

The right to be forgotten

Essentiality to the current legal framework

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1. Introduction

The “right to be forgotten” can be understood as the individual’s right to data or information that is private to the person. This right has become popular due to the advent of technology and the availability of private information on open platforms.

The “right to be forgotten” or “the right to erasure” is a specific sector of law that deals with individual rights to control the use of their data, including images, videos, etc., and to have it deleted from organizations’ records.

2. Background

The origins of the right can be traced back to the French jurisprudence on the ‘**Right to Oblivion**’, or **Droit a Loubli** in 2010. This right of oblivion assisted convicted criminals who had served their jail sentences by prohibiting the dissemination of details about their crimes and criminal lives.ⁱ

Though it was a concept that might have existed before the year 2014 it gained popularity via the European Union-based case **Google Spain SL, Google Inc v Agencia Española de Protección de Datos, Mario Costeja González** of the year (2014).ⁱⁱ This particular case led to the codification of the right in the General Data Protection regulations governing the data in the European Union, this particular right was an addition to the right of erasure to ensure individual privacy and ensure that the data was desired to be left unseen from the public stays away from them. The suitably titled rule mostly controls the erasure responsibilities of the individuals. *“This means that personal data has to be deleted right away where the data subject has withdrawn his consent and there is no other legal basis for processing, the data subject has objected. There are no overriding legitimate grounds for the processing, or erasure is required to fulfill a statutory obligation under the EU law or the right of the Member States. Furthermore, data must be deleted organically if the processing itself was illegal.”*

The controller must so comply with the data subject’s (individual owing the data) right to erasure while yet automatically subject to statutory erasing duties. The law does not specify in certain instances how the data should be deleted. The decisive factor is that personal data cannot be discerned without excessive effort any more. If the data media has been physically destroyed or if special software has permanently overwritten the data, then this is sufficient.

Furthermore, included in the GDPR is the right to be forgotten mentioned under Art. 17(2.)ⁱⁱⁱ:- *If the controller has made the personal data public and if one of the above reasons for erasure exists, he must take reasonable actions, considering the situation, to inform all other controllers in data processing that all links to this personal data, as well as copies or replicas of the personal data, must be erased.*

There is no one particular form for an erasure request, hence the controller might not demand any particular form. Still, the identity of the data subject has to be verified fittingly. Should the identification remain unproven, the controller might ask for more data or object to data erasing. Should a statutory obligation or request for erasure exist, this has to be carried out fast. The controller must thus verify the criteria for deletion without unnecessary delay. of an erasure request, the data subject has to be notified one month of the actions done or the causes of rejection. The second reflection of the right to be forgotten is in the notification duty. Apart from erasure, Art. 19 of the GDPR requires the controller to notify all data recipients about any correction or erasure, so using all the methods at hand and exhaust all the suitable actions.

One does not have a completely unqualified right to be ignored. It is particularly restricted to the right of freedom of information and expression collision. Other exceptions are if processing data subject to an erasure request is required to comply with legal duties, for archiving purposes in the public interest, scientific or historical research purposes, statistical purposes, or the defense of legal claims.

3. The Indian Scenario regarding the right to privacy

3.1. Right to privacy and the beginning of the journey

It wasn't until recent past in the year 2017 that the right to privacy was declared as a legal right and a fundamental right, the nine-judge bench in the case *of Justice K.S Puttaswamy & Another vs. Union of India and Others*^{iv} officially recognized the right to privacy as a fundamental right and gave it the status of a fundamental right, though there is no means of finding a formal definition of the word "**privacy**" we can trace the word through a lot of international conventions and case laws, The right to privacy must be determined on an individual basis. Privacy has a strong legal foundation globally. **Article 12 of the Universal Declaration of Human Rights (1948)**^v and **Article 17 of the International Covenant on Civil and Political Rights (ICCPR) (1966)**^{vi} protect individuals from "**arbitrary interference**" with their private, family, home, correspondence, honour, and reputation.

With the formal advent of the right to privacy as a fundamental right, the question of individuals' right to be forgotten also came into perspective.

The traversing boundaries between the *right to privacy* and the *right to be forgotten* are thin. Hence though the cases and scenarios sound similar they are not the same. Though the rights seem and sound to be similar and in general guard the interest of the individual only it is essential to understand the difference between the two to gain a finer understanding of both.

As Individuals, we frequently fail to differentiate between the right to privacy and the right to be forgotten. The right to privacy refers to the fact that there are some pieces of information about individuals that cannot be disclosed to the broader public in general because they are considered to be private to the individual. This includes passwords, account details, and other such information. The concept of the "right to be forgotten" emphasizes the need to remove material that has been made accessible to the general public from the many platforms on which it was previously accessible.

4. The Legal framework of the right to be forgotten in Indian Context

4.1. The Information Technology Act of the year 2000

The Information Technology Act of India came into effect in 2000 as a solution and response to the country's rising needs. However, with every passing decade, the problems regarding the data available online have become dire. The current act doesn't provide a proper respite for all the new issues that have culminated, and hence, they remain legal grey areas.

The act though doesn't deal with the right to be forgotten instantly it does have a provision that provides a semblance to a solution in the said regard Under the provisions of Section 43A of the Information Technology Act of 2000, ***"a corporation is obligated to compensate any individual who has suffered wrongful loss or wrongful gain as a consequence of the corporation's negligence in implementing and maintaining reasonable security practices and procedures in a computer resource that it owns, controls, or operates. This responsibility extends to any person who has suffered wrongful loss or wrongful gain."***^{vii}

4.2. The Data Protection Bill of 2019

The Justice B.N. Srikrishna Committee was responsible for drafting the proposed data protection bill that was presented to the public in May of 2018. The 'Right to be forgotten' is a relatively new right that attempts to protect personal data, and the proposed bill digs into the premise of creating this right and was probing whether to recognize the same as a legal

right. On the other hand, Ravi Shankar Prasad, who was the Minister of Electronics and Information Technology, presented the Personal Data Protection Bill to the Lok Sabha on the 11th of December, 2019. However, the bill was retracted as a legislative joint committee proposed 81 revisions to the bill, consisting of 99 sections. The administration just withdrew this bill after the committee made its suggestions.^{viii} Though the said bill was retracted the provisions that stood in aid of the said right.

4.3.The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.^{ix}

Though the intermediary guidelines haven't provided a respite for the impending problems that arise due to the availability of individual information online they have given one solution to the problem, these rules provide a grievance redressal mechanism that allows the aggrieved party to complaints with the appointed Grievance Officer to have content that was disclosed without the complainant's permission to be deleted or removed from the internet

4.4. The Data Protection Act of 2023

The Indian legislature's adoption of the Digital Personal Data Protection Act, of 2023^x, is a praiseworthy move since it codifies the right to erasure as a legal right and resolves judicial ambiguities surrounding the aforementioned right. Even though the current act has taken a progressive step towards making the right more available to the general public certain aspects to it have to be added to make the law perfect in ensuring that individual rights are safeguarded.

5. Judicial Contribution paving the path to the said right

6. Why India needs RTBF?

One key question arises as to why we need the right to be forgotten and multiple reasons can be cited for the same. Many reasons and grounds exist for accepting and enacting laws regarding RTBF, some of which are mentioned in the following paragraphs.

The right to own one's own identity and personal information should be granted to every individual in this age of digital technology due to the easy availability of the information. Information and communication technology makes it possible for both public and private organizations to significantly violate the right of an individual to privacy by enabling them to monitor and record all actions that take place on the internet. In the meantime, people are being pushed to post an unprecedented quantity of information about themselves on social

media platforms either due to legal necessities or due to social pressure, which includes a substantial amount of personal information that ends up floating on various public domains. Therefore, governments and lawmakers must preserve the right to data protection and privacy to prevent individuals from losing the capacity to manage their own identities and maintain their integrity. In addition, individuals ought to be the owners of their personal information. The ‘Right to be forgotten’ gives individuals the ability to reclaim at least minimal control over their digital lives.^{xi}

The vast majority of the personal information that is available to the public is there illegally, such as intimate photographs that have been uploaded to the internet without the owner’s permission. This information should not be accessible to other individuals because there is no justification for it.

It is of the utmost importance that the persons are compelled to live with mental depression as a result of the essay that was published under his name, which is completely irrelevant in the present day and age. Hence these right stands as an essentiality of the present time and age.

In *State of Punjab v. Gurmeet Singh and Ors.*^{xii}, The Supreme Court has said that victims of sexual crimes can be protected from being shunned by society if they remain anonymous.

In *Prem Shankar Shukla v. Delhi Administration*^{xiii} Justice Krishna Iyer, speaking for a three-judge Bench of the Hon’ble supreme court held: “...*the guarantee of human dignity, which forms part of our constitutional culture, and the positive provisions of Articles 14, 19 and 21 spring into action when we realize that to manacle man is more than to mortify him; it is to dehumanize him and, therefore, to violate his very personhood, too often using the mask of ‘dangerousness’ and security...*”

In *Sreedharan T v. State of Kerala*,^{xiv} The “Right to be forgotten” was seen by the Kerala High Court as a part of the “Right to privacy.” In this case, a writ petition was filed to protect the rape victim’s right to privacy under Article 21 of the constitution. The petitioner asked the court to tell search engines to take down the rape victim’s name and other personal details in order to protect her identity. The court sided with the petitioners and recognised their “Right to be forgotten.” They then told the search engine to take the petitioner’s name off of orders put on its website until further orders were given.

Recently the Delhi High Court in the case of *ABC v. State & ANR.*^{xv} Justice Amit Mahajan, observed that “... *there is no reason why an individual who has been duly cleared of any*

guilt by law should be allowed to be haunted by the remnants of such accusations easily accessible to the public. Such would be contrary to the individual's right to privacy which includes the right to be forgotten, and the right to live with dignity guaranteed under Article 21 of the Constitution of India..."

7. Conclusion

In India, the "right to be forgotten" is a right that is still developing and is in a very infantile stage. Even though this fundamental right overlaps with a few of the other fundamental rights that were earlier addressed creating a conundrum, it is yet a very significant right in the modern era that we are currently living in where individual data is available in the public domain where everyone can access it with a certain ease. Everyone has a bad period every once in a while, and sometimes they make mistakes that leave a stain on their character. However, after some time has passed and the accused has been exonerated, no one accepts him at the same level as they did before, even if it isn't because of a crime or a checkered past every individual does have a right to control his or her information in a manner they deem fit. For this reason, there ought to be a "Right to be forgotten" so that in the future, no one would be able to call his dignity into doubt.

A) Problems with the said right

Danger to proper journalism

If the Right to Be Forgotten is implemented, many journalists may face difficulties in communicating news and information to the public due to the long impending doom of every news being an infringement of someone's privacy and hence creating a long-standing negative effect on individual rights. It would throw the press and media industry into disarray and cause intense distress because they would have to wait for the adjudicating officer's decisions. Journalists will face difficulties in disseminating information and ideas through the media.

Violation of Freedom of speech and expression and right to information

Freedom of expression is a universal human right. The removal of online content from the Internet can affect citizens' freedom of expression. They would have trouble freely expressing their opinions through published articles, books, television, the Internet, or other media because removing information tilts the balance of power in favour of the person whose

information was made public, it also puts the public at large at a disadvantageous position they do not freely express opinions or beliefs on specific topics hence curtailing the right of one over the right of another.

“The right to be forgotten poses the greatest threat to free expression in the next decade,” Rosen said. Easier to view and judge a person based on their past behaviour which is available on the internet will play a pre-defined character assumption of the concerned person to the audience.

B) Suggestions

First and foremost, the right cannot be implemented effectively unless an acceptable time frame is established for the Data Protection Board to make decisions on cases and for the data fiduciary to decide on requests.

The key aspect that is noteworthy is that in addition to articles, thumbnails, photos, and videos, they are also covered by the right to be forgotten and can be deleted using the previously stated five criteria tests.

Additionally, the Act ought to cover compensation for the data custodian if the data principle's decision to reject the request is dishonest or devoid of any legitimate concerns about balancing the public interest or fundamental rights with the removal of data.

The most important reform about the right to be forgotten is that it should have a broad application and, should the request be granted, the data should be erased from all domains, not only the one where the applicant requested the removal. The right to erasure would be useless if the current path were followed because the relevant data could still be accessed using a different domain name, making the right useless. Only if the data cannot be accessed at all following the approval of the request would the goal for which the right was created be achieved.

Given how quickly the concept of relevancy is evolving in the modern world, it is possible that the relevant data was irrelevant at the time the right to be forgotten was sought, but that it will become relevant in the future for any number of reasons. One potential remedy for this issue would be for the Data Protection Board to establish an offline repository for links that are rendered unavailable through the exercise of the right to erasure. This way, the links could be restored when the Data Protection Board or the Honourable Courts so demand.

- ⁱ Ahmad, Z. (2022, August 23). Manupatra. Articles. Accessed November 21, 2024, from <https://articles.manupatra.com/article-details/Right-to-be-forgotten>.
- ⁱⁱ Google Spain SL, Google Inc v Agencia Española de Protección de Datos, Mario Costeja González, C-131/12.
- ⁱⁱⁱ Art. 17 GDPR, Right to erasure ('right to be forgotten'), URL: <https://gdpr-info.eu/art-17-gdpr/>.
- ^{iv} Writ Petition (civil) No. 494 of 2012.
- ^v Article 12, the Universal Declaration of Human Rights (1948).
- ^{vi} Article 17, the International Covenant on Civil and Political Rights (ICCPR) (1966).
- ^{vii} Section 43A Information Technology Act 2000. India Code. (n.d.). Retrieved November 22, 2024, from https://www.indiacode.nic.in/show-data?actid=AC_CEN_45_76_00001_200021_1517807324077&orderno=49#:~:text=%2D%2DWhere%20a%20body%20corporate,gain%20to%20any%20person%2C%20suc
- ^{viii} Right to be forgotten, Zubair Ahmad, Accessed November 21, 2024, from <https://articles.manupatra.com/article-details/Right-to-be-forgotten>.
- ^{ix} Rachit Garg, "Personal Data Protection Bill, 2019 and the right to be forgotten - iPleaders" iPleaders, 2022, Accessed November 21, 2024, URL <https://blog.iplayers.in/personal-data-protection-bill-2019-and-the-right-to-be-forgotten/#:~:text=The%20right%20to%20be%20forgotten%2C%20is%20the%20right%20of%20the,it%20is%20no%20longer%20needed.>
- ^x Digital Personal Data Protection Act, 2023, Accessed November 21, 2024, URL <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>.
- ^{xi} S. Neelavathi vs. The Managing Director cum Chairman, Tamil Nadu Housing Board, Writ Petition No.9478 of 2016.
- ^{xii} 1996 SCC (2) 384
- ^{xiii} 1980 (3) SCC 526
- ^{xiv} Writ Petition No. 9478 of 2016
- ^{xv} 2024 LiveLaw (Del) 1272