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THE RIGHT TO BE FORGOTTEN: PRIVACY IN THE AGE OF PERMANENT MEMORY

AUTHORED BY - PARNIKA SHIRWAIKAR

3rd year BA.LLB (University of Mumbai)

Abstract

In the present state of perpetual digital memory, the 'Right to Forgotten (RTBF)' emerges as a crucial instrument for regaining privacy and reclaiming freedom from outdated and damaging digital data. This paper discusses the development of RTBF from its enactment in European Union after the landmark decision in Google Spain case, to its implicit recognition in India in the Puttaswamy judgement and Digital Personal Data Protection Act of 2023. While also pointing out the challenges in its implementation. The paper concludes with an urge for a separate legislative framework in India.

Keywords: Right to be Forgotten, Digital Footprint, Digital Personal Data Protection Act, Data Principal, Privacy, Data Fiduciary.

I. Introduction.

We live in such times where the reputation of an individual largely dependent on their digital footprint. Memory now, is no longer ephemeral and subjected to natural erosion of time. Earlier, data was restricted to physical records and was only accessible through deliberate effort, today, data exists perpetually across social media, search engines, digital archives and algorithm. Thereby significantly increasing the risks of reputational harm, continuous surveillance and loss of individual autonomy and privacy.

In these digital times, people are often under the impression that once something goes out into the boundless realm of the internet, its set in stone and etched permanently into the public domain. Though this belief is largely grounded in reality, it's not without a remedy. To counter the intimidating permanence, is the "Right to be forgotten (RTBF)¹." The RTBF comes to the

¹ [Right to be forgotten](#)

rescue of individuals facing online stigma and being forced to live with the burdens of unlawfully disclosed personal information. This law aims to protect the dignity and privacy of individuals in the times of expanding internet where the values of privacy, security and confidentiality and put to test often due to the ineffable repercussions of publication of private information of an individual that is often defamatory and harmful. The right to be forgotten entitles such an individual to demand the removal of such private information from the internet.

II. Status of the Right to Be Forgotten in EU.

The Right to be forgotten was first officially recognized by the European Court of Justice in the case of [Google Spain SL v. Agencia Española de Protección de Datos](#),² in the year 2014. The right was however not absolute, and in 2019, the EU Court further clarified the territorial scope of RTBF, ruling that Google does not have to apply the “right to be forgotten outside Europe”. The Right to be forgotten is now codified under **Article 17** of the EU’s General Data Protection Regulation.³ It states, “The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay.” Thereby providing individuals the right to demand erasure of personal data without undue delay when such data is no longer necessary, consent has been withdrawn by the subject or if the data is unlawfully processed. Simultaneously, the GDPR has provisions in order to safeguard freedom of expression, public interest, and compliance which makes it one of the most structured and comprehensive frameworks.

III. Status of the Right to be Forgotten in India.

Although the European Union has tried to find a balance between the right to privacy and the right to freedom of expression through carefully designed safeguards, the handling of the Right to be Forgotten in India is still disorganized and primarily judicial in nature.

Currently, there is no specific legislation for the Right to be Forgotten in India. The Supreme Court recognized **privacy** as a fundamental right guaranteed by the Constitution of India in the case of Justice KS Puttaswamy v. Union of India⁴. The court recognized privacy

² [Google Spain SL v. Agencia Española de Protección de Datos](#),

³ [General Data Protection Regulation](#).

⁴ [Justice KS Puttaswamy v. Union of India](#)

as a core component of personal autonomy and individual liberty. Although the Right to be forgotten was not expressly defined, it was implicitly recognized by the court as an extension of Right to Privacy. However, it was held that such right is not absolute and can only be exercised by an individual for the removal of their personal information when it's no longer relevant, outdated, or serves no legitimate interest.

The Digital Personal Data Protection Act, 2023⁵ came as a legislative response. The DPDA deals with the processing of digital personal data within the territory of India. **Chapter 5** of the Data Protection Act deals with rights of the 'Data principal' i.e. the individual concerned. It allows the processing of personal data for lawful purposes on the consent of the individual concerned. The consent maybe withdrawn at any point of time. Specifically, **clause 20 of the 5th chapter** states that the data principal possesses the Right to be forgotten by demanding restriction or erasure of their personal data by a data fiduciary. However, consent is not required in special circumstances such as medical emergencies and issues of national interest. In a country where the digital footprint is becoming an increasingly important consideration in issues of employment, social status, and even marriage, the lack of a clear right to be forgotten is a cause for concern. The judiciary has largely taken an ad hoc approach in balancing the right to privacy and the public interest in transparency and freedom of expression. The absence of clear legislative guidance has resulted in a considerable degree of judicial discretion in interpreting when and how the Right to Be Forgotten can be invoked.

IV. Challenges and Concerns

The implementation of the Right to Be Forgotten creates complicated problems which need to find a solution between protecting personal privacy rights and permitting people to express their opinions through speech and their right to access news information. The RTBF presents dangerous risks because it allows users to conceal essential public facts which need to remain in the historical record. The public should have access to information while journalists should keep their search for truth unimpeded to prevent governmental authorities from misusing their power to censor information. The current system produces enforcement challenges because it does not clearly define what search engines and social media platforms need to do. The process becomes more difficult because cross-border data flows lead to problems when handling data which exists outside of national boundaries. The situation in India becomes more difficult

⁵ [Digital Personal Data Protection Act, 2023](#)

because people have limited knowledge about the issue and they face technological difficulties and the country lacks an appropriate system for resolving disputes.

V. The Way Forward.

India needs to establish a comprehensive approach which defines the Right to Be Forgotten through specific rules. The legal system requires precise regulations which establish who qualify for protection and what procedures should be used and which tests should determine the outcome. The establishment of an independent adjudicatory body would enhance decision-making processes through its fair and consistent judgment framework which decreases the need for judicial authority. We should create clear rules which separate private citizens from public personalities because we want to protect private citizens more than public personalities. India can create its own system based on the GDPR framework while making necessary changes to fit its constitutional and social environment. The aim should not be the effacement of past occurrences but rather to ensure that the memories on the Internet do not constitute an unjust obstacle that hinders the dignity and freedom of people.

The Right to Be Forgotten functions as an essential protection which safeguards personal privacy rights and dignity rights in a world where digital memory exists indefinitely and throughout all digital spaces. While the European Union has established robust framework and an effective enforcement system, India is still developing its legal approach. As one's identity in the physical world is increasingly being defined by one's digital identity, it is necessary that a clear and balanced framework is developed to address the issue of privacy. A balanced approach can ensure that progress is not made at the expense of human dignity and freedom.