
AN EXAMINATION OF INDIA'S RIGHT TO PRIVACY THROUGH THE LENS OF THE RIGHT TO BE FORGOTTEN

Arti P. Gadre and Prof (Dr.) Bhagyshree A. DeshpandeResearch Scholar, Research Centre, Department of Law, Sant Gadge Baba Amravati University, Amravati
(Assistant professor, KES Shroff College of Arts and Commerce)

&

Professor, Dr Panjabrao Deshmukh College of Law, Amravati, (Supervisor)

ABSTRACT

Information is readily available online in today's environment when technology has permeated practically every area of our life. The world has been completely changed by the internet, and things only seem to be moving in their favour. On the internet, personal data is being kept for ever-longer periods. As a result, instead of forgetting by default as it is experienced in the human brain, remembering by default is now the norm thanks to the wonders of technology. The "Right to be Forgotten" was enthusiastically brought into the European Union in this context, and it was heralded as a new era in the protection of online data privacy. The General Data Protection Regulation was created shortly just after the aforementioned provision to give people the "Right to be Forgotten" so they could ask data controllers to delete their personal information in specific situations. The researcher examines the potential legal barriers to recognising such a right and argues in favour of its implementation in India because it is legally solid. In this paper, the development of such a right in India will be examined in light of a significant ruling by the Judiciary. The paper will also look at defences and arguments for the right to be forgotten being recognised as a fundamental right in India.

Keywords: Right to Privacy, Right to be Forgotten, Data Privacy, Data Protection Bill.

1.1. INTRODUCTION

Any and every type of information can now be preserved online thanks to the field of digitization. Numerous people benefit from the abundance of data that is readily available online, but some individuals also experience negative effects from it. There are some situations where people don't want personal activities to be publicly disclosed on different social media platforms. And with good reason—citizens' right to privacy should always be protected and not infringed upon. An individual's private space shouldn't be invaded. People now utilise the internet more and more frequently in their daily lives. The main issue is that such online databases are designed to maximise the utility of the web. Pages are still visible even when they are removed from the site because of the cache. The Internet never forgets as the phrase goes.

The public frequently posts private information, regrets doing so much later, and wishes they had never published it in the first place and would have kept it confidential. Once information is shared and made public online, the original purpose for which it was intended to be used becomes utterly irrelevant. It is only natural that data made available online is open to interpretation, which may be interpreted to qualify as information misuse or even abuse.

Imagine that you are a renowned and well-respected person, but a search engine only identifies you as the creator of that popular video. Well, Mr Mario Costeja Gonzalez experienced a comparable incident. Mr Gonzalez had put up some property for auction in 1998 as a result of some financial difficulties, the specifics of which were described in a newspaper article that later appeared online. However, the story of his auction was always clearly shown anytime his name was googled, which hurt his reputation. So, he requested that Google take down the aforementioned post. The Court of Justice of the European Union, which has its headquarters in Luxembourg, ruled in the abovesaid case, that Google must remove any search results that are outdated, incorrect, or even irrelevant data if the request is made by the concerned party. As a result, in Mr Gonzalez's situation, Google must delete the search results that appear regarding his property's auction.

This ruling is significant because it establishes the legal framework for the Right to be Forgotten or the Right to Erasure. It also establishes the basis for the GDPR's right to deletion clause. But this right is far more complex than a straightforward removal request. The "right to be forgotten," its implications, and its use in India are examined in greater detail in this research paper.

1.2. OBJECTIVE OF STUDY

- To understand the development of the right to be forgotten in India
- To learn judicial pronouncements protecting the right to be forgotten in India.

- To examine the rules put in place to address privacy issues in India.

1.3. RESEARCH METHODOLOGY

For the proposed study, the researcher employed a doctrinal research approach. It is based on secondary research resources such as encyclopedia entries, scholarly publications, court decisions, legal reports, and the most significant laws and rules currently in effect

1.4. REVIEW OF LITERATURE

(Jain, 2007) in his book "Indian Constitutional Law," discusses the numerous developments that have occurred in Indian constitutional law. After the constitutional law took effect, there were numerous case laws. Few court rulings had a substantial impact on constitutional law and served as turning points. By interpreting Article 21 as a whole, the court has inferred other rights for the general public, including the right to privacy and the right to be forgotten. To live honourably, one must have the right to privacy. The researcher concluded that one of the fundamental liberties protected by the Indian Constitution is the right to privacy, and even the Supreme Court of India has recognised this.

(Becker, M., 2019) his research paper, titled "Privacy in the Digital Age: Comparing and Contrasting Individual versus Social Approaches to Privacy" discussed privacy rights and different aspects in the digital era. The author also discusses the challenge that the digital era poses to an individual's right to privacy. Even it explains the value of privacy on social networking sites and other apps.

And other Acts and Articles are referred to by the researcher.

1.5. LIMITATION OF STUDY

The study's limitation is that it only looked at secondary research on the information that was already accessible about the project's subject. The study has been constrained by the researcher's use of solely references to Indian legislation and rulings.

1.6. WHAT IS PRIVACY?

The United Nations recognises the right to privacy as a basic human right (UDHR). What this right comprises is challenging to concisely and exactly express. Regarding information or personal data and the degree to which it is shared with third parties, privacy has a dual aspect. The tools that were accessible at the time, such as literacy, bookkeeping, newspapers, and, most recently, the Internet, have changed how people today interpret privacy. The notion of privacy in the contemporary age has changed as a result of the Internet and the introduction of mass data gathering and retention. The present privacy debate is on how third parties handle the data they possess, including how it is protected, who gets access to it, and under what circumstances.

1.7. RIGHT TO PRIVACY

Black's Law Dictionary refers to the right to privacy as a "right to personal autonomy." In this sense, having the freedom to make your own decisions is equivalent to having the right to privacy. One may exercise this privilege to prevent others from using personal information about him, such as his name, picture, etc. Any unjustified interference in his private life could put him through emotional hardship, damage his relationships with his family, and his reputation, and jeopardies his mental health.

All people have the right to privacy just by being alive. Physical integrity, individual freedom, the right to free speech, and the freedom to move or think are also included. Thus, privacy encompasses more than just the physical body and also includes integrity, individual autonomy, data, voice, consent, objections, movements, thoughts, and reputation. As a result, it is a relationship that is neutral and free from interference, unwelcome intrusion, or invasion of personal space between an individual, a group, and an individual. All contemporary societies agree that maintaining one's privacy is crucial, and they do it not only for ethical considerations but also for legal ones.

The concepts of privacy and the right to privacy are difficult to grasp. Privacy often relates to modern information and communication technologies and is based on the principle of natural rights. The right to privacy refers to our ability to protect the space around us, which includes all we own, such as our bodies, homes, assets, ideas, feelings, secrets, identities, etc. By controlling the scope, mode, and duration of the information you choose to release, you can decide which portions of this area other people can access.

1.8. WHAT IS THE RIGHT TO BE FORGOTTEN?

Citizens can request to have their information deleted from the internet under the concept of the "right to be forgotten" or "right to erasure." Additionally, the same can be verified via a traceable mechanism. It is frequently linked to the right to privacy under the heading of the right to be left alone. This right is crucial in the

social media era since every image, recording, communication, or post has the potential to be used against you. These rights protect both a person's privacy and dignity. A search engine's only goal is to deliver information on a relevant topic. Because it is powered by artificial intelligence (AI), it is unable to comprehend inaccurate or irrelevant information. Its database has a wealth of information about every associated human. Since social platforms have made people so vulnerable, it is only fair to demand the right to privacy and the right to be forgotten to protect one's dignity. According to the global conversation surrounding it, the Right to Privacy guarantees and protects the Right to be Forgotten as a natural right.

1.9. DEVELOPMENT OF RIGHT TO BE FORGOTTEN IN INDIA

There is presently no legal framework for such a right to erasure or the right to be forgotten in India.

The Gujarat High Court's decision in *Dharmaraj Bhanushankar Dave v. State of Gujarat*, the first case in India to deal with the idea of the right to be forgotten, was significant. The petitioner had filed a case to have a published ruling that exonerated him from charges removed, which is how the matter came to be. The petitioner was unable to identify specific legal requirements that had been broken, so the court declined to issue an order for the revocation of the judgement. As a result of the absence of a legal framework, the petitioner was unable to seek any relief.

The supporting opinion was concluded in the famous case *K.S. Puttaswamy v. Union of India* concluded that a person's right to privacy and liberty depends on their ability to be left alone. The Supreme Court also noted that the right to be forgotten just can not be utilised when the data in question was required for (1) practising the freedom of speech and expression and information; (2) complying with legal requirements; (3) carrying out a task carried out from the public's interest or health policy; (4) cataloguing intended purpose in the interest of the public; (5) science-based or cultural study purposes or interpreting data; or (6) the institution, exercise, or maintenance of a claim. As a result, the court recognised the right to privacy as a fundamental right protected by Article 21 of the Constitution, together with the right to be forgotten and to be left alone. The right to privacy was further expanded to include both physical and virtual environments, such as the internet and social media.

Justice Sanjay Kishan Kaul stated "The right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the Internet".

The petitioner in *Sri Vasunathan v/s The Registrar General & Ors* asked to have his daughter's name removed from the cause title because it was easily searchable and would damage her reputation. The court ruled in the petitioner's favour and issued an order that the name is omitted from the order's body and cause title. Only copies of the order that turned up in a search on the internet were covered by the remedy.

In *Subhranshu Rout @ Gugul v. the State of Odisha*, the accused assaulted the woman and created a phoney profile to share personal images of her on Facebook. No one, much less a woman, would wish to create and showcase the grey areas of her personality, the Odisha High Court ruled. Women are the victims in the majority of incidents, including this one. As a "right in rem," they have the authority to impose the right to be forgotten. Once the relationship between the victim and the accused becomes strained, as it did in the current case, the taking of pictures and films with permission cannot justify the exploitation of such content.

However, the right to be forgotten is uncertain in India due to a lack of legislative protections. What would a proposed right to be forgotten cover, for instance? Would it eliminate the source itself or just a search result from a search engine?

Under the direction of the B.N. Srikrishna Committee, the Personal Data Protection Bill, 2019 was created in place of such inquiries. Section 20 of the bill establishes the right to be forgotten. It states that three grounds may be used to request the right to limit and stop the further disclosure of personal data.

1. Either no longer applies to the reason for which it was collected or has fulfilled that goal.
2. Was made with the data principal's consent by section 11 and that consent has now been revoked; or
3. Was made in violation of this Act or any other currently in effect law's provisions.

The committee also placed a strong emphasis on obtaining the consent of an individual before processing and using their personal information. According to the committee, consent/assent must be specific, unequivocal, and able to be withdrawn just as efficiently as it was given.

1.10. CONCLUSION

It is crucial to protect privacy in this day and age where every piece of information is accessible with only a click. Both human beings' vulnerability and connection have increased. Information on a person is available

online, on social media, or elsewhere. An individual should have the right to safeguard and maintain his or her identity in this regard. A person can do this thanks to the right to be forgotten.

Although this right is not universally recognised, which creates questions and limits its effectiveness. However, it should be mentioned that social media platforms allow people or users the option to erase any information that infringes on their right to privacy. The right to be forgotten is prospective in nature and shields a person from further harm.

Even though this right has been acknowledged in India, no concrete legal framework has yet been established. Even though we have cyber cells to address these problems, victims have found it impossible to seek redress because there is no legal structure.

1.11. REFERENCES

- Jain, M. P. (2007). *Indian Constitutional Law*. Nagpur: Lexis Nexis.
- Sharma, S. K. (1994). *Privacy law: A comparative study*. New Delhi: Atlantic Publishers and Distributors.
- Becker, M. Privacy in the digital age: comparing and contrasting individual versus social approaches towards privacy. *Ethics Inf Technol* 21, 307–317 (2019)
- Google Spain SL v. Mario Costeja González, Case C-131/12, Court of Justice of the European Union
- <https://privacyinternational.org>
- <https://digitalindia.gov.in>
- <https://academic.oup.com>
- <https://www.researchgate.net/>
- <https://papers.ssrn.com>
- <https://www.prindia.org>
- Report of Justice B.S. Srikrishna Committee, 2018
- Dharmaraj Bhanushankar Dave v. State of Gujarat, 2015 SCC OnLine Guj 2019
- K.S. Puttaswamy v. Union of India (2017) 10 SCC 1
- Sri Vasunathan v/s The Registrar General & Ors 2017 SCC Kar 424
- Subhranshu Rout @ Gugul v. State of Odisha BLAPL No. 4592 of 2020
- Google Spain SL v. Mario Costeja González, Case C-131/12, Court of Justice of the European Union
- 2015 SCC OnLine Guj 2019
- (2017) 10 SCC 1
- 2017 SCC Kar 424
- BLAPL No. 4592 of 2020