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Right to be forgotten: Need for Constitutional recognition in India?

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We all are aware that our Constitution recognizes the right to personal liberty and also the protection of life. One of the important segments of this right is the right relating to the privacy of an individual. Our Judiciary has over the years made it evident that in no way should an individual's right to privacy be invaded as it is an important part of Article 21 of the Constitution. Another important aspect of the right to privacy is the right to be forgotten. The following article explains the same in detail and also states the global recognition of that right. Though our Constitution has not expressly spoken about the right to be forgotten, various courts across the country have considered it to be an inherent part of privacy rights. The following article also specifies the various landmark judgements wherein the courts have given recognition to the right to be forgotten.

Keywords: *privacy rights, personal liberty, right to be forgotten*

INTRODUCTION

The Constitution of India is the cardinal law of our country. It is because of the Constitution that the citizens of our country enjoy certain fundamental rights. Fundamental Rights are nothing but certain human rights that the citizens of India possess. There are various fundamental rights such as rights pertaining to equality, freedom, or cultural and educational rights to name a few.

One of the most important Articles in our Constitution is Article 21[1] which relates to the protection of life and personal liberty of an individual.

In recent years there has been an advent in technology which undoubtedly has opened doors of opportunity for our country in terms of globalization. Thus, in recent times almost everything has become digitized. And this is alarming for us when it comes to the protection of our data online. The right to privacy has been considered as a fundamental right by our Judiciary. There's a new dimension to this right which aims at dealing with the protection of the personal data of an individual. This right is called as the 'right to be forgotten'. The right that enables the citizens of the country to erase their personal data from the internet is called as the 'Right to be Forgotten'. The Supreme Court of India considers the right to privacy as a fundamental right and the right to be forgotten is still a developing right in India.

HISTORY AND EVOLUTION OVER THE YEARS:

Right to be forgotten came into the picture with the following famous case.

GOOGLE SPAIN v AEPD, MARIO COSTEJA GONZALEZ:

In this, Mario Gonzalez had given an advertisement in the local newspaper of Spain with respect to the auction of real estate relating to secure the repayment of his security debts. The proceedings with respect to that matter had already been resolved many years ago. However, the search engines were still showing details relating to that matter whenever his name would be searched on the internet. Thus, he filed a complaint and asked the local newspaper and Google Inc. to delete or alter his private information pertaining to the above-mentioned matter. The Court of Justice of Europe was of the opinion that the citizens of the European Union had the right to erase their private information from public record databases and search engines[2]. This gave birth to the concept of 'Right to be Forgotten'. In 2019 however, the European Court made it clear that this right need not be applied by Google outside Europe.

[1] Constitution of India, art 21

[2] 'The Right to be Forgotten (Google V Spain)' (*Archive*) <https://archive.epic.org/privacy/right-to-be-forgotten/#:~:text=Summary,information%20is%20no%20longer%20relevant.> accessed 25 September 2022

GLOBAL STATUS[3]

1. European Union: General Data Protection Regulation (GDPR) was adopted by the European Union in 2018. Article 17 of the same gives the citizens the right to erase their private information from public platforms such information is irrelevant in the present times.

2. Russia: It was in 2015 that Russia also permitted its citizens wherein they could get their personal and private information removed from online search engines if there was irrelevancy or violation of the law.

3. Siberia and Turkey: Right to be Forgotten has also been accepted in these countries to some extent.

INDIAN SCENARIO:

Justice K S Puttaswamy & Anr. v Union of India & Ors[4]:

The petitioner in this case was claiming that the right of an individual with respect to one's privacy is an integral part of Article 21 of the Constitution. Whereas, the Respondents argued that the right to privacy cannot be considered to be a part of Article 21 as it is not expressly mentioned so in the Constitution. However, it was in this particular case that the bench considered the right to privacy to be a part of Article 21 of the Constitution of India. Court also clarified that the right to privacy is a significant part of Part 3 of the Constitution[5] which specifies fundamental rights[6]. Thus, with this landmark judgement right to privacy was recognized in our country and the right to be forgotten is still evolving in India.

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[3] Sofi Ahsan, 'Right to be Forgotten: Govt position, court rulings, and laws elsewhere' (*Indian Express*, 27 December 2021) <https://indianexpress.com/article/explained/explained-right-to-be-forgotten-7691766/> accessed 25 September 2022

[4] *Justice KS Puttaswamy & Anr v Union of India & Ors* (2017) 10 SCC 1

[5] Constitution of India, part III

[6] *Justice KS Puttaswamy* (n 4)

PERSONAL DATA PROTECTION BILL, 2019:

It was in 2019 that the Personal Data Protection Bill was put forth in Lok Sabha. The Bill basically showcases the guidelines as to how the personal information of an individual should be handled and stored and also speaks about an individual's rights pertaining to his private information. The Bill provided the citizens of the country with rights relating to accessing, correcting, or erasing their personal information[7]. Section 18[8] of the Bill gives the citizens the right to erase their personal information online which is not relevant now for which it was initially processed.

Also, Section 9[9] of the said Bill clearly states that the data fiduciary will not possess any private information after the period necessary for the purpose for which it was initially processed. The private information of an individual shall also be erased after its purpose is served. The said Bill however at the moment stands withdrawn by the Parliament. The Parliament is soon coming up with a new framework of rules to cater the global needs with respect to privacy laws on digital platforms. Thus, the said Bill prominently gave importance to the privacy of an individual and considered it as a fundamental right.

CASE LAWS DEALING WITH THE RTBF IN INDIA:

The following cases clarify the status of the right to be forgotten in India.

1. Jorawar Singh Mundy v Union of India[10]:

The petitioner who is an American citizen had charges against him under the Narcotics Drugs and Psychotropic Substances Act, 1985.[11] However, these charges were cleared after a few years. The petitioner faced a lot of problems in finding jobs as the employers could still find the details of the case on various search engines online. Therefore, he filed a writ petition before the Delhi

[7] 'Centre withdraws Personal Data Protection Bill, 2019: Will present new legislation, says IT minister' (*Times of India*, 3 August 2022) <https://timesofindia.indiatimes.com/india/centre-withdraws-personal-data-protection-bill/articleshow/93323625.cms > accessed 25 September 2022
[8] Personal Data Protection Bill 2019, s 8
[9] Personal Data Protection Bill 2019, s 9
[10] *Jorawar Singh Mundy v Union of India* WP (C) 3918/2021 & CM APPL 11767 of 2021
[11] Narcotics Drugs and Psychotropic Substances Act 1985

High Court pleading with the various online platforms to delete the information relating to his case as it was not relevant now.

The question before the court was to decide between an individual's right to privacy and the right to the information given to the public. The court declared that the right to privacy of the individual was hampered and ordered the online search engines to delete the information with respect to the case of the petitioner which was no longer needed and relevant. Thus, through this case, the court recognized the right to be forgotten as a part of the right to privacy which in turn hails from Article 21 of the Constitution.

2. Zulfiqar Ahmad Khan v Quintillion Business Media (P) Ltd[12]:

The media house published two articles against Khan with respect to #MeToo allegations. Khan filed a suit against the media house for the removal of the articles as they were baseless and it had hampered his reputation and invaded his right to privacy. The court ordered the media house and other search engines to remove the articles thus recognizing the right to privacy of Khan. This in turn upheld the right to be forgotten of an individual.

3. Subhranshu Rout v State of Odisha[13]:

In this particular case, the victim, a woman was raped by the accused with whom she was in love for around a year. The accused clicked pictures and videos of the incident at the victim's house which were later published online by him. All of this is done without the victim's consent. The court held that right to be forgotten falls under the fundamental right to privacy. The court also made it clear that leaking private images and videos when the relationship falls out though initially captured with consent is not justified. Thus, the Odisha High Court gave due consideration to the right to privacy though the right to be forgotten lacks a proper legislative framework.

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[12] *Khan v Quintillion Business Media* 2019 (175) DRJ 660

[13] Prime Legal , 'Right to be Forgotten an integral part of an individuals right to privacy' (*Legal Service India*) <https://www.legalserviceindia.com/legal/article-4284-right-to-be-forgotten-an-integral-part-of-an-individual-s-right-to-privacy.html> accessed 25 September 2022

4. X v Youtube[14]:

In this case, the plaintiff is a famous actor in the Indian Film Industry. She had filmed for a web series that contained nude scenes. However, the web series was never released. Later on, she found the videos of the same on the producers' YouTube channel and website. Upon being requested by the plaintiff the same was removed by the producer.

However, a few other people released those videos on other online platforms without the plaintiff's consent. Also, the videos were edited in a pornographic manner. All of this hampered the plaintiff's reputation. The plaintiff approached the court seeking for complete removal of her videos from all the online platforms. The court was of the opinion that the plaintiff was entitled to the right to privacy and thus the right to be forgotten also comes into the picture. The court ordered the defendants to take down all the videos of the plaintiff within 36 hours of the order being passed and also put a restriction on its uploading streaming or broadcasting in any manner.

CONCLUSION

Humans are social beings which implies that we have to thrive and survive in society. Thus, we as humans care a lot about our reputation in society. Therefore, privacy rights are of utmost importance. They fall under the right to personal liberty and protection of life which is nothing but Article 21 of the Constitution. It is very evident from the above discussion that our Judiciary has considered an individual's right to privacy as a significant part of Article 21 of the Constitution. Thus, in no way should an individual's privacy be invaded. When an individual is involved in any kind of litigation or being charged for any crime which he may be acquitted of later on still it happens that the search engines have the individual's name associated with the matter. This is when an individual's reputation in society is affected. Thus, this is the time when the right to be forgotten plays an important role.

[14] *X v YouTube* CS(OS) 392/2021

The right to be forgotten gives an individual the right to erase from the public domain any personal or private information of him associated with any matter which is no longer relevant and which hampers his reputation or invades his privacy. There are various countries across the world that have recognized the right to be forgotten. However, India has not yet included the right specifically in the Constitution. But, from the various judicial judgements, it is evident that our Judiciary has emphasized the importance of the right to be forgotten. Though at the moment The Personal Data Protection Bill, 2019 stands withdrawn which had provisions relating to the right to be forgotten and considered it as a fundamental right, with the passing of the same in the upcoming times will give individuals access to many data protection rights. Thus, constitutional recognition of the right to be forgotten will prove to be a boon with respect to the privacy rights of the citizens of the country.