

RIGHT TO BE FORGOTTEN & PRIVACY: INDIAN PERSPECTIVE

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ABSTRACT

In an era we live every information we receive in one mouse click. The necessity to maintain an individual's privacy regarding his internet imprint is becoming increasingly important in order to protect one's inviolate personality and right to public non-interference in private issues. With the advent of Digital Eternity, everyone is entitled to a second chance in both our digital and real life. With the introduction of the internet, these mails, social media accounts, and online archives have become permanent extensions of our faulty memories. The Right to Forget gives people a second chance to break free from the confines of their past. The ability to forget is part of human nature. Because of technological breakthroughs, forgetting is becoming the exception rather than the rule.

People develop and grow, in contrast to technology's inertia. They can evolve and recreate themselves free of the confines of their history. On Indian soil, the concept of the Right to Forget has yet to acquire traction. In addition, Indian courts have avoided delving further into its significance and potential difficulties. This research aims to define the right to forget/be forgotten, which would need to be protected by law, as well as lay a theoretical framework for this individual's right and assess the social necessity of establishing the right in the current socio-economic and technical context. The concept of privacy has been questioned as a result of the growing usage of the internet. In comparison to pre-internet and social media times, privacy is extremely difficult to enforce. As a result, the dispute over the right to be forgotten has raged for a long time, resulting in numerous landmark judgments and laws in many parts of the world. This version of the right to privacy, known as the right to be forgotten, has lately been brought up in court.

Keywords: Right to Forget, Personal Identity, Privacy, Freedom, Internet

INTRODUCTION

Information on the Internet is pervasive and appears to be available at all times in the digital era. Now that most of the world's knowledge is available at the click of a mouse, the way people retain and recall information has also altered dramatically. Without search engines, finding information would be nearly impossible, and social media platforms play a critical part in allowing people all over the world to communicate with one another. Individuals with the right to be forgotten can have their personal information erased from the internet, websites, or other public platforms in certain circumstances. On some reasons, an individual has the right to have his or her personal information removed from publicly available resources such as search engines like Google and social networking platforms like Twitter and Facebook. The law is now silent on the remedy for victims of rejected lovers posting sexually graphic video or images on social media in order to harass and intimidate women. It has become impossible to truly forget material uploaded on the Internet in the age of the World Wide Web. While such data can be put to a variety of uses, it can be harmful to the data subject if it is used in ways that are hurtful to the data subject's reputation or in ways that are contrary to the data subject's intended use without their agreement. Unsolicited and unpermitted material circulating around the Internet can have a number of negative consequences. ⁱThese negative consequences can range from brief embarrassment to social antagonism and melancholy. As a result, if privacy cannot be maintained from the start, it can be done by granting individuals the ability to retrospectively delete information that may be detrimental. The seeming indestructibility and quick accessibility of information on the internet has come at a cost. Search engines and social networking platforms both make material available that people might want to keep "private" or secret, such as news articles about prior crimes, embarrassing old images, or sex films posted by ex-partners. ⁱⁱVarious sorts of information, whether true or misleading, obsolete or out of context, can injure people and jeopardise key values like dignity and personal autonomy, which are protected by the right to privacy under international human rights law. Private firms, on the other hand, capture and store large amounts of data, including internet buying patterns, cultural tastes, political opinions, and lists of visited websites. All of these advances have raised worries about personal information being misused or abused for illegal purposes, such as identity theft. Individuals are increasingly attempting to reclaim control over their identity and personal information online, which is unsurprising. To overcome this scenario a right is being evolved i.e. the Right to erasure is another name for the Right to be Forgotten. The European Union

introduced the Right to be forgotten for the first time in May 2014. There is currently no law in India that expressly recognizes the Right to be forgotten. This paper proposes the concept of the right to forget, which relates to the restriction of organizations' and individuals' ways of using personal information and, thus, extends beyond personal data protection, based on the idea that people, as individuals, have already lost control over the circulation of their personal information and that regaining that control is extremely difficult.

The progress of artificialisation or externalization of human memory has been brought about by the prevalence of information and communication technology centered on database and network technology throughout society, which forces people to refresh their memory or prevents them from forgetting their past by providing personalized, paternalistic services based on digital records stored in the external human memory. Forcible recollection has negative impacts on personal identity development and intellectual ability, hence creating the human right to forget/be forgotten is important from a social standpoint.ⁱⁱⁱ The right to be forgotten differs from the right to privacy in that the latter refers to information that is not publicly available, whereas the right to be forgotten entails erasing material that was publicly available at the time and preventing third parties from accessing it. The Right to be Forgotten allows individuals to have specific material or data about themselves removed from the internet, such as papers, images, and videos, so that it can no longer be retrieved by internet search engines.^{iv} The grey area is the potential for such results to have an adverse impact on a person's online reputation for an infinite period of time if they are not deleted.

RIGHT TO BE FORGOTTEN

^vThe "right to be forgotten" usually refers to a remedy that allows individuals to request that search engines remove information about them that appears after a search for their name. It can also relate to requests for certain information to be removed from websites' hosts. Individuals' right to "choose for themselves when, how, and to what extent information about them is conveyed to others" or a right that allows the individual additional control over information about them has been considered more widely. Even though it pertains to information that is, to some extent, public, it has been classified as a privacy right. Neither international human rights instruments nor state constitutions officially recognize the "right to be forgotten." Its breadth is mainly ambiguous, ranging from a relatively limited right covered by existing data protection

law to wider conceptions embracing reputation, honour, and dignity protection. ^{vi}It was brought to the fore by the Court of Justice of the European Union (CJEU) judgments in the Google Spain case in 2014.

LEGAL FRAMEWORK IN INDIA

In India, the current data protection regime, which is governed by the Information Technology Act of 2000 and its provisions, does not recognize an individual's "right to be forgotten." The Personal Data Protection Bill: 2019 PDP Bill, based on the Report of the Justice B. N. Srikrishna Committee, finally seeks to grant statutory protection to this right after lengthy debate and judicial inconsistencies on the matter. The Right to be forgotten is part of an individual's right to privacy, which is governed by the Personal Data Protection Bill, which Parliament has yet to adopt.

The 'right to erasure' under the General Data Protection Regulation (GDPR) of 2016 was a major inspiration for this (GDPR). ^{vii}Despite the fact that the 'Right to be forgotten' is not included in the Sensitive Personal Data Information (SPDI) Rules, there are certain court precedents in India. It enables a person to request that private information be removed from the Internet. The concept has gained acceptance in certain countries, while the right is not recognized by Indian law, it has recently been ruled to be an integral aspect of the right to privacy by Indian courts. Individuals with the right to be forgotten can request that their personal data be deleted from organizations. ^{viii}The "right to be forgotten" is a common moniker for a right that was established in the European Union in May 2014 as a result of a European Court of Justice Judgments. Its origins is in a judgments by the European Union's Court of Justice in Google Spain SL v. Agencia Espaola de Protección de Datos, which included RTBF for the first time under the right to privacy. ^{ix}The Court concluded that European data protection legislation affords people the right to request that search engines like Google remove particular results for searches involving their names. Search engines must evaluate whether the information in question is "inaccurate, inadequate, irrelevant, or excessive," as well as if there is a public interest in the information remaining available in search results when selecting what to delist.

The Supreme Court recognized the right to privacy a basic right in a landmark decision in 2017. "The right to privacy is safeguarded as an integral aspect of the right to life and personal liberty

under Article 21 and as a part of the freedoms granted by Part III of the Constitution," the court said at the time.

For the first time, the Orissa High Court, an Indian constitutional court, raised the issue of an individual's right to be forgotten online, arguing that Article 21 of the Indian Constitution, which deals with Right to Life and Personal Liberty, should be enforced as a remedy for victims whose compromising information was made public online. It is commonly characterized as an individual's right to have public access to his or her personal information on the internet removed or limited. In *Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd.*, the Delhi High Court acknowledged the "right to be forgotten" and the "right to be left alone" as important parts of an individual's existence. Justice Sanjay Kishan Kaul of the Supreme Court of India held in *Justice^x Puttaswamy v. Union of India* that individuals have the freedom to put and remove data from internet sources in both tangible and intangible forms. "An individual's right to exercise control over his personal data and to be able to regulate his or her own life would equally embrace his or her right to control his or her existence on the Internet," Kaul said.

ENFORCEMENT ISSUES

- ^{xi}The right to be forgotten faces numerous legal and technical obstacles in its Implementation.
- Because there are several ways to evade such bans, governments around the world have had a difficult time blocking or deleting pornographic or torrent websites from the Internet.
- Furthermore, ^{xii}search engines' filtering or delinking of URLs does not imply that such information has been removed from the Internet.
- There is also no method to prevent such data from being uploaded again.
- ^{xiii}The Data Protection Authority must decide whether online data should be kept (right to information) or deleted (right to be forgotten) from the internet.
- As a journalist must wait for the adjudicating officer's verdict, the right to be forgotten may become a threat to press freedom.
- The right to criticize public figures for their public policies based on previous remarks and actions will be jeopardized.

- Furthermore, a citizen requesting such information will be perplexed as to whether to contact the Central Information Commission or the Data Protection Authority.
- For the sake of the national interest, the state retains unrestricted powers to collect and process data without the requirement for consent.

AN INDIVIDUAL HAS THE RIGHT TO HAVE THEIR PERSONAL DATA ERASED IF THE FOLLOWING CONDITIONS ARE MET

- Personal data is no longer required for the purpose for which it was gathered or processed by an organization.
- When an organization relies on an individual's consent as the legal basis for data processing, that individual withdraws their consent.
- An organization relies on legitimate interests to justify the processing of a person's data, the individual objects to the processing, and the organization has no overwhelming legitimate interest in continuing the processing.
- Personal data is being processed for direct marketing purposes by an organization, and the individual has objected to this processing.
- An organization processed a person's personal data in an unauthorized manner.
- In order to comply with a legal rule or requirement, a company must delete personal data.
- To provide information society services, an organization has processed a child's personal data.

THE RIGHT TO HANDLE ANOTHER PERSON'S DATA MAY TRUMP THEIR RIGHT TO BE FORGOTTEN

- The information is being collected in order to enjoy the right to freedom of expression and information.
- The information is being used to comply with a legal requirement.
- The information is being used to carry out a task in the public interest or to exercise an organization's official power.

- The information being processed is required for public health reasons and is in the public interest.
- The information being processed is required for the practice of preventative or occupational medicine. This only applies when the data is processed by a health practitioner who is bound by a professional secrecy agreement.
- The information is vital to the public interest, scientific research, historical research, or statistical reasons, and its removal would be detrimental.

REGULATION ON PERSONAL DATA PROTECTION (GDPR)

The European Union implemented the General Data Protection Regulation on May 25, 2018. ^{xiv}Individuals have the right under the General Data Protection Regulation to request that their personal information be deleted or erased by contacting the organizers. The data subject has the right to demand from the controller the erasure of personal data about him or her without undue delay, and the controller has the obligation to erase personal data without undue delay, according to Section 17 of the General Data Protection Regulation.

RIGHT NOT TO BE FORGOTTEN vs. RIGHT TO INFORMATION

The country has experienced numerous issues involving the right to privacy, which is enshrined in Article 21 of the Constitution, since its foundation. ^{xv}The opinion in the Kharak Singh case was the first to point out that privacy is an important component of personal liberty and does not violate Article 19. Both articles can exist side by side, and neither is carved out of the other. Since then, other judgments involving lower benches have supported the right to privacy as a fundamental right. This can be shown in cases where a rape victim has a right to have her past forgotten, while a criminal cannot claim that he has the right to demand that his conviction not be mentioned in the media.

Until 2015, when a case in the Gujarat High Court ('HC') dealt with the removal of a non-reportable judgements from a website, the RTBF was a foreign idea in our country. The HC ruled that such material could not be removed because it would remain in the HC databases regardless. Despite the fact that the RTBF was not explicitly mentioned in this example, it indirectly allowed for discussion of this novel notion. The Karnataka High Court has made a

brief reference to the RTBF, describing it as a "trend of Western countries." In addition, a writ in the Kerala High Court has ruled in favor of the petitioner in the removal of the petitioner's name from specific websites with little explanation.

In today's socio-political climate, it's critical to recognize that data protection laws modelled after EU guidelines will not meet our country's needs.^{xvi} This is because of the following factors: To begin with, India's privacy law differs significantly from that of the European Union. This means that, in India, privacy is viewed in a different light than it is in Western countries, owing to cultural differences. While we are an innately "collective" culture, the EU places a higher value on the concept of "individualism." In a strong culture of trust, Indians appreciate both the individual and social aspects of privacy. As a result, the definition of privacy cannot be applied to both regions at the same time case of ^{xvii}Sri Vasunathan v. Registrar General, in which the father of a girl requested that his daughter's name.

The Karnataka High Court recognized the right to be forgotten for the first time in the e removed from the copy of the order and that the High Court issue an order instructing search engines not to mention his daughter's name in that order. The petitioner argued that his right to privacy had been breached since disclosing personal information about his daughter in a public forum could jeopardize her reputation in society as a result of her previous criminal convictions.

In Jorawer Singh Mundy vs. Union of India & Ors, the Petitioner's contention is that he is an American citizen of Indian ancestry who handles stocks and real estate portfolios, among other things. When he visited India in 2009, and he was charged under the 1985 Narcotics, Drugs, and Psychotropic Substances Act (NDPS). However, the trial court cleared him of all allegations in a ruling dated April 30, 2011. Following that, an appeal was filed disputing the trial court's decision, and in CrI.A. No. 14/2013 titled Custom v. Jorawar Singh Mundy, a Single Judge of the Delhi High Court maintained his acquittal in a ruling dated 29th January, 2013. When the Petitioner returned to his native country, he encountered considerable difficulties in his professional life because the High Court's decision on appeal was available on Google for any possible employer to see if they chose to run a background check before hiring him.

The Petitioner had initially sought that Google India (Respondent No. 2), Google LLC (Respondent No. 3), Indian Kanoon (Respondent No. 4) and vLex.in (Respondent No. 5) remove the said verdict due to the aforementioned issue. Except for Respondent No. 5, none

of the other Respondents took action in response to the Petitioner's request. As a result, the current Writ petition was filed, asking for instructions to be issued to the Respondents to delete the aforementioned ruling from all of the Respondents' respective platforms, while also acknowledging the Petitioner's Right to Privacy under Article 21 of the Constitution.

The legal problem before the Hon'ble Court in this case was to strike a balance between the Petitioner's Right to Privacy and the public's Right to Information, as well as the preservation of transparency in judicial records, if a Court order was removed from internet platforms. As a result, Google India and Google LLC were ordered to delete the ruling in *Custom v. Jorawar Singh Mundy*, dated January 29, 2013, from its search results. Furthermore, Indian Kanoon has been ordered to prevent the stated judgement from being viewed by search engines like as Google, Yahoo, and others until the next hearing date. The Union of India was ordered to ensure that the Court's directives in the above mentioned order were followed.

In 2016 the Kerala High Court passed an interim order requiring Indian Kanoon to remove the name of a rape victim which was published on its website along with the two judgments rendered by the Kerala High Court in Writ petitions filed by her. The court recognised the Petitioner's right to privacy and reputation, without explicitly using the term 'right to be forgotten'.

In *Zulfiqar Ahman Khan v. M/S Quintillion Business Media Pvt. Ltd. and others*, Ahman Khan requested that articles critical of him be removed from the news website *The Quint*. The right to be forgotten and the right to be left alone, according to the Delhi High Court, are important parts of an individual's existence.

The Gujarat High Court dismissed a plea seeking "permanent restraint on public exhibition of judgement and order" on an online repository of decisions and indexing by Google in ^{xviii}*Dharamraj Bhanushankar Dave vs State Of Gujarat*, Special Civil Application No. 1854/2015. The Petitioner had been acquitted of multiple charges by the Sessions Court and the High Court, and the judgement in question had been designated as 'unreportable.' The petition was dismissed because the petitioner was unable to identify any legal provisions that threatened his right to life and liberty, and because posting on a website does not constitute "reporting" of a ruling because it is not a court document.

In *Subhranshu Rout v. State of Odisha* the Court cited several High Court rulings as well as the Personal Data Protection Bill's provisions. In this case, the defendant was accused of sexually

assaulting a woman and then posting a video of the occurrence on a social media platform. Despite the fact that the accused deleted the films after police involvement, the Court recognized the impact the release had on the victim's mind. The court also stated that the issue of consent would be immaterial in this case (which was argued by the accused). While the court denied the accused bail, it did state that the victim or the prosecution might petition the court to have her rights safeguarded by having the content removed. The Court further stated that the right to be forgotten is an inherent aspect of the right to privacy, and that this right must be accompanied with a mechanism for deleting content from intermediary servers in order to be meaningfully exercised.

SUGGESTION

There is currently no law in India that expressly recognizes the Right to be forgotten. On the Other side, if an individual's previous actions are made public, the public will have easy access to read/view those erroneous actions and will condemn that person based on those actions. This might result in psychological and emotional distress for the individual, as well as having an impact on his current life. However, judicial judgments have suggested that it was inherent under Article 21 of the Constitution. There must be a balance between the right to privacy and protection of personal data (as defined by Article 21 of the Indian constitution) and Internet users' freedom of information (as defined by Article 19). A comprehensive data protection law must address these concerns while minimizing the conflict between the two fundamental rights that make up the Indian constitution's golden trinity (Art. 14, 19, and 21).

- If the provision is not enacted it would definitely will cause substantial damage or harm due to the availability of the search results linked to their name.
- The Right is required in order for people to have more and greater control over their personal information on the Internet.
- Victims of sexually explicit videos/pictures frequently placed on social media platforms by perpetrators to frighten and harass women may be able to use the Right to be forgotten as a remedy.
- Countries must consider how to develop the appropriate constitutive principles for the logical space of online information.

CONCLUSION

Many constitutional flaws plague the right to be forgotten, making it incompatible with its Indian context. Article 19 of the Indian Constitution preserves individuals' freedom of expression and allows an individual to post content online about another person as long as it is not prohibited by statutory law. As a result, the GDPR's broad definition of personal data cannot be protected under the constitution since it would violate the right to freedom of expression. As a result, the right to be forgotten in its current version would be incompatible with the Indian context, both substantively and procedurally. The right to be forgotten is a complicated subject since it blurs the line between the right to privacy and the right to free speech and expression and therefore the Right to be forgotten must be established statutorily under Indian law and must apply to both private individuals and the government.

ENDNOTES

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