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**SERIES ON CYBER LAW: ISSUE 4**

# **RIGHT TO FORGOTTEN IN INDIA - CASE ANALYSIS OF JORAWER SINGH MUNDY VS. UNION OF INDIA & ORS.**

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1. **Facts** – This case is filed by Jorawer Singh (hereinafter referred to as the petitioner), an American Citizen of Indian Origin. In 2009, when the petitioner visited India, he was charged under the Narcotics Drugs and Psychotropic Substances Act (NDPS), 1985. Though later he was acquitted of all the charges by the trial court. In the appeal as well that was filed against the order of the trial court, the petitioner was set free by the Delhi High Court. (*Custom v. Jorawar Singh Mundy Crl. A. No. 14/2013*).
  - 1.1 The petitioner was given a clean chit of all the allegations from Indian courts. After this, he moved back to the US and pursued his professional career in law, and applied for various job positions. But in the employment process, he faced a lot of criticism and negative feedback by the employers at the time of conducting his background verification due to the fact that the judgments regarding his involvement in the drug case were available all over the internet, specifically the internet platform, namely, Google (Respondent 2), Google LLC (Respondent 3), Indian Kanoon (Respondent 4) and vLex,in (Respondent 5).
  - 1.2 Hence, the present writ petition was filed under Article 226 of the Indian Constitution before the Hon'ble High Court of Delhi asking for direction to be issued to the Respondents to take down the reported judgment by the Delhi High Court in *Custom vs. Jorawar Singh Munday* from their platforms as a right to privacy which is enshrined under Article 21 of the Indian Constitution.
2. **Issue** – Whether a court has authority to order the removal of information from the online platform and whether the Right to be forgotten with regard to such information can be availed under the Right to Privacy which is enshrined under Article 21 of the Indian Constitution.
3. **Judgment**
  - 3.1 The Hon'ble Delhi High Court started by stating that they have to examine the issue in the present case on the question which requires a balancing of the 'right to privacy' against the 'right to information' available to the general public, as well as 'maintenance of transparency' in the judicial records. In the landmark judgment of *K.S. Puttaswamy vs. Union of Indian* [(2017) 10 SCC 1] which recognized that the right to privacy as a fundamental right covered under Article 21 of the Indian Constitution but it didn't talk about the right to be forgotten. Though It stated that “*the right of an individual to exercise control over his personal data and to be able to control his/her own life would encompass his right to control his/her own life and his/ her existence on the internet.*” The literal interpretation of this stance implicates that the right to control personal data also means the right to control the sharing of personal information of the online platform and also erasing and ceasing the sharing of such information.
  - 3.2 In *Zulfiqar Ahman Khan v. Quintillion Businessman Media Pvt. Ltd &Ors.*[2019 (175) DRJ 600 it was observed that Right to privacy includes 'Right to be forgotten' and the 'Right to be left alone' and ordered the removal of certain posts on The Quint related to the allegations of sexual harassment against the plaintiff until the case is finally disposed of. The Court recognized the Right to be forgotten as one of the core right under the Right to privacy.
  - 3.3 In *Subhranshu Rout v. State of Odisha* [BLAPL No. 4592/2020] case, the Orissa High Court rejected the bail application of an accused who was alleged to have uploaded victim's sexual assault personal data on social media platforms. The court said that there is no legal standing on the right to be forgotten in the Indian Laws. The Hon'ble court directed the victim to seek relief from the appropriate authorities as this case didn't fall under the writ jurisdiction.

- 3.4 In *R. Rajagopal v. State of Tamil Nadu*, [1995 AIR 264] The Supreme Court observed that the right to privacy implies the right to be left alone. Every individual has a right to protect his privacy and has a choice not to share his personal information regarding everything and anything. It is always important to strike a balance between the right to privacy and freedom of expression.
- 3.5 The judgment of the Karnataka High Court in *Sri Vasunathan vs. the Registrar General*, [WP No. 62038 of 2016] where a father (petitioner) filed a writ petition asking for directions for removal of her daughter's name from an order passed by this court as it has negative consequences on her daughter's repute and relationship with her husband. These orders are easily available on online platforms and just by typing her daughter's name, the order reflects in the search results. The court observed that "*This would be in line with the trend in western countries of the 'right to be forgotten' in sensitive cases involving woman in general and highly sensitive cases involving rape or affecting the modesty and reputation of that person concerned.*" It held in favor of the petitioner and directed its registry to make sure that the name of the petitioner's daughter doesn't appear in the order anywhere wherever such order is available on the internet platforms.
- 3.6 Based upon the precedents discussed above, in the present case, the Hon'ble High Court of Delhi decided in the favour of the petitioner and held that as the social and professional life of the petitioner is hampered and his reputation is getting affected despite the fact that he was acquitted from all the criminal charges, he is entitled to relief and directed the Respondents Google and Google LLC to block the access to the judgment using their search engine.

#### 4. Conclusion

- 4.1 The Right to be forgotten is the right to have someone's personal information removed from the internet space as a matter of privacy to protect his personal data not being shared with the general public. It has its origin from the General Data Protection Regulation (GDPR), European Union, and laid down under Article 17(2), GDPR. Though, it is a new concept in India that is yet unexplored and not legally recognized by Indian law. Where on one hand many courts have recognized the right to be forgotten as an integral part of the Right to privacy and on other hand, various courts have rejected the pleas of removal of personal information from the online platforms on the ground that there is no provision in any Indian law mentioning the right to be forgotten, hence people are left with no relief and suffered from harmful after effects. This contradiction occurs because of no legislative sanction attached to this right. The Information Technology Act, 2000, the statute regulating the cyber world in India does not mention about right to be forgotten. Whereas the Indian Personal Data Protection Bill, 2019 does talk about the right to erasure or the right to be forgotten but we have to wait for the act to get enforced. Hence, the right to be forgotten is still evolving and struggling to be considered as a fundamental right in India. With the advent of technology, the concern of data privacy and data exploitation is bound to occur, and the right to be forgotten is one of the reliefs that can be claimed against any illegal or unwanted sharing of the personal information of anyone who is facing ill effects because of the availability of such content online. Its high time to legally recognize right to be forgotten as a core ingredient of right to privacy and hence, a fundamental right.

Judgment Link –

[[https://www.livelaw.in/pdf\\_upload/16186364774292021-393948.pdf](https://www.livelaw.in/pdf_upload/16186364774292021-393948.pdf)]

A copy of the judgment is annexed hereto at **page 3 to 4**.

2021 SCC OnLine Del 2306

In the High Court of Delhi at New Delhi  
(BEFORE PRATHIBA M. SINGH, J.)

Jorawar Singh Mundy ... Petitioner;  
*Versus*

Union of India and Others ... Respondents.

W.P.(C) 3918/2021 & CM APPL. 11767/2021

Decided on April 12, 2021

Advocates who appeared in this case:

Mr. Sanjay Kumar, Advocate

Ms. Shiva Lakshmi, Advocate for R-1

The Order of the Court was delivered by

PRATHIBA M. SINGH, J.:— This hearing has been done through video conferencing.

2. The Petitioner prays for removal of the judgment in *Crl.A. No. 14/2013* titled *Custom v. Jorawar Singh Mundy* from the Respondents No. 2, 3, 4 and 5's platforms i.e. Google, Indian Kanoon and vLex.in.

3. The case of the Petitioner is that he is a professional of Indian origin but an American citizen by birth. He claims to be managing investments and dealing with portfolios of real estate etc. When he travelled in 2009 to India, a case under the Narcotics Drugs and Psychotropic Substances Act, 1985, was lodged against him. However, finally vide judgment dated 30<sup>th</sup> April, 2011, the trial court had acquitted him of all the charges. An appeal was filed challenging this order of the trial court, and vide judgment dated 29<sup>th</sup> January, 2013, a Id. Single Judge of this Court upheld his acquittal in *Crl.A. No. 14/2013* titled *Custom v. Jorawar Singh Mundy*.

4. Thereafter, the Petitioner is stated to have travelled back to the United States and pursued law at the University of San Diego School of Law. He then realised that he is facing a huge disadvantage due to the fact that the judgment rendered by this Court was available on a google search to any potential employer, who wanted to conduct his background verification before employing him. According to the Petitioner, despite him having had a good academic record, he is unable to get any employment to his expectations, and the reason for the same, according to him, is the availability of this judgment online.

5. The Petitioner then issued a legal notice to Respondent Nos. 2 to 5 i.e. Google India Private Ltd., Google LLC, Indian Kanoon and vLex.in. Respondent No. 5 i.e. vLex.in is stated to have removed the said judgment, however, the other platforms have not yet removed the same. The prayer in this writ petition is thus to direct the removal of the said judgment from all the Respondent platforms, recognizing the Right to Privacy of the Petitioner, under Article 21 of the Constitution.

6. Issue notice to the Respondents No. 1, 2, 3 and 4, returnable on 20<sup>th</sup> August, 2021.

7. Ms. Shivalakshi, Id. Counsel, accepts notice on behalf of Respondent No. 1, and submits that if this Court directs the removal of the said judgment, MEITY would accordingly issue directions to the said Respondents No. 2-4 platforms.

8. The question as to whether a Court order can be removed from online platforms is an issue which requires examination of both the Right to Privacy of the Petitioner on the one hand, and the Right to Information of the public and maintenance of transparency in judicial records on the other hand. The said legal issues would have to

be adjudicated by this Court.

9. The Right to Privacy is well recognized by the Supreme Court in the Constitution Bench judgment in *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1. In *Zulfiqar Ahman Khan v. Quintillion Businessman Media Pvt. Ltd.* this Court had examined this issue and while granting an interim order, this court had held as under:

*"8. In fact, it is the submission of Id. counsel for the Plaintiff that the Plaintiff's personal and professional life has been hampered irreparably and further damage is likely to be caused if appropriate relief is not granted against the republication of these two articles. The original publisher having already agreed to pull down the same, this Court having directed that the same ought not to be republished, the Plaintiff, thus, has a right to ensure that the articles are not published on multiple electronic/digital platforms as that would create a permanent atmosphere of suspicion and animosity towards the Plaintiff and also severely prejudice his personal and professional life. The printouts of the articles from [www.newsdogapp.com](http://www.newsdogapp.com), which have been shown to the Court, leave no doubt in the mind of the Court that these are identical to the articles published on [www.thequint.com](http://www.thequint.com), which have already been pulled down.*

*9. Accordingly, recognising the Plaintiff's Right to privacy, of which the 'Right to be forgotten' and the 'Right to be left alone' are inherent aspects, it is directed that any republication of the content of the originally impugned articles dated 12<sup>th</sup> October 2018 and 31<sup>st</sup> October 2018, or any extracts/or excerpts thereof, as also modified versions thereof, on any print or digital/electronic platform shall stand restrained during the pendency of the present suit.*

*10. The Plaintiff is permitted to communicate this order to any print or electronic platform including various search engines in order to ensure that the articles or any excerpts/search results thereof are not republished in any manner whatsoever. The Plaintiff is permitted to approach the grievance officers of the electronic platforms and portals to ensure immediate compliance of this order"*

10. Recently, the Orissa High Court in *Subhranshu Rout v. State of Odisha* [BLAPL No. 4592/2020, decided on 23<sup>rd</sup> November, 2020], has also examined the aspect and applicability of the "Right to be forgotten" *qua* Right to Privacy, in a detailed manner including the international law on the subject.

11. It is the admitted position that the Petitioner was ultimately acquitted of the said charges in the case levelled against him. Owing to the irreparable prejudice which may be caused to the Petitioner, his social life and his career prospects, inspite of the Petitioner having ultimately been acquitted in the said case *via* the said judgment, *prima facie* this Court is of the opinion that the Petitioner is entitled to some interim protection, while the legal issues are pending adjudication by this Court.

12. Accordingly, Respondent Nos. 2 and 3 are directed to remove the said judgment dated 29<sup>th</sup> January 2013 in *CrI.A. No. 14/2013* titled *Custom v. Jorawar Singh Mundy* from their search results. Respondent No. 4 - Indian Kanoon is directed to block the said judgement from being accessed by using search engines such as Google/Yahoo etc., till the next date of hearing. Respondent No. 1 to ensure compliance of this order.

13. Let counter affidavit be filed by all the Respondents within four weeks. Rejoinder, thereto, if any, be filed within four weeks thereafter.

14. List on 20<sup>th</sup> August 2021.