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# RIGHT TO BE FORGOTTEN IN INDIA: A CRITICAL LEGAL ANALYSIS

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## ABSTRACT

Right to be forgotten (RTBF) is the right to remove personal data from internet searches in special circumstances. Recently, the Supreme Court recognised the 'right to be forgotten' as phase of 'right to privacy' and ordered to improve a mechanism of putting off personal details of litigants involved in matrimonial litigation. The bench was thinking about a plea of female which stated that; her private records must either be deleted or masked from judgement of her case because the judgement is easily on hand to public. Though the judgement masked women's identity, but printed the identification of her husband, although which acquaintances had been able to hyperlink her with the case. This was once leading to giant loss for her, thru social stigma.

She maintained that, such type of public visibility was towards her proper to privacy, which also includes the proper to be forgotten. The issue of the right to be forgotten was in the news recently when a US citizen of Indian origin filed a petition to overturn his sentence, which is still available in internet searches. The Delhi High Court issued an order in April 2021 recognizing the "applicant's right to be forgotten" and ordering Google and Kanoon India to cancel the court order relating to the person. In India, in *K.S. Puttuswamy v. Union of India*<sup>1</sup>. It has been accepted that the right to be forgotten is part of it right to privacy. But there is no legal framework to enforce the right to be forgotten. In this article I have discussed its meaning, origin and application in India.

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<sup>1</sup> ((2017) 10 SCC 1)

## **Introduction**

The right to be forgotten (RTBF) is the right to remove personal information about a person from web searches and other directories under certain circumstances. The concept has been discussed and practiced in several jurisdictions, including Argentina, ] the European Union (EU) and the Philippines. The question arises from the individual's desire to "determine the development of his life independently, without being constantly or periodically stigmatized as a result of certain past actions."

There is controversy over the appropriateness of establishing the right to be forgotten (with respect to access to information) as an international human right. This is partly due to the ambiguity of current decisions trying to enforce this right. There are also concerns about its impact on the right to free speech, its interaction with the right to privacy, and whether creating the right to be forgotten will degrade the quality of the internet through censorship and rewriting of history. Those who support the right to be forgotten mention the need for issues such as revenge porn sites showing up on search engine listings for a person's name, as well as examples of results relating to petty crimes people may have committed in the past. A major concern is the potential undue impact that the results could have on an almost unlimited number of individuals online reputation if not removed.

Enforcement restrictions in certain jurisdictions include the inability to request removal of information held by entities outside the jurisdiction. There is no global framework that allows people to control their online image. However, Professor Victor Mayer- Schönberger, an expert at the University of Oxford's Oxford Internet Institute, said Google could not avoid complying with French law implementing the 2014 European Court of Justice, judgment on the right to be forgotten. Meyer- Schönberger said countries, including the US, had long argued that their national laws were

However, on 11 December 2019, Ravi Shankar Prasad, Ministry of Electronics and Information Technology, presented the Data Protection Act at the Lok Sabha<sup>2</sup>. This law has not yet been passed by the DPR. The main purpose of the Personal Data Protection Act is to protect the privacy of individuals with respect to their personal data. According to the Personal Data Protection Act, Chapter 5 talks about the rights of data controllers. In this chapter, paragraph 20 mentions the right to be forgotten. Clause 20(1) states: The data subject (the person to whom

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<sup>2</sup><https://prsindia.org/billtrack/the-personal-data-protection-bill-2019>

the data is related) has the right to limit or prevent further disclosure of their personal data by the data guardian. Therefore, in accordance with the right to be forgotten, the user can disconnect, delete or correct a person's personal data.

In 2018, Google brought the first two cases to be forgotten to a preliminary hearing in the UK. Both are wealth managers who have been charged with crimes that now fall under the UK's criminal rehabilitation law, which says they can be ignored and companies should not be disclosed unless they meet very unusual exceptions. Since around 2014, Google and France have been debating in court about the scope of the right to be forgotten, which is currently pending in EU Courts. France demands concessions over possible deletion of data from online indexes around the world. Such rights are rendered meaningless if they are likely to be seen by someone in the United States or someone in Europe who could impersonate their IP address. Google restricted rights and fought French attempts to expand them, forgoing options first for Google's European space and then for any European customers. As the court administration enters Phase III of its major electronic court project, privileges such as the right to be forgotten must be included in any innovative agreements made for legal record keeping and boards of directors.

### **Understanding of the Right To Be Forgotten**

The right to be forgotten "reflects an individual's desire to delete certain data so that third parties cannot trace it anymore.". Defined as "the right to remain silent about past events that have not been occurred more have occurred."The right to be forgotten means that individuals can remove information, videos, or photos about themselves from certain Internet recordings so that search engines cannot find them. In 2011, there was little protection against harm from incidents such as sharing pornography in retaliation or uploading photos. Due has the poor judgment.

The right to be forgotten is different from the right to privacy. The right to privacy is information that is not known to the public, while the right to be forgotten is to delete information that is known to the public at a certain time and prevent third parties from accessing that information. This right has been recognised by the different European Union court as well as British Court under the General Data Protection Regulation as a statutory right.

### **General Data Protection Regulation (GDPR)**

The General Data Protection Regulation was established on 25 May, 2018 by the European Union. This Regulation safeguards key fundamental rights and freedoms of normal people and specifically their right to the insurance of individual information. The free development of personal data inside the Union will be neither confined nor restricted because of reasons associated with the assurance of regular people concerning the handling of individual information. As according by GDPR, the data subject will reserve the option to get from the regulator the eradication of individual information concerning the person in question immediately.

Under Article 2 of the GDPR, "personal data" signifies "any data connecting with a distinguished or recognizable normal person ("data subject")"<sup>3</sup>.

"Controller" signifies "the normal or legitimate individual, public power, office or whatever other body which decides the reasons and method for the handling of individual information".

As per the GDPR site, "unnecessary delays" is viewed as about a month.

### **Right to be forgotten on the Indian prospective**

There have been sure situations where the Right to be Forgotten was practiced partially:

In April 2016, the Delhi High Court analyzed the issue after a Delhi banker put in a solicitation to eliminate details regarding his marriage dispute. He contended that since the dispute was settled there was no requirement for it to be up in the public . The High Court has requested an answer from Google and other web search tool organizations by September 19, where upon the court will keep on investigating the issue.

The High Court of Karnataka in January 2017, maintained the RTFB of a woman who went to court to dissolve a marriage. She claimed that she had not married the man whose name was on the endorsement certificate. When the case was settled, her father request the court that her name be remove from web engines since her name actually displayed for enquiries with respect to criminal cases in high court.

The Delhi Court directed a case in February 2017, where a man mentioned to have data in regards to his significant other and mother remove from web search tool results. The man was

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<sup>3</sup> <https://gdpr-info.eu/art-2-gdpr/>

of the assessment that the web search tool results that were connected to his name were demonstrating a detour to future employment possibilities.

Presently, there is no lawful norm right to be forgotten, yet whenever carried out, this would imply that residents never again need to document a case to demand for data from web indexes to be removed. This case could fundamentally affect the option to be forgotten and web search in India.

S.C. has said that the **Puttaswamy v. Union of India**<sup>4</sup>, that the right to be forgotten was a part of the last point of the right of privacy.

The right to be forgotten generated from the right to privacy under Article 21 and partly from the right to dignity under Article 21 of the Indian constitution.

The General Data Protection Regulation is intended to significantly strengthen the right to be forgotten in Europe. Article 17 of the GDPR establishes the right to delete, which allows a person to request the immediate erasure of their personal data by a supervisory authority. The right to be forgotten is governed by the Personal Data Protection Act in India, 2019 (PDP Bill) Right to be forgotten has not yet received official approval in India. However, in *K.S. Puttaswamy (Ret.) v. Union of India, 2018* that the right to security of a fundamental right. The Supreme Court declared the right to privacy a fundamental right in a landmark decision in 2017. “The right to privacy is maintained as an integral part of the right to life and personal liberty under Article 21 and as part of the possibilities guaranteed by Part III of the Constitution,” court notes. .

Art. 21 of Indian constitution are very important fundamental rights regarding life and personal liberty. The states that No person shall be deprived on his life or personal liberty expect according to a procedure established by law.

With a deeper combination of innovation and digitization of information, a simple Google search can yield a wealth of information about an individual that has the potential to threaten the status and prestige of the individual as guaranteed by Article 21 of the Indian Constitution. Many Supreme Courts now explicitly recognize the right to be forgotten in their decisions, in line with international law on the matter.

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<sup>4</sup> ((2017) 10 SCC 1)

### **Important case laws regarding to Right To Be Forgotten in India:**

#### **Zulfiqar Ahman Khan v. M/S Quintillion Business Media Pvt. Ltd. And others, Zulfiqar<sup>5</sup>.**

Ahman Khan requested for the evacuation of articles composed against him in news website The Quint. The Delhi High Court noticed the Right to be Forgotten and be as an indispensable piece of person's presence.

**Jorawer Singh Mundy v. Union of India and Ors.**<sup>6</sup>, High Court of Delhi, said to the Google to eliminate the decision vindicating man in drug case as it impacted his work profession.

### **Data Protection Bill 2019**

This bill was framed on the recommendations of B N Srikrishna Committee (2018)<sup>7</sup>. It's discuss about the To provision to protection of privacy of individuals relating to their Personal Data and to establish a Data Protection Government of India for the said purposes and the matters related to the personal data of an individual person.

Section 18 relates to the 'right to correction and erasure,' which overlaps with the correct to be forgotten somewhat. This includes the correction of inaccurate or deceptive private data further because the removal of personal information that's now not needed for the process and analysis. The people and organisations to which such information was disclosed should learn whenever the info trustee makes such a modification or erasure.

Section 9 states that a knowledge trustee cannot keep personal information larger than the particular amount that it absolutely was no inheritable unless the data principal voluntarily offers consent or there's legal coercion. Information trustees also are needed to perform the regular review to see whether or not or not personal data ought to be kept. Section 36(b) states that the correct to limit revelation of non-public data doesn't apply within which the actual data is required to enforce a lawful authority or claim, contest charges, get legal counsel, or alternative similar purposes<sup>8</sup>

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<sup>5</sup> CS (OS) 642/2018.

<sup>6</sup> 2021 SCC OnLine Del 2306.

<sup>7</sup><https://www.mha.gov.in/about-us/commissions-committees/ccsap-justice-ret-d-b-n-srikrishna-report&ved=2ahUKewjWru7xsKL5AhXfzHMBHf0VBAGQFnoECEIQAQ&usg=AOvVaw23iSZCk1YzWy9fG5OkTXBp>

<sup>8</sup> <https://gdpr-info.eu/>

**Advantages to the right to be forgotten:**

The right to be forgotten can give significant consolation of security and can play a significant part in further developing association and individual. State and non-state organization have many abilities with regards to web based data protection and mental profiles.

Allowed to the individuals to get a sense of responsibility with their data gives them more command over their improved characters.

- Self-regulation of online presence connected with on the web space.
- Capacity to remove libellous or humiliating undesirable data from general visibility.
- Valuable chance to give people a fresh start throughout everyday life.
- Expulsion of data that might imperil an information subject's finance, profession, or individual security and safety.

**Challenges of the right to be forgotten:**

**Legal Challenge:** Right to be forgotten may conflict with matters of public records. Sections 74 on the Indian Evidence act, judgments are often considered public records and fall under the definition of a public document. Right to be forgotten cannot be extended to official public records, especially court records, as this would undermine public confidence in the justice system in the long run.

**Challenges with Journalism-** If the Right to be Forgotten is applied for the Journalism, journalists may have problems presenting news and information to the public. This will create a situation of chaos in the print and media industry as they await the decision of the judicial officer. Journalists will suffer under the barrier of sharing information and ideas through the media.

**Effect on the Freedom of Expression:**

Freedom of Expression is a basic human right in the universe. The eliminated of online substance from the web could influence the people's to freedom of speech. They will experience an issue in communicating their perspectives through distributed articles, books, TV, web or some other medium, as the overall influence of remove the data will move in the blessing of person, whose data has been disclosed. They won't go ahead and offer their viewpoints or convictions on a specific matter.

**Impact on Freedom of Speech:** Right to be Forgotten presents the biggest important problem to freedom of speech in the upcoming time. When an individual's past actions are posted on the internet, the public has easy access to read/view crimes and judge a person based on their past actions.

### Suggestions

**Rule regarding Privacy as on Reasonable Restriction-**In order to realize the right to be forgotten, privacy must be added as a basis for reasonable restrictions under Article 19(2) through a fundamental amendment to the Constitution. Article 19 (1) (a) of the Constitution of India provides for the right to speech and expression. This right is subject to reasonable restrictions in Article 19, paragraph 2 of the Constitution. I propose that there be an amendment whereby the right to privacy should be included in Article 19, Paragraph 2 of the Constitution.<sup>9</sup>

**Balancing between Privacy and Information:** Structural improvement is needed, the right to be forgotten may be limited.

For example:

- To exercise the right to freedom of expression and information;
- compliance with legal obligations; performance of a task carried out in the public interest or public health;
- Archival purposes in the public interest;
- Scientific or historical research purposes or
- statistical purposes; or
- Establishment, exercise or defence of legal claims

### Conclusion

There is currently no law in India that specifically provides for the right to be forgotten. On the one hand, if an individual's past actions are posted on the internet, then the public has easy access to read/view crimes and judge a person based on their past actions. . It can cause psychological and emotional distress to the individual as it affects their current life. But on the other hand, citizens' freedom of speech and expression can be restricted and this can cause

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<sup>9</sup> Indian Constitution 1950 , Art 19 and 21.



chaos in journalism. The right to be forgotten is therefore a very complex issue, as it brings uncertainty between the right to privacy and the right to freedom of expression and opinion.

Security must be introduced as a reason for the relevant Article 19 restrictions through a major constitutional amendment to fulfil the right to be forgotten. There is a need for system growth and the ability to forget may be limited. For example, when exercising the right to speech and information; comply with legal obligations; completion of a project in the public interest or for public health; scientific or verifiable research objectives or measurable objectives; or the establishment, performance or protection of legitimate situations. Parliament and the Supreme Court should conduct a thorough review of the right to be forgotten and devise a way to balance the competing rights of privacy and freedom of speech and expression. Data is a valuable resource in the digital age that should not be left unchecked. So in this scenario, India needs to put in place a strong data protection regime.

However, it is said that the European version of the law may be suitable to make it compatible with the Constitution of India. The right to be forgotten should be established in line with Indian jurisprudence and should be extended to the individual as well as the state as proposed in the data protection Bill 2019. Guidelines Rules, 2011 which is currently a weak protection for data protection, must be reinforced with specific wording. The power to balance the right to privacy and the right to freedom of expression must be exercised by the executive in accordance with administrative principles against excessive delegation.

## REFERENCES

- Indian Constitution 1950 , Art 19 and 21.
- Indian Evidence Act 1872 sec 74
- Times of India, Explained: What is the ‘right to be forgotten’, 9 December 2020, Explained: What is the ‘right be forgotten’? - Times of India (indiatimes.com)
- Melvin v. Reid 112 Cal.App. 285, 297 P. 91 (1931) Personal Data Protection Bill, Clause 20, Bill No. 373 of 2019.
- Google Spain v. AEPD, 2014 ECLI:EU:C:2014:317. John Hendel, Why Journalists Shouldn’t Fear Europe’s Right to be Forgotten, The Atlantic (May 23,202212:34PM),
- Adam Satariano, ‘Right to Be Forgotten’ Privacy Rule Is Limited by Europe’s Top Court, Sept. 24, 2019 ‘Right to Be Forgotten’ Privacy Rule Is Limited by Europe’s Top Court - The New York Times (nytimes.com)
- Sowjanya S. , Right to be Forgotten: A Forgotten Part of Right to Privacy, 7 November 2018, Right to be Forgotten: A Forgotten Part of Right to Privacy – The Law Blog
- [www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldntfear-europes-right-to-beforgotten/251955/](http://www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldntfear-europes-right-to-beforgotten/251955/).
- <https://www.theatlantic.com/technology/archive/2012/01/why-journalists-shouldntfear-europes-right-to-beforgotten/251955/>.
- <https://gdpr.eu/right-to-be-forgotten/>
- [https://main.sci.gov.in/supremecourt/2012/35071/35071\\_2012\\_Judgement\\_24-Aug-2017.pdf](https://main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf)
- <https://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=305802>
- <https://gdpr-info.eu/>
- <https://prsindia.org/billtrack/the-personal-data-protection-bill-2019>