

Right to Privacy vs Right to Know: Challenges and the way forward

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Search Engine for Indian Law

<https://indiankanoon.org>

Launch of Indian Kanoon

- Started in 2008 with 50K SC judgments & 1K central laws
- Aggregated laws and judgments into a common platform
 - *Took judgments inside court website and made them searchable*
 - *Ordered results by relevance model for legal documents*
 - *Interlinked them to simplify document discovery*
- Earlier legal documents were limited to legal community
- Half a million users per month in 2011

Court judgments on Google

- Legally judgments were “public” even earlier but were inaccessible to general people
- Availability on Google improved accessibility
- Google and Yahoo started showing more court judgments when someone searched a name
- Started getting emails that court judgments should be removed
 - *Mostly related to matrimonial cases*
 - *Some were requests, other threats. Some about karma.*

Requests for removing court docs

- 1 *I am the one who was accused in the case. As it is clear, I was acquitted by the court and the charges were not true at all. My only mistake was to fall in love with a girl which was not accepted by her parents. Since then I have faced many problems including loosing the girl I loved so much, the presence of this case on your portal has been a cause of embarrassment to my family n especially to my parents. We are not able to get my elder sister married as someone found about this case against me from your portal. I am living a life of misery and hardship due to this stigma. I am just so*
- 2 *helpless that I have become a burden to my parents.*

I appeal to you to kindly remove reference to my behavioral disorder which is breach of law which mandate patients medical condition should not be made public. Its a confidential information between patient and his doctor.

Due to the mention of my psychological disorder, <XXX>| rejected my job offer and no company is willing to offer me interview let alone job. In India behavioral disorder is still consider a taboo and i am paying huge price for that.

Policy changes on Indian Kanon

- Earlier most complaints were regarding inability of people to re-marry due to public availability of their past marriages
- As a policy response, we started blocking matrimonial cases from generic search engines in 2012
- Later most requests that were denied were related to loss of business or people not hiring them due to past litigation
- No policy changes were done to accomodate it

Battle in the Courts

- First case filed in 2009 in Andhra High Court. Later disposed off.
- Many court cases were filed for name removal. Some granted and some denied.
- Primary argument in the cases was that the hardship faced by the party require court intervention
- A Gujarat HC made a smart point that HC rules do not allow third parties to take court decisions. Dismissed by court.
- A principle based approach was filed in Delhi HC
 - *Right to be forgotten*
 - *Based on a decision of the EU courts*

Is it not violation of privacy?

- Last year 9 judge bench of Supreme Court unanimously ruled that Right to Privacy is a fundamental right
- While it was important, SC has upheld right to privacy many times since Maneka Gandhi vs UoI (1978)
- SC has repeatedly upheld in last four decades that individuals have autonomy over personal choices and can control over dissemination of their personal information
- But the right to privacy is not absolute and is subject to own set of restrictions

Exceptions to the right to privacy

- In *R. Rajagopal (1994)*, SC laid out the contours of the right to privacy while dealing with the biography of a convicted criminal
 - *Held that right to privacy ceases to exist in matters of public records including court records*
- People have a right to know
 - *On what facts and arguments, a court came to a decision?*
 - *Appellate court decisions are also precedents in future cases*
- Courts are public repository of facts

The Right to Know

- Supreme Court has placed it as part of freedom of speech and expression (Article 19(1)(a))
 - *The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security*
(S P Gupta vs UoI, 1991)
- People have a fundamental right to know about public authorities
 - *Right to Information Act*

Right to know – Court judgments

- Individual Identity - A person was arrested by Kerala police after one man googled his details and read a court judgment about him
- Group Identity - Recently a journalist figured out about Lokniti Foundation that was abusing PILs to further Govt agenda in the Supreme Court
- Precedent - Mohd Adil Hussain took AMU to Allahabad HC when he was suspended. He self-represented himself in the court, used Indian Kanoon and succeeded
 - <http://www.openthemagazine.com/article/true-life/adil-hossain-versus-amu>

Right to Privacy vs Right to Know

- Once a personal dispute or a commercial dispute reaches the courts it becomes matter of public record
- Are people entitled to know all such disputes or entire details of such disputes just for the sake of transparency of the courts?
 - *Blanket exception to “public records” is too broad*
 - *Need to balance citizen’s right to privacy with people’s right to know*
 - *Courts should also respect people’s privacy to some extent*

Challenge to modifying court order

- Court judgments are repository of facts
 - *Acquittals & conviction*
 - *Income tax cases, cases against the State*
 - *Partition decree, succession decree*
 - *Even personal matters like divorce decree, adoption deed, maintenance*
- We cannot just go and arbitrarily change court judgments

Challenges - II

- Court documents are remembered by party names
- Many cases have rich history behind it
 - *Kedarnath vs State of Bihar, 1962 [Sedition]*
 - *Kesavananda Bharti vs Union of India, 1973 [Basic structure doctrine]*
- Any mangling of the names will impact historians and even ordinary citizens to understand how the case came to court

Proactive removal of sensitive info

- Important because data once released is difficult to remove
- Principle of harm to exclude victim names
 - *Currently only protection is to rape victims and that too only in the trial court judgments (Section 228A IPC)*
 - *Should be expanded to cover victims of molestation, sexual harassment etc and in all court documents*
- Name abbreviations and partial name anonymization in certain civil cases like divorce, child custody, child adoption etc
 - *Will impact court documents as repository of fact*
 - *Will impact when people have to quote a certain judgment*
- No need to publish names of minors in any court document [Nth son/daughter of ..]

Regulating court judgments writing

- Summary of case findings, conviction and acquittal at the top of judgment
- Court judgments should not verbatim copy facts from the case into the judgment
- Only facts which are relevant for the judge to arrive at a decision should be placed in public domain
- Also people should stop assuming that going to court means that its decision will be private

Redaction after publication

- Right to be forgotten is a bad principle as it pits private party with private party
 - *Google doesn't do any manual review of urls to be blocked*
 - *Even on website owners counter claim, there is no review*
 - *Significant harm to the people's right to know*
- The law needs to draw bright lines and courts, in their administrative capacity, need to decide these issues rather than leaving it to each individual publisher
- Should be based on the principle of harm that is demonstrable or to correct an error that caused certain facts to be leaked in judgments

Privacy in public datasets

- Court judgments are still the first public dataset that is publicly available
- Many other datasets are coming up
 - *First Information reports (FIRs) are public dataset*
 - *People lodge complaint against known or unknown person with full details about the crime in police station*
 - *Some may be true. Some may be concocted*
 - *Unverified allegations – No verification by any judicial body*
 - *Now being publicly published daily due to Supreme Court order*
 - *Almost entire Govt functioning is public*
 - *Tenders, projects, land details, land use etc*
- What happens when a search engine on top of these datasets are built?

Questions?