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Right to be forgotten: Paving the way for the protection of privacy

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Abstract

The Indian Constitution gives some specific Fundamental Rights to the people of India and can't be abused in any case, like the Right given under Article 21 i.e. Life and Personal Liberty. Right to be forgotten is one of them which is recently incorporated. Earlier, the right to forget was not accessible and enforceable in the courts of law by the public, but over the years Indian courts have recognized the Right to Forget for adjudicating several cases as part of Article 21, in civil writ petition no. 9478 of 2016 court recognized a person's Privacy rights pertaining to the right to be forgotten without explicitly using it; also, in *Jorawer Singh Mundy vs. Union of India & Ors*, the court dealt with both the right to privacy and the right to forget concurrently. With the rise of various social media platforms, where information spreads in seconds, people's awareness of the Right to Forget has grown. The main aim of the paper is to discuss the right to forget as a standalone provision and also to spread awareness about it in public. After going through this paper one will understand the importance and its global acceptability as well as in India.

Keywords: Privacy, data protection, fundamental rights, internet, data protection bill

1. Introduction

The right to forget "translates the act of deleting data so that it cannot be found by third parties was defined as "the right to remain silent about past life events that no longer exist." The Data Protection bill 2021, (not passed yet) talks about the Right to be Forgotten, the right to be forgotten still does not have any legal backing or support even after its great need in the present time. In order for courts to be legally bound by it, it has to be fully integrated as a basic right given in part three of Indian constitution also it should be integrated under Article 21 of the Indian constitution. This right is already been recognized by many countries across the globe as a legal right. For example- the General Data Protection Regulation of the European Union (GDPR). Nonetheless, it is not considered a lawful right of people of India, and courts have discretionary power over it and use it accordingly.

According to General data protection regulations, controller have been given the right of permanent deletion of the data, data subject can request the controller in case he want permanent deletion of his/her personal data which is no longer in use. Within specified period of time (within a month). The same regulation has been used by several Indian courts time to time, to decide numerous cases. There are several reasons why, despite becoming increasingly important in the age of the internet, this right has not been integrated under part three of Indian constitution as a basic right, which will be thoroughly covered in the following section. As a result, it could be argued that court have the discretionary power of whether to remove the personal data in given situation while following international law. If we want to provide fair and equal justice to all we need to take some urgent actions so that we can protect people's right to be forgotten.

1.1 Research Questions

1. Whether Right to forget recognized yet as a Fundamental Right? If so, in what forms?
2. Whether the Right to Forget is a Standalone Right or a Part of the Right to Privacy under the legal system of India, the USA, and the EU.

1.2 Purpose of the Paper

Right to forget is still in its initial stage, through this research paper authors have made their best efforts to cover all the aspects related to the right to forget in order to make people

aware that how this right can protect their personal data as well as prevent any misuse of it, and to bring this right in public domain so that this can be accessible by common people.

1.3 Methodology

The researcher has focused on Doctrinal method. The information is gathered from newspaper articles and various international and national journals which specifically focus on the qualitative nature of the data. This research paper gives simple yet extensive thoughts or opinions regarding the "Right to be forgotten: paving way for the protection of privacy". And endeavors to cover the various other legal aspects of the Right to forget.

2. Right to Forget: A Historical Perspective

At the international level, the right to forget is first rooted in European data protection law. European Union issued Directives on Data Protection in 1995, stating that if any individual deleted his/her account from the website then his/her information could be removed. This paved the way for the fundamental idea of "personal data deletion" to emerge. Which has become critical for the protection of people's rights. Individuals' data may also be treated, i.e. deleted or updated, in order to protect their "right to privacy." Certain conditions, such as transparency, proportionality, legitimacy, and so on, may also apply.

The case of Google Spain in 2014 accelerated developments in the "Right to be forgotten" issue, broadening the concept's scope through its interpretation. According to the European Union's Court of Justice, an individual has the right to request deletion of information, as well as delinking. This largely means that an individual can ask a search engine to remove links containing unnecessary or factually inaccurate personal information. However, the court's interpretation of the law made it extremely challenging for search engine crawlers to enforce. This was due to the fact that Google received millions of requests from search engines to remove the link, which proved extremely difficult to implement.

In addition, it is having certain ambiguities and inadequacy. There was ambiguity if all content would be removed or needed to be reviewed. While we must protect people's privacy, both these essential rights, including the access to information and the right to free expression, must also be protected. As an outcome, not all demands will be acknowledged, and some could be against the public's best interests. Despite its flaws, this decision was critical in making it easier to rule on cases involving the "right to be forgotten."

2.1 Right to Forget: Exploring a Comparative Study with Particular Emphasize on the Legal System of the USA, Argentina, India, and the European Union

The general set of rules has been established by the United States to protect its people. New York was quick to introduce a draught "right to be forgotten" Bill A05323, (Bill Search and Legislative Information, n.d.) titled "An act to alter the civil rights law and the civil practice law and rules, in regard to developing the right to be forgotten act." Furthermore, New York State representatives Tony Avella and David Weprin in March 2017 given a set of law requiring search engines and online speakers to remove data that is "inaccurate," "irrelevant," "inadequate," or "excessive," that is "no longer material to current public

debate or discourse," and it is hampering the data of the subject. The decision given in the case of Google Spain SL v. Agencia Española de Protección de Datos was primary kept in mind while drafting the Bill.

In 2018 General Data Protection Regulation (GDPR) was adopted by the EU, Article 17 (Art. 17 GDPR – Right to Erasure ('Right to Be Forgotten') - General Data Protection Regulation, n.d.) provides for the right to delete certain categories of personal data - categories that are no longer considered essential, data was agreed to or dealt with has been withdrawn. Objected, personal data is unlawfully processed, and data is legally obligated to be deleted. However, regulations limit the right to erasure in certain cases, particularly for reasons of public interest in the public health sector, for archival purposes "in the public interest, for purposes of scientific research or appropriate historical or statistical purposes" and for "the establishment, exercise or defence of legitimate claims.

Aside from the EU, Argentina has been a hotbed of action in the current problem, with multiple lawsuits filed by important individuals have filed lawsuits against search engines like Google and Yahoo!, requesting the elimination of particular search outcomes, particularly links to images uploaded online. Yahoo de Argentina SRL and Others v. Da Cunha, Right to forget is mentioned in this case, petitioner was a model and musician based in Argentina. She sued Yahoo and Google for damages and injunctions for linking her identity to various adults and pornographic sites, which also featured her images without her legit consent. Apex Court of Argentina issued directions in the matter in December 2014, focusing on the importance of search engines in terms of free expression. (Da Cunha V. Yahoo De Argentina SRL and Another, n.d.).

In India, The right to privacy has been recognized as a fundamental right in the landmark case of K S Puttaswamy (2017) ^[1] and the "right to forget" is growing in India. The committee headed by Justice BN Shrikrishna (Economy News: Indian Economy News, GDP Growth, World Economy News, Government Policy News, n.d.) has drafted the Personal data Protection bill 2018, which has presented another right called the Right to Forget, which gives rights to the people to delete, restrict, delink, or modify irrelevant, misleading information about an individual on the Internet. India currently lacks comprehensive data protection legislation. Given the growing importance of technology-based businesses, the Parliament set out to create India's data protection bill. On December 11, 2019, the IT ministry (MeitY) proposed the drafted Personal Data Protection Bill, 2019 to Parliament, and it was referred to a Joint Parliamentary Committee (JPC) for further consideration. But later in August 2022 Indian government withdrawn the PDP bill 2021. (Govt Withdraws Data Protection Bill, 2021, Will Present New Legislations, 2022).

2.2 Right to privacy as a Part of Right to Forget: Judicial Developments

Although there are multiple legal proceedings in India concerning the Right to Forget, they are inconclusive. The Supreme Court of India recognised the right to forget as a fundamental right in the case of KS Puttaswamy and Anr. vs UOI and Ors. It was founded on a rethinking of prior cases including MP Sharma vs Satish Chandra and Kharak Singh

¹ (2017) 10 SCC 1. (India)

vs. State of Uttar Pradesh of India had recognized the Right to forget as a fundamental right. It was founded on a reconsideration of previous cases such as *MP Sharma vs Satish Chandra* ^[2] and *Kharak Singh* ^[3]. In all of these cases, the main issue was not the right of to forget, but the right to privacy. Indeed, many experts argue that the right to forget differs from the privacy rights in that the former entails removing publicly available information at the time and preventing third parties from accessing it, whereas the latter entails allowing third parties access to it. Whereas the latter involves preventing data that is not publicly available from entering the public domain (Weber, n.d.) (Crovitz, 2010). While the right of Right to forget has not been a focus of Indian law, it does exist. Apex court ruled in *R. Rajagopal vs. State of Tamil Nadu* ^[4]. In 1994 first time the different concept of the Right to be left alone was discussed (Kumar, 2017). In this case, there was a prisoner who wrote his autobiography in prison, which mentioned that there are ties existing among the detainees and numerous IAS as well as IPS officers. He had given his wife his autobiography with the intent of having it authored in a particular magazine. Nevertheless, the publishing was restricted in a variety of ways, raising questions of whether anyone, even in prison, has the right to be alone. It stated that a person has the right to personal rights by prohibiting the publisher of material (e.g., life, relationship, relatives, parenthood, infant, childbearing, and schooling) without his/her express consent. This was also upheld by the court. The judgment can be viewed as a precursor to ongoing litigation on a particular topic. Despite this, divergent Elevated Court rulings on the matter have possibly opened a Pandora's Box due to the absence of a proper Judgment of the Supreme Court in the matter. The decision can be considered a forerunner to the current litigation on the subject. Despite this, divergent High Court opinions on the topic have possibly opened a Pandora's Box due to the lack of a proper Apex Court judgment in the matter.

Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd, in this case, the Delhi High court acknowledged the "Right to be left alone" as well as "Right to forget" as an essential component of a one's existence. In *Sri Vasunathan v. Registrar General* ^[5], the "Right to be forgotten" was formally recognized, albeit in a limited sense. The petitioner's application to just have his youngest daughter deleted from a decision involving costs of marriage as well as fraud was granted by the Court. It was contended that recognizing the right to just forget would've been similar to measures taken by "western countries" to protect this right in "sensitive" situations involving people's "modesty." or 'reputation,' particularly women. Justice Sanjay Kishan Kaul ruled that a person has the freedom to avail excess data from the internet in both tangible and intangible forms. "The right of a person to control over his personal data and to be able to manage his/her personal life would also cover his ability to control his existence on the Internet", Kaul added.

In the case of *Ashutosh Kaushik v. Union of India and Others*, Ashutosh Kaushik (Plaintiff) petitioned in the Delhi

High Court under Article 226 ^[6] requesting that the respondent authority delete any video recording, posts, or any other internet content related to his tipsy driving in 2009. He has been winner of a famous reality show and started acting in several films, so this information has been seen by many of his fans, creating negative perception of him. Nonetheless, this deed happened a decade earlier, and the information published at the time was unnecessary in the current conditions, affecting him mentally and affecting his mental distress. In this instance, the decision in *Jorawar Singh Mundy v. Union of India and Others* ^[7] was cited by the Delhi High Court. It asserted that any information online that is meaningless or incorrect in the present situation can be deleted or erased to safeguard the welfare of those affected. Following that, the Court ordered that Google remove the data pertaining to the Petitioner's humble demonstrations in 2009 and 2013, as they were no longer relevant and had cast him in a negative light.

The right to be forgotten is rooted in Articles 19 ^[8] and 21 ^[9] of the Indian Constitution, which are not absolute in nature and subject to reasonable restrictions. Kaul J. ruled that people's past misdeeds shouldn't be used against an individual as a weapon by way of using their digital footprint and that individuals should be allowed to limit the release of data about them. The Court considered the 2016 European Union Regulation (Article 17), which established the right to be erased (Article 17 GDPR, 2022).

3. Right to Forget: Protecting Privacy and Data Related Rights - A Way Forward

Entities that hold personal and sensitive information and are negligent in ensuring effective measures to safeguard such information, resulting in wrongful loss or wrongful gain to anybody, will be responsible to pay damages to the affected person, according to Section 43A ^[10].

Although people can withdraw their personal information on public platforms via measures The Data Protection Bill, like the IT Rules, defamation, obscenity, and so on, would be India's first legislation that specifically recognises the 'right to forget.' Although censoring provisions of the right conflict with the rights to information, speech, and expression are integral part of the fundamental right to privacy. According to the judgement in the matter of *Zulfiqar Ahman Khan* ^[11], in the internet world, where privacy and security constantly under attack, it is critical that we preserve persons' privacy and prevent the exploitation of their personal information.

4. Conclusion

The judicial system has construed the Right to Forget in a variety of contexts. Courts in India considered this right not on the basis of privacy, but on the basis of protecting women's modesty. The right to forget highlights the tensions between the right to privacy and the right to free expression, and given the rapid pace at which digital space is changing, these tensions are likely to persist. There can be some

² 1954 AIR 300, 1954 SCR 1077. (India)

³ 1963 AIR 1295, 1964 SCR (1) 332. (India)

⁴ 1995 AIR 264, 1994 SCC (6) 632. (India)

⁵ WRIT PETITION No.62038 OF 2016 (GM-RES). (India)

⁶ Article 226 in the Constitution of India 1949.

⁷ W.P. (C) 3918/ 2020. (India)

⁸ Article 19 in the Constitution of India 1949.

⁹ Ibid 21.

¹⁰ Section 43A in The Information Technology Act, 2000.

¹¹ Ibid 18

degree of agreement if public interest overrides are prioritized and adequate safeguards are put in place.

Regardless of its shortcomings, it is critical to protect an individual citizen's rights and keep them from interfering with their personal or professional lives. There is currently no law in India which shape- the Right to Forget. On the one hand, if an individual's past actions are posted on the internet, the general populace will have easy access to read/view those inaccurate actions and will start judging that person based on his past actions. As it affects the individual's current life, this could end up causing psychological and emotional distress.

On the other hand, citizens' freedom of speech and expression will be restricted, causing havoc in the media. As a result, the right to forget is a very complicated issue because it creates uncertainty between the right to privacy and the right to free speech and expression. There is currently no law in India which shape- the Right to Be Forgotten. On the one hand, if an individual's past actions are posted on the internet, the general populace will have easy access to read/view those inaccurate actions and will start judging that person based on his past actions. As it affects the individual's current life, this could end up causing psychological and emotional distress.

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5. References

1. Art. 17 GDPR – Right to erasure ('right to be forgotten') - General Data Protection Regulation. (n.d.). GDPR. Retrieved June 8, 2022, from <https://gdpr-info.eu/art-17-gdpr/>
2. Article 17 GDPR. (2022, April 25). GDPRhub. Retrieved June 10, 2022, from https://gdprhub.eu/Article_17_GDPR
3. Bill Search and Legislative Information. (n.d.). Bill Search and Legislative Information | New York State Assembly. Retrieved June 8, 2022, from https://assembly.state.ny.us/leg/?default_fld=&bn=A05323&term=2017&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y
4. Crovitz G. Crovitz: Forget any 'Right to Be Forgotten'. The Wall Street Journal; c2010 Nov 15. Retrieved September 2, 2022, from <https://www.wsj.com/articles/SB10001424052748704658204575610771677242174>
5. Da Cunha V. Yahoo de Argentina SRL and Another. (n.d.). Open Society Justice Initiative. Retrieved; 2022 Jun 15. from <https://www.opensocietyfoundations.org/litigation/da-cunha-v-yahoo-de-argentina-srl-and-another>
6. Economy News: Indian Economy News, GDP Growth, World Economy News, Government Policy News. (n.d.). Business Standard. Retrieved May 2, 2022, from <https://www.business-standard.com/article/economy-policy>
7. Govt withdraws Data Protection Bill, 2021, will present new legislations; c2022 Aug 3. Business Standard. Retrieved September 3, 2022, from https://www.business-standard.com/article/economy-policy/centre-withdraws-personal-data-protection-bill-2019-to-present-new-bill-122080301226_1.html
8. In The High Court of Delhi At New Delhi Extra Ordinary Civil Jurisdiction Writ Petition No. of 2021 In The Matter Of: MR. AS. (n.d.).
9. Law Beat. Retrieved July 11, 2022, from <https://lawbeat.in/sites/default/files/2021-07/Ashutosh%20kaushik%20Vs%20Union%20of%20India%20%26%20Ors.pdf>
10. Kumar AP. The right to be left alone. The Indian Express, 2017, July 31. Retrieved June 17, 2022, from <https://indianexpress.com/article/opinion/columns/aadh-aar-card-data-privacy-the-right-to-be-left-alone-4774645/>
11. Weber RH. (n.d.). The Right to Be Forgotten More Than a Pandora's Box? jipitec. Retrieved September 3, 2022, from <https://www.jipitec.eu/issues/jipitec-2-2-2011/3084>.