

Right to be Forgotten in India: Digital Privacy & Law

Ishu Nagar

LL.M. One Year, Roll No.257/PLM/005

School of Law, Justice & Governance, Gautam Buddha University, Greater Noida (U.P.)

Email: ishunagar1002@gmail.com

Dr. Santosh Kumar Tiwari

Assistant Professor,

School of Law, Justice & Governance, Gautam Buddha University, Greater Noida (U.P.)

Email: santoshtiwari@gbu.ac.in

Article: Received: 22/05/2026, Returned: 28/05/2026, Accepted: 04/06/2026, Published:06/06/2026.

D.O.I. <https://doi.org/10.5281/zenodo.20563850>



© 2026 The Author(s). This is an Open Access article/ Journal distributed under the terms of the Creative Commons Attribution 4.0 International which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are properly credited. (<https://creativecommons.org/licenses/by/4.0/>)

Abstract: The fact that digital technologies expand exponentially, and the internet is extensively penetrated has radically changed the manner in which personal data is made, memory, retrieved and shared. In the modern world, people simply use online resources on a regular basis: social networks, websites with search engines, online shops, cloud services, and leave a trail of digital footprints behind. In contrast to the classical methods of communication, online information has a particular feature, permanence. Once data are put up, either voluntarily or on unwanted conditions, it might still be available forever, and usually, there is nothing much you can do about it. Such sustainability of data has far-reaching ramifications on personal privacy, reputation and dignity especially when it concerns the suppression of outdated, incorrect and sensitive data.

Keywords: Right to Forgotten, Judiciary, Democracy, RTBF, Digital Personal Data Protection, Right to Privacy, GDPR.

Introduction

The idea of the Right to be Forgotten (RTBF) comes to mind as the means to address these issues and provide persons with the right to regulate their personal information in the online world. In its broadest sense, RTBF allows people to demand the deleting, linking, or blocking of access to personal data, which is no longer necessary, relevant, or proportionate. It is also directly related to the concept of informational self-determination, which stresses the right of a person to his/her ownership over the distribution of personal information and its use. Under some legal systems, such as the European Union, RTBF has been acknowledged as a legal right in the General Data Protection Regulation, indicating a close embrace of data protection and personal privacy. However, the legal establishment of the privacy concept in the Indian context has been changed radically following the court ruling by the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*. The Court categorically declared that the right to privacy is a constitutive right in Article 21 of the Constitution that encompasses different aspects such as informational privacy, physical autonomy and choice. Noteworthy, the judgment acknowledged that people have to own their personal information and that unauthorized sharing of such information can infringe on constitutional rights. This was the constitutional basis on which the Right to be Forgotten can be

envisaged in India. Although this is constitutionally supported, the RTBF is in an infantile and piece-meal phase of evolution in the Indian constitution. This lack of statutory interpretation appreciation has led to recourse to judicial interpretation that has created uneven and contradictory results. Although some High Courts have tried to consider individuals to just be secured against constant availability of personal information, other High Courts have been keen on embracing the values of transparency, open justice and free access to information, taught by the principles of RTBF in India.²

The passage of the Digital Personal Data Protection Act, 2023 is an important legislative move towards addressing the data privacy. The Act also presents the rights like right to correction, erasure and withdrawal of consent themselves, thus acknowledging the individual right to personal data, but without providing a specific and enforceable right in the form of the Right to be Forgotten. Lack of clear provisions to deal with delinking by search engines or erase information that have been made publicly available restricts the effectiveness of the Act in tackling the wider issues of digital permanence of information.³

The research question, thus, is the fact that there is a gap in the legal framework in the depiction of a detailed, comprehensive, and consistent legal decision on the Right to be forgotten in India. This void is revealed in various key dimensions. To begin with, it is not clear on the nature and degree of an individual control on personal information mainly in situations where such information has already been mainstreamed. Second, the responsibilities of intermediaries, such as search engines and online platforms are still, and there are inconsistencies in their compliance. Third, the identification of RTBF creates intricate constitutional issues, especially concerning a trade-off between privacy concerns and other competing values, namely, the freedom of expression and speech offered in Article 19(1) (a), the right to information, and the principle of open justice.⁴

The conflict between privacy and freedom of speech is particularly acute in situations which involve records in courts, media coverage, and famous personalities. Although people might want to rewrite or bury their history thinking that it might be detrimental to their finances and reputation, the right to be forgotten at will might compromise the principle of transparency, historical accuracy and a right to know that belongs to the masses. The courts are therefore left with a fine playing field of balancing without necessarily having clear guidelines of what the law entails leading to uncertainty and unpredictability in results.

Furthermore, because digital data are transnational, further complicating RTBF enforcement. Data stored on the servers located outside India or owned by multinationals may not promptly be subject to local court demands. This brings into concern the issue of jurisdiction, enforceability as well as efficacy of remedies that individuals may seek redress. These lack of effective enforcement systems and institutional capability also worsen these challenges.

It is against this backdrop that this present study attempts to critically analyze the question of whether the changing legal and constitutional landscape in India is sufficient to be able to counter these complexities and indeed implement the Right to be Forgotten. It will transcend in examining trends in judicial adjudication, review of statutory provisions, and explore a comparative international approach to pinpoint any gaps as well as suggest a consistent legal framework to the recognition and enforcement of RTBF in India.

² Jorawar Singh Mundy v. Union of India, 2021 SCC OnLine Del 2306; Dharamraj Bhanushankar Dave v. State of Gujarat, 2017 SCC OnLine Guj 1360; X v. Registrar General, High Court of Karnataka, 2017 SCC OnLine Kar 424.

³ Digital Personal Data Protection Act, No. 22 of 2023, §§ 11-12 (India).

⁴ INDIA CONST, art. 19, cl. 1(a); Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC

Review of Literature

In the digital era, the concept of the Permanency of Digital Memory has been addressed by creating the Right to be Forgotten (RTBF): a legal concept that lines up with the legal challenges raised by the permanence of digital memories. The discussions of RTBF in the literature are based on larger discussions on informational privacy and protection of personal data that are apparent in countries with developed digital economies. Early academic discourse on privacy in India largely followed the approach of locating the centrality of privacy in the context of Article 21 of the Constitution and thus relating it to the concept of individual autonomy in a fast-digitizing society. Since the seminal case of *Justice K.S. Puttaswamy (Retd.) v. Union of India*, the research focus was directed to the consideration of privacy scope and consequences in the digital age. Legal commentators have repeatedly highlighted that RTBF a priori is merely an extension of informational privacy in that it ensures that individuals have the right to prevent further exchange and propagation of their personal information, preventing them, as a result, from reputational damage because of obsolete or prejudiced information.⁵

A good part of the literature is involved in the comparative analysis especially concerning the data protection regime of the European Union concerning the General Data Protection Regulation⁶. Article 17 of the GDPR provides a clear identification of the right to erasure wherein a person can demand the removal of personal information under certain conditions (Scholars have pointed out that the European approach corresponds to a highly rights-oriented framework, aiming at viewing privacy as a central value and data controllers as facing extremely high liabilities). This right was further clarified by the Court of Justice of the European Union in *Google Spain SL v. Agencia Espanola de Proteccion de Datos*, which stated that Google operates as a search engine and has the duty to delete links to personal data.⁷

Conversely, Indian scholarship has found that there are some gaps in the recognition and practice of RTBF, which concern the structure and doctrines. That which lacks statutory recognition is one of the key issues as it requires turning to judicial interpretation, as opposed to the GDPR, India does not have an extensive legal requirement that spells out the scope, restrictions, and means of enforcement of RTBF. This lack leads to confusion and restricts the capacity of the people to exercise control on their personal information effectively.⁸

Judicial inconsistency is another crucial problem that is reflected in the literature. Different High Court decisions have been analyzed by scholars and those decisions adopt different approaches in hearing RTBF claims; some decisions have granted anonymization or delinking of personal information, though, as a protection of privacy; other rulings denied such requests on the basis of judicial record availability to the public. The lack of consistency is indicative of the fact that there is no standardized legal test or guide principles that can be used to resolve RTBF claims.⁹

The conflict between RTBF and other constitutional principles, especially freedom of expression and speech, freedom of information and the concept of open justice is also discussed widely in the literature, with the researchers suggesting that acknowledging RTBF unqualified may create censorship, historical revisionism, and limitations of the freedom of journalists. Simultaneously, the denial of RTBF can lead to an unequal damage to the individuals in whose lives the past

⁵ INDIA CONST, art. 21; Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁶ General Data Protection Regulation, art. 17, 2016 O.J. (L 119) 1 (EU).

⁷ Case C-131/12, Google Spain SL v. Agencia Espanola de Proteccion de Datos, 2014 E.C.R. 1-317.

⁸ B.N. Srikrishna Committee, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (2018).

⁹ Jorawar Singh Mundy v. Union of India, 2021 SCC OnLine Del 2306; Dharamraj Bhanushankar Dave v. State of Gujarat, 2017 SCC OnLine Guj 1360.

actions or accusations still have an impact. This is the tension, which should amount to the necessity of the legal framework, which would be well- balanced and address both privacy and transparency.

On the whole, the literature demonstrates that the Right to be Forgotten is manifested towards protecting the autonomy and dignity of people in the digital era, but in India, its practice is not comprehensive enough. It is evident that a detailed legislation overtly acknowledging RTBF, creating equal standards under which it is applicable and properly balancing it with other constitutional and societal concerns is required.

Objectives

- I. To explore the principle and extent of the Right to be Forgotten.
- II. To examine the constitutional entitlement of RTBF in India.
- III. To assess the judicial trends in regard to RTBF.
- IV. In order to evaluate the sufficiency of legal frameworks used.
- V. To make a comparison of the position in India and in the international standards.
- VI. To suggest reforms to be effectively implemented.

Research Questions

- i. Is the Right to be Forgotten included in the Right to Privacy in Article 21?
- ii. What have Indian courts interpreted and applied by RTBF?
- iii. Does the existing law system offer adequate protection of digital privacy?
- iv. What can be done to reconcile between RTBF and freedom of speech?
- v. What is the international experience that India can learn based on frameworks such as GDPR?

Research Methodology

The research approach embraced in this analysis is a doctrinal type of research, which comprises of the systematic examination and explanation of legal guidelines, statutory laws, and court precedents on the Right to be Forgotten (RTBF). The given method is especially suitable since the research will focus on constitutional law, data protection laws, and the emerging judicial interpretations, in the first place. The study is based on primary sources of law, such as the Constitution of India, the law statutes, as well as court rulings. Articles 21 and 19(1)(a) are the provisions in constitutions, which are analyzed to comprehend how the right to privacy connects with the freedom of speech and expression. Judicial opinions (particularly, Justice K.S. Puttaswamy (Retd.) v. Union of India) are examined to pursue the history of privacy jurisprudence in India and how it applies to RTBF. High Court rulings are also taken into account to find out the tendencies and anomalies of the way of judging.

The paper also investigates the legal frameworks specifically the Digital Personal Data Protection Act, 2023, to assess the scope with which the Indian law acknowledges rights like erasing data and having control over the information. This aids in a determination of whether current laws are sufficient as they are in responding to the difficulties that come with the finality of digital information.

Besides the primary sources, secondary sources can be used in the research, such as scholarly books, journal articles, and reports by the committee of experts. Through these sources, one is able to get the theoretical understanding of the concept of RTBF and its applicability in the digital era and also its critical opinions.

The comparative approach is also followed, and the specific reference to the framework of the European Union on the topic of the General Data Protection Regulation is made. This can help the study to determine best practices and determine how the similar principles can be applied in the Indian legal system. On the whole, the study is descriptive and analytical, aiming at investigating

the current legal regulations, discovering gaps and contradictory aspects, and proposing a number of reforms in order to enhance the right to privacy over the Internet in India.

Discussion / Analysis

Conceptual Understanding of RTBF

The Right to be Forgotten (RTBF) is the right of persons to have their own personal data destroyed, deleted, or suppressed unless this information remains relevant, necessary or proportionate to the purpose, which it was initially gathered or posted. In the modern digital world where data can be saved and accessed infinitely, RTBF has become an essential process to safeguard people against the long-term effects of digital records, especially those that are out of date, inaccurate or biased.¹⁰

In its essence, RTBF is based on the principle of informational self-determination which acknowledges that people must be able to control the release and use of their personal information. The idea is intertwined with informational privacy, one of the elements of the right to privacy, as it protects individuals against unwarranted or excessive disclosure of personal data and ensure that they will not suffer ongoing reputational damage, stigmatization, and individual and professional constraints because of the ongoing accessibility of historical information.

The element of RTBF is also integrated into modern data protection regimes which are based on the principles of limiting purposes, data minimization and storage limitation. Under such principles, personal data must be gathered and stored towards the purpose of which it was acquired and must not be misused towards ends other than those within its original purpose; RTBF acting as a remedial to this remedies the effects of rogue actions by allowing people to request that their records be deleted or anonymized.

International fame of RTBF is most clearly noticeable in the European Union General Data Protection Regulation, Article 17: the right to erasure, which grants individuals the right to demand the deletion of their personal data as long as the following criteria are met: the data is not necessary any more, consent has been withdrawn, or the processing is illegal. This right was reinforced by the jurisprudence of the Court of Justice of the European Union, in *Google Spain SL v. Agencia Espanola de Proteccion de Datos*, which stated that search engines must delete links to personal data, on the legitimate request, thus acknowledging the role of an intermediary in the distribution of data.¹¹

Nonetheless, RTBF is not a matter-of-course and has to be implemented in a balancing system. The practice of this right is regularly at conflict with other fundamental rights, especially the right to freedom of speech and expression, the right to information, and the principle of transparency in public records. An example is the information in a criminal process or judicial decision or a sensitive topic in the public interest that might need to be kept available despite a subject requesting erasure. As a result, courts and regulatory bodies must consider the character of the information, how the information pertains to the interest of the masses and the harm to the individual before they can provide relief.

The conceptual interpretation of RTBF in the Indian context is still developing and is largely based on the appreciation of privacy as a fundamental right under Justiciary of *Justice K.S. Puttaswamy (Retd.) v. Union of India*¹². In this groundbreaking ruling, the Supreme Court highlighted the significance of informational privacy and the necessity of people to participate in the control over

¹⁰ B.N. Srikrishna Committee, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (2018).

¹¹ Case C-131/12, *Google Spain SL v. Agencia Espanola de Proteccion de Datos*, 2014 E.C.R. 1-317. INDIA CONST, art. 19, cl. 1(a).

¹² *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

personal information. Even though RTBF was not explicitly stated in the case, it provided the constitutional grounds of its emergence as the privacy is inherent to human dignity and independence.

Later Indian judicial rulings have tried to apply RTBF in certain situations, especially in orders instructing removal or anonymization of personal information on the Internet. Nevertheless, lack of well-established statutory framework has led to problems of inconsistency in the interpretation process and restrained enforceability. This brings out the importance of legal recognition and organization on the use of RTBF.

Therefore, RTBF is an enormous change in the jurisprudence of privacy as it is a necessity to adjust the legal protection to digital realities. It attempts to maintain the balance between personal and social interests, and individuals will not be all-time predetermined in the past, but it is also important that the integrity of information systems in society is preserved.

Constitutional Perspective

The concept of the constitutional basis of the Right to be Forgotten (RTBF) in India has its conceptual roots in the acknowledgment of the right to privacy as a basic right by Article 21 of the Constitution. This rule was confirmed in the historic case of *Justice K.S. Puttaswamy (Retd.) v. Union of India* where the Supreme Court in its landmark ruling in a nine-judge bench applied fully this rule by declaring the right to privacy to extend in all angles of privacy.¹³

Privacy as expressed in the Court in Puttaswamy verbalized multifaceted privacy that included bodily, spatial as well as informational privacy. Among them, the informational privacy deserves special attention in the framework of RTBF since it has to do with the possibility of an individual to regulate the process of gathering, retention, and distribution of personal information (which in the digital era, individuals are continually creating).² The ruling has stressed the fact that in the digital era, everyone is a producer of personal data, and in many cases, they remain unaware of how their personal data is handled or stored. Consequently, to preserve personal freedom and respect, it would be necessary to protect informational privacy.¹⁴

Notably, the Supreme Court acknowledged the fact that privacy is entwined with notions of human dignity, autonomy, and self-determination. It noted that command of personal information is part and parcel to the formation of personality and identity of an individual, and that such understanding granted RTBF a potent normative advantage since it makes the persistence of information about a person that is not relevant or true by the time it is subjected to criticisms quite disturbing.

Even though the Right to be Forgotten was not identified as a separate right by the Court, it implicitly admitted its applicability. The court has observed that people ought to be given a chance to regulate the spread of personal information and curb the misuse of the same by others. This observation has been considered by the academia and the following judicial rulings as the foundation of RTBF in the Indian law.

But privacy in the constitution as provided in Article 21 is not absolute. In Puttaswamy, the Court presented a three-fold test (usually a four-prong proportionality test) set of structured tests to assess the validity of any privacy restriction. This encompasses: (i) that the action must be legal, meaning that there must be a law; (ii) legitimate purpose of the state, meaning that the measure taken must not affect other primary rights; (iii) necessity and (iv) proportionality, such that the action taken must be the least restrictive measure available.¹⁵

Among the greatest conflicts of the Constitution is the notion between RTBF and the inalienability

¹³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

¹⁴ Id.

¹⁵ Id.

of freedom of speech and expression as guaranteed by Article 19(1)(a).¹⁶ The acknowledgment of RTBF is likely to create a restriction to the capacity of the media, online space, and other people to spread information. Also, it could potentially compromise the right to information and principle of open justice, demanding transparency in a judicial process and allowing publicly available documents. This therefore means that a delicate balancing act that the courts take should not interfere in such a way that RTBF enforcement becomes overly restrictive of these conflicting rights.

This practice of constitutional principles concerning RTBF has been echoed throughout legal judgments in the future, especially at the High Court level. In some instances, courts have allowed the personal information related to search engines to be anonymized or delinked in order to safeguard the privacy of individuals. Concurrently, they have also denied such relief in cases where such information constitutes part of the public records or is used to accomplish a valid public interest. This deviation shows that there is a constitutional underpinning of RTBF though the application is yet to be tested and case-specific.

Moreover, due to the failure to explicitly acknowledge RTBF in the Constitution or other statutes, the judicial discretion has been applied, thus giving uneven results. This underscores the importance of a more ordered form of law that has a clear outline of the bounds and constraints of RTBF and that adheres to constitutional ideals.

To sum up, the principle of the Right to be Forgotten in India has its constitutional backing in the right to privacy in Art 21 as elucidated in Puttaswamy. The judgment offers a robust normative foundation by which RTBF can be identified as a part of informational privacy and personal dignity. But its use is limited by the Constitution especially in the necessity to limit privacy and freedom of speech and publication against the interests of the population. The future of RTBF in India will be determined by the ability of courts and politicians to balance these competing interests through a sensible legal system and framework.

Statutory Framework

The legal framework running the Right to be Forgotten (RTBF) in India is still developing and disjointed. The Digital Personal Data Protection Act, 2023,^{16 17} being the first major law related to this sphere, is the main innovations in India, as it is the first full-scale effort to regulate the protection of personal data. Though in the Act RTBF is not specifically recognized as an autonomous right, some of the provisions included thereof are conducive to the principles at its core.

The Act establishes several important rights of data principals, such as the right to erasure, the right to correction, and the right to withdraw consent, which in combination help increase an individual in control over personal data by offering the opportunity to request the deletion or alteration of inaccurate or unneeded data. The withdrawal-of-consent right goes one step further to assure that once one has withdrawn consent, his or her personal data could no longer be processed. Such terms demonstrate an understanding of informational freedom and adherent to international practices of protection of personal information.¹⁸

Nevertheless, even with such developments, the Act does not have a clear codification of RTBF. It fails to give clear provisions on how one should delink personal information and search engines, how to delete data that are publicly accessible, and the responsibilities of intermediaries in the case. This lack generates ambiguity of interpretation, especially in instances where individual personal data is already in the public or are part of the judicial records. The result is variable justice, with

¹⁶ INDIA CONST, art. 19, cl. 1(a).

¹⁷ Digital Personal Data Protection Act, No. 22 of 2023, §§ 11-12 (India).

¹⁸ Id.

results depending on judiciary intervention.

Besides the Data Protection Act, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 also contain mechanisms of content regulation and takedown. Although these regulations provide a framework of mechanism through which complaints or government instructions can be updated to address the issues of grievances concerning online contents, their actual application meant to control illegal or offensive content rather than safeguard or respond to personal privacy based on RTBF.¹⁹

Additionally, the IT Rules fail to provide a definite structure of assessing the RTBF claims. They do not give specific guidelines as to when personal data is to be deleted or anonymised, and fail to provide an adequate response to the drawbacks of privacy, versus other rights. Consequently, the current statutory framework is incomplete and inadequate to have a successful implementation of RTBF in India.

On the whole, although the recent legislation developments point towards the increasing awareness of the issues related to data protection and privacy, the lack of clear statutory formulations about RTBF makes it clear that the assigned legal issue requires a more extensive and sophisticated legal strategy.

Competition with other rights

Recognizing and applying to the Right to be Forgotten (RTBF) poses a serious constitutional challenge, especially because it will cause a conflict with other universal rights. Most of all, RTBF should be weighed against right to the freedom of speech and expression according to the Art 19(1)(a) of the

Constitution, right to information and right to free press²⁰

The freedom of speech and expression also entails the freedom to spread and receive information and this could be influenced negatively in case people are allowed to destroy information that is available to the general population or limit its access. As an example, free provision of RTBF would result in the subjugation of valid information which may culminate into censorship or distorting of history. In the same manner, press freedom can be violated when journalists and other media houses are forced to delete or change the material that has already been published.

Meanwhile, eliminating RTBF all-together would betray the right to privacy and personal dignity, especially when it comes to out-of-date, irrelevant, or sinister personal information. The presence of such information can still damage the reputation, pose social stigma, or disadvantage to individuals later on despite attempts to otherwise. This brings a basic conflict of interests between the individual rights and society.

To overcome this dilemma, courts in India have turned toward using the doctrine of proportionality, as enshrined in *Justice K.S. Puttaswamy (Retd.) v. Union of India* lauded that any limiting order against fundamental rights must meet some criteria, among which are legality, necessity and proportionality. Within the RTBF, it has to do with the justification of the removal or a restriction of information with regards to competing interests.²¹

In applying this balancing test courts normally take into consideration a variety of factors, including:

- The sensitivity and nature of the information.
- Its interest to the people.
- The contribution of the personality (face of people or small person)

¹⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (India).

²⁰ NDIA CONST, art. 19, cl. 1(a).

²¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

- The damage that might be brought about by the continued availability.
- The period taken since the events took place.
- This case-by-case consideration is indicative of the incompleteness of RTBF and the call to subtle jurisprudence. The lack of statutory guidelines, however, leads to inconsistencies in applying these principles.

Conclusively, the Right to be Forgotten is set in a complicated constitutional context whereby it should be well balanced against other rights. Although the doctrine of proportionality presents an effective way of settling such conflicts, the absence of a well-ordered legal framework has remained an obstacle to how it can be effectively implemented in India.

Judicial Interpretations

In India, the establishment of the Right to be Forgotten (RTBF) has been influenced to a great extent by the judgement of the courts since the right has no particular statutory enumeration. There is an emerging jurisprudence of RTBF claims in courts, which has been dealt with case-specific and ad hoc, resulting in a piecemeal question of RTBF claims.

Justice K.S. Puttaswamy (Retd.) v. Union of India

This historic ruling did not directly acknowledge the Right to be Forgotten, but it instilled constitutional authority to advance this right. In the case, the Supreme Court decided that the right to privacy was a fundamental right under Article 21 and the informational privacy.

The Court insisted that people should be able to regulate their personal information and that the illegitimate disclosure of this information may be violating the dignity and autonomy. This argument is the conceptual rationale behind RTBF in that it suggests that society needs to be allowed to limit access to personal information as soon as it is not required.²²

Dharamraj Bhanushankar Dave v. State of Gujarat

Here, the petitioner demanded that a judgment be taken out of public view; he claimed that the judge was breaching his privacy and so the judge decided to keep this ruling open. The Gujarat High Court dismissed this claim on the basis that judgments of the court are considered as part of the public records and cannot be destroyed or deleted.²³

The Court focused on open justice as well as transparency thus putting more priority to the interest of the masses than the privacy of the individual. The case is indicative of a narrow interpretation of RTBF and shows that the judiciary does not favor intrusion into the publicly-accessible legal files.

Jorawar Singh Mundy v. Union of India

This case was also a momentous turning point to acknowledge RTBF in India. The petitioner who had already been acquitted of a criminal case requested the court to order judgment information to be removed off search engine pages claiming that its presence would continue to hurt his reputation.²⁴

The Delhi High Court granted the order and requested that the judgment be removed off the search engine. The Court understood that further access to such information might unfairly damage the reputation and future of a person.

The case is interesting in that it acknowledges the effect of digital permanence in practice, and the activities of search engines in affecting access to personal information.

X v. Registrar General, High Court of Karnataka

The Karnataka High Court in this judgment ordered the anonymity of a woman's identity in a case with delicate personal matters. The Court appreciated that the publication of personal information

²² Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

²³ Dharamraj Bhanushankar Dave v. State of Gujarat, 2017 SCC OnLine Guj 1360.

²⁴ Jorawar Singh Mundy v. Union of India, 2021 SCC OnLine Del 2306.

may have a negative impact on the dignity and privacy of the person.²⁵

Though not explicitly directed under the RTBF, the ruling contains similar principles as it restricts the access of sensitive personal information by the population. It portrays the eagerness of the judiciary to uphold privacy when suitable.

The case of *Google Spain SL vs. Agencia Espanola de proteccion de datos* deals with the comparative insight.

It is important to note that the development of RTBF in the world has greatly relied on the decision in *Google Spain SL v. Agencia Espanola de Proteccion de Datos*, which the court of Justice of the European Union ruled that persons have a right to ask the search engines to take down links to personal information when under specific circumstances.²⁶

The Court acknowledged that search engines have an important role to play in the flow of information and hence have a role to play in ensuring individual privacy. The case has formed a precedent and has been used to address the issue of RTBF in India.

Findings

The analysis reveals that in India, the Right to be Forgotten (RTBF) is at an immature and dispersed phase and there are numerous legal and practical constraints to the proper execution of the law.

1. RTBF is not specifically mentioned in the Indian statutory law. Although privacy is recognized as a fundamental right under article 21, there is no explicit provision of legislation that can specify the scope, applicability, and limitations of RTBF. This lack has led to confusion and left its acknowledgement more or less at the mercy of the judiciary.
2. The discussion of case laws reveals that there are inconsistencies in how courts have dealt with RTBF claims. There have been reports of anonymization or erasure of personal information on the relief granted by some High Courts but some have refused such disclosures arguing the value of public records and disclosures. This incoherence leads to uncertainty and unpredictability of law.
3. Despite introducing rights to erasing and correcting data, among other aspects, the Digital Personal Data Protection Act, 2023 offers a veil of protection; a protection that is indirect and lacks the RTBF in its application. Its inability to cover the aspect of disconnection with the search engines or erase the data permanently accessible to the public hinders its relevance to the issue of digital privacy.
4. The other important discovery is that there is an intrinsic tension that arises between the right to privacy as compared to freedom of speech and expression. Enforcing RTBF might restrict free flow of information and the freedom of media and denying a person a right can cause further damage to his reputation and dignity. This situation complicates formulating an adequate legal standard.
5. The paper points out that India has no effective system of executing RTBF at the moment. There exists no particular body or system to process claims of RTBF effectively. Consequently, people have to resort to courts in order to seek redress and this can be time and time again inconsistent.

Comprehensively, these results indicate that the concept of RTBF is currently gaining popularity in India, but legal measures are not fully realized and need considerable improvement in order to provide effective protection of digital privacy.

Conclusion

The Right to be Forgotten (RTBF) is a major advancement in privacy protection within the digital

²⁵ X v. Registrar Gen., High Court of Karnataka, 2017 SCC OnLine Kar 424.

²⁶ Case C-131/12, Google Spain SL v. Agencia Espanola de Protection de Datos, 2014 E.C.R. I-317.

age as it marks the increasing concerns about protecting the autonomy, dignity, and reputation of people in the era of irrevocable digital memory. With the ever-growing storage and sharing of personal data on digital platforms, control of this information has emerged as a key part of contemporary rights to privacy. Judicial acknowledgment of privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India* and legislative actions, including the Digital Personal Data Protection Act, 2023, have made significant strides in India. Nevertheless, the lack of a strict and complete statutory framework to specifically touch on RTBF still restrains its effective application. Judiciary interpretation has led to inconsistent decisions, which makes it more desirable to be more consistent and transparent. Besides, the establishment of RTBF brings highly significant constitutional issues, especially when the interests of the right to privacy collide with the rights of freedom of expression, right to information and principle of transparency. It is important to balance to the extent that imposing RTBF does not result in excessive suppression of speech by the state powers that are not aimed at harming people unreasonably.

Thus, to enjoy a degree of relevance and enforceability, RTBF needs to go beyond the implicit acknowledgement and seek a more formal and elaborate legal framework in India. These involve well- defined legal guidelines, judicial uniformity, and enforcement. This will not only guarantee greater privacy in the digital economy but also make sure that the rights of individuals are balanced with the overall societal needs.

The future of the Right to be Forgotten in India will eventually lie on how the legal system has been adapted to meet the demands of the digital era and achieve the right balance between privacy, transparency, and freedom of expression.

SUGGESTIONS

Considering the previously noted lapses against the legal environment of the concept of the Right to be Forgotten (RTBF) in India, the subsequent suggestions are made to make it a more acceptable and viable concept:

1. RTBF Recognition by Statute

It is urgent to undertake the creation of clear legislative provisions that clearly distinguish RTBF as a legal right. The Digital Personal Data Protection Act, 2023 offers some rights to data protection, yet it needs to be improved or added to give certain guarantees to the right to erasure and delinking, as well as the scope, limitations, and exceptions.

2. Work on Uniform Guidelines of Judiciary

This is set to eliminate discrepancies in judgments that judges make and standardized guidelines should be created to be used by courts to adjudicate RTBF claims. Such guidelines must establish specific criteria, including the type of information or knowledge, the interest of the people and the likelihood of injury to the individual so that there is consistency and predictability in the court.

3. Enforcing the Position of Data Protection Board

Data Protection Board must be enabled to play the role of a professional body to deal with complaints related to RTBF. It must possess well established powers, procedural systems and enforcement capacities so as grant solutions that are faster and more effective in alleviating the court load.

4. Implementation of Structured Balancing Test

The conflicts between RTBF and other competing rights like freedom of speech, right to information and press freedom should be addressed through the introduction of a clear balancing framework. This model needs to integrate the ideas of proportionality, necessity, and public interest allowing a reasoned and equal measure of claims.

5. Liability of Search Engines and Intermediaries

Strong penalties against the intermediaries such as social media and search engine platforms

should be put down to address RTBF requests within a certain time. They must be made to implement clear grievance redressal systems and adhere to the legal removal or delinking instructions and still have measures against abuse.

6. Awareness and Digital Literacy

Dissemination of information on digital rights pertaining to privacy, such as RTBF, to the masses should be done. The level of educational programs, raising awareness, and user-friendly systems of grievances can be used to empower people, enabling them to exercise their rights in the digital ecosystem in a good and responsible manner.

Works Cited and Consulted

A. Books

Gautam Bhatia, Privacy and the Indian Constitution (Oxford University Press 2019).

Avtar Singh, Law of Arbitration and Conciliation (Eastern Book Company, latest ed.).

Justice B.N. Srikrishna Committee, A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians (2018).

B. Journal Articles

R. G. Ramachandran, The Right to be Forgotten: A Critical Analysis of the Emerging Privacy Jurisprudence in India, 12 Indian J. L. & Tech. (2016).

K.S. Park, The Right to Be Forgotten, 1 Inf 1 Data Privacy L. 1 (2013).

Meg Leta Jones, The Right to Be Forgotten, 2 Stan. Tech. L. Rev. 1 (2016).

C. Statutes and Regulations

Digital Personal Data Protection Act, 2023.

Information Technology Act, 2000.

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

General Data Protection Regulation.

D. Case Laws

Justice K.S. Puttaswamy (Retd.) v. Union of India.

Dharamraj Bhanushankar Dave v. State of Gujarat.

Jorawar Singh Mundy v. Union of India.

X v. Registrar General, High Court of Karnataka.

Google Spain SL v. Agenda Espanola de Proteccion de Datos, Case C-131/12, 2014 E.C.R. 1-317.

E. Reports and Online Sources

Justice B.N. Srikrishna Committee Report (2018).

Ministry of Electronics and Information Technology, Government of India - Data Protection Resources.

European Commission, GDPR Guidelines and Reports.

Declaration by Author (s): "We hereby declare that this manuscript is our original work, free from plagiarism, and that all sources and any use of Artificial Intelligence tools for content generation or editing have been fully disclosed and verified for accuracy. "Ishu Nagar & Dr. Santosh Kumar Tiwari