

Indic Legal Law Journal

Volume No. 1

Issue No. 4

October - November 2022

Pages: 1 - 6

Author Name: Pritha Lahiri

RIGHT TO BE FORGOTTEN

The article discusses the Right to be forgotten in brief in light of certain case laws and debates revolving around it.

Introduction

The right to be forgotten is the right to have private information about a person be removed from Internet searches and other directories. Since 2006, the definition has been debated and put into effect in both the European Union (EU) and Argentina.¹ The problem has arisen from people's desires to "determine the development of their life in an autonomous way, without being perpetually or periodically vilified as a consequence of a specific action performed in the past."

There are questions about its effect on the right to freedom of speech, its relationship with the right to privacy, and whether, by censorship and the rewriting of history, establishing a right to be forgotten will decrease the quality of the Internet. Many in support of the right to be forgotten cite its importance because of problems such as vengeance porn sites appearing for the name of a person in search engine listings, as well as instances of these results relating to petty crimes that individuals may have committed in the past. The key concern lies in the probably disproportionate effect that such findings will exert almost indefinitely on the online credibility of an individual if not removed.²

¹ Vinod Sreeharsha, *Google and Yahoo Win Appeal in Argentine Case*, THE NEW YORK TIMES (Dec. 17, 2020, 10:04 AM), <https://www.nytimes.com/2010/08/20/technology/internet/20google.html>.

² Charles Arthur, *What is Google deleting under the 'right to be forgotten' - and why?*, THE GUARDIAN (Dec. 17, 2020, 10:08 AM), <https://www.theguardian.com/technology/2014/jul/04/what-is-google-deleting-under-the-right-to-be-forgotten-and-why>.

Indic Legal Law Journal

Arguments

- **Individuals have the right to control their personal information and identity:** These days, the web is filled with different content. Some of this content is confidential and is exchanged in an unparalleled way by individuals. Information technology systems enable public and private entities to interfere with a person's right to privacy by enabling them to control and monitor all online communications. Therefore, the right to data protection and privacy must be protected by governments and politicians so that people do not risk their ability to manage their identity and personal integrity. Besides, individuals should have control over their knowledge. The 'right to be forgotten' therefore empowers individuals to reclaim control of their digital lives.
- **Most personal information available online has no public interest value:** Digital technologies have ushered an era of information overload. The vast majority of online personal information available is of little intrinsic value, although its accessibility may have devastating consequences for the lives of people: such information can thwart their job opportunities, obstruct their ability to receive the credit they need or simply prohibit them from living their lives with dignity.
- **People should not be indefinitely reminded of their past mistakes:** Even if data is legitimately in the public domain or shared with the individual's consent, people have the right to make mistakes without being haunted by them forever. Failure to understand the "right to be forgotten" causes search engines to present a distorted picture of individuals that list links to juvenile or other errors in top search results for a person's name.
- **Ensures the right to privacy under Article 21 of the Constitution:** The right to privacy, an essential tenet of the right to life and personal liberty, is guaranteed by Article 21 of the Indian Constitution. Privacy gives a person the chance to be left alone. It basically implies that a person can have his say on the kind of personal details he wants to post on the internet and those he wants to delete, and no one can put a bar on that right.

Analysis of 'Right to be Forgotten' under PDP Bill

Legal scholars from around the country have raised many concerns regarding the "right to be forgotten" since the introduction of the Personal Data Security Bill. The PDP Bill was drawn

Indic Legal Law Journal

up on the lines of the General Data Protection Regulation (GDPR), but on many grounds, the sense given to the 'Right to be Forgotten' under the PDP Bill varies from the GDPR.

A 'data subject' can on the grounds referred to therein, request the erasure of his/her details from the 'controller' under the GDPR, whereas that right is restricted only to prevent the continued disclosure of personal data under the PDP Bill. The 'data principal' does not enjoy the complete exclusion of personal data from the data fiduciary' database under the PDP Bill, which is contrary to the jurisprudence of 'Right to be Forgotten' and the Google Spain Case decision, where It was held that the search engine operator was obligated to remove links to web pages published by third parties containing confidential personal details from the list of results shown after a search based on a personal name.

In the case of Justice K.S. Puttaswamy (Retd.) v. Union of India³. it was observed by the court that if India *is to recognize 'Right to be Forgotten' on the verge of GDPR, it cannot be an absolute right. Such right cannot be exercised if the personal data is needed for the public interest, compliance with any legal obligation, national security, scientific and historical research etc. These conditions are exceptions to the right to privacy, including data privacy.*

In this regard, the report of the Data Protection Committee also states that the deletion of information accessible to the general public will infringe both the right of the citizen to know and the freedom of the press. The granting of such an absolute right can, if the information is withdrawn, impact the public domain of information. Such a right can also require the removal of private storage information, which may present an obstacle to the later release of the information. Therefore, a balance has to be established between the deletion of information and restriction over disclosure of information.

Although the 'right to be forgotten' does not provide for the right to erasure of personal data, Section 10 of the PDP Act imposes an obligation on the 'data trustee' to delete personal data if such data is no longer retainable. The limitation of data storage is discussed in Section 10 and specifies that 'data fiduciary' shall retain personal data only as long as it is necessary to store or for a longer period of time as required by any law. The data must be removed, if the goal of processing such data is accomplished.

³ K.S Puttaswamy v. Union of India, (2017) 10 S.C.C. 1.

Indic Legal Law Journal

Under Section 27 of the PDP Bill, a third party is entitled to submit to the Adjudicating Officer for a clarification of his order granting the right to be forgotten. Any individual who believes that such an order does not fulfil the conditions referred to in Section 27(1) which request that his order be reviewed by the Adjudicating Officer.

Furthermore, Section 28(2) of the PDP Bill authorizes the 'data fiduciary' to charge a reasonable fee if any 'data principal' exercises the rights granted to it. However, it is silent about the requirements for such fees to be decided. Such an exclusive power to the 'data fiduciary' may end up misusing the provision of this section and charging a high fee to the 'data principal'. Therefore, under this section, there is a need to define the requirements for deciding the charge.

The conflict between the right to privacy in respect of personal data and the right to information:

The RTI Act provides Indian people with the right to secure access to information held by public bodies under their jurisdiction. It assumes that democracy requires an educated citizenry and accountability of knowledge that is essential to its functioning, as well as to contain corruption, and to keep governments accountable to the governed for their power. It is also assumed that the revelation of information in actual practice can conflict with other public interests which include efficient operations of the governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. Therefore, the RTI Act attempts to harmonize these competing interests while maintaining the ideals of democracy. Nonetheless the dispute exists with regard to the personal information that is used by this act and how much information can be used by the general public under its right to information.

Section 8 of the RTI Act⁴ provides certain exemptions from the disclosure by a public information officer of information relating to, or under the control of public authorities. There is no obligation to provide information to individuals if disclosure of such information prejudicially damages the sovereignty and integrity of India or if there is a court order banning disclosure of such information or disclosure will cause a violation of the privilege of the Parliament or State Legislature or if information contains trade secrets or intellectual property and disclosure.

⁴ The Right to Information Act, 2005, § 8, No. 22, Acts of Parliament, 1949 (India).

Indic Legal Law Journal

Section 8(j) of the RTI Act further provides an exemption from public disclosure for personal data, though it does not use the term 'personal data'. As per section 8(1)(j) of the RTI Act, there shall be no obligation to give any citizen information which relates to 'personal information' if the disclosure of such personal information is unrelated to any public activity or interest, or if it creates an unjustified violation of the privacy of the individual concerned, unless officials created and approved under the RTI Act, such as the Central Public Information Officer or the State Public Information Officer or the Appellate Authority, as the case may be, are satisfied that the disclosure of such personal information is unrelated to any public activity or interest.

Judicial Precedents in India

Over the years, Courts in India have recognized the “Right to be forgotten to be a basic tenet”

1. Subhranshu Rout @ Gugul v. the State of Odisha⁵

The Court noted in this case that RTBF has been recognized as a statutory right in the European Union under the General Data Protection Regulation (GDPR), and has been upheld by a number of courts in the United Kingdom, and in Europe. It observed that while there is now a widespread and seemingly consensual convergence on the adoption and enactment of the right to be deleted or forgotten," there has been little effort in India until recently to understand the RTBF definition. Importantly, the Court also recognized that it is a "thorny issue in terms of practicality and technological nuances" though there is a need to introduce RTBF in India.

2. Sri Vasunathan v. The Registrar General & Ors⁶

Justice Anand Byrareddy by recognizing the Right to be Forgotten, disposed of the petition by concluding that:

“This would be in line with the trend in the Western countries where they follow this as a matter of rule “Right to be Forgotten” in sensitive cases involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned.”

⁵ Subhranshu Rout @ Gugul v. the State of Odisha, BLAPL No. 4592 of 2020.

⁶ Sri Vasunathan v. The Registrar General, Writ Petition Number 62038 of 2016 (GM-RES).

Indic Legal Law Journal

3. **Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd. and Ors.**⁷

In this case, the Court recognized the plaintiff's 'Right to be Forgotten'. The concern arose after the respondent released two articles dated 12.10.2018 and 31.10.2018 containing abuse charges against the complainant during the #MeToo movement. The court vide order dated 19.12.2018 ordered respondents to delete these articles from the internet as they could cause the defendant massive injury. The court also ordered that no other person must republish these papers. The plaintiff, however, pointed out that the substance of those papers had been republished on another website. On the basis of this grievance, during the pendency of the suit, the court ordered the re-publication of the said articles to be prohibited. The court also observed that the 'Right to be Forgotten' and the 'Right to be Left Alone' are the inherent facets of 'Right to Privacy'.

Conclusion

Therefore, it is clear that India has no settled stance on what constitutes a 'right to be forgotten,' but the Supreme Court has held that it may not be an absolute right. There are numerous opinions on the subject from the different High Courts of the country. In view of all the factors discussed above the Data Protection Committee Report has pointed out that granting the right to erasure under 'Right to be Forgotten' can hinder the other rights of the people of India, such as the right to information, freedom of the press, etc., which in a country like India is to some extent a correct position.⁸ But as said, 'data is a new oil,' the revised draft of the Personal Data Security Bill tackles the issues of control of personal data,' data fiduciary' fee determination requirements, etc. Otherwise, it may arise as a new arena of battle.

⁷ Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd., 2019 (175) D.R.J. 660.

⁸ Kunal Garg, *Right to be Forgotten in India: A Hustle over Protecting Personal Data*, INDIA LAW JOURNAL, (Dec 17, 2020, 10:10 AM) <https://www.indialawjournal.org/a-hustle-over-protecting-personal-data.php>.