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The Right to Be Forgotten Meets the Right to Know

 **THE HINDU**

9 July 2026

POLITY**GS2**

CURATED & WRITTEN BY

**Bharat Choudhary**

UPSC Educator & Content Creator

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THE LIFT LINE

The right to be forgotten asks the law to let a person outrun their own record, but open justice asks the law to keep that record in the light, and a mature republic must find the seam between forgetting and knowing rather than choosing one over the other.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

The Delhi High Court has, in a 2026 matter, again grappled with the “right to be forgotten,” the claim that an individual may have personal information, including references in old judgments, delinked or de-indexed from public visibility. The case squarely tests informational privacy against the open-justice principle and the public’s right to access judicial records. For the exam this is a clean GS2 problem in fundamental rights, **statutory** (<https://ujyari.com/vocab/statutory/>) interpretation and the working of the judiciary.

GS Paper 2: fundamental rights and their reasonable restrictions; the functioning of the judiciary; the enactment and interpretation of laws such as the **Digital Personal Data Protection Act, 2023** (<https://ujyari.com/legislation/dpdp-act-2023/>).

For **Prelims**, hold the anchors: Justice K.S. Puttaswamy v. Union of India (2017) held privacy to be a fundamental right under Article 21; the Digital Personal Data Protection (DPDP) Act, 2023 provides for erasure of personal data in defined circumstances; the right to be forgotten has no explicit statutory name in India but is read into privacy **jurisprudence** (<https://ujyari.com/terms/jurisprudence/>). For **Mains**, argue how proportionality reconciles privacy with open justice.

BACKGROUND AND CONTEXT

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The right to be forgotten entered Indian discourse after the Puttaswamy judgment of 2017, in which a nine-judge bench of the Supreme Court unanimously recognised privacy, including informational privacy, as intrinsic to the right to life and personal liberty under Article 21. The concept draws on European jurisprudence, notably the Court of Justice of the European Union's 2014 Google Spain ruling and later the EU General Data Protection Regulation.

Indian High Courts, including Delhi, Karnataka and Kerala, have since passed varying orders, sometimes directing the masking of a litigant's name in a reported judgment, sometimes declining. The DPDP Act, 2023 introduced a statutory right to erasure of personal data held by a data **fiduciary** (<https://ujiyari.com/terms/fiduciary/>) once the purpose is served, but it does not clearly extend to court judgments, which occupy a distinct constitutional space. The 2026 Delhi High Court engagement matters because it revisits the friction between an individual's desire to be delinked and the constitutional value of transparent courts.

THE CORE ARGUMENT / ISSUE

Privacy is a right, but not an absolute one

Puttaswamy recognised privacy as a fundamental right while making clear it is subject to reasonable restrictions that satisfy the tests of legality, legitimate aim and proportionality. The right to be forgotten is a facet of informational privacy, and it is strongest for private individuals in matters of no continuing public interest, for example a person acquitted long ago whose name resurfaces to their prejudice.

Open justice is a constitutional value in its own right

Courts in India sit and pronounce in the open, and their judgments form a public record that enables scrutiny of the justice system, guides future litigants and preserves institutional accountability. To erase names or delink judgments wholesale would corrode the very transparency that legitimises judicial power. The public's right to know how courts decide is not a mere convenience; it is a check on power.

INTEREST	CONSTITUTIONAL ANCHOR	WHEN IT SHOULD PREVAIL
Right to be forgotten	Article 21 privacy, Puttaswamy 2017	Private person, spent matter, no ongoing public interest
Right to know / open justice	Open-court principle, Article 19(1)(a)	Public figures, ongoing proceedings, public accountability
Statutory erasure	DPDP Act 2023	Personal data held by fiduciaries once purpose ends
Court records	Distinct constitutional status	Presumptively public, redaction only on strong cause

The DPDP Act does not settle the judicial question

The DPDP Act, 2023 gives a data principal the right to seek erasure of personal data, but judgments and court records are not ordinary commercial data. Reading a blanket erasure right into the corpus of judicial decisions would collide with open justice. The Act is a tool for the data economy, not a licence to rewrite the public record of the courts.

HOW TO THINK ABOUT THIS (ANALYTICAL FRAME)

Apply the proportionality test as the reconciling device. Ask, first, whether the person seeking delinking is a private individual or a public actor; second, whether the information retains genuine public interest or has become stale and prejudicial; third, whether a narrow remedy, such as de-indexing from search engines while retaining the judgment on the court's own record, can serve privacy without erasing the public record. The transferable rule: when two fundamental values collide, the answer is rarely to extinguish one but to find the least restrictive measure that honours both.

THE DIAGRAM IN WORDS

Individual seeks delinking of old record -> claim: right to be forgotten (Art 21 privacy, Puttaswamy 2017) vs open justice (public court record) -> apply proportionality: private vs public person + stale vs live interest + narrow vs blanket remedy -> option: de-index from search while judgment stays on court record -> privacy protected, transparency preserved

WAY FORWARD

- 1 **Adopt a proportionality-based test.** Direct courts to weigh the claimant's status, the continuing public interest and the availability of a narrow remedy before ordering any delinking.

- 2 **Prefer de-indexing over erasure.** Where privacy warrants relief, delink from search-engine visibility rather than deleting or masking the judgment on the court's own authoritative record.
- 3 **Clarify the DPDP boundary.** Legislatively or through rules, make explicit that the statutory erasure right does not extend to judicial records, which remain governed by open-justice principles.
- 4 **Issue judicial guidelines.** Have High Courts frame consistent guidelines so that the right to be forgotten is applied uniformly rather than case by case with divergent outcomes.

PYQ LINKAGE AND PRACTICE

UPSC has tested the right to privacy after Puttaswamy, the tension between fundamental rights and reasonable restrictions, and data protection in the digital age. This editorial links those themes to open justice and to the DPDP Act's erasure provisions.

Practice question: "The right to be forgotten and the principle of open justice both flow from the Constitution. Examine how the proportionality standard can reconcile the two in the digital era." (250 words, 15 marks)

Sources: *The Hindu* (<https://www.thehindu.com/opinion>)

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