectory begun in Jorawer Singh Mundy's narrow de-indexing relief and the Madras High Court's Karthick Theodore line, itself now stayed by the Supreme Court pending appeal, a reminder that even the domestic doctrinal foundation remains unsettled.[30]

## POLICY IMPLICATIONS

For governance, the judgment effectively legislates in a space Parliament has, so far, left open: the DPDPA, 2023 does not squarely address judicial records, and its rules remain unnotified.[31] For platforms, Google and Indian Kanoon now face a compliance obligation whose contours, what counts as "no longer relevant", how requests are verified, how re-indexing is prevented, are worked out case by case, raising real costs for legal-research platforms specifically. For human rights, the judgment strengthens the practical value of an acquittal, discharge or quashing, aligning India with a global trend toward informational self-determination. For future litigation, the consequence is already visible: Indian Kanoon's Division Bench appeal squarely tests whether the single judge's standard can survive appellate scrutiny, and the Supreme Court's parallel engagement with the banker de-indexing stay means the apex court will likely have the final word on the press-freedom question this judgment declines to resolve.

## RECOMMENDATIONS

Three interventions would strengthen the framework. First, Parliament should amend the DPDPA, 2023, or enact a standalone provision, to define RTBF eligibility for judicial records expressly, including a merits-based, not merely outcome-based, test for acquittals rather than leaving the standard to accrete through writ litigation. Second, the Division Bench, and eventually the Supreme Court, should clarify the territorial scope of de-indexing orders, calibrating between effective relief and comity with other jurisdictions' search results. Third, the Delhi High Court's masking-software initiative should be extended, with defined verification standards, to other High Courts and the subordinate judiciary, so that the "liberty to seek masking" does not remain illusory

[29] General Data Protection Regulation (EU) 2016/679, art. 17.

[30] *Karthick Theodore v. Registrar General*, Madras High Court, W.A.(MD) No. 1901 of 2021; *iKanoon Software Development Pvt. Ltd. v. Karthick Theodore*, SLP(C) No. 15311 of 2024 (Supreme Court, stay pending); *Jorawer Singh Mundy v. Union of India,* 2021 SCC OnLine Del 2306.

[31] Digital Personal Data Protection Act, 2023; Prashant Reddy T, "Indian court rulings on the 'right to be forgotten' will dent our collective memory", *available at:* https://scroll.in/article/1094739/the-right-to-be-forgotten-will-dent-our-collective-memories (last visited 20-08-2026).

for litigants without ready access to counsel capable of moving such an application.

## CONCLUSION

Laksh Vir Singh Yadav does what no Indian court had done before: it gives the right to be forgotten a name, a constitutional home, and an operative test. That is a genuine contribution, the "record survives, only findability shrinks" architecture is a more calibrated instrument than either wholesale deletion or the status quo of permanent digital exposure. But a framework built substantially on borrowed comparative reasoning, without the comparative safeguards that made that reasoning workable elsewhere, invites the appellate and legislative correction now under way. Whether the judgment endures in its present form depends less on the strength of its central intuition, that acquittal should mean something online, not merely on paper than on whether the Division Bench, the Supreme Court and, eventually, Parliament supply the definitional precision the single judge left for another day.