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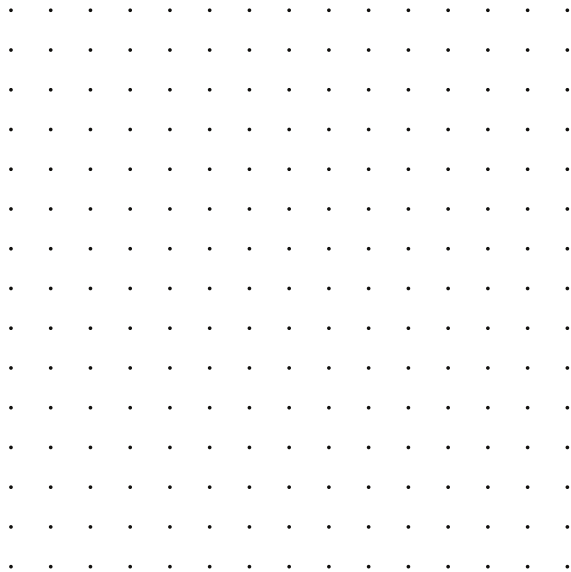
GURINDER PAL SINGH

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ERASING THE PAST:

Exploring the Right to Be Forgotten

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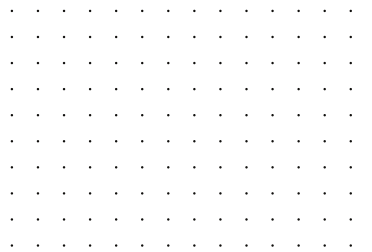
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It takes no time to destroy the reputation of a person built by him brick by brick over an age. A bad opinion without judgment creates a prejudice and as a result, an edifice built over ages gets destroyed in no time and lingers on not only during the lifetime of the person but sometimes deep into his generations to come. In short, there is no cruel tyranny more than an adverse opinion getting engineered in public opinion. But then, what adds to the injury is when the name of a person is used as a tool to bring his or her identity in the glare of general public, despite found to have been wrongly accused of the commission of a wrong. In this modern world, when every aspect of life touching a person is under public glare, reputations are built and destroyed by making public mere allegation of a crime of which that person already stands acquitted. How would one react, for example, to a person's name splashed on the television channels or newspapers in connection with an alleged crime of which he already stands acquitted? Would that act of bringing his or her name in public glare not add to his/her agony?

Has a victim, in such a situation, no right to seek protection of law? And, for example, what about a person alleged to have committed the crime but, on trial, found to be not guilty? Is he not protected from the tyranny of continuing public opinion despite a judgment exonerating him of the charge? How does the law come to the rescue of such a person? It is particularly in such a situation that the law of privacy comes into play. And, what is that law of privacy? The question takes us to Article 21 of the Constitution of India which guarantees right to live with dignity. And, within the sway of that Article, comes the right to privacy. Let us take a concrete example. Supposing a person is charged of having committed the offence of rape and before and during the pendency of the trial, the name of the person accused of that crime, is prominently made public by the media but ultimately the accused is found by a competent court to have not committed the crime and thus, is acquitted of the charge. Can, even after the acquittal, the name of the accused be continued to be displayed or mentioned in the media or in public domain?

It is in such a situation that Article 21 of the Constitution of India comes into play as it guarantees the right to be forgotten and left alone as per the Himachal Pradesh High Court in **State of H.P v X [2024 SCC Online HP 3169]** for the simple reason that if the shadow of crime, despite acquittal, is permitted to continue it would result in travesty of concept of life under Article 21 of the Constitution of India.



But then, what about, for example, the right to freedom of expression by the media? The question arose before the Delhi High Court in ***X v India Today Group [2024 SCC Online Del 5113]***. The court held that prima facie it was of the view that right to freedom of press “*must give way to the right to privacy of the Plaintiff especially when he has been exonerated of all the allegations leading to his honorable acquittal*”

However, what if, there already exists record mentioning, say for example, the name of the rape accused in the newspapers? In such a case, what about the right of freedom of expression of the press? Will that freedom give way to the right of privacy of the person so exposed in the press especially when he has already been exonerated of the charge? What happens, in such a case of existence of old news articles/posts on the internet? And, what if that old record is updated or sought to be updated? What happens in such a case to the right to be forgotten and the redaction of specific information relating to him? Has he, in such a case, right to be forgotten? Interestingly, there is no statute which recognizes right to privacy. The right to be forgotten has already been acknowledged in the Western countries. What about India?

Though the Gujarat High Court in ***Dharamraj Bhanushankar Dave v State of Gujarat [2017:GUJHC:1698]*** declined to favor such a right, that judgment was principally swayed by its own Rules. The Madras High Court too in ***Karthick Theodore v Registrar General, Madras High Court & Ors [2021(5)CTC 668]*** refused to allow the request for redaction of information from online published court records holding that “the sanctity of an original record cannot be altered except in a manner prescribed by law”. The question arose before the Delhi High Court in ***Jorawer Singh Mundy v Union of India [W.P. (C) 3918/2021]***. It was held that Right to be forgotten and the Right to be left alone are inherent aspects of Right of Privacy. The judgment related to the republication of the content of the originally impugned articles published earlier. The right to privacy was finally declared as a fundamental right by the Supreme Court of India in the 2017 landmark case of ***Justice K.S Puttaswamy (Retd) v Union of India & Ors [2018 INSC 880]***.



It is important to note that while the Karnataka High Court in the case of ***Vasunathan v The Registrar General, High Court of Karnataka [2017:KHC:2043]*** acknowledged the right to be forgotten, keeping in line with the trend in the Western Countries, the Delhi High Court in ***Zulfiqar Ahman Khan v Quintillion Business Media Pvt. Ltd and Ors [2019:DHC:2559]*** recognized the “Right to be forgotten” and “Right to be left alone” as an integral part of individual’s existence. This surely is the correct position and finds support from the above referred judgment of the Supreme Court delivered in 2017 in the matter of Jorawer Singh.

In simple words, the legal position with regard to right to be forgotten is that in case of acquittal, the accused has a right to be forgotten. However, this right will not extend to the court record relating to his trial in which he is mentioned by name. This right will also not extend to contemporaneous publication of his name, say in print media but would extend to republication after acquittal of such earlier publication. Where, for example, the name of such an acquitted person continues to be displayed on, say, online portals, the right to privacy and the right to be forgotten come into full play and the aggrieved person may demand removal of his name. However, interestingly, the print and other such media would be justified in mentioning that, *“Mr. A was accused in the past, say of rape, but was acquitted by the Court”*. This may not fall within the sway of Right to be forgotten or Right to be left alone or Right to privacy.

The right to be forgotten is indeed a complex and evolving concept in the digital age. While it offers individuals the power to shape their online narrative and protect their privacy, it also raises concerns about freedom of expression and the availability of information. Striking a balance between these competing interests is crucial, and ongoing dialogue and legal developments will continue to shape the future of this right. Ultimately, the right to be forgotten empowers individuals to reclaim authorship over their digital lives and seek a measure of control in an increasingly interconnected world. Long-time back, in the nineteenth century, the English Poet and Playwright Robert Browning said *“I give the fight up: let there be an end, a privacy, an obscure nook for me. I want to be forgotten even by God”*. The Law of the day has put its seal of approval to that.



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