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RIGHT TO BE FORGOTTEN: PRIVACY V. PUBLIC INTEREST IN

INDIA

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The Internet never forgets! In the physical world, time naturally fades memories, reduces the impact of gossip and allows individual to move beyond their past mistakes or misfortunes. A criminal allegation despite an acquittal, an embarrassing news report from a decade ago, or leaked personal information can continue to follow an individual Indefinitely through a simple search engine query.

This digital permanence creates a difficult paradox: A person may be legally vindicated or socially rehabilitated, yet remain digitally condemned forever. It is at this intersection of memory and technology that the **Right to be forgotten (RTBF)** emerges-the right of an individual, in appropriate circumstances, to seek the removal or restriction of access to personal information from public search engines and databases.¹

However, this right does not exist in isolation. Giving individuals the ability to remove their online information can directly conflict with the public's right to access information, freedom of press, and preservation of historical records. In India this creates an intense debate: where should personal privacy end and public interest begin?

Why India Needed a Privacy Awakening?

For nearly six decades, India operated within a difficult legal landscape in which personal privacy was not clearly recognized as an inviolable fundamental right. Earlier constitutional precedents- most notably M.P. Sharma (1954) and Kharak Singh (1962) were subsequently considered by the Supreme Court in its landmark privacy judgment.²

As the country entered the digital age, this legal gap created a silent crisis. Unchecked surveillance concerns emerged, personal data became increasingly valuable, and citizens become vulnerable to digital public shaming. In the absence of a comprehensive statutory data protection framework, individuals had limited legal means to control humiliating allegations or outdated personal information available in the public domain.

The Internet was rapidly becoming an inescapable digital record, making Indian jurisprudence increasingly in need of a constitutional reassessment of privacy.

The Judicial Catalyst: Justice K.S. Puttaswamy V. Union of India (2017)

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

² M.P. Sharma v. Satish Chandra, AIR 1954 SC 300; Kharak Singh v. state of Uttar Pradesh, AIR 1963 SC 1295

When legal frameworks fail to keep pace with technological developments, judicial intervention may become necessary. A major turning point came through a constitutional battle concerning civil liberties, privacy and individual autonomy. This ultimately resulted in one of the most important judicial interventions in modern Indian constitutional law.

In case *Justice K.S. Puttaswamy v. Union of India* (2017) - *Justice K.S. Puttaswamy*, a retired judge of the High Court of Karnataka filed a petition in 2012. He challenged the constitutional validity of the Union government's mandatory biometric identification scheme, Aadhaar.³

During the proceedings of this petition the Union government, relying upon older Supreme Court ruling in *M.P. Sharma* (1954) and *Kharak Singh* (1962)⁴ argued that the Indian Constitution did not expressly guarantee a fundamental right to privacy. To resolve this constitutional conflict and reconsider the earlier precedents, the Supreme Court constituted an extraordinary nine-judge bench.

The nine- judges bench unanimously overruled the earlier understanding in *M.P. Sharma* and *Kharak Singh* concerning the absence of a constitutionally protected right to privacy. The court declared that the right to privacy is an intrinsic fundamental right protected under Article 21(right to life and personal liberty) ⁵and forms part of the fundamental rights guaranteed under part III of the Constitution.

The path from privacy to right to be forgotten

The bench expanded the understanding of privacy to include protection of personal information and individual autonomy. Justice S.K. Kaul highlighted that, unlike human memory, internet search engines can retain and make past information available for an indefinite period. Justice Kaul emphasized that human dignity requires individuals to have the opportunity to move forward without being permanently defined by their past. Justice Kaul discussed the right to be forgotten in the context of personal information that may no longer be necessary, relevant or connected with a legitimate interest.

Right to be forgotten: Judicial precedent to written law

For years, the right to be forgotten existed largely as a judge-made and evolving remedy in Indian courtrooms. The legal landscape subsequently changed with the enactment of the digital personal data protection (DPDP) act 2023 which introduced statutory rights concerning personal data.⁶

Section 12 of DPDP Act 2023, provides individuals Right concerning the correction and erasure of personal data in specified circumstances.⁷ Where the statutory requirements are satisfied, the Data Fiduciary is required to undertake the appropriate correction completion, updating or erasure of personal data, subject to the provisions of the Act.

Privacy VS public Interest

WHEN PRIVACY WINS

- Cases resulting in complete acquittal, discharge, or out-of-court mutual settlement.
- Non-heinous crimes, civil matters, financial settlements, or juvenile transgressions.
- Family court disputes, divorce, custody and deeply personal life conflicts.

³ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁴ *M.P. Sharma v. Satish Chandra*, AIR1954 SC 300; *Kharak Singh v. State of Uttar Pradesh*, AIR 1963 SC 1295

⁵ Constitution of India, art. 21.

⁶ Digital Personal Data Protection Act, 2023, No. 22, Acts of Parliament, 2023 (India)

⁷ Digital Personal Data Protection Act, 2023, sec 12

- Ordinary individuals, victims of sexual offenses or innocent witnesses.
- Information from years ago that has lost its current social utility or news value
- Delisting search results based on name searches or redacting personal names while keeping the text intact.⁸

WHEN PUBLIC INTEREST WINS

- Proven guilt in court, especially in relation to serious offences.
- Offenses against women or children, terrorism, financial scams, or serious public crime.
- Matters involving national security, public policy or systematic fraud.
- Politicians, bureaucrats, public servants or high-profile figures holding public office.
- Public scrutiny where it is considered a necessary consequence of legal accountability.
- The record remains accessible through name searches, search engines, or legal databases where public access has legitimate justification.⁹

Conclusion

The right to be forgotten should not be viewed as a tool for rewriting history, but as a necessary shield for human dignity in an unforgetting digital world. Achieving the right balance requires recognition that, while public records must remain transparent, individuals should also have the opportunity to move beyond their past without carrying a permanent digital stain.

Ultimately, Indian privacy jurisprudence must continue to evolve in order to harmonize Article 21 with open justice. By applying the proportionality test and favouring narrow remedies such as name-masking and de-indexing where appropriate, courts can protect personal autonomy without comprising legitimate public interest.¹⁰ Moving forward, clearer statutory alignment will help ensure that privacy and truth can coexist in the digital age.

⁸ See generally Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁹ See generally Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

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