The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025 pp. 41-47

The Research Analytics
(A Peer Reviewed and Open Access Journal)

7

Right To Be Forgotten in India with Special Reference to Right to Privacy

1) **Dr. Arti**, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab.
2) **Debaditya Das**, University School of Law, Desh Bhagat University, Mandi Gobindgarh, Punjab

Abstract
The right to be forgotten has been placed in light of the recent CJEU Google Spain-Costeja-Gonzalez case. It has reopened a discussion on what the place of data protection is in the broader debate on privacy versus freedom of speech.
This paper will first establish an ideal definition of the right to be forgotten.
After presenting how the concept has evolved throughout history, this paper carries out a detailed evaluation of how the two major jurisdictions, the EU and the US, are dealing with the right to be forgotten, emphasizing the major differences in terms of ideology and legal structure. It shows that the right to be forgotten was not a new concept for neither EU nor US.

Keywords: *Right to be forgotten; Privacy; Data protection; United States; Google Spain;*

INTRODUCTION

It has become impossible to forget the information posted on the Internet. While such data can be uses to multiple, it can be detrimental to the data subject if it is used in ways that are harmful to the reputation of the data subject. There can be several adverse effects to unpermitted information floating in the Internet. Hence, if the privacy cannot be protected ab initio, then it can be done by conferring a right upon individuals to erase that which might be harmful.

The European Court of Justice introduced a right in 2014 on the "right to be forgotten" which provides a right to compel removal of the personal or information posted on the internet from online. It was recognized as a right for the first time by 1995 European Union Directive. In 2016 E.U. adopted a new General Data Protection Regulation & take effect from 2018.

It directly contradicts the freedom of speech and the right of the public to know. This is especially true in U.S., where the country's central values rest in the right of freedom of expression and against censorship.

Even in India, neither the judiciary nor the legislature has categorically expressed on this right. The right to privacy judgement, has been unanimously accepted. A comparative analysis of the jurisprudence of the right to be forgotten arising from a landmark decision was given Justice of the European Union.

At a time when right to privacy has been recently recognized as a fundamental right this article aims to trace new right to be forgotten in the Indian legal system.

The "right to forget" refers to the already intensively reflected situation. Basically, "Right to be forgotten" or "Right to be Erased" provides a right to individual to request for removal of his/her personal data through Internet. The simple rule behind data erasure is that whoever is using the

The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025

data has volunteer consent from the data owner. So, when the consent is withdrawn, the owner has a right to expression. The CJEU offered little guidance in determining to mandatory erasure due to irrelevance or inadequacy. The opinion on "right to be forgotten" differs immensely between America and EU countries.

LITERATURE REVIEW

The paper explains how there is a conflict between RTBF and the idea of open courts, where the public has access to court documents. RTBF aims to help people protect their dignity, but because India doesn't yet have strong laws for it, courts apply it inconsistently. Cases like ***Zulfiqar Ahman Khan Vs. Quintillion Business Media Pvt. Ltd***. and ***Jorawer Singh Mundy Vs. Union of India*** show that judges struggle to find the right balance between protecting privacy and maintaining public interest.

RESEARCH GAP

There is a lack of clarity in Indian laws on how RTBF should be implemented.

RESEARCH OUTCOME

The paper suggests that India's legal system needs to develop clearer guidelines and consistent judicial decisions to effectively balance the RTBF with other rights, such as freedom of expression and public interest.

RESEARCH PROBLEM

The ambiguity in the Indian legal framework with regard to the Right to Be Forgotten (RTBF), and its conflict with other fundamental rights, creates inconsistencies in judicial interpretation.

RESEARCH OBJECTIVE

This research paper aims to examine the ambiguities in India's legal framework concerning the Right to Be Forgotten (RTBF), particularly under the Digital Personal Data Protection Act (DPDPA), and how these uncertainties affect judicial interpretations in cases involving criminal records and reputational issues. It also seeks to explore the conflicts between RTBF and other fundamental rights, such as freedom of expression and public access to information.

RESEARCH QUESTIONS

1. What are the key legal ambiguities in the current Indian legal framework, particularly the Digital Personal Data Protection Act, regarding the Right to Be Forgotten (RTBF)?
2. How do Indian courts interpret and apply the RTBF in cases involving criminal records and online reputational issues
3. What are the conflicting interests between the RTBF and other fundamental rights?
4. What legal reforms or policy changes are necessary to create a more effective balance between individual privacy rights and the public interest in the enforcement of the RTBF in India?

RESEARCH HYPOTHESIS

The current legal framework and policy provisions in India, under the Digital Personal Data Protection Act and related judicial interpretations, inadequately address the enforcement of the Right to Be Forgotten (RTBF), leading to inconsistent application, especially in criminal records and reputational matters.

RESEARCH METHOD & METHODOLOGY

The research methodology for this legal paper involves a doctrinal analysis of existing laws and judicial precedents related to the Right to Be Forgotten (RTBF), utilizing secondary sources such as legal texts, case law, and scholarly articles. The research is qualitative in nature, court rulings, and the interplay of RTBF with fundamental rights. This is an analytical research that focuses on analysing and interpreting existing laws, judicial decisions, and legal principles related to the Right to Be Forgotten (RTBF).

SCOPE & LIMITATION OF THE RIGHT TO BE FORGOTTEN

The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025

The scope of this research is to analyze the Right to Be Forgotten (RTBF) within India's legal framework, particularly focusing on the Digital Personal Data Protection Act (DPDPA), judicial interpretations, and the conflict with fundamental rights. The limitation lies in its reliance on secondary sources for a doctrinal analysis, without incorporating empirical data or practical implementation challenges on digital platforms. The scope of the Right to be Forgotten under the DPDP Act involves a multifaceted understanding of how and where it can be exercised, who can request it, and what its limitations are-

1. Eligible Persons: Only Data Principals[9] , defined as individuals to whom the personal data relates, may exercise this right. They may also do so through a consent manager or legally appointed representative in specific situations, such as minors or incapacitated persons.
2. Entities Bound by the Right: The right is enforceable against Data Fiduciaries[10], which include companies, organizations, or even government bodies that collect, store, or process personal data digitally. These fiduciaries are responsible for honouring erasure requests, subject to applicable conditions and exceptions.
3. Conditions for Exercising the Right: A Data Principal may request the erasure of their data if:

- The data is no longer required in connection with the purposes for which it was gathered or processed, and the purpose for which it was obtained has been satisfied.
- Consent is withdrawn by the data principal.
- There has been illegal processing of the data.
- However, the data cannot be erased if it is:
- Required to adhere to any legal requirements,
- Essential for pursuing legal claims,
- Or in the public interest (for instance, for journalistic reasons, statistical analysis, or historical study).

CURRENT LEGAL FRAMEWORK IN INDIA

The present data protection in India, under the Information Technology Act, 2000 and the rules framed does not recognize an individual's "right to be forgotten" After debate and judicial inconsistency on the subject, the Personal Data Protection Bill: 2019 based on the Report of the Justice B. N. Srikrishna Committee. The PDP Bill now seeks to give statutory recognition to this right. This is inspired by the 'right to erasure' under the General Data Protection Regulation, 2016.

The criteria are used by the Adjudicating Officers to determine such right should be exercised or not. The decision of whether an individual should be allowed to exercise his "right to be forgotten" vests Adjudicating Officer under the PDP Bill. This is the only right provided for in the PDP Bill which requires an application before the Adjudication Officer.

JUDICIAL PRECEDENTS RECOGNIZING RIGHT TO BE FORGOTTEN

Though the 'Right to be Forgotten' is not found under Sensitive Personal Data Information but there are some judicial precedents on same in India. For the first time,

Orissa H.C. relying on the decision of the Supreme Court on ***K.S. Puttaswamy*** (Privacy-9J), Court stated that at present, "…there is no statue which recognizes right to be forgotten but it is in sync with the right to privacy."

Delhi High Court in the decision of ***Zulfiqar Ahman Khan Vs. Quintillion Business Media (P) Ltd[11].*** also recognized the "right to be forgotten" and 'Right to be left alone' as an integral part of individual's existence.

[9] Digital Personal Data Protection Act 2023, s 12(3).
[10] ibid.
[11] CS (OS) 642 of 2018

The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025

Karnataka High Court in ***Sri Vasunathan Vs. Registrar General***[12] recognized "Right to be forgotten" explicitly, though in a limited sense. As per request of Petitioner, kindly remove his daughter's name from a judgment including claims of marriage and forgery was upheld by the Court. It held that recognizing the right to be forgotten would parallel initiatives by 'western countries' which uphold this right when 'sensitive' cases including 'modesty' or 'reputation' of people were involved.

In Justice ***Puttaswamy Vs. Union of India***[13] the Supreme Court Justice Sanjay Kishan Kaul held that in its tangible and intangible form as the individuals have the right to put and remove the data from online sources. The right to be forgotten finds in Article 19 and 21 of the Constitution of India which does not provide unlimited right and subject to the certain restriction such as other fundamental right, abide with legal obligations.

RIGHT TO BE FORGOTTEN UNDER EU DIRECTIVES

The Right to be forgotten has evoked mixed responses from various jurisdictions. The developments have been rapid in the EU. Along with EU, the United States provisions on Right to forgotten have been discussed.

The European Union (EU) – European Union, has establish the Right to be forgotten in consolidated form. The Data Protection Directive was adopted way back in 1995 to regulate the processing of personal data. Subsequently General Data Protection Regulation was adopted in April 2016.

The Article gives the EU citizens the right to get personal data erased under six conditions, including withdrawal of consent to use data, it was collected. However, the request may not be entertained in some situations such as if the request contradicts the right of freedom of expression and information, or when it goes against public interest in the area of public health, scientific or historical research or statistical purposes. Thus, the GDPR of 2016 includes a specific protection in the right to be forgotten in Article 17.

In ***Google Spain Vs. AEPD***[14] and Mario Costeja GonzÁlez European Court directed Google to delete "inadequate, irrelevant or no longer relevant" data from its search results, when a member of the public requests so. The ruling has now is popularly known as the "right to be forgotten". The case involved one Mario Costeja GonzÁlez, a Spanish man who was unhappy that searching his name on Google threw up a newspaper article from 1998. When he approached to remove the article on 2009 and Gonzalez then approached Google to not display up the article when his name is searched. The court give the judgment in favour of the plaintiff. To exercise the right to be forgotten and request removal from a search engine, one must complete a form through the search engine's website.

To make "*right to be forgotten*" enforceable EU introduced in 1995. As of March 2017, Europeans had submitted over 715,000 requests to deactivate two million URLs. Google has deleted over forty-three percent of those, approximately 732,000 links. According to Article 17 of European Union Directives, the term "personal data" means *any information relating to the individual*. Such a definition raises ambiguities on issues. The Court of Justice of EU finally stated that: The search engine companies are controllers of their services.

There is one more case of Europe against Facebook, which does not talk about "right to be forgotten" but it gives an approach for erasing data. This case basically explains erasing data by not displaying it to anybody. In this case was filed by Max Schrems, who asked Facebook to provide him all his personal information had on him. Initially, he received PDF file more than 1000 pages. This file also includes information, which he thought was deleted. After that

[12] WP 62038 of 2016
[13] (2017) 10 SCC 1
[14] Case C-131/12, also known as ECLI:EU:C:2014:317.

The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025

he decided to file a complaint against Facebook. He had filed 22 complaints against Facebook, which includes subjects such as shadow profiling, excess personal data, not removing data, face recognition.

The question is whether the benefits of privacy for consumers outweigh any potential costs to consumers. The right to erasure does not provide absolute "right to be forgotten". Every individual has a right to erase personal data but in certain circumstances.

RIGHT TO BE FORGOTTEN UNDER USA DIRECTIVES

United States (US) – United States of America has well developed Legal system that protects the privacy of its citizens. In March 2017, New York state senator Tony Avella and assemblyman David Weprin introduced a bill proposing that individuals be allowed to require search engines and online speakers to remove information that is "inaccurate", "irrelevant", "inadequate", or "excessive". The bill was similar to the European Court of Justice's decision in ***Google Spain SL v. Agencia EspaÑola de ProtecciÓn de Datos***. Two important cases namely ***Melvin v. Reid[15] and Sidis v. FR Publishing Corporation[16]*** are to some degree relevant. Melvin's case an ex-prostitute was charged with murder then acquitted; she tried to assume a quiet and anonymous place in society.

RIGHT TO BE FORGOTTEN WITH RESPECT TO DATA RETENTION & GDPR

As Hetcher (2001) points out, the Internet can often lead to a "threat to personal privacy" due to the "ever-expanding flow of personal data online."

RIGHT TO BE FORGOTTEN IN INDIA

In India there are no specific data protection laws, here only found PDP Bill 2019. In the writ petition ***Sri Vasunathan Vs. The Registrar-General[17]*** before the Karnataka High Court, the Court observed that "This would be in line with the trend in western countries of the 'right to be forgotten' sensitive cases. involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned." Hence, the Court directed its registry that petitioner's daughter's name should not reflect in the case-title of the order in the body or the order in the criminal petition.

Gujarat High Court ***Dharamraj Dave Vs. State of Gujarat[18]*** pointed out that there is no attracted law to remove judgment from Google search or Indian Kanoon petitioner does not have sufficient arguments to prove "uploading judgment on the Internet is violation of Article 21 of the Constitution."

In 2017, **Justice K S Puttaswamy's case**, the "right to be forgotten" which is defined by The European Union Regulations, 2016, has been recognized. The following are some considerations given by the Supreme Court.

1. Children access digital media & doing chat, Bluetooth, web downloading, Emails, Facebook, Google, Hotmail, Instagram. So, the parents of such children can request for remove data or personal information regarding their childhood.
2. Go forward in life and should not be stuck by the mistake done in past. individual have the capacity to change his/her beliefs.
3. Whereas this right to control the spreading of personal information does not amount to total erasure history, as this right is a part of right to privacy.
4. Right to be forgotten means, when the data of any person is no longer required then he/she should be able to remove it from the system.

CONCLUSION

[15] California Court of Appeals112 Cal. App. 285 (1931)
[16] 113 F.2d 806 (2d Cir. 1940)
[17] Sri Vasunathan v. The Registrar General & Ors., http://www.iltb.net/2017/02/karnataka-hc-on-the-right-to-be-forgotten/
[18] Dharmraj Bhanushankar Dave v. State of Gujarat, 2015 SCC OnLine Guj 2019.

The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025

Present analysis examined the conception subsequent development of the right to be forgotten in European Union. Right to be forgotten requires harmonisation and balancing of the right to privacy and the right to freedom of expression. The right to privacy, which is a fundamental right in the European context. Right to Privacy has been recognized as a fundamental right in India.

Article 19 of the Constitution protects the right to expression of the citizens and allows an individual to post content online about another person the broad conception of personal data as defined in the GDPR cannot be protected under the constitution, as it infringes right to freedom of expression. The Right to be Forgotten needs to be established statutorily in Indian jurisprudence

"Right to be forgotten" is becoming very important for the legal aspect legal provisions for such right are getting complexes. "Right to be Forgotten" is viewed as a part of the right to privacy. In India, this debate is still continuing relating to specific provision for providing such a "Right to be forgotten". India is still dependent on ad-hoc jurisprudence to access this right. it is expected that there will be provision for such a right in the upcoming law on data protection.

REFERENCE

Legislations –

1. Constitution of India
2. Universal Declaration of Human Rights, 1948
3. Personal Data Protection Bill,2019
4. The Digital Personal Data Protection Bill, 2022
5. Information Technology Act of 2000
6. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
7. General Data Protection Regulation.

Books-

1. Bas, D.D., Shorter Constitution of India 16th edition, Lexis Nexis, (2021).
2. Pandey, Dr. J. N., Constitutional Law of India, Central Law Publications, Allahabad, 49th. Edition 2012.
3. Singh, M. P., The Constitution of India, Delhi Law House, Delhi, 4th. Edition 2015.
4. Keith A. B., Constitutional History of India, Allahabad Law Agency, Haryana, 10th Edition 2015.
5. Jain, M. P., Indian Constitutional Law, LexisNexis, Haryana, 5th. Edition 2013.
6. Jenning Ivor, Indian Constitution, Oxford University Press, Edition 1953.
7. Ignacio N. Cofone**,** The Right to be Forgotten, **Routledge**; 1st edition (7 February 2020).

Journals/ Article-

1. Pound, Roscoe, Legal Rights, *International Journal of Ethics*, Vol. 26, No. 1, pp. 92-116, (1915)
2. Kelly Michael J., Satola David, Right to Be Forgotten, Assessed on 12.12.2022 from - file:///C:/Users/user/Downloads/RighttoBeForgotten.pdf.
3. Iutisone SALEVAO, The rule of law: principles, issues and challenges, Legitimate Governance & Development in the Pacific pp. 1-35 (2005).
4. Chakraborty, Supallab, Right To Be Forgotten- The Most Recent Dispute In Data Protection, assessed on 12.12.2022 from https://thelawbrigade.com/wp-content/uploads/2019/05/supallab-right-to-forgotten.pdf.
5. Right to be forgotten assessed on 12.12.2022 from https://articles.manupatra.com/article-details/Right-to-be-forgotten

The Research Analytics ISSN (Online): 3107-6165
Volume 1, Issue 2, April-June 2025

6. Right to be Forgotten Overview assessed on 12.12.2022 from https://support.google.com/legal/answer/10769224?hl=en.
7. Right to be Forgotten, assessed on 18.12.2022 from https://www.mtsu.edu/first-amendment/article/1562/right-to-be-forgotten.
8. Everything you need to know about the Right to be Forgotten, assessed on 20.12.2022 from https://gdpr.eu/right-to-be-forgotten/.

Websites-

1. https://thedailyguardian.com/right-to-be-forgotten-a-critical-and-comparative-analysis/
2. https://www.researchgate.net/publication/371338423_RIGHT_TO_BE_FORGOTTEN_IN_INDIA-A_CRITICAL_ANALYSIS
3. https://blog.ipleaders.in/right-to-be-forgotten-3/
4. 31771.pdf

News Papers

1. The Indian Express
2. SCC Online Blog
3. The Print