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## Erasing the Past: Examining the Right to Be Forgotten in the Digital Age

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*In the rapidly developing digital age the 'Right to be forgotten' gives people the ability to manage their online presence. The 'Right to be Forgotten' (RTBF) is a key idea for recovering privacy in the digital era as the internet has become a permanent archive. This article explores this concept in the Indian context and examines the legal position of the right to be forgotten in India by examining pertinent statutes and judicial rulings, taking into account the historical background for the emergence of this right. The article also includes arguments in favour of the RTBF, such as enabling people to manage their data and reducing harm from out-of-date or irrelevant data, as well as arguments against it, such as threats to the right to knowledge and freedom of speech. A comprehensive analysis of the RTBF's implementation issues is made. Suggestions have been made to improve the RTBF framework in India, with a focus on a balanced approach that protects freedom of expression and the public interest while also honouring privacy.*

**Keywords:** *right to be forgotten, right to privacy, data protection, fundamental rights.*

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### INTRODUCTION

People throughout the world have been granted several rights to guarantee their well-being. They are not static; rather, they are constantly evolving and are interpreted in new ways over

time. The scope of the rights that are currently in place is being expanded to keep up with the rapid advancement of civilization. 'The right to be forgotten' is one such recently established right. The perpetual nature of the internet creates a permanent record of our lives and it raises questions about how much control people have over their personal information online. With our digital footprints constantly expanding and our personal data always available and shared on the internet, the right to be forgotten (RTBF) has become an essential tool for protecting people's privacy in the digital era.

The right to be forgotten (RTBF) is a right to request the removal of personal information regarding oneself from search results on the internet and other directories. It can be otherwise called the 'Right to erasure' or 'Right to oblivion'. In Italian it is referred to as *diritto al' oblio* and in French *le droit a l'oubli*. This problem emerged from the people's desire to be in charge of their lives and not have to live with constant or intermittent shame related to past behaviour. This right gives people a chance to request the removal of information about them from search engines and other public domains so that it is no longer accessible to outside parties. The RTBF poses distinct legal and ethical problems for India as it navigates its digital transition.

## BACKGROUND

In French jurisprudence, there is a saying called *le droit a l'oubli* which entitles convicted criminals who have already completed their sentence is entitled to object to the publishing of the details surrounding their conviction and incarceration. It acted as the basis for the emergence of the RTBF. The predecessor in the origin of this right is the European Union. The Data Protection Directive 1995 of the European Union in its Article 12 provides every data subject (people) the right to rectify, erase or block the data processing if the information is incomplete or inaccurate. Though the right is impliedly given in the article, it was expressly recognised only in 2014 after a landmark judgment. The first-ever case regarding this right was *Google Spain v AEPD and Mario Costeja Gonzalez*<sup>1</sup>. Mario Costeja Gonzalez, a Spaniard, experienced financial troubles sixteen years ago. In an attempt to resolve them, one of his properties was put up for auction; the specifics were reported in a newspaper and then made available online. The auction

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<sup>1</sup> *Google Spain v AEPD and Mario Costeja Gonzalez* [2014] ECR I-317

ended in 1998 but not Mr. Gonzalez's troubles with the auction details available on the internet. The news about the sale continues to appear prominently anytime one searches for his name. He contended that this should be taken out of Google's search results as everyone who googled him thought he was bankrupt and it kept harming his reputation. The European Court of Justice held against Google and stated that under certain conditions, people in the EU might ask for their personal data to be erased from databases of public records and search results. But in 2019, the European Union court restricted the verdict to the EU, declaring that Google was not required to implement the 'Right to be forgotten' outside of Europe.

In another case in Argentina, the complainant Virginia Da Cunha<sup>2</sup> who is a pop singer filed a plea with the court requesting the court to rule in her favour and order Yahoo and google to remove search results from the Internet that improperly link her to prostitution or pornography. The complainant based their claim on the 'right to be forgotten' acknowledged by the EU's Court of Justice in the Gonzalez case, arguing that the information was hurtful, outdated (having occurred more than 20 years ago), irrelevant, and unneeded. The trial court after hearing the case ruled in favour of the petitioner. But, in 2010, the ruling was overturned by the appeals court and by the end of 2014, Argentina's Supreme Court of Justice had ruled in favour of the search engines. However, this concept gained popularity only after the EU adopted General Data Protection Regulation (GDPR<sup>3</sup>) in 2018. Under Article 17 of the General Data Protection Regulation, every individual has the right to seek deletion of their personal information under the specified circumstances.

## LEGAL STATUS OF 'THE RIGHT TO BE FORGOTTEN' IN INDIA

For a long period, India did not have any statute explicitly recognising the RTBF<sup>4</sup>. The Indian Constitution under Article 21<sup>5</sup> protects the Right to privacy as an inherent right. Hence, it could be said that it also encompasses the RTBF as it falls under the broad category of privacy rights.

<sup>2</sup> *Da Cunha v Yahoo de Argentina SRL and Anr* (2010) Supreme Court of Argentina Case No 152/2014

<sup>3</sup> General Data Protection Regulation 2016

<sup>4</sup> Arti Aasha and Debaditya Das, 'Right To Be Forgotten In India- A Critical Analysis' (2023) 52(4) Industrial Engineering Journal

<[https://www.researchgate.net/publication/371338423\\_RIGHT\\_TO\\_BE\\_FORGOTTEN\\_IN\\_INDIA-A\\_CRITICAL\\_ANALYSIS](https://www.researchgate.net/publication/371338423_RIGHT_TO_BE_FORGOTTEN_IN_INDIA-A_CRITICAL_ANALYSIS)> accessed 19 April 2024

<sup>5</sup> Constitution of India 1950, art 21

The Information Technology Act 2000<sup>6</sup> in its Section 43A makes any organisations that possess, control or operate liable to pay damages if they acted negligently and failed to protect the sensitive information of the data principal that leads to any wrongful loss or wrongful gain to anyone. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 enabled individuals to seek removal of their certain data from the internet under the grievances mechanism provided under the rules. With the parliament's approval and the President's assent, the Digital Personal Data Protection Act 2023<sup>7</sup> came into force and included the statutory provision recognising the right to be forgotten. It constitutes four rights to the data principal:<sup>8</sup>

- The right to information
- The right to updation, correction, completion and erasure
- The right to Grievance redressal
- The right to designate an individual to act on their behalf in case of their demise or incapacity.

A person's right to seek the data fiduciary to update, complete, rectify, or remove their personal data is mentioned in Section 12 of the Act. The data fiduciary upon the request of the data principal must make the necessary changes. If retaining personal information is required for a particular reason or to comply with the laws being in force, the data fiduciary may not be required to delete it. However, exemptions to this right have also been given in Section 17 of the Act.

## JUDICIAL STANDS ON 'THE RIGHT TO BE FORGOTTEN'

*DharamrajBhanushankar Dave v State of Gujarat & Ors*<sup>9</sup>: The Gujarat High Court decided a case where a person who had been found not guilty of any crimes had filed a petition to have his name taken down from websites that were accessible to the public. Here, the Gujarat High Court

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<sup>6</sup> Information Technology Act 2000

<sup>7</sup> Digital Personal Data Protection Act 2023

<sup>8</sup> 'What You Need to Know about India's Digital Personal Data Protection Act' (*Ardent Privacy*)

<https://www.ardentprivacy.ai/blog/what-you-need-to-know-about-indias-digital-personal-data-protection-act/>> accessed 19 April 2024

<sup>9</sup> *DharamrajBhanushankar Dave v State of Gujarat* (2017) 9 SCC 641

adopted a more positivist approach to reasoning, ruling that it could not find the publishing to be a violation of the petitioner's fundamental rights in the lack of the required legislative support. Hence the petitioner's claim to enforce the right to be forgotten was rejected.

*Zulfiqar Ahman Khan v M/S Quintillion Business Media*:<sup>10</sup> The petitioner sought the removal of two stories about him that had been published on a news website. The pieces were included in a report on the #MeToo movement. The articles were later taken down after the Delhi High Court recognized the 'right to be forgotten' and the 'right to be left alone' as essential components of the right to privacy.

*Sredharan T v State of Kerala*:<sup>11</sup> In this case, the Kerala High Court acknowledged the 'Right to be forgotten' as a reasonable and acceptable part of the Right to privacy. In order to safeguard the right to privacy under Article 21 of the Indian Constitution, a writ petition was filed. In order to protect the rape victim's identity, the petitioner sought the court to order the removal of the victim's name and personal details from search engines. The High Court of Kerala ruled in the favor of petitioners and recognized the 'Right to be forgotten'. The petitioner's name was ordered to be removed from the search engine's published orders on its website by the court in an interim order that will remain in effect until further orders.

## **ARGUMENTS SUPPORTING THE RTBF**

The supporters highlight the notion that the RTBF is vital in multiple aspects.

- Firstly, it assists in protecting the privacy of individuals. Particularly, people can ask search engines or online platforms to take down irrelevant or outdated information about them.
- It serves as a tool for preventing harm. It is through this right; that sensitive information that could be harmful and more importantly destructive to the well-being of an individual is put off the public. Individuals will have greater control over their personal

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<sup>10</sup> *Zulfiqar Ahman Khan v M/S Quintillion Business Media* (2019) 255 DLT 241

<sup>11</sup> *Sredharan T v State of Kerala* (2017) MANU/SC/0084/1980

information and online profiles, enabling them to take charge of their digital footprint and lessen the harmful effects of previous information.

- Individuals should be allowed to move on from their prior experiences, particularly if they have settled disputes or been found not guilty of crimes. Their definition should not be fixed by search results.
- The European Union's Court of Justice and other international organizations have acknowledged the RTBF as one of the fundamental rights, bolstering the concept's validity under the law.

## **ARGUMENTS AGAINST THE RTBF**

### **Opponents contend that:**

- The freedom of speech and information access may be incompatible with the right to be forgotten. Removing data from public view could obstruct journalistic endeavours and the right of the public to know.
- Internet platforms and Search engines face technological difficulties in implementing the right to be forgotten, including evaluating the legitimacy of requests, striking a balance between competing rights, and guaranteeing legal compliance.
- The integrity of historical research and records may be undermined by the removal of content from internet platforms, which raises concerns about the preservation of accurate historical records and public awareness.
- The public might benefit from certain types of information even if they are unfavourable to an individual

## **CHALLENGES ASSOCIATED WITH THE 'RIGHT TO BE FORGOTTEN'**

- The primary problem is, that the public's right to access information and each person's right to privacy must coexist in harmony for the right to be forgotten to be implemented. It's challenging to make sure that information removals are appropriate while maintaining the right to free speech (Article 19(1) (a)) and access to information.

- The internet is a wide, dispersed network. Multiple platforms allow for the copying and reposting of information. Ensuring the total removal of undesired content from all online platforms presents a substantial technological obstacle.
- Each request varies from another. Determining what constitutes public interest and what constitutes an individual right will pose a significant impediment.
- Individuals or organizations in positions of authority may abuse the RTBF to suppress or manipulate the negative data available against them.

## WAY FORWARD

- The Digital Personal Data Protection Act must be implemented effectively and awareness campaigns should be conducted to let people know about their right to be forgotten.
- An amendment in the Constitution should be brought to the Constitution adding the right to be forgotten as a reasonable restriction under Article 19(2).
- The RTBF is to be implemented in a way that balances the individual's right to privacy with the right to information access of the public. When evaluating requests, things like historical records, journalistic endeavours, freedom of expression, and the public interest must be taken into account.
- Encourage transparency and accountability while processing the requests from the data principal by adopting transparent criteria.
- Provide safeguards against the right to be forgotten being abused, especially by strong organizations attempting to manipulate available data.

## CONCLUSION

The right to be forgotten, a complicated and diverse idea brings up significant moral, legal, and social issues. As discussed in this article, the right to be forgotten has acquired recognition worldwide and in India as well, where it has been the focus of legal scrutiny and discussion. The protection of one's privacy and individual control over data are strong reasons in favour of the RTBF, but there are also legitimate worries about how it would affect the freedom of speech, information access, and the accuracy of historical records. The rights concerned must be meticulously considered to strike the correct balance. The recommendations made in this article,

which include amending the constitution, maintaining transparency, and addressing potential abuse could be considered in achieving a balanced approach. Primarily, creating a digital environment that respects people's right to privacy and the public's ability to obtain information is the ultimate objective.