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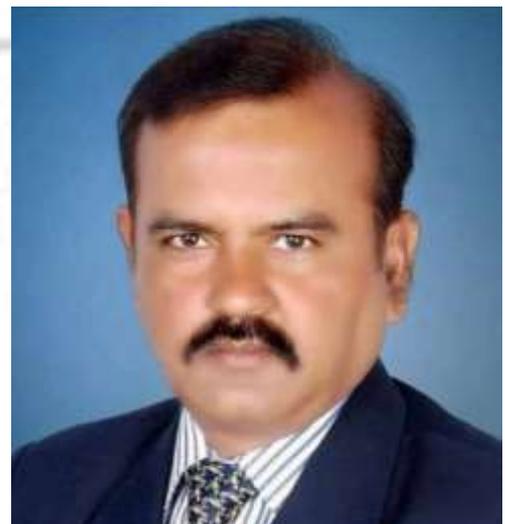
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO BE FORGOTTEN

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INTRODUCTION

According to Black's Law Dictionary, the right to privacy means "the right to be left alone", the right of a person to be free from unwanted interference. The Supreme Court had unanimously recognized that the Constitution guaranteed the Right to Privacy as an intrinsic part of the right to life and personal liberty under Article 21. The footprints of the right to privacy have been seen long before in various international laws and conventions. Similarly, right to be forgotten is also an aspect of right to privacy, it is the right of an individual over his or her personal data and information, having complete autonomy and prerogative over it, to purge such data as per their intention.

In today's digital age we are not only dealing with issues regarding sharing of information, but also the removal of such data and information when needed. All the online interactions we carry out on the day-to-day basis leave a permanent digital footprint. Removal of information online can be a tedious task, as convenient as it is to share and upload information online removal may seem convenient at first, but it is not a fallacy that information even though removed or deleted can be reached if needed through various means. Even though an individual may have control over what he wants to share and what he wants to put in the digital space he may not know the complications that comes with the removal of that information forever, a simple example of this would be let's say a certain influential personality named Mr. X posted something on his page, a few hours later he takes the post down cause he no longer wanted that post to be on the digital space or platform, although he has removed the post, some people had taken screenshots of it, downloaded the post etc. pertaining to the fact that the information has not been completely eradicated and footprints of it still exists.

Whatever actions we carry out online are bound to leave some kind of footprint, Basically, "Right to be forgotten" or "Right to be Erased" provides a right to individual to request for removal of his/her personal data floating around through Internet. The simple rule behind data erasure is that whoever is using the data has volunteer consent from the data owner. So, when

the consent is withdrawn, the owner has a right to have his data erased.¹ Also when the data controller has no legal right to process the data, the data should be erased.²

It is said that the Internet never forgets, it has an unforgiving memory. Internet does not allow a person to overcome his past follies and turn a new leaf. A person's mistake in his personal life becomes and remains in public knowledge for generations to come.³ The right to be forgotten reflects the desire of an individual to have his specific data deleted so that some other entity can no longer access it, be it photos, videos, or anything that can be traced in the digital space.

ORIGIN AND EVOLUTION

The Origin of 'Right to be Forgotten' can be traced back to the French Jurisprudence on the **droit a loubil** which is also known as 'Right to be oblivion'. This right was in the favour of convicted criminals who had completed their crimes and criminal life. An incident happened in 1998 which brought up the perception of this right which alluded the emergence of this Right in the European Union. A native of Spain named Mario Costeja Gonz'lez got into some financial trouble and was in acute need of the funds, Mr. Gonz announced an auction of his property via newspaper and somehow the article wound up on internet. Mr. Gonz since then was never forgotten by the internet, He had difficulties finding jobs in the amidst of his article being on the internet which led to showing bankruptcy if anyone searched his name on the Internet. Mr. Gonz filed a suit against google in order to seek remedies regarding his article being on the internet.

In the case of *Google Spain SL, Google Inc. v Agencia EspañOla De Protección De Datos, Mario Costeja González*, The European Court of Justice ruled against Google stating that the European citizens have the right to remove the contents off the internet when they become irrelevant under certain circumstances and when the search engine is obliged to do so. European Union gave this right a recognition in May 2018 by providing it in the Article 17 of General Data Protection Regulation. ⁴Article 17 of General Data Protection Regulation states that "the data subject has the right to request erasure of personal data related to him on any one of a number of grounds including non-compliance with Article 6.1(lawfulness)that includes a

¹ General Data Protection Regulation (EU) No. 2016/679 of 27 April 2016, right to erasure, art. 17, 19.

² Ibid. art. 18, 19

³ The Internet Never Forgets, THE QUAD, <https://thebestschools.org/magazine/the-all-seeing-internet/> (visited January 20, 2024).

⁴ General Data Protection Regulation (EU) No. 2016/679 of 27 April 2016, right to erasure, art. 17

case(f) where the legitimate interest of the controller is overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data”.

As India lacked a dedicated law that explicitly provides the Right to be Forgotten, a noteworthy development took place on December 11, 2019. Ravi Shankar Prasad, the minister of Electronics and Information Technology, presented the Personal Data Protection Bill to the Lok Sabha. Rather than being not consented by the Lok Sabha, the bill held a vital purpose—Safeguarding an individual's privacy concerning their personal data.⁵ Within the structure of the Personal Data Protection Bill, Chapter 5 focuses on the Right of Data Principal. Inside Chapter 5, Clause 20 majorly focuses on the concept of Right to be forgotten. More explicitly, clause 20(1) sets out a data principal— an individual linked to the data—possesses the entitlement to restrict or halt the continued disclosure of their personal data by a data fiduciary. The legal acknowledgment adjacent to the data protection and privacy in India was notably framed by the landmark case of *Justice K.S. Puttaswamy v Union of India*. This vital Supreme Court judgement ascertained the fundamental right to privacy. Recognizing the importance of data protection, various Standing and Parliamentary Committees have underscored the imperative for comprehensive regulations. In a noteworthy pace, the *Justice B.N. Srikrishna Committee* bestowed a panoptic data protection bill in May 2018, scrabbled around the budding concept of the ‘Right to be Forgotten’, Focused on safeguarding personal Data.

Significant Judicial Decision on ‘Right to be forgotten’: -

In the case of *Sredharan T v State of Kerala*, The Kerala High Court in this case recognised ‘Right to be Forgotten’ as a part of the Right to Privacy. A writ petition was filed in order for protection of Article 21 Right to Privacy of the Indian Constitution, The petitioner asked the court for the removal of Name and Personal Information of the rape victim from the Search engines to guard her identity. The court ruled in the favour of petitioners by using the Right to be forgotten under Right to Privacy Article 21 of Indian Constitution and ordered the search engine to remove the name of rape victim from their website until further notice.

In the case of *Dharamraj Bhanushankar Dave v State of Gujarat* before the Gujarat High Court, The Gujarat High court did recognise the Right to Privacy while providing the judgement in the favour of respondent. The Petitioner was charged with Criminal conspiracy, murder and

⁵ Samridhi M, “Right to be Forgotten in India “available at : <https://lawctopus.com/clatalogue/clat-pg/right-to-be-forgotten-in-india/> (Visited on January 22, 2024)

kidnapping among others and was pronounced guilty, the petitioner asked the High Court to not let the respondent post any information related to the petitioner on any of the Search Engine because it would jeopardize the petitioner's personal and professional life. The High Court said that any such article will not violate Article 21 of the Indian Constitution as the petitioner presented no legal base for the arguments against the article going on the search engine in front of the Hon'ble Cort.

In the case of *V. v High Court of Karnataka*, The High Court of Karnataka recognised 'Right to be forgotten'. This case was filed to get an order from the Kerela High Court to remove the name of Petitioner's Daughter from the Case Title as it was easily accessible to the general public and can be easily use to defame her. The name can be used to create difficulties in her personal as well as professional life.⁶ The court held that "this would be consistent with the trend in Westen Countries, where the 'Right to be forgotten' is applied as rule in sensitive cases concerning women in general, as well as particularly sensitive cases involving rape or harming the modesty and reputation of the individual concerned".

LEGISTALTIONS INVOLVED

When it comes to the right to be forgotten, which legislations are to be enforced and where, determining that can be a challenging task as now impacts of an individual's online activity can be far reaching and beyond their own local jurisdiction or even their country. An individual's data can be accessed by anyone from any corner of the world and so in such circumstances it's difficult to predict what type of legislations can be applied or the lack of such because internet or the digital space at the end of the day is an unpredictable space, breaches can happen in many ways which one can never determine and making laws to prevent them before hand is not feasible due to its dynamic nature. But certain regulations and laws do exist to overcome the basic laches of the subject, it may be used as an umbrella of some sort for the concept to be used to further frame laws regarding the same.

The GDPR's article 17 of the framework focuses on the concept of 'Right to erasure' which states that an individual shall have the right to obtain from the controller the erasure of personal data concerning him without any undue delay. The recital 66 elaborates on the subject which further strengthens the right to be forgotten in the online environment.

⁶ Zubair Ahmad, "Right to be forgotten", available at: <https://articles.manupatra.com/article-details/Right-to-be-forgotten> (Visited on January 22, 2024)

In India there is a lack of specific legislation when it comes to the right to be forgotten, which in turn may create inconsistency as existing avenues depend upon case-by-case interpretation as well as judgements. The Digital Personal Data Protection Act, 2022 does have some provisions that indirectly address the concept, section 8 of the act mandates the data fiduciaries to only collect and process the personal data that is needed for the stated purposes, this essentially enforces a limit upon storage and collection of data, section 9 of the act specifies that data fiduciaries can only retain data for as long as it is required, the data should be erased if there is no legal obligation to retain it and section 12 dwells upon the concept of right to erasure, stating that a data principal shall make a request to the prescribed data fiduciary for erasure of her personal data and the data fiduciary shall do so without any undue delay.

MYTH OR REALITY

The right to be forgotten is a layered concept, existing somewhere between myth or reality, the concept of universal erasure sounds doable only in theory but in practice it is not as effortless as it may seem. As the laws related to this right vary from nation to nation and so a universal general application of it is not possible even though the information that needs to be erased has its reach and domain all over the world, its removal may only ensure the erasure of or deny access to such information over a certain area where those laws are applicable. Therefore, you can control some visibility but not all of it. The idea of the right to be forgotten is premised on the basis that a citizen must have control over information appertaining to him by being cognizant of the content and extent of personal data being accessed by a third party.⁷

It may potentially have some adverse effects as many individuals may try to suppress information with legal implications that may potentially have the ability to hold individuals accountable for their online actions again pertaining to the fact that there needs to be a balance, application of it may depend upon case-to-case basis. There is a lack of legislative framework as the practicality and effectiveness of enforcing this right on the global internet is a very challenging task to say the least. Implementing this across the globe raises a lot of concerns about censorship as it may vary from platform-to-platform basis what may raise eyebrows in certain parts of the world may be normal in other parts of the world, jurisdiction is a complex arena of this subject when it comes to the digital space, other ethical implications of this right

⁷ Jasmine E. McNealy, "Emerging Conflict between Newsworthiness and the Right To Be Forgotten" *The*, 39 N. KY. L. REV. 119 (2012), at 121.

are to be individually balanced as well with this right like freedom of expression, privacy, accountability etc.

The right to be forgotten is a complex legal concept that can have both advantages and disadvantages. Here are some of the key advantages of the right to be forgotten:

- **Protects Privacy:** The right to be forgotten can help individuals protect their privacy and personal information by allowing them to request the removal of their personal information from online platforms or search engines.
- **Reduces the Risk of Harm:** The right to be forgotten can help reduce the risk of harm to individuals by preventing their personal information from being used for malicious purposes, such as identity theft.
- **Supports Freedom of Expression:** The right to be forgotten can support freedom of expression by allowing individuals to control their personal information and ensure that it is accurate and up to date.

Here are some of the key challenges of the right to be forgotten:

- **Limitations on free speech:** The right to be forgotten can potentially limit freedom of speech and the public's right to access information, as it can result in the removal of legitimate and important information from online platforms or search engines.
- **Technical challenges:** The implementation of the right to be forgotten can be technically challenging, as it requires online platforms and search engines to develop complex systems for managing and removing personal information.
- **Conflicts with other legal rights:** The right to be forgotten can conflict with other legal rights, such as the right to access information, the right to freedom of expression, and the right to conduct research and journalism. However, it is important to carefully balance the right to be forgotten with other legal and social interests, such as freedom of expression and access to information, in order to ensure that it is used in a responsible and ethical manner.

Moreover, with the recognition of the right to privacy as a fundamental right and the introduction of the Personal Data Protection Bill, the right to be forgotten is gaining increasing attention from both the courts and the legislature in India.⁸

⁸ Right to be forgotten, available at : [Right to be Forgotten - ClearIAS](#) (Visited on January 24,2024)

Therefore, while the right to be forgotten may offer individuals with many tools to manage their data and information and may help them control their presence online and potentially remove content, which is outdated or harmful, it's the limitations that it comes with on the larger global scale which is why it can be perceived as a myth on some scale. The right to be forgotten is a multifaceted reality which is ever evolving in the digital world.

CONCLUSION

The future prospect of this right is potentially in need for evolvement as there is a lack of legislative framework, an open and continued dialogue is necessary for its effective implementation which can only occur when it is observed on a case-by-case basis as circumstances and situations evolve and occur. This right is not limited to right to oblivion or the right to remove names of rehabilitated criminals from past criminal records. The right to be forgotten means the ability of individuals to erase, limit, delink, delete, or correct personal information on the Internet that is irrelevant, inaccurate, or inadequate. In the Indian scenario, the right to be forgotten should fall under right to privacy and should not be made an absolute right. The right should be made enforceable in cases where the de-indexing or archiving would not be sufficient to protect one's right to privacy. With the evolution of technology and easy access search engines, a mechanism to protect the privacy of every individual becomes necessary. Thus, the introduction of the right in India with respect to search engines along with other personal data protection laws will resolve the problem of data insecurity and misuse of any kind of personal information. Thus, the right to be forgotten should not be limited only to the extent of the right to erasure (right to oblivion) of personal identity from old criminal records and crimes committed by women or children but should extend to all the citizens of a country in terms of digital footprint, considering the extent of the infringement of their right to privacy or more specifically the infringement of the right to be forgotten.⁹

It shall be a dynamic tool which shall potentially play a vital role in curtailing online privacy but before doing that it needs to address its on ground concerns like jurisdictional issues, applicability as well as accountability related to individuals when needed in order to shape a harmonious digital future. Its effectiveness, and ethical implications shall have a broader social impact and will continue to be subjects of scrutiny and discussion.

⁹ Tejashree J, "The Need for the Right to be Forgotten in India" 5.1 RFMLR 106 (2018)