Half-Built and Half-Forgotten

The Right to be Forgotten Between the Srikrishna Committee's Vision and the DPDP Act, 2023

AI Disclosure Statement

The authors used an AI-assisted writing tool solely for language editing, grammar refinement, formatting, and Bluebook citation formatting assistance. All legal research, analysis, case law interpretation, arguments, and conclusions presented in this manuscript are the authors' own work.

Abstract

India's right to be forgotten has developed twice, first on paper and then in the courtroom, and the two versions no longer align. The Justice B.N. Srikrishna Committee, in 2018, proposed a right to erasure structured around a five-factor balancing test and overseen by an independent Adjudication Wing. Five years later, the Digital Personal Data Protection Act, 2023 preserved the label of erasure in Section 12 but discarded the mechanism: there is no statutory balancing test and no independent adjudicator. The decision whether to erase data now rests with the data fiduciary alone. High Courts have since filled that vacuum, most notably in *Laksh Vir Singh Yadav v. Union of India* (2026), through a judicially crafted regime of de-indexing and masking that Parliament never enacted. This article traces how these two tracks have diverged and argues that India's right to be forgotten is now half statute and half judgment, imperfectly stitched together. The result is unequal protection for individual litigants and a right that remains substantively uncodified.

Keywords: Right to be Forgotten; Digital Personal Data Protection Act, 2023; Srikrishna Committee; Article 21; Informational Privacy; Judicial De-Indexing

I. Introduction

Every legal system that recognises a right to be forgotten confronts a structural difficulty: the right authorises a balance between privacy and the public interest in information, and that balance must be struck by an actor with the institutional standing to strike it. The European Union resolved this by vesting data protection authorities with the task and grounding their decisions in the codified test that emerged from *Google Spain*[1]. India's version is considerably

[1] *Google Spain SL v. Agencia Española de Protección de Datos (AEPD)*, Case C-131/12, ECLI:EU:C:2014:317 (May 13, 2014).

less structured. The right to be forgotten entered Indian legal discourse through a committee report, was diluted in the process of drafting legislation, and has since been reconstructed piecemeal by High Courts working without settled legislative language.

This article traces the development in three stages, though the progression is not linear. Part II examines the constitutional basis of the right, particularly as it emerges from the privacy jurisprudence following *K.S. Puttaswamy v. Union of India*[2]. Part III returns to 2018 and restates what the Srikrishna Committee proposed[3]: a five-factor balancing test, administered by a dedicated Adjudication Wing. Part IV then compares that proposal with what Section 12 of the Digital Personal Data Protection Act, 2023 ("DPDP Act") actually delivers.[4] Part V turns to how the judiciary has responded to that mismatch, focusing on recent Delhi High Court decisions, including *Kokkanti Venkata Maheswara Reddy v. Google LLC*[5], and most significantly *Laksh Vir Singh Yadav v. Union of India*[6], which together constitute the most detailed judicial framework for de-indexing and masking presently available in Indian law. Part VI argues that a regime built on a thin statute and a thick body of case law is not a stable equilibrium, and Part VII proposes a route back to codification that draws on both the Srikrishna Committee's framework and the courts' more recent approach.

II. The Constitutional Foundation

India's right to be forgotten does not trace to a single statute; it derives from Article 21. In *K.S. Puttaswamy v. Union of India* (2017),[7] the nine-judge bench recognised privacy as a fundamental right, and several of the concurring opinions pointed toward informational privacy, understood as a degree of control over how one's personal history circulates, particularly where that history no longer carries genuine public value. That recognition, however, remained doctrinal rather than operational. *Puttaswamy* did not lay down a rule for when erasure or de-indexing should be permitted, nor did it identify who was to apply such a rule. Both questions were left for Parliament or the courts to resolve later.

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[2] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).
[3] *Report of the Committee of Experts Under the Chairmanship of Justice B.N. Srikrishna, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians* (2018).
[4] The Digital Personal Data Protection Act, No. 22 of 2023, § 12, Acts of Parliament, 2023 (India).
[5] *Kokkanti Venkata Maheswara Reddy v. Google LLC*, W.P. (Civil) No. 8465 of 2026 (Del. H.C. 2026) (India).
[6] *Laksh Vir Singh Yadav v. Union of India*, 2026 SCC OnLine Del 4491 (Del. H.C.) (India) [neutral citation 2026:DHC:4891; W.P.(C) 1021/2016, decided May 29, 2026 (Datta, J.)].
[7] *Puttaswamy*, (2017) 10 SCC 1 (India).

This gap was filled, unevenly, at the trial and High Court levels in a scattering of privacy cases. Each High Court, absent any Supreme Court template or statutory framework, developed its own approach, drawing on *Puttaswamy's* account of dignity and personal autonomy but without a shared vocabulary for basic distinctions, such as whether deletion, de-indexing, and masking are the same remedy or three separate ones. This fragmentation is the background against which the Srikrishna Committee's 2018 proposal, and its subsequently diluted legislative descendant, must be read.

III. The Srikrishna Committee's Framework: The Road Not Taken

A. The Five-Factor Balancing Test

The Justice B.N. Srikrishna Committee[8] undertook much of the foundational work behind India's first comprehensive data protection framework, including its treatment of the right to be forgotten as neither an automatic entitlement nor a right capable of outright refusal, but as a claim requiring structured adjudication.

The Committee's 2018 report proposed a multi-factor test broadly resembling the following: the sensitivity of the personal data in question; the scale of disclosure; the ease of accessing the information; the data principal's role in public life; the relevance of the disclosure to the public; and whether the original disclosure occurred voluntarily or was compelled by law. The Committee's own draft bill embedded this test directly into statute. The right, on this design, rested on a balance of competing constitutional interests, one that could not be waived away merely because the data subject wished it resolved in a particular direction.

B. The Adjudication Wing

The Committee gave equal weight to who would apply this test. The 2018 report's accompanying Personal Data Protection Bill proposed an independent "Adjudication Wing" within the data protection authority, structurally separate from the authority's regulatory functions, with the power to entertain applications for erasure or restriction, apply the five-factor test, and issue binding orders. This was a deliberate institutional-design choice.

[8]Srikrishna Committee Report, supra note 3.

The Committee's underlying premise was that a data fiduciary was not structurally positioned to determine, unsupervised, what the public interest required with respect to its own data holdings. Read together, the five-factor test and the Adjudication Wing formed a single regulatory scheme: one substantive standard, paired with an adjudicatory mechanism independent of both the data principal and the data fiduciary. Almost none of that architecture survived into the statute that Parliament eventually enacted.

IV. The Digital Personal Data Protection Act, 2023, Section 12: The Retreat to Self-Regulation[9]

Section 12 of the DPDP Act requires a data fiduciary to delete personal data once its collection is discontinued or its use for the specified purpose is no longer necessary. On its face, this looks like a form of erasure. In practice, it is considerably narrower than what the Srikrishna Committee recommended, and it narrows precisely where the right to be forgotten matters most.

First, Section 12 is anchored in consent revocation and purpose exhaustion. It does not reach the broader, open-ended situations where consent was never the relevant issue, and where the data was lawfully disclosed in the first instance, as with a news report or a court judgment. Second, and more significantly, the Act contains no statutory balancing test. The Committee's five factors, including sensitivity, public role, and passage of time, find no counterpart in the statute. Third, because no balancing mechanism exists, the erasure decision rests entirely with the data fiduciary. There is no independent decision-making space in which the data principal's request is weighed against the fiduciary's commercial interest in declining it. The Act instead creates a Data Protection Board that functions largely as a complaints-and-penalties body for statutory non-compliance, rather than the specialist erasure adjudicator the Committee had envisioned.

The practical effect is that a request to de-index an old, already-publicised matrimonial dispute sits awkwardly within a statute organised around consent and purpose limitation, with no other institutional space designed to consider it thoughtfully. The gap between what the Committee proposed and what Section 12 delivers is not a matter of drafting style; it reflects the removal of the entire adjudicatory framework that gave the right its substance.

[9]The Digital Personal Data Protection Act, No. 22 of 2023, § 12 (India).

V. Courts Filling the Vacuum

A. *Kokkanti Venkata Maheswara Reddy v. Google LLC*[10]

In this 2026 matter, a serving IPS officer sought the removal and de-indexing of online reports connected to a matrimonial dispute that had since been settled amicably, with the related criminal proceedings quashed. The Delhi High Court addressed the matter principally on jurisdictional grounds, holding that it could entertain the petition because Google, YouTube's grievance officer, and the Ministry of Electronics and Information Technology were all situated in Delhi, notwithstanding that the petitioner and the original reports originated in Telangana.

Beyond the forum question, the decision quietly set an operative bar for how such requests are handled in practice: a litigant seeking relief resembling the right to be forgotten in India must locate an available venue by tying it to the location of an intermediary or regulator, because no statutory home for such claims exists, and no dedicated adjudication unit of the kind the Srikrishna Committee proposed makes the correct forum self-evident.

B. *Laksh Vir Singh Yadav v. Union of India*[11]

The most consequential development is the Delhi High Court's judgment of May 2026 in *Laksh Vir Singh Yadav v. Union of India*. Justice Sachin Datta, dealing with a large batch of petitions from acquitted or discharged individuals and parties to settled matrimonial disputes, delivered a 144-page judgment that, in practice, if not always in doctrinal language, constructs an operating framework for relief under Section 12.

The Court held that the right to be forgotten flows from informational privacy under Article 21, and that constitutional courts are not powerless merely because Parliament has not legislated the specifics. In doctrinal terms, the judgment does three things the DPDP Act does not.

First, it treats deletion, de-indexing, and masking as three distinct remedies rather than interchangeable forms of the same relief. De-indexing removes a record from name-based search results without affecting the underlying content; masking replaces personal identifiers in a public court document with neutral placeholders, while the original remains preserved in the court's

[10] *Kokkanti*, W.P.(C) No. 8465 of 2026 (Del. H.C. 2026) (India).
[11] *Yadav*, 2026 SCC OnLine Del 4491 (Del. H.C.) (India).

own archives and retains legal force for third parties with a legitimate interest. Section 12 maintains no such distinction, treating all three as a single undifferentiated concept of erasure.

Second, the judgment adopts a balancing framework of its own, distinct from the Srikrishna Committee's test but structurally similar to it. Relief turns on a proportionality inquiry: whether the information remains or will continue to be relevant, whether open justice or a competing public interest is engaged, and whether press freedom is implicated, alongside considerations of dignity and reputation. The result approximates a five-factor test in substance, even if it was not set out as a discrete list on the page; a High Court reconstructed it from Article 21 doctrine because no statutory trail existed to follow.

Third, the judgment builds in an enforcement mechanism. A masking order is treated as an order of a competent court for the purposes of Rule 3(1)(d) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.[12] This obliges search engines to remove the record from name-based results and requires record-hosting platforms such as Indian Kanoon to do the same, so that the underlying judgment remains available but is no longer surfaced through a name search. The originating court retains continuing jurisdiction to revisit and, if warranted, rescind the masking direction.

C. A Patchwork, Not a Doctrine

Other High Courts have reached different conclusions on substantially similar facts.[13] The Gujarat High Court, in *Dharamraj Bhanushankar Dave v. State of Gujarat*[14], declined to remove an acquittal judgment from a legal database, holding that publishing a judgment online does not, without more, violate the law. The Kerala High Court, without adopting a general right-to-be-forgotten standard, has directed redactions in matters touching on sexual-offence victims,[15] treating that outcome as grounded in victim-protection principles specific to those proceedings rather than in a freestanding right to erasure. Separately, in a 2025 order, a Delhi court at Patiala House issued relief resembling a John Doe order, directing search engines and a

[12]The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(d) (India).
[13]Harikartik Ramesh & Kali Srikari Kancherla, *Unattainable Balances: The Right to be Forgotten*, IX NLIU L. Rev. 393, 394 (2020).
[14]*Dharamraj Bhanushankar Dave v. State of Gujarat*, Special Civil Application No. 1854 of 2015 (Guj. H.C.2017) (India).
[15]*Vysakh K.G. v. Union of India*, 2022 SCC OnLine Ker 7337 (Ker. H.C.) (India).

legal database to remove reports naming a man who had been cleared of all charges in a money-laundering matter.[16] That order rested on dignity-based reasoning broadly similar to, though not identical with, Justice Datta's later framework.

VI. Half-Built and Half-Forgotten: The Argument

Placed side by side, the statutory and judicial tracks do not form a coherent whole; at best, the outline of a single right becomes visible if one looks for it. The difficulty is not that India lacks a right to be forgotten, but that the right sits in the wrong institutional location, much as it was placed on the wrong desk from the outset. The Srikrishna Committee designed a right meant to be applied prospectively and consistently, through a specialised body operating under a codified test, before litigation became necessary. What exists instead requires India to re-litigate the right in every High Court, rebuilding the doctrine from Article 21 each time, because Section 12 supplies no working benchmark. Relief is settled only after a litigant has borne the delay and reputational cost of a full writ proceeding. That is a considerable burden to place on any individual.

The deeper problem is not merely doctrinal untidiness. Because Section 12 leaves erasure to self-assessment by the data fiduciary, the fiduciary itself effectively defines the scope of the right in the first instance. A refusal carries little practical cost for the fiduciary, and there is no independent check available to a data principal who lacks the resources to litigate. The judicially crafted remedy, however carefully reasoned, is reachable only by litigants who can get to a High Court, and it is not uniform across jurisdictions, as the divergence between the Gujarat and Delhi positions on acquittal judgments illustrates. Neither individuals nor the intermediaries obligated to comply with masking and de-indexing directions have any dependable certainty in advance. What currently exists falls well short of what the Srikrishna Committee's integrated design was meant to achieve: a predictable, independently adjudicated pathway to deletion for individuals, paired with a settled rule that data fiduciaries and platforms could follow before any matter escalated into a constitutional writ.

VII. Toward Codification: A Way Forward

[16][Plaintiff's name withheld in public reporting] v. Google LLC & Ors., suit for permanent injunction, interim order dated Nov. 10, 2025 (Patiala House Cts., New Delhi) (Anju Bajaj Chandna, Prin. Dist. & Sess. J.) (India).

Closing this gap does not require inventing new doctrine; the relevant principles already exist in Indian law, even if not always under a single heading.

First, Parliament, or the Data Protection Board acting through binding regulations under the DPDP Act, should codify a proportionality test for erasure and de-indexing requests, drawing directly on the factors Justice Datta's judgment has already applied in practice: the nature and sensitivity of the information, its continuing relevance, competing public interest and open justice considerations, and the impact on the individual's dignity and reputation. Second, the Data Protection Board's mandate should be expanded, or a dedicated unit created within it, to adjudicate disputed erasure and de-indexing requests in the first instance, rather than leaving a petition under Article 226 as the only route. This would also relieve the High Courts of matters that more properly belong before a specialised regulator.

VIII. Conclusion

India's right to be forgotten has, in effect, been built twice: first by a committee that designed a complete adjudicatory system, and then, seven years later, by a Parliament that retained the right's label while dropping the machinery beneath it. What has filled that space is not statute but litigation, most notably the Delhi High Court's framework in *Laksh Vir Singh Yadav v. Union of India*[17], a judgment more detailed and, in practice, more useful than Section 12 itself. That is not a small achievement in constitutional terms.

But a right that changes shape from one High Court to the next, and that is accessible only to those able to sustain a writ petition, is not the right the Srikrishna Committee described in 2018. Until Parliament or the Data Protection Board brings the courts' standards onto the statute book, India's right to be forgotten will remain what this article has called it: half-built, and half-forgotten.

[17] *Yadav*, 2026 SCC OnLine Del 4491 (Del. H.C.) (India).