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Case Comment: Jorawar Singh Mundy vs Union of India - Understanding the ‘Right to be Forgotten’ and ‘Right to be Left Alone’

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INTRODUCTION

“I find it wholesome to be alone the greater part of the time. Even with the best, being in the company is soon wearisome and dissipating. I love to be alone. I never found the companion that was so companionable as solitude.”¹

— Henry David Thoreau

Our constitutional makers framed the fundamental rights to safeguard human dignity above all things. In today’s digital era the personal information of a person aligns with his/her dignity. Therefore, to protect the human dignity of a person, his/her personal information must be dealt with very carefully. The right which immediately pops up in our mind on seeing

¹ ‘Henry David Thoreau: Quote’ (*Good Reads*) <<https://www.goodreads.com/quotes/tag/privacy>> accessed 26 January 2022

the words “personal information” is the Right to Privacy under Article 21² of the Indian Constitution. The “right to be forgotten” (hereinafter, referred to as RTBF) is a person's right to get the publicly available personal data deleted from the internet or from any other sources that can be accessed publicly. Provided that the information has become irrelevant and is of no use now. One of the very first instances of RTBF can be seen in Spain when a man requested the Court of Justice of the E.U to remove a newspaper article about his bankruptcy from Google Inc. since he had already paid off his debt and that article had no signs of existing in a public domain. It is often found that sensitive information gets leaked on the internet and may sometimes store some outdated news which may affect the peaceful living of an individual in the future. This very fact makes the RTBF and Right to Privacy inseparable.

BACKGROUND AND FACTS OF THE CASE

Back in 2009 a case under the *Narcotics Drugs and Psychotropic Substances Act, 1958*³ was filed against an American citizen of Indian origin. The judgment of his acquittal continued to be available on the internet due to which the Petitioner faced immense problems while applying for jobs, though the Petitioner had a good academic performance. When an employer used to run a background check on the Petitioner, he would see the judgment on Google and according to him, it was the reason why he was not able to procure a job that he expected. In pursuance of the above circumstances, the Petitioner prayed the Court for the removal of every article on the impugned judgment on any print or digital platform.

THE JUDGMENT IN BRIEF

The ambit of Article 21 got widened further with the Delhi HC recognizing the RTBF and “Right to be left alone” and provided interim relief to the Plaintiff. The Court held as under:

“Accordingly, recognizing the Plaintiff's Right to privacy, of which the Right to be forgotten and the Right to be left alone are inherent aspects, it is directed that any republication of the content of the

² Constitution of India, 1950, art 21

³ Narcotics Drugs and Psychotropic Substances Act, 1958

originally impugned articles, or any extracts/ or excerpts thereof, as also modified versions thereof, on any print or digital/electronic platform shall stand restrained during the pendency of the present suit."

CRITICAL ANALYSIS

The meaning of RTBF is very clear, it states that an individual must have the right to terminate every information which has become obsolete and has now current. One of the landmark cases of RTBF is Shri Vasunathan's case⁴ in which the court considers this right to protect the dignity and modesty of women. Though partially this happens to be the very first entry of RTBF in India. But according to Justice Anand Byapareddy, the right is only limited to protecting the privacy of women about sensitive issues like rape. Later on, the "Aadhar Case"⁵ prohibited access to personal information by direct searches through web engines. This right must be introduced formally by the legislature by making it a wing of the "Right to Privacy" to ensure zero interference in an individual's privacy.

Right to be Forgotten and Article 21

RTBF can also be referred to as the ability to expunge, delink, obliterate, and bound personal information on the Internet that is extraneous or superfluous⁶. The RTBF falls within the periphery of the Right to Privacy. It protects an individual's privacy by securing his/her personal information and in turn, becomes an integral part of Article 21. Personal information should be regarded as "Personal Property" and every step must be taken to protect that property of an individual from any sort of misuse. The Indian Constitution, like many other constitutions, has recognized that to safeguard human dignity, it is essential to implement the "Right to Privacy" to the very letter. If we compare RTBF with Right to Privacy then we can see that RTBF has a specialty in itself to deal with sensitive information that has been posted on the internet and also has a firm grip over the search engines whereas Right to Privacy is a broader concept that covers every 'nook and cranny of sensitive personal data.

⁴ *Shri Vasunathan v The Registrar General* (2017) SCC OnLine Kar 424

⁵ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

⁶ Richard Murphy, 'Property Rights in Personal Information: An Economic Defence of Privacy' (1995) 84 GEO. L.J. 2381

Right to be Forgotten and RTI under the light of Personal Data Protection (PDP) Bill, 2018

Now, comes the question that what should be the restrictions to RTBF? There is a possibility that the introduction of the PDP bill along with the RTBF may pose a threat to freedom of the press. Like any other right, RTBF too is not absolute, it is exempted in cases in which the security of the state is in question. Moreover, RTBF doesn't smear in the investigation of a crime. The bill speaks about the formation of two authorities, who would regulate the disclosure of data. Section 47⁷ of PDP provides some relief to the press. It sets aside an exception "for journalistic purpose" and the publication by the Journalist must comply with other ethical standards set by the Press Council of India or any other media regulating organization. Therefore, it can be inferred that the Journalist must take care of the privacy of that individual and take into reason the regulations. The bill also has provisions for hefty and high penalties which may extend up to Rs. 5 crores in case of any non-compliance with the standards. These responsibilities of having a look over the published media will be over an adjudicating officer, a bureaucrat as mentioned under Section 27⁸ of PDP. RTBF is a right that deletes information from a public space. In other words, it can also mean that it deprives the public of accessing certain information, and here raises the question that whether RTBF is neglecting the right to information of citizens. There is a dire need to establish a balance between these two rights. On this balancing, the Justice Sri Krishna Committee, the committee which was formed to make a report on the regulations of the new data protection bill, has rightly pointed out that these balancing tests must be undertaken by the adjudicating officer and not by the search engines. The search engines should comply with the framework provided by the Government and in some cases, they must also respect the requests of an individual to remove certain data from the web. In this way, the whole machinery can work smoothly with limited censorship over the published information.

⁷ Personal Data Protection Bill, 2018, s 47

⁸ Personal Data Protection Bill, 2018, s 27

CONCLUSION

The internet, especially social media is so widespread and persuasive that it creates a perception about something or somebody instantly. If any information is available about a person's criminal history or about any incident that might let the public form a negative mindset about that person then the life of that person will be no better than hell. He/She will become a prisoner of his/her previous life. In the last few years, India has developed massively. This development took place over the foundations of digital innovations in the country. Smartphone's and the internet have become an inseparable part of our lives. Moreover, courts are now recognizing that access to the internet has an ambit under Article 21. Some of us had a past that we would like to forget and move on in our life. But the problem arises when that past comes up again and again and binds an individual in the shackles of the mistakes of his past. The RTBF is aimed towards finding aid to this problem. The scope of RTBF should not be restricted only to "sensitive personal data" but it should be increased and it must include erasing anything which is "irrelevant, inaccurate or inadequate." In the present case the Counsel for the Petitioner has brought into light the fact that without any statutes to back them up, their prayer is expected to contradict the public opinion towards the right to information and freedom of expression. Akshat Bajpai, who is an advocate representing one of the petitioners argued that in Europe these multinationals have a different way of doing things whereas in India they are a bit inconsiderate about the law.

With the speeding developments in technology, it becomes obligatory to protect an individual's privacy. RTBF guarantees the protection of an individual's privacy and strengthens the freedom of speech of an individual. The introduction of such a right in India will help the citizens to regulate their "digital footprint" and will also solve the emerging problem of data diffidence and misappropriation of personal data.