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From Stigma to Solace: A Comparative Analysis of the Right to Oblivion in India and the U.K.

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Abstract. The concept of a “fresh start” has been recognized worldwide, emphasizing the significance of rehabilitative justice and legal forgiveness. This article examines the evolving jurisprudence surrounding the right to oblivion in India, particularly as it pertains to individuals acquitted of criminal charges. Indian High Courts have increasingly affirmed this right as a means of safeguarding the privacy, dignity, autonomy, and reputation of individuals. They have also underscored the principle of a fresh start, as seen in the Madras High Court’s decision in *Karthick Theodore* case, acknowledging the lasting stigma of criminal accusations that can obstruct future opportunities. Presently, the portal Indian Kanoon has appealed this decision before the Supreme Court, arguing that it has a duty to keep the public informed because the case implicates the principle of open justice. This has opened up an important opportunity for the Court to determine the contours of this right. Meanwhile, the Himachal Pradesh High Court has recognized the right to oblivion

in a case wherein the petitioner was acquitted of charges under the Protection of Children from Sexual Offences Act, 2012 (POCSO) to protect his family life, his younger child, and his future prospects. However, the Court has not offered an adequate guidance on balancing the competing rights of privacy and freedom of information. The study examines the intricate relationship between the right to oblivion and other fundamental rights, such as privacy, dignity, autonomy, and the freedoms of speech, expression, and information. To provide a comparative framework, the research analyses the landmark U.K. case *NT1 and NT2 v. Google*, which presents a thoughtful approach to balancing these competing rights. By conducting a comprehensive analysis and proposing potential guidelines, this paper aims to contribute to establishing a robust legal framework for the right to oblivion in India.

Keywords: privacy; data protection; fresh start; right to oblivion; freedom of information; rehabilitative justice.

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Introduction

In 2005, an incident in South Korea sparked a case that exemplifies the complex dynamics of digital memory. A young woman, later dubbed the “Dog Poop Girl,” was photographed on a Seoul subway after her dog defecated on the floor, and

she refused to clean it up.¹ The image was uploaded online, and within hours, her identity was revealed. What followed was an avalanche of public shaming, with users on social media relentlessly mocking and humiliating her.² The incident, which could have been an isolated, momentary lapse in judgment, turned into a prolonged episode of social punishment because of the persistence of digital memory.³ Years later, her name was still associated with the event, showing how an act of indignation can be magnified and prolonged due to the internet's inability to forget.

A contrasting example of digital memory's role in public accountability is the case of the United States' high school student who was denied admission to Harvard University after racist tweets he had written years earlier resurfaced.⁴ The tweets, which contained offensive and harmful language, prompted the university to rescind his admission offer. Harvard, a university that upholds values of diversity and inclusion, made the decision in alignment with its institutional values, believing that past conduct reflective of racism cannot be ignored.⁵

These two cases illustrate the ambivalence of digital memory, raising the question of when the preservation of past behaviour serves justice and when it causes undue harm. In the second case, the tweets provided Harvard University with critical information to assess the prospective student's suitability. On the other hand, in the case of the "Dog Poop Girl," digital memory prolonged and magnified a momentary lapse in judgment far beyond what could be considered reasonable. This example vividly illustrates Schönberger's critique of digital memory: human beings change, grow, and evolve, yet the permanence of their digital footprint often holds them captive to a fixed identity.⁶ In contrast, the case of the student denied admission for his racist tweets demonstrates how digital memory can promote public accountability.

Similarly, digital records of individuals' criminal pasts hold public relevance for various reasons, including promoting accountability, deterring criminal behaviour, enabling research, and fostering societal reform. Additionally, they can serve to challenge entrenched societal structures that contribute to or perpetuate a crime. For example, in a recent French case involving a woman who was drugged and repeatedly raped by her husband and other men, the victim sought an open trial with the intention of shifting the shame typically associated with rape onto the

¹ Solove, D. J. (2005). *Of privacy and poop: Norm enforcement via the blogosphere*. Teach Privacy.

² Solove, 2005.

³ Solove, 2005.

⁴ Levin, D. (2020). *Colleges Rescinding Admission Offers as Racist Social Media Posts Emerge*. The New York Times. <https://www.nytimes.com/2020/07/02/us/racism-social-media-college-admissions.html>.

⁵ Levin, 2020.

⁶ Mayer-Schönberger, V. (2011). *Delete: The virtue of forgetting in the digital age*. Princeton University Press.

perpetrators.⁷ In such cases, maintaining a perpetual digital record not only serves as a deterrent but also offers valuable insights into the societal norms that facilitate such crimes. These records are crucial for informing both legal and societal reforms by highlighting the systemic issues underlying certain types of criminal behaviour.

However, the ongoing accessibility of criminal records also presents significant disadvantages. The social stigma attached to any criminal record, regardless of the severity of the offence or the eventual outcome, can severely hinder an individual's social integration and access to opportunities in education, employment, housing, etc.⁸ This is particularly problematic in cases of complete acquittal or unjust convictions, such as those under Section 377 of the Indian Penal Code (IPC).⁹ Individuals in such situations may continue to face societal judgment due to the persistent availability of their digital records, despite their innocence or the fact that the laws they were convicted under have been declared unconstitutional.¹⁰ Moreover, continued and easy access to information about an individual's involvement in criminal activities may impede their rehabilitation into society after they have served their sentence.¹¹

The right to oblivion, which enables individuals to restrict access to their personal information, directly addresses the conflict between preserving the continued availability of information online and an individual's right to move beyond their past.¹² Various High Courts across India have emphasized the principle of a "fresh start" or clean slate, acknowledging this right as essential for safeguarding the privacy, dignity, autonomy, and reputation of individuals who have experienced undue hardship as a result of their interaction with the criminal justice system.¹³ These courts recognize that the persistent accessibility of such information can lead to long-term social, professional, and psychological consequences, thereby justifying the need for a legal mechanism to balance the public's right to know with the individual's right to rehabilitate and reintegrate into society.¹⁴

⁷ Baisnée, M., & Gozzi, L. (2024). *Women moved by defiant Gisèle Pelicot in France mass rape trial*. BBC News. <https://www.bbc.com/news/articles/cvg5g24rr6lo>

⁸ Kohl, U. (2023). The right to be forgotten in data protection law and two western cultures of privacy. *International and Comparative Law Quarterly*, 72(3), 737–769.

⁹ The Indian Penal Code of 1860 (Ind.), s. 377.

¹⁰ *Navtej Singh Johar v. Union of India* (2018), INSC 790.

¹¹ Upadhyay, N. K., & Romashkin, S. (2022). Using artificial intelligence to address criminal justice needs, problems and perspectives. In N. S. Malik et al. (Eds.), *Legal analytics: The future of analytics in law* (pp. 21–34). Chapman & Hall.

¹² Gratton, E., & Polonetsky, J. (2017). Droit À L' Oubli: Canadian perspective on the global right to be forgotten debate. *Colorado Technology Law Journal*, 15, 337–392.

¹³ *Jorawer Singh Mundy v. Union of India* (2021) SCC OnLine Del 2306.

¹⁴ *Jorawer Singh Mundy v. Union of India*.

Despite these judicial acknowledgements, Indian courts have yet to provide sufficient guidance on the appropriate approach or the factors to be considered when balancing the competing rights implicated by the right to oblivion. The absence of a principled framework has led to challenges, such as in *Indian Kanoon v. Karthick Theodore*,¹⁵ where the Madras High Court's decision was challenged before the Supreme Court. This case presents a critical opportunity for the Supreme Court to establish a clear framework for balancing the right to privacy and reputation against the public interest in access to information and other societal considerations. This research paper explores how similar challenges have been addressed in the United Kingdom, particularly through the lens of its jurisprudence on the misuse of private information. The United Kingdom's approach is especially relevant given its common law roots. Moreover, the Indian Supreme Court has previously relied on U.K. jurisprudence to strike a balance between freedom of information and informational privacy. Through a comparative analysis, this article aims to contribute to the development of a robust framework for the right to oblivion in India and offer a structured approach to navigating the complex interplay of privacy, reputation, and public interest in access to information. Part I of the article explains the concept of the right to oblivion and its relevance in the context of online information about criminal records. Part II explores the decisions of the various High Courts on this issue. Part III offers a comparative lens by discussing U.K. jurisprudence. Finally, Part IV proposes a double-proportionality framework for balancing competing rights in this context and identifies the relevant factors to consider.

1. The Right to Oblivion: Addressing Stigma Related to a Criminal Past

Personal information plays a crucial role in shaping individual identity, reputation, dignity, and autonomy.¹⁶ In the digital era, individuals have lost substantial control over their personal data, as it is collected, processed, and disseminated by complex algorithms.¹⁷ This information asymmetry creates a power imbalance, leaving individuals with minimal control over their data and thereby affecting fundamental constitutional values such as dignity, autonomy, and democratic participation.¹⁸ Given that technology and the internet are integral to modern life, empowering individuals by giving them greater control over their personal information is essential to protecting these constitutional rights.¹⁹

¹⁵ *Ikanoon Software Development Pvt. Ltd. v. Karthick Theodore*, SLP (C) No. 15311/2024, S.C. (India).

¹⁶ Floridi, L. (2005). The ontological interpretation of informational privacy. *Ethics and Information Technology*, 7, 185–200.

¹⁷ Cyman, D., Gromova, E., & Juchnevicius, E. (2021). Regulation of artificial intelligence in BRICS and the European Union. *BRICS Law Journal*, 8(1), 86–115.

¹⁸ Ausloos, J. (2020). *The right to erasure in EU data protection law: From individual rights to effective protection*. Oxford University Press.

¹⁹ Ausloos, 2020.

The right to oblivion addresses the challenges posed by the internet's enduring, easily accessible memory, enabling individuals to better control their personal information.²⁰ This right can be exercised through mechanisms such as de-indexing, where specific search results are removed from appearing when an individual's name is queried on a search engine.²¹ Similarly, de-ranking ensures that particular results are made less visible by pushing them further down the search results.²² These mechanisms enable individuals to reclaim control over their identity and mitigate potential harm to their rights to privacy, dignity, autonomy, and reputation.²³

Notably, the right to oblivion can also play a vital role in rehabilitative justice by allowing individuals to restrict access to information, available online, pertaining to old criminal records for minor offenses or records of unjust convictions under laws that have since been declared unconstitutional, such as Section 377 of the IPC,²⁴ or Adultery,²⁵ or records of cases wherein they have been acquitted. It offers individuals the opportunity to rebuild their lives without the persistent stigma associated with past encounters with the criminal justice system. The right to oblivion also aligns with the core principles of juvenile justice, which prioritize rehabilitation over punishment.²⁶ Allowing the removal or restriction of access to criminal records would prevent a young person's follies from casting a long digital shadow over their adult life.²⁷ It would ensure that minors are not unfairly burdened by their past offences and that they can pursue opportunities in education, employment, and societal acceptance without the stigma of a criminal record.²⁸

On the other hand, allowing individuals to utilise the right to oblivion to restrict access to past criminal records raises significant concerns about rewriting history²⁹ and eroding public accountability.³⁰ Some scholars argue that granting individuals, particularly public figures, the ability to erase or obscure their past transgressions

²⁰ Mayer-Schönberger, 2011.

²¹ Ambrose, M. L., & Ausloos, J. (2013). The right to be forgotten across the pond. *Journal of Information Policy*, 3, 1–23.

²² Ambrose & Ausloos, 2013.

²³ Ambrose & Ausloos, 2013.

²⁴ *Navtej*.

²⁵ *Joseph Shine v. Union of India* (2019) 3 SCC 39.

²⁶ Simpson, A. L. (1976). Rehabilitation as the justification of a separate juvenile justice system. *California Law Review*, 64(4), 984–1017.

²⁷ *Jitendra Meena v. State of Rajasthan*, S.B. (C) W.P. No. 9143/2021 (Rajasthan High Court).

²⁸ *Jitendra Meena v. State of Rajasthan*.

²⁹ Gratton & Polonetsky, 2017.

³⁰ Volokh, E. (2000). Freedom of speech and information privacy: The troubling implications of a right to stop people from speaking about you. *Stanford Law Review*, 52(5), 1049.

could undermine the public's right to know and distort the historical record. Public access to criminal records serves an important function in ensuring transparency and maintaining trust, especially in the case of public persons whose past actions may be relevant to their current roles or responsibilities.³¹ The right to oblivion could enable individuals to hide information that is critical for informed public discourse and decision-making. By selectively removing parts of their history, individuals may manipulate their public image, deceiving the general public about their integrity or suitability for positions of influence.³² This potential for abuse highlights why the right to oblivion, though well-intentioned, has been met with scepticism by legal scholars, who stress the need to balance privacy rights with accountability and truth in the public sphere.

The following part examines judicial pronouncements in India where courts have grappled with the complex issue of balancing the right to privacy against the public's right to information when addressing petitioners' requests to restrict online access to their criminal records.

2. Beyond the Shadows of the Past: Judicial Pronouncements on the Right to Oblivion in India

The Supreme Court of India has recognized that the right to oblivion is a derivative of the privacy-dignity-autonomy matrix.³³ Various High Courts in India have upheld this right in different contexts, such as protecting the identities of victims in cases of sexual abuse³⁴ and revenge pornography,³⁵ safeguarding family relationships,³⁶ and upholding the privacy and reputation of individuals who have been acquitted of criminal charges.³⁷ For example, in *Jorawer Singh Mundy v. Union of India*,³⁸ the Delhi High Court granted interim relief to an American citizen seeking the removal of an outdated judgment from online platforms where he had been accused under the Narcotic Drugs and Psychotropic Substances Act, 1985. The Court recognized Mr. Mundy's right to privacy and the right to oblivion, balancing these rights against the public's right to information and the need for transparency in judicial records.

³¹ Volokh, 2000.

³² Post, R. C. (2018). Data privacy and dignitary privacy: Google Spain, the right to be forgotten, and the construction of the public sphere. *Duke Law Journal*, 67(5), 981.

³³ *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

³⁴ *X v. Union of India & Ors.* (2021) SCC OnLine Del. 1788.

³⁵ *Subhranshu Rout v. State of Odisha* (2020) SCC OnLine Ori. 878.

³⁶ *Name Redacted v. The Registrar General* (2017) SCC OnLine Kar. 424.

³⁷ *State of Himanchal Pradesh v. X* (2024) SCC OnLine HP 3169.

³⁸ *Jorawer*.

The Court assessed the nature of the information to determine whether it was outdated, irrelevant, or disproportionate to its original purpose. Additionally, the potential harm to Mr. Mundy's reputation, personal life, and career prospects was taken into account. The Court ultimately weighed the public interest in access to information against Mr. Mundy's right to privacy and reputation. Citing precedents such as *Zulfiqar Ahman Khan*³⁹ and *Sri Vasunathan*,⁴⁰ the Court found that, despite his acquittal, the petitioner's social and professional life had been adversely impacted, and he was entitled to relief.

Similarly, in *Vysakh K.G. v. Union of India and Connected Cases*,⁴¹ the Kerala High Court considered requests for the right to oblivion in nine distinct cases, categorising them into two groups. The first involved matters such as matrimonial disputes, where the principle of open justice was not directly engaged, while the second dealt with cases involving criminal charges and a habeas corpus petition, where the principle of open justice applied. The Court held that a claim to protect personal information based on the right to privacy cannot coexist with the open justice principle, particularly in current or recent proceedings of this nature.

The Court emphasised that while the legislature may establish grounds for invoking the right to oblivion, courts can still assess the facts and circumstances on a case-by-case basis to determine its applicability. In matrimonial and family disputes, the Court directed its Registry to refrain from publishing the parties' personal information and from permitting the disclosure of the parties' identities. Additionally, the Court instructed the Registry to issue privacy notices on its official website in both English and vernacular languages, ensuring greater protection of personal data in such cases. Furthermore, the Court addressed the role of intermediaries, particularly search engines such as Google, in enforcing the right to oblivion. It challenged the argument that search engines maintain content neutrality or so-called "content blindness," pointing to the fact that platforms like Google already employ mechanisms for content filtering and personalization. The Court posited that in the era of advanced artificial intelligence, identifying and filtering content to uphold the right to oblivion should be technologically feasible. By highlighting these existing capabilities, the Court underscored the responsibility of intermediaries to play an active role in ensuring that the right to oblivion is respected and effectively implemented.

Likewise, in *Karthick Theodore v. The Registrar General & Ors*,⁴² the Madras High Court reformulated the right to oblivion as the "right to be remembered well." The petitioner, who was acquitted of rape charges, sought to have his name redacted

³⁹ *Zulfiqar Ahman Khan v. Quintillion Business Media Private Limited* (2019) SCC OnLine Del. 8494.

⁴⁰ *Name Redacted*.

⁴¹ *Vysakh K.G. v. Union of India and Connected Cases* (2023) 1 KLT 83.

⁴² *Karthick Theodore v. The Registrar General, Madras High Court & Ors.*, W.A. (MD) No. 1901 of 2021 (Madras High Court).

from court records and their digital copies. Initially, the Court denied his request, on the ground that India's criminal justice system was still underdeveloped. It emphasized the demands of transparency arising from the principle of open justice. However, a Division Bench later reconsidered the matter. The Court drew upon the international precedent of *Google Spain*⁴³ and the Indian Supreme Court's decision in *Puttaswamy*,⁴⁴ as well as the Digital Personal Data Protection Act (DPDPA).⁴⁵

It clarified that High Courts, as Courts of Record, must retain data indefinitely. However, they have discretion over the public availability of personal data. This discretion has previously been exercised to protect the identities of crime victims, as seen in cases such as *X v. State of Maharashtra*⁴⁶ and *Nipun Saxena*.⁴⁷ The Court framed the petitioner's request as an assertion of his "fundamental right to erasure." It stated that "the right to oblivion or the right to be remembered well cannot be denied to a person if the facts and circumstances so warrant." This decision recognizes the challenges of "uncontrolled and unbridled dissemination of information in the digital era." However, it also highlights the need for a comprehensive legal framework for reconciling competing rights, such as the right to information and privacy in the technological age. Presently, following an appeal by Indian Kanoon, the Supreme Court has granted interim relief by staying the High Court's decision. This indicates the need for further judicial deliberation on the issue.

Meanwhile, High Court of Himachal Pradesh adopted a stance similar to that of the Division Bench of the Madras High Court by upholding the right to oblivion for an individual acquitted of charges related to kidnapping under the Indian Penal Code, 1860, and aggravated penetrative sexual assault under the Protection of Children from Sexual Offences Act, 2012.⁴⁸ The Court highlighted that the respondent and the prosecutrix had eloped and subsequently married. Following their marriage, the prosecutrix's father intervened and filed criminal charges against the respondent. Notably, the prosecutrix never supported the prosecution's case and had a three-year-old daughter from their union.

The Court asserted that the right to oblivion is a principle recognized by democratic nations as a vital aspect of the right to privacy. It stated that the respondent should not be burdened with being viewed as an accused for the rest of his life. To safeguard the privacy and well-being of the prosecutrix, the accused, and their daughter, the

⁴³ *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos and Mario Costeja González*, Case C-131/12, ECLI:EU:C:2014:317 (EU).

⁴⁴ *K.S. Puttaswamy*.

⁴⁵ The Digital Personal Data Protection Act, 2023.

⁴⁶ *X v. State of Maharashtra* (2023) SCC OnLine SC 279.

⁴⁷ *Nipun Saxena & Anr. v. Union of India & Ors.* (2019) 2 SCC 703.

⁴⁸ *State of Himanchal Pradesh*.

Court ordered that their names be redacted from public records. Furthermore, it mandated that their names should not appear in search engine results, thus preventing any undue hardship or prejudice in their daily lives and career prospects.

Similarly, the ruling of Rajasthan High Court in *Suresh Kumar v. Union of India*,⁴⁹ has reaffirmed the rehabilitative philosophy which is embedded in India's juvenile justice system. Justice Anoop Kumar Dhand, while delivering the judgment, held that the "right to be forgotten" in the context of juvenile delinquency is not a conditional or discretionary right but an *absolute* statutory entitlement under the Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act 2015").

The facts are instructive: the petitioner, after being selected as a constable, was terminated because of a criminal record from his juvenile years. Under the Juvenile Justice Act, 2004, the petitioner was admonished and released him after counselling; the authorities relied upon that record to disqualify him nearly 15 years later. The Court held that such action directly violates Section 24 of the Juvenile Justice Act, 2015, which directs the removal of disqualifications attached to juvenile convictions and prohibits any future disadvantage arising from such adjudications. The Court noted that:

Once a child in conflict with law has been dealt with under the juvenile justice framework and has completed the period of rehabilitation, their record must be erased and cannot form the basis of any disqualification.

Also, it found fault with the conduct of police authorities for disclosing expunged records during background verification. The judgment placed considerable reliance on Rule 14 of the Juvenile Justice Model Rules, 2016, which provides for the destruction of records related to juvenile convictions after the prescribed retention period. This destruction is not symbolic; it is a legal imperative intended to restore dignity and facilitate reintegration into society, free from the shadow of past mistakes.

The Court's ruling resonates with prior jurisprudence. However, what differentiates the *Suresh Kumar case*⁵⁰ is the emphatic language used to classify this right as "absolute." The judgment explicitly eliminates the need for a juvenile to disclose prior convictions in future employment, thereby insulating them from collateral consequences. In doing so, it maintains the "fresh start" principle embedded in Section 3(xiv) of the Juvenile Justice Act, 2015, and aligns juvenile justice with Article 21 of the Indian Constitution, which concerns the right to dignity and privacy.

This judgment may also be seen as an extension of the *Puttaswamy* doctrine on informational privacy,⁵¹ which holds that individuals have the right to control the dissemination of their personal information, particularly when it has become irrelevant over time.

⁴⁹ *Suresh Kumar v. Union of India*, 2025: RJ-JP:6012.

⁵⁰ *Suresh Kumar v. Union of India*.

⁵¹ *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1.

Nevertheless, declaring the right as “absolute” may pose interpretive challenges in the future. For example, would this extend to cases of serious offences or to roles involving high-security clearances? The judgment does not carve out exceptions, but subsequent cases may require addressing potential conflicts between the rights of the individual and the compelling interests of the state.

As may be inferred from the above cases, the courts have upheld the right to oblivion with respect to criminal records only in cases where the individual has been acquitted of criminal charges. They have not considered requests regarding old criminal records for minor offences or unjust criminal convictions under provisions of criminal law that have since been declared unconstitutional. Nevertheless, the courts’ stance regarding cases of acquittal opens the possibility of granting relief in such cases as well. In all cases, however, a careful balancing of rights is required to ensure that the relief granted does not disproportionately affect the public’s right to know in order to protect an individual’s rights. The next part examines U.K jurisprudence on the misuse of personal information and the right to oblivion in cases involving information about criminal records, offering a comparative perspective on this vital question.

3. A Fresh Start: Judicial Pronouncements on the Right to Oblivion in the United Kingdom

Unlike Indian courts, U.K. courts recognize the right to oblivion in respect of information related to serious crimes, but only when additional fundamental rights, such as the non-derogable right to life, are implicated. In such cases, the rationale for granting relief is more than to provide the individual with a fresh start. On the other hand, in cases involving old records of minor offences, the courts grant this remedy in relation to convictions that have become spent under the U.K. Rehabilitation of Offenders Act, 1974, provided that the information is no longer relevant to the public. Once a conviction becomes spent, the information related to such convictions is not disclosed unless there is an overriding public interest in disclosure. The objective is to prevent discrimination in various contexts, such as employment opportunities, ensuring that individuals are not unfairly penalized for past actions and are given the chance to rebuild their lives.

In *NT1 and NT2 v. Google*,⁵² the U.K. courts recognized the right to oblivion for spent convictions, particularly when the information was no longer deemed relevant to the public. The court employed a test similar to that used in its misuse of private information jurisprudence, balancing competing rights such as privacy and the public’s right to know. This part of the article first outlines the proportionality test applied in misuse-of-private-information cases. The second part examines cases where additional factors tipped the balance in favour of granting the right to oblivion. The

⁵² *NT1 and NT2 v. Google LLC* (2019) EWHC 799 (QB) (U.K.).

final part explores *NT1 and NT2 v. Google* in detail, analysing the factors that influenced the court's decision in determining the requests for the right to oblivion.

3.1. The Proportionality Standard for Balancing Rights in Misuse of Private Information Cases

In the U.K., the courts apply the proportionality test to balance freedom of expression against the right to privacy in claims of misuse of private information.⁵³ This involves a two-stage process. First, they assess whether the claimant has a reasonable expectation of privacy regarding the information in question. This is determined by asking whether a reasonable person in the claimant's position would feel substantial offence if subjected to the same publicity. The information must be private and worthy of protection. The assessment considers various factors, including the claimant's attributes, the nature of their activity, the location, the intent behind the intrusion, the absence of consent, and the effects on the claimant. Additionally, they evaluate whether the information or similar details are already public or likely to become public. In such instances, the loss of a legitimate expectation of privacy depends on the facts and circumstances of the case.

Next, they determine whether the claimant's privacy rights should yield to the freedom of expression of others. Since both rights are qualified and neither takes precedence, this conflict cannot be resolved by broad generalizations. At this stage, they must closely examine the relative importance of the specific rights at issue, consider the justifications for interfering with each right, and apply a proportionality test. A critical factor in this analysis is the extent to which the published information contributes to public debate. This consideration includes the subject matter, the claimant's notoriety, their prior conduct, and editorial discretion. Furthermore, they must exercise caution related to journalistic technique, form, and detail. They typically defer to the professional expertise and judgment of journalists when appropriate.

For instance, in *ZXC v. Bloomberg*,⁵⁴ the Court of Appeal examined the reasonable expectation of privacy regarding information related to a criminal investigation. The claimant was the Chief Executive of X Ltd., a company under investigation by the UK Law Enforcement Body (UKLEB). Bloomberg, a prominent financial journal, published an article detailing the claimant's involvement in the UKLEB investigation. Both the claimant and UKLEB objected to the article, arguing that it failed to give UKLEB an opportunity to comment and contained previously undisclosed confidential information.

The Court relied on the principles established in *McKennitt* and *Campbell* to implement a two-stage inquiry for claims of misuse of private information. In the first stage, the Court assessed how a reasonable person would feel if placed in the

⁵³ *HRH The Duchess of Sussex v Associated Newspapers* (2021) EWHC 273 Ch.

⁵⁴ *ZXC v. Bloomberg* (2020) EWCA Civ. 611.

claimant's position, subjected to similar publicity. Factors identified in *Murray* were used to determine whether there was a "legitimate expectation of protection" or a "reasonable expectation of privacy." This protection can diminish if the information is already in the public domain, which is a factual determination based on the circumstances.

If a reasonable expectation of privacy is established, the burden shifts to the defendant to justify any interference with the claimant's privacy. This constitutes the second stage of the inquiry, which involves a balancing exercise. The Court emphasized that both Article 8 and Article 10 of the European Convention on Human Rights (ECHR) rights are important, both are qualified and neither has inherent precedence. When these rights conflict, the Court must closely scrutinize their comparative importance in the specific case.

The Court must consider the justifications for interfering with or restricting each right and apply the proportionality test, often referred to as "the ultimate balance." A key factor in this evaluation is the publication's contribution to public debate. The Court also considers the individual's public profile, the subject matter of the report, and their prior conduct. Additionally, the manner in which the information was obtained and its veracity are critical considerations. Ultimately, the Court assesses the proportionality of the interference with freedom of expression, ensuring that Article 10 rights are not curtailed to the point of serving purely private interests.

By applying these factors, the Court recognized that a person under investigation or arrest can still maintain a reasonable expectation of privacy. This expectation is particularly significant given the potential harm to an innocent person's reputation and life from publicizing their arrest. However, this expectation may diminish in cases involving certain public offenses, such as electoral fraud. In this instance, the investigation was in its early stages, and minimal information was publicly available. Therefore, the claimant retained a reasonable expectation of privacy. The Court identified a substantial public interest in maintaining the confidentiality of the information and the ongoing investigation. Furthermore, the manner in which Bloomberg obtained the confidential information raised questions, resulting in a balance that favoured privacy.

3.2. Balance in Favour of Restricting Access to Information: Criminal Cases

As previously mentioned, the U.K. courts have granted requests to restrict access to personal information even in cases involving serious crimes, provided that other rights are at stake. The term "Mary Bell Orders" refers to the rare injunctions issued by the U.K. courts to protect individuals from a significant and demonstrable risk of harm. The first such order was granted to safeguard Mary Bell and her daughter. In *X (formerly known as Mary Bell) v. Stephen O'Brien & Ors.*⁵⁵ the Queen's Bench Division

⁵⁵ *X (A Woman Formerly Known as Mary Bell) v. O'Brien* (2003) EWHC 1101 (QB).

issued a globally effective injunction that prevented any media, including online sources, from disclosing the identities of the claimant, who had been convicted of murdering two children at the age of eleven, and her daughter, who was adversely affected by being identified as such.

The Court noted that, despite the passage of 35 years, there remained a substantial public interest in the case, which posed a “demonstrably serious risk of harassment, vilification, and potential physical harm.” Mary Bell’s case was exceptional; as a victim of abuse, her mental state had contributed to the tragic events, and her current mental condition, along with concerns for her innocent daughter, led the court to conclude that the injunction served a legitimate purpose. Moreover, the public interest could be satisfied through already accessible material in the public domain without needing to reveal the new identities and whereabouts of Mary Bell and her daughter. The existing voluntary press code was inadequate in these circumstances to protect their rights, making the injunction necessary. Importantly, the Court clarified that such cases are exceptional, and it should not be assumed that offenders are entitled to similar injunctions solely due to the notoriety following their release. Any interference with press freedom must be justified, and in this case, the considerations of time, mental health, and the impact on an innocent individual outweighed the freedom of expression.

Likewise, in *Venables*,⁵⁶ there was a significant risk of irreparable harm to the petitioners, who had murdered a two-year-old boy when they were approximately ten years old. The Court acted to protect their non-derogable rights to life and protection against torture under Articles 2 and 3 of the European Convention on Human Rights (ECHR). It granted an “injunction contra mundum” to prevent the publication of their new identities and whereabouts. The Court emphasized that media freedom could only be restricted if the conditions under Article 10(2) of the ECHR were met. These grounds, it noted, must be interpreted narrowly. The Court created a presumption in favour of speech and expression, stating that those seeking restrictions must demonstrate that the restrictions were lawful, necessary in a democratic society, and proportionate to a legitimate aim.

While freedom of the press includes publishing information that might be considered dangerous or irresponsible, it does not always outweigh other rights. The Court observed that non-derogable rights, like the right to life, may take precedence in such cases. Given the substantial public hostility toward the petitioners, there was a real threat of violence from vigilante groups. This, coupled with the State’s positive obligations to protect their rights, justified the restrictions. The Court found that the voluntary press code would not have been sufficient. In light of the serious threat to the petitioners, it extended the “duty of confidence” to protect them. The injunctions were deemed necessary, proportionate, and lawful. However, the Court emphasised

⁵⁶ *Venables & Thompson v. News Group Newspapers Ltd.* (2001) 1 All ER 908.

that this was an exceptional case. It clarified that if only privacy rights under Article 8 of the ECHR were involved, the injunction would not have been granted.

Subsequently, the Queen's Bench issued a "Mary Bell Order" to safeguard the new identity and whereabouts of Maxine Carr, who, along with her boyfriend had been accused of murdering two children.⁵⁷ The case garnered extensive media attention due to its gruesome details, resulting in significant public outrage and threats to her life. The Court concluded that, in this context, her non-derogable rights under Articles 2 and 3 of the European Convention on Human Rights (ECHR), as well as her right to physical and psychological integrity, protected as a privacy right under Article 8 of the ECHR, were more compelling than the freedom of expression guaranteed under Article 10 of the ECHR.

In outlining the applicable test, the court emphasized that any restrictions on freedom of expression must be approached with caution. The court must ensure that such restrictions are both necessary and proportionate. In this instance, the current whereabouts of Maxine Carr were deemed irrelevant to public discussions regarding the murders or the measures needed to protect children. The European Court of Human Rights' decision in *Bensaid*,⁵⁸ which recognized mental stability as part of the guarantees under Article 8 of the ECHR, played a significant role in both previous cases discussed.

In an interesting development, the court in *A (A Minor), Re*⁵⁹ granted a similar order to protect the Article 8 rights of a minor child whose mother was under investigation for the deaths of her two older brothers. Unlike the previous cases, the non-derogable rights under Articles 2 and 3 of the ECHR were not at stake. Nonetheless, the court prioritized the principle of the best interests of the child and issued the injunction accordingly.

3.3. The Ruling in *NT1 and NT2 v. Google LLC*

The case of *NT1 and NT2 v. Google LLC*⁶⁰ illustrates how courts balance privacy rights and freedom of expression in claims involving the right to oblivion. Both claimants sought to have Google delist search results related to their past convictions. However, the outcomes diverged significantly due to the unique circumstances of each case. NT1 was involved in a dubious property business and convicted of criminal conspiracy in the 1990s. Although his sentence became spent, reports of his conviction remained online. He requested the delisting of multiple links, but Google only agreed to block one. In contrast, NT2 had a similar background but served a shorter custodial sentence for a conspiracy related to questionable environmental

⁵⁷ *Carr v. News Group Newspapers Ltd. & Ors.* (2005) EWHC 971 (QB).

⁵⁸ *Bensaid v. UK* (2001) 33 EHRR 10.

⁵⁹ *A (A Minor), Re* (2011) EWHC 1764 (Fam).

⁶⁰ *NT1 and NT2*.

practices. Like NT1, his conviction also became spent, yet Google declined his request to delist eight links, citing public interest.

The Court addressed two key issues: whether the claimants had the right to exclude search results for inaccuracy or unjustified privacy interference, and whether interim damages were necessary. It considered ten legal features, including that the rights under Articles 8 and 10 of the European Convention on Human Rights were expressly qualified, principles of interpretation under EU law, and the guarantees under the Rehabilitation of Offenders Act 1974, the Data Protection Act 1998, the Human Rights Act 1998, and the EU Charter of Fundamental Rights.

In its deliberation, the Court highlighted the sensitivity of the data and stressed that privacy does not inherently prevail over freedom of expression. Instead, it advocated for a careful focus on the specific rights at stake in each case. For NT1, several factors weighed against delisting. As a businessman, his role in public life, though not very prominent, influenced the Court's decision. The nature of the information about NT1 favoured continued accessibility. Further, although some inaccuracies existed in the reports, they were not significant enough to warrant a remedy. The information was factual and not deemed hate speech or libel. Additionally, the Court considered whether the information was sufficiently recent. Since NT1 was still engaged in business, albeit in a reduced capacity, public access to his past was justified. Furthermore, his lack of remorse and attempts to whitewash his history through reputation management services weighed against him. The serious nature of his crime also tipped the balance in favour of continued disclosure.

In contrast, NT2 had several factors working in his favour. His conviction was for breach of privacy, not dishonest behaviour, which made it less relevant to his integrity. He had admitted guilt and shown repentance, resulting in a short sentence. Unlike NT1, NT2 had not personally benefited from his actions. He was no longer involved in the same industry, reducing the relevance of the past information to his current life. Some of the contested information inaccurately suggested that he had derived personal benefit, supporting his case for delisting. A significant amount of time had passed since his conviction, which justified restrictions on access. The Court also considered NT2's family circumstances (as he had young children) which engaged his Article 8 ECHR rights. He also demonstrated harm to his business from the continued information accessibility. Moreover, the Court found no danger of him repeating his criminal behaviour.

Consequently, the outcomes for NT1 and NT2 diverged sharply. The Court dismissed NT1's claims, finding that his role in public life and the relevance of his conviction to the public interest outweighed his privacy rights. The inaccuracies in the reported information were not significant enough to warrant relief. Conversely, the Court granted NT2 relief, considering his remorse, shorter sentence, and lack of financial gain. The presence of a young family and the limited relevance of his past to his current activities were pivotal in the decision.

Hence, the Court ordered the delisting of certain search results for NT2 while dismissing all claims for NT1. Notably, no damages were awarded in either case. This landmark decision provides valuable insights into how courts navigate the complex issues underlying the right to oblivion. It emphasizes that no single factor determines the outcome. Instead, a holistic assessment is essential, weighing various elements against the public's right to information.

Conclusion

Indian Kanoon's pending appeal⁶¹ against the decision of the Madras High Court in *Karthick Theodore* presents a significant opportunity for the Supreme Court of India to clarify the scope of the right to oblivion, particularly in matters that implicate the principle of open justice, such as the accessibility of past criminal records. The case raises essential questions about balancing the public's right of access to such information with an individual's right to privacy, dignity, and autonomy under the Constitution. This is also an opportunity for the legislature to reconsider Section 12 of the Digital Personal Data Protection Act (DPDPA),⁶² which currently guarantees rights such as correcting inaccurate or misleading data, completing incomplete data, updating outdated data, and erasing personal data. However, the right to erasure is constrained by the requirement that data necessary for compliance with applicable laws may not be erased. Another important limitation of these rights is that they are only available in respect of personal data collected and processed with the explicit consent of the data principal, or when consent is inferred from the voluntary sharing of data for a specific purpose by the data subject. This consent-based framework restricts the scope of rights available to individuals and is a narrower version of the protections recommended in the 2018 Personal Data Protection Bill.⁶³

As the Supreme Court considers this appeal, it is a critical moment for both the judiciary and the legislature to ensure that privacy rights, including the right to oblivion, are adequately safeguarded against the challenges posed by the availability of digital records, while still respecting the open justice principle. Since the issue requires a balancing of fundamental rights, the Court must rely on the double proportionality framework to resolve the conflict. The double proportionality standard modifies the traditional four-stage proportionality test, ensuring that both competing fundamental rights are treated with equal respect.⁶⁴ It is a three-step process used where the Constitution does not prioritize one right over another over the other. First, the measure must be genuinely aimed at advancing both sets

⁶¹ *Ikanoon Software Development Pvt. Ltd.*

⁶² The Digital Personal Data Protection Act, 2023 s. 12.

⁶³ The Personal Data Protection Bill, 2018.

⁶⁴ *Association for Democratic Reforms v. Union of India* (2024) 3 SCR 417.

of rights and must have a rational nexus to this purpose.⁶⁵ Second, it should be the least restrictive means to achieve the goal, ensuring that no less restrictive and equally effective alternatives are available.⁶⁶ Finally, the measure must strike a fair balance between the competing rights, avoiding disproportionate restrictions on either right.⁶⁷ This ensures that any interference with one right is proportionate to the advancement of the other.

As noted by the Kerala High Court, the right to oblivion should not apply to ongoing or recent legal proceedings,⁶⁸ except in specific cases where the individual accused of a crime faces a real and serious threat to their life. This judicial restraint reflects the importance of the public's right to access information in matters of current legal relevance, while safeguarding individual privacy only in truly exceptional circumstances.

The first step in the balancing exercise should be to determine whether the individual requesting the right to oblivion has a reasonable expectation of privacy regarding the information in question, and whether the public has a legitimate right to access that information. This initial stage helps to establish whether there is indeed a conflict between the fundamental rights of privacy and access to information. The reasonable expectation of privacy depends on various factors. For instance, who the individual is matters: in case of a public figure the expectation of privacy diminishes. However, if the individual is a minor the expectation of privacy would increase significantly. The nature of the information also plays a key role. For example, in cases involving major crimes, the reasonable expectation of privacy may decrease. However, for individuals unjustly convicted under criminal law provisions that have since been declared unconstitutional, the reasonable expectation of privacy would increase. Additionally, how the information is presented is important. If the criminal records disclose personal identifiers such as photographs of the individual, there is a greater expectation of privacy, as they are more intrusive than identifiers like name and age.

At the same time, it must be assessed whether the public should retain the right to access the criminal records online. This involves determining the significance of the public having access to such information, whether through digitally available records of court judgments or search engine results linked to the individual's name. Several factors are relevant in this context. The nature of the crime is an important consideration. For example, serious crimes may justify public access to records, especially if the individual holds a continuing public role. Additionally, potential harm to the public arising from possible misconduct by the individual may be measured.

⁶⁵ *Association for Democratic Reforms v. Union of India.*

⁶⁶ *Association for Democratic Reforms v. Union of India.*

⁶⁷ *Association for Democratic Reforms v. Union of India.*

⁶⁸ *Vysakh K.G.*

The likelihood and degree of such harm should also be assessed. Other factors may include the time elapsed since the crime, the individual's efforts at rehabilitation, and whether the information could contribute to ongoing public discourse about safety and accountability. Balancing these factors will help determine the appropriateness of public access to online criminal records.

Once it is established that a conflict exists between the fundamental rights, the Court must evaluate whether the requested right to oblivion is both necessary and proportionate. Information related to crime plays a vital role in societal discourse and often serves as a catalyst for legal and social reforms. Therefore, as a general principle, the Court should disallow the remedy of erasure for online-accessible criminal records, except in cases of unjust convictions under provisions that have since been declared unconstitutional. In instances where the remedy of de-indexing search results is sought, the Court must determine whether de-ranking search results would be an equally effective alternative. If de-ranking is inadequate, de-indexing must be permitted since the criminal records will still be available online through alternative search prompts.

Finally, the Court should consider various factors, such as the harm caused by the continued accessibility of the information. This is especially pertinent if such access hinders the individual's reintegration into society. Other important considerations include the time elapsed since the conviction, the nature of the offense, and the individual's conduct during and after serving the sentence, all of which are essential for evaluating the possibilities of rehabilitation.

By working systematically through these stages and carefully weighing the relevant factors at each point, a fair and balanced approach may be achieved in respect of the right to oblivion in the context of criminal records, upholding the rights to privacy, dignity, autonomy, reputation, and the principle of open justice.

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