

## ACQUITTED BUT NOT FORGOTTEN

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

In an important development for the 'right to be forgotten', the [Delhi High Court recently ordered the removal of one of its own judgments](#) from easy access. The petitioner was acquitted of certain crimes by the court and the judgment was freely accessible on the Internet. Unhappy with this, the petitioner sought removal of the judgment from a leading database platform and search engines. The court, as a temporary relief, asked search engines to remove this order from search results, and ordered the database platform to block the judgment from being accessed by search engines. The High Court recognised that the petitioner may have a right to be forgotten, which must be balanced with the right of the public to access courts of record.

The right to be forgotten is, generally, the right to have information about a person removed from public access. The proponents argue that individuals should be able to determine the development of their life in an autonomous way. Persons cannot be perpetually stigmatised for past conduct.

Also read | [Shades of grey in the right to be forgotten](#)

In 2017, the [Supreme Court recognised the right to be forgotten](#) as being under the ambit of the right to privacy (specifically, informational privacy) under the Constitution. It observed that if someone desired to remove personal data from the virtual space, it ought to be respected. The top court observed that a lot of personal information may serve no "legitimate interest", was "incorrect", or was not "necessary" or "relevant". However, the right to be forgotten was subject to reasonable restrictions based on countervailing rights such as free speech. But despite the Supreme Court's judgment, the right remains underdeveloped in India.

For now, individuals may request data hosts to take down some content, and it may be taken down based on the policies of the respective hosts. For example, some embarrassing selfies that a person posted as a minor may violate the terms of service. These photos may be taken down if so requested because they not only violate terms of service but are also unnecessary and irrelevant. However, if these photos have since become part of, say, a scientific study on Internet usage patterns by teens, or if the person now holds a prominent government office, they now serve a public purpose.

There is a general consensus that people should be allowed to modify or delete information uploaded by themselves. However, whether this extends to information uploaded by third parties is uncertain. Take for instance a news article reporting an accusation of sexual harassment against a public figure. If the person was never convicted, should they continue to bear the infamy? Is abhorrent conduct reportable only if there is a legal proceeding to support it?

Perhaps there is a lesson in the American civil rights movement. Back then, some governments filed defamation claims against newspapers to disincentivise them from reporting violence against protesters. In one of these cases, *The New York Times* was held liable to pay \$500,000 (a king's ransom in 1962) by an Alabama court for some errors in their content. In appeal, the U.S. Supreme Court intervened in [New York Times Co. v. Sullivan \(1964\)](#), and ruled that public interest reporting may continue without fear as long as it did not intentionally or recklessly make outright false statements. Thus, the court disallowed suppression of criticism and accountability, especially against powerful figures. The case has been cited by the Supreme Court of India several times. Nonetheless, many courts in the country have ordered take-down of unflattering

news articles pertaining to legal proceedings, redaction of names of litigants, and removal of references from search results. However, this is perhaps the first instance of a court ordering the removal of access to its complete final judgment from certain spaces.

While there may be significant merit to the right to be forgotten, whether it extends to the removal of judgments of courts of record is uncharted territory. Judgments are published for good reasons. Trials held under public scrutiny act as a check against judicial caprices and help in enhancing the confidence of the public in the fairness and objectivity of the administration of justice.

The wrong that the Delhi High Court sought to correct could have been achieved by narrow tailoring. The court could have ordered that the name and personal details of the petitioner be redacted while maintaining public access to the judgment itself. Unaware of the Streisand effect, the court names the petitioner repeatedly in its interim order, while removing the acquitting judgment from easy access. The issue has been listed for a final hearing and the outcome is keenly awaited.

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To reassure Indian Muslims, the PM needs to state that the govt. will not conduct an exercise like NRC

**END**

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