

The Right to Be Forgotten in India: Balancing Privacy Rights and Freedom of Expression in The Digital Era

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Abstract- We currently live in an information age where a huge chunk of information is readily available online. The information available can be both useful and damaging. At certain instances, an individual may seek to be rid of a specific incident that occurred years ago. The right to be forgotten essentially enables an individual to make a request to have personal data removed from the internet. In India, this notion is currently a proposition to be developed. The Indian courts are in the process of determining the way it should operate alongside both the Right to privacy and the Right to free speech. The Digital Personal Data Protection Act 2023 is a legislated mechanism to facilitate privacy of individuals. This paper aims to analyse what the Right to be forgotten signifies, its operational modalities and significance. The Right to be forgotten is primarily a deal because it enables individuals to exercise greater control over their information.

Keywords: Right to be forgotten, right to privacy, right to free speech, Digital Personal Data Protection Act, Human Dignity

I. INTRODUCTION

Today, life is impossible without the internet. Everything is accessible at our fingertips. Yet, at the same time personal data is all over the internet too. Often this data can be embarrassing or hurtful. Hence, the right to be forgotten is essential for these instances as an avenue to get the data removed. Previously, we lived in a world where forgetting was possible. Now, the internet makes these endeavours a more arduous task. Therefore, the right n. The right to be forgotten is essentially about finding a balance between the right to privacy and the right to free speech. This has become a deal for now. The concept first emanated in the European Union.

The Court of Justice of the European Union laid down that every person has a right to get their personal data removed from search engines. India has begun contemplating on this matter as an ideal which

needs development. The courts in India are grappling to find a legal solution.

II. RESEARCH QUESTIONS

1. Could the right to be forgotten become a component of the Right to Privacy under the Indian Constitution?
2. How have the Indian courts approached the issue of Right to be forgotten so far?
3. What is the stand of the Digital Personal Data Protection Act, 2023 regarding the Right to be forgotten?
4. What is the way to balance the right to be forgotten and the Right to free speech?
5. What can India learn from Europe regarding Right to be forgotten? # III. Research

III. OBJECTIVES

1. To determine the meaning and implications of the Right to be forgotten.
2. To evaluate the operative modality of the Right to be forgotten in India.
3. To examine the judicial stance adopted concerning the Right to be forgotten in India.
4. To identify the position on the Right to be forgotten as stated in the Digital Personal Data Protection Act, 2023.
5. To identify potential measures to ensure a balance between the Right to be forgotten and the Right to free speech.
6. To analyses the approach of India versus Europe on the Right to be forgotten.
7. To suggest certain measures for amelioration of Right to be forgotten in India. #

IV. RESEARCH HYPOTHESIS

It is hypothesized that the Right to be forgotten is inherent in Right to Privacy as contemplated under Indian Constitution and is not absolute but must be balanced against the Right to free speech.

V. METHODOLOGY. RESEARCH

The present research adopts an analytical method to analyse laws, judicial pronouncements, academic literature, and case-studies concerning the Right to be forgotten.

VI. LITERATURE REVIEW

Various scholars and juridical bodies have discussed the Right to be forgotten previously. The concept is primarily rooted in the writings of Samuel D. Warren and Louis D. Brandeis on the right to be let alone. Alan F. Westin also identified privacy with control over personal information. Viktor Mayer-Schonberger has argued that the age of the internet makes it impossible to forget, therefore the need to protect it arose. Court of Justice of European Union held that everyone must have the Right to be forgotten. It spurred debates regarding this right.

India also began deliberating over the notion of right to be forgotten when Supreme Court held that Right to privacy is a constitutional right under the constitution of India. Digital Personal Data Protection Act 2023 acts as one of the important laws to protect an individual's data online. Generally, everyone accepts the fact that the Right to be forgotten is not absolute and must be balanced with the Right to free speech.

VII. CONCEPTUAL FOUNDATIONS

The Right to be Forgotten the Right to be Forgotten (RTBF) is relatively a new legal concept. It primarily empowers individuals to manage the data associated with their identity over the web. RTBF enable people to make requests for removing irrelevant and inaccurate personal data related to them. ## What is RTBF? RTBF basically hinges upon the concept of privacy.

Privacy essentially encompasses control of the personal data, its storage and its sharing. Privacy is directly related to human dignity which further relates to enabling individuals to move past difficult times or events. ## History of RTBF the notion of Right to be forgotten originated from a judgment rendered by the Court of Justice of European Union. The CJEU provided that individuals shall have a Right to get irrelevant links deleted from the search engine pages. RTBF is consequently now a de facto right in European nations.

Challenges and Controversies

However, it is pertinent to state here that Right to be forgotten is not without challenges. It is debated that RTBF would potentially curb freedom of speech and historical accuracy. To address these issues modern RTBF frameworks, employ precisely structured standards.

VIII. CONSTITUTIONAL FOUNDATIONS OF RTBF IN INDIA

A. Privacy as a fundamental right. Article 21 of the Indian Constitution guarantees every person Right to life and personal liberty. Supreme Court in its path-breaking judgment in Justice K.S. Puttaswamy v. Union of India, held that privacy is an inalienable right which comes within the purview of Art. 21

B. Informational Self-Determination the Right to informational self-determination is considered a facet of individual autonomy and implies an individual's ability to control data related to him. This was recognised by the Supreme Court which found that an individual's interest lies in having control over their personal data.

C. Dignity and Reputation Right to human dignity is enshrined in the Constitution of India. The Supreme Court has recognized that dignity has to do with how we treat an individual as persons. The right to be forgotten plays a vital role in maintaining and preserving one's dignity and reputation.

D. Privacy Jurisprudence prior to Puttaswamy in India, the Right to privacy was a recognized principle even before the Supreme Court's pronouncement in the Puttaswamy case, but was not treated as a

fundamental right. The earlier judgments contributed immensely in evolving the present privacy jurisprudence.

IX. JUDICIAL EVOLUTION OF RTBF JURISPRUDENCE IN INDIA

A. Subhranshu Rout v. State of Odisha: -
Insurance Rout v. State of Odisha, Orissa High Court made the first observation on the Right to be forgotten and held that the victims of privacy violations should not suffer digitally imposed embarrassment and degradation

B. Jorawer Singh Mundy v. Union of India: -
In Jorawer Singh Mundy v. Union of India, RTBF was given recognition by the Delhi High Court, which ruled that references that were detrimental to the petitioner's professional prospects should be erased

C. Ashutosh Kaushik v. Union of India the Delhi High Court deliberated on the issue of the permanent visibility of past criminal records and media reports. While acknowledging the need for privacy and rehabilitation, it stressed the importance of interest and the freedom to express oneself

D. Judicial Trends and Emerging Principles
Through a case-by-case approach, Indian courts are seeking to strike a balance between the protection of privacy interests and the safeguarding of freedom of expression and the principles of democratic transparency. Increasingly, RTBF is seen as an adjunct of privacy right guaranteed under Article 21. The courts have consistently avoided giving a legal recognition of RTBF as a right and rather are following a contextual balancing of the relevant competing interests.

X. RTBF UNDER THE DIGITAL PERSONAL DATA PROTECTION ACT 2023

The Digital Personal Data Protection Act 2023 is a new law in India designed to govern how people's personal information is collected and used on the internet. The law is important because it protects individuals' data rights in the digital world.

The law requires that an individual can rectify, update, and erase his/her information where it is incorrect, outdated, or unnecessary to store it and that an information processor can only process an individual's data for the purpose for which it was sought and shall not process it for a different purpose.

One of the challenges in the Act remains in establishing guidelines and mechanisms to tackle information contained in news reports or the request to search engines for the removal of certain data and, in certain situations like those involving the government, there is no specific requirement to erase personal data. The lack of specificity has led some to argue that the law's privacy protection does not sufficiently cover individual's rights to forget their past.

XI. RTBF AND COMPETING CONSTITUTIONAL CLAIMS

The right to be forgotten involves balancing an individual's right to privacy with the broader constitutional claims to free speech, transparency, and democratic accountability. The Constitution explicitly guarantees the right to free speech, which not only allows individuals to express themselves but also includes the right to receive and impart information. If individuals could selectively erase their past online presence at will, it might erode the scope of free speech as individuals may feel empowered to make embarrassing information unavailable to others, thereby limiting free public discourse and exchange of ideas.

This right also worries some civil liberties groups and media bodies as it might lead to undue control and censorship of information that the public has a legitimate right to know about. The right to know is considered another vital right that ensures transparency in the workings of the government.

The doctrine of open justice ensures transparency and trust in the judicial system, whereby all court proceedings and judgments are kept open to public scrutiny so that they cannot be manipulated, however in this regard the courts may decide to limit information from being revealed so long as it is reasonable in order to protect an individual's privacy.

The doctrine of Proportionality ensures that individual rights are not curtailed to an extent which is greater than what is necessary. The principle applies as such that if a specific right, such as the right to be forgotten, is to limit another, the limitation imposed must serve a legitimate objective and should not exceed that which is required for achieving the objective.

XII. COMPARATIVE ANALYSIS: The EUROPEAN UNION

The EU passed a Right to be Forgotten law in 2014 which enables individuals to request that search engines remove certain results containing their information. Spain's data protection authority, with the support of the EU's highest court, has provided extensive guidelines on this matter. India lacks specific legislation, but the judiciary, aided by the Digital Personal Data Protection Act 2023, is attempting to create its own framework. However, India's approach deviates from the EU in significant ways.

XIII. RTBF IN THE AGE OF ARTIFICIAL INTELLIGENCE

In an era dominated by artificial intelligence, the challenges and implications of the right to be forgotten become even more complex. AI systems are designed to process vast amounts of data, and the increasing prevalence of AI-generated content, deepfakes, and sophisticated data-matching capabilities pose unique challenges to individuals seeking to exercise their right to erasure.

The current legal frameworks may not be adequate to address the complexities that emerge in the age of AI.

XIV. FINDINGS

The study found that although there is an acknowledged necessity for the right to be forgotten in India, and that judicial pronouncements have set certain benchmarks for it to be implemented, the lack of a comprehensive statute leads to uncertainties in its application and enforcement. Though the Digital Personal Data Protection Act 2023 has laid some foundation for the recognition of RTBF, there are aspects which require to be looked into and

expanded. There remains a continued struggle in balancing individual privacy with public interest.

XV. SUGGESTIONS

1. India should pass a statutory law of Right to be Forgotten.
2. Guidelines for processing requests should be drawn up and enforced.
3. Specific protocols are to be made regarding search engines and internet service providers.
4. Courts can always take recourse to the option of anonymisation to respect individuals' privacy and maintain public interest.
5. A specific guideline should be made for AI by regulatory bodies.

XVI. CONCLUSION

The rise of the digital world has changed our lives and the right to be forgotten empowers individuals with some control over their personal data. Though, this right should not in any way obstruct an individual's right to information or limit democratic discourse, the courts in India are constantly engaged in evolving the scope of individual privacy by interpreting it to meet the evolving challenges that present themselves. An adequate RTBF system is needed to safeguard individual's rights to privacy as well as protect the constitutional rights to speech and access to information.

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