
IMPORTANCE OF RIGHT TO BE FORGOTTEN AS A FACET OF RIGHT TO PRIVACY IN THE DIGITAL ERA

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Abstract

Right to privacy is undisputedly recognized as a fundamental right in all major jurisdictions and the right to be forgotten (RTBF) has emerged as one of its crucial dimensions. RTBF can be defined as the individual's right to have her data erased, limited, delinked, etc. from the internet by requesting the data fiduciaries or the entities responsible for putting the data on the net. It has its utilitarian basis as it facilitates the individual in getting the data or information concerning him removed, limited, delinked or erased from the internet. Initially, the paper traces the evolution, importance and development of this right internationally and in India. The legislative framework pertaining to this right such as the provisions of the European General Data Protection Regulation & the Digital Personal Data Protection Act and its development through case laws have been analysed. The contemporary approaches of the Indian legal system towards RTBF have been highlighted and extensively discussed. The legal dilemma of balancing the RTBF with other rights, like right to freedom of speech and expression, has been analysed in detail. The article concludes with some recommendations for addressing the aforementioned conflict and methods to be employed while dealing with the RTBF.

Keywords: Right to privacy; fundamental right; right to be forgotten; utilitarian; data; General Data Protection Regulation; Digital Personal Data Protection Act; right to freedom of speech and expression.

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Introduction

Recently, a lady civil servant has faced ruthless media trial as the details of her extra-marital affair, including her WhatsApp chats and other audios, were leaked by her husband. Trending on every social media platform, having many shows on news channels telling different versions of her story, the woman is being condemned universally. The matter of her divorce is sub-judice, but the paramount question that arises is as to how would she get rid of all this contemptuous and sore audio-visual digital content attacking her individuality even if she gets other legal remedies and proven innocent in the end. The answer lies in the recourse to the right to privacy which has within its scope, “the right to be forgotten” (RTBF). In 1890, ‘right to be left alone’ was accepted as one important aspect of the right to privacy by two prominent American juristsⁱ. Right to privacy has been given the status of a fundamental right enshrined within Article 21ⁱⁱ of the Constitution of India and RTBF is an important facet of it. RTBF can be defined as the right of any individual to get the data or information concerning him removed, limited, delinked or erased from the internet. It signifies the “right of the data subject to get his data erased by requesting the data controller or the digital platforms processing such data”.ⁱⁱⁱ In this digital era where it’s true that “the internet never forgets”, it becomes all the more vital to understand and put to use this right. The functional role of the internet is such that it stores the ‘digital footprints’ of people for a longer duration or permanently thus hindering the natural cognitive ability of humans to forget things^{iv}. A past legal wrong, instance of sudden emotional outbursts and involuntary negligence may resurface suddenly after the individual and people around have already forgotten about it, rupturing the reputation and dignity of the individual perpetually^v. The personal data is equivalent to currency in today’s digital world. It has been used in different ways by innumerable users giving rise to a “panopticon beyond anything Bentham ever imagined”. This situation demands the recognition of new digital rights such as ‘right of personality’ which includes RTBF and the right to digital identity. The rationale of RTBF is to allow actual representation of personal identity of individual by permitting and facilitating the removal or erasure of their past digital traces left online^{vi}. Generally, it is observed that, “this right is nothing more than a way to give (back) individuals control over their personal data and make the consent regime more effective.”^{vii} The right is an important materialisation of this ‘control-right’

which an individual must have over her personal information. In other words, the RTBF can be defined as, “the right of individuals to have their data no longer processed and deleted when they are no longer needed for legitimate purposes.”^{viii} The right advocates irrevocable removal of the personal information.

This article aims to trace the evolution and development of the right to be forgotten. The growth of this concept as a facet of right to privacy and the jurisprudence developing around it nationally and internationally has been discussed. Its origin from the European legal jurisprudence and increasing recognition in other jurisdictions have been studied. This article analyses the utility of this right in the present data driven society and the extent to which legal recognition has been given to RTBF. Specifically, this research addresses the following issues: Whether there exists any such right as ‘the right to be forgotten (RTBF)’? Whether RTBF forms one important facet of the right to privacy? Whether this right has attained sufficient recognition in the national and international legal frameworks? What are the approaches of law courts in different jurisdictions and particularly of the Indian law courts with respect to RTBF? Is there a conflict between RTBF and the right to freedom of speech and expression including the right to know? What measures can be employed to resolve such conflicts? The authors submit that whilst there exist situations wherein the RTBF comes in conflict with other fundamental rights, the harmonious balance between the conflicting rights can be established and the operation of the RTBF does not necessitate that the other rights be made completely dysfunctional. This article thus contributes to the discussion on the utility of the RTBF, growing jurisprudence with respect to this concept and its reconciliation with other rights. This article is structured in the following parts: initially, it studies the evolution and development of the RTBF internationally and in Indian legal jurisprudence. The following section highlights the legislative framework extending recognition to this right. Further, the contemporary approaches of the Indian legal system towards RTBF are analysed. In the final parts, the issue of the conflict between RTBF and the right to freedom of speech and expression including the right to know has been dealt with. The article ends with the authors suggesting measures to resolve the afore-mentioned conflict.

Right to be forgotten: Evolution and Development

The roots of RTBF lie in the French jurisprudence, which recognizes “le droit à l’oubli—or the right of oblivion”— “a right that allows a convicted criminal who has served his time and been

rehabilitated to object to the publication of the facts of his conviction and incarceration”^{xix}. This right has a specific purpose of easing the process of social reintegration of those convicted criminals who have served their sentence fairly^x and gives them the second chance. In 1991, Professor O’Callaghan, a Spanish scholar, has referred to RTBF indirectly. He attributed the birth of this right to the American case of “Melvin v Reid”. In this widely-cited case from California (1931), Gabrielle Darley sued a motion picture studio for making a picture based on her prior extramarital affairs.^{xi} Darley, a prostitute accused, was once charged with murder but was ultimately found not guilty. As stated in the case, Darley had in 1918 abandoned her previous anti-social ways and married a respectable man & since then she was living a normal life in the society. A movie on Darley's former life called "The Red Kimono" was released and promoted seven years later using real name of Darley. In order to protect her privacy, she sued the film makers and the Californian Court held that, “though some of her past details are contained in public records, thus can’t be deemed private, the use of her real name and full details by the film makers in the making as well as advertisement of their film in fact constituted a direct invasion of her inalienable right... to pursue and obtain happiness”^{xii}.

In the European jurisprudence, the origination of this right can be attributed to the case of Mr. Mario Costeja Gonzalez, a European from Spain, who due to a brief and sudden financial crisis was compelled to put up his property for auction through advertisement which somehow became available on internet. Even after overcoming the crisis the Google search when searched with his name showed the advertisement which severely damaged his reputation and this forced him to take legal recourse to get his data removed. In, “Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González, the Luxembourg-based Court of Justice of the European Union held that Google must remove the search results that come up about the auction of his property”^{xiii}. The Court concluded that, for the purposes of the European Union Data Protection Directive, search engines such as Google are "controllers" of the processing of personal data. It was a landmark decision as it granted, for the first time, the individuals “the right to request search engines to remove links to online content containing personal information that is old, inaccurate, or contain irrelevant data”. The judgment declared that, “the activities carried out by a search engine like Google squarely fell within the concept of ‘processing of personal data’ enshrined in the General Data Protection Directives”^{xiv}. The Court

remarked that, “such processing can affect the individual’s right to private life and protection of personal data”^{xv} as:

“It enables any internet user to obtain through the list of results a structured overview of the information relating to that individual that can be found on the internet — information which potentially concerns a vast number of aspects of his private life and which, without the search engine, could not have been interconnected or could have been only with great difficulty — and thereby to establish a more or less detailed profile of him.”^{xvi}

The Court further dwelt upon the position of privacy rights vis-à-vis other rights and clearly favoured the former by stating:

“[those] rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject’s name.”^{xvii}

This decision is deemed responsible for the development of the concept of right to be forgotten. It spurred a global discussion over who should eventually be responsible for private information’s protection and erasure from the internet. The practical outcome of the ruling gives internet companies like Google, Bing, and Yahoo! considerable latitude in enacting their own internal policies for safeguarding personal information based on the specific grievances that they receive with no governmental or judicial review of their policies & decisions. The decision makes such companies final adjudicators of privacy which is socially undesirable, it would be better if the governments and interest groups of the society assist them in making appropriate privacy-protective decisions. In the digital era where the technology works on the basis of objective Artificial Intelligence, it becomes crucial to safeguard an individuals’ informational privacy and secure the right to erasure. The search engines equipped with the capacity of retrieving the information greatly help in storing and disseminating the information irrespective of its relevance, nature and effect upon the individual involved.^{xviii} Information which is out of context, false or out-dated can cause serious harm to an individual including lowering her estimation in the eyes of the right-thinking men of the society, mental harassment, damage to employment prospects, etc. The processing of data online is such that it is very hard to clearly ‘qualify or quantify’ the potential harm that it may cause to the concerned individual. It is generally believed that, ‘internet spelt the death of privacy’ and that some authors have

suggested that instead of expecting laws to protect privacy the people have to adjust with the lack of it.

The RTBF is generally understood to be a part of right of personality which protects moral and legal integrity of an individual especially in cases where the personal information has lost its public interest significance but continues to harm the person^{xix}. The European law has a favourable approach towards RTBF which is deemed, “a response to the echo of totalitarian record keeping,an assertion against governments, and,astimehasevolved, non-governmententities”^{xx}whereas the American law has a strong presumption in favour of the right to freedom of speech and expression which extends almost to constitute a right to remember^{xxi}. In the US, there is no such recognized right as RTBF and the American scholars consider this concept as the formidable global threat to freedom of expression^{xxii}.

Importance of right to be forgotten as a facet of right to privacy:

The RTBF vindicates the ownership right of the individual over her data by allowing her to request that organizations remove and delete personal information about her from online platforms. It makes proprietary approach applicable upon the privacy protection.The person controls what happens to the information and keeps it under his or her control even after it has "left his or her hands."

It helps in tackling harmful content online and empowers the individual by giving her the authority to regulate her online presence. Since, while consenting for the usage of one’s personal information the individual cannot be expected to foresee every kind of potential threat or harm to her data. This right could contribute to easing the disproportionate burden of responsibility upon the individual by extending some responsibility to the data controller.

If the data is old, outdated or offensive, you may want it to be removed which is possible by the exercise of RTBF. Thus, ensuring effective control of the individual over the data.

The RTBF ensures right to informational privacy by allowing the individual to regulate the usage of her personal data online and also the right to re-evaluate the purpose and usage of her data.A ‘right to be forgotten’ would provide people a permanent substantial choice to alter or re-evaluate the usage of their personal data in an ever-changing objectives in transitioning contexts.

The internet search engines like Google have been held to be covered by the privacy law and by claiming the RTBF search engines can also be ordered to remove or delink the data from the internet.

The RTBF protects the right to reputation of a person by necessitating the removal of the false and irrelevant online data pertaining to them. It substantially helps those people who are victims of malicious prosecution and empowers such person to get all the data accusing them of crimes removed and thus prevents emotional and mental harm practically giving them the second chance.

The RTBF helps in the process of social reintegration and rehabilitation of those convicted criminals who have served their sentences fairly and completely and are willing to live the life of a law-abiding citizen now. Since, it helps those persons and the society in forgetting their past by removal of the traces of the criminal incident available online.

RTBF protects personal autonomy over one's data which is one important aspect of the right to privacy. It helps in preventing the dissemination of those secrets which the person wants to keep from the society. It will strengthen the individual's control over his/her identity and facilitate the accountability of data controllers.

RTBF is crucial for those women against whom serious offences such as rape, molesting, immoral trafficking, etc. have been committed. As, it saves them from social condemnation and defamation by preventing online data respecting them from being misused online.

RTBF serves as a remedy for preventing harassment of victims of the online distribution of sexually explicit films or images and helps shield them from social exclusion by keeping these victims' identities private.

Legislations:

The legislations at the international level have tried to vindicate the concept of RTBF though indirectly. The Consolidated Treaty on the Functioning of the European Union in its Article 16 provides, "everyone has the right to the protection of personal data concerning[him or her]". Article 1 of the EU Charter of Fundamental Rights states that human dignity ought not to be violated and that it must be given respect and protection. Article 7 asserts that every individual's

private and family life, home and communications must be respected. Data privacy which signifies, “the right to maintain control over the circulation of data is enshrined in Article 8 of the EU Charter of Fundamental Rights”.^{xxiii} The article gives every person right to protection of his personal data. It lays down that the data should be used only for a specified and legitimate purpose and the individual would also have the right of access to and rectification of every data concerning him. Data protection generally comprises of the different rights such as the right to request complete deletion of data^{xxiv} and to withdraw the consent given before, the right to control usage of data or to obtain delinking and de-referencing of the data from search engines. In order to further develop the provisions of Article 8 of the ECHR the European Union prepared Convention 108 also known as the, “Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data” which in its Article 5,6,8 and 9 deals with different aspects of the personal data protection and processing. Article 5 deals with quality, storage and collection of data and Article 6 lays down that, “personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life may not be processed automatically unless domestic law provides appropriate safeguards.” Article 8 empowers the data subject with “avenues for information collection” and “redress regarding the maintenance of personal data.” Article 9 provides for exceptions, including “state security,” protection of “the data subject,” and protection of “the rights and freedoms of others.” In 1995, the European Union Data Protection Directive (Privacy Directive) was enacted. The directive was the foundation of the EU’s well-developed privacy laws. It laid down pre-requisites such as legitimacy of purpose, transparency, proportionality and the existence of data supervisory authority for the processing of personal data. Article 12(b) of the directive is proximate to RTBF and provides that, “Member States shall guarantee every data subject the right to obtain from the controller: as appropriate the rectification, erasure or blocking of data the processing of which does not comply with the provisions of the Directive, in particular because of the incomplete or inaccurate nature of the data.” Although this right is subject “to each member state’s exemptions for journalistic purposes or the purpose of artistic or literary expression only if they are necessary to reconcile the right to privacy with the rules governing freedom of expression.”

The General Data Protection Regulation 2016 under Article 17 empowers the “data subject to get his personal data removed by the Data controller” or “ask for the erasure of data without delay”

and the controller becomes bind to erase the data^{xxv}. The grounds upon which this right to erasure can be exercised includes cases where:

the purpose for which the personal data was collected is “fulfilled or it is no longer necessary”

the data subject has “withdrawn his consent for processing of data” from the organization

the data is processed for some legitimate interest but when the data subject objects to it, it is found that no legitimate interest is actually involved

when the organization is using the data for marketing purposes but “the data subject objects to such processing”

when the personal data is being “used unlawfully”

personal data has to be “removed to comply with legal ruling or obligation”

if the organization has processed a child’s data to offer information to society services.

The GDPR also enumerates cases where the organizations’ “right to process data” supersedes the individuals’ “right to erasure” such as when data is used in the exercise of right of freedom of expression and information, or in compliance with any legal obligation or ruling, or in public interest in the official capacity, or when necessary for public health purpose. This also includes situations where the data processing is necessary to perform preventative or occupational medicine and is done by health professional or when it is used for the “establishment of legal defence or in exercise of legal claims or the data represents important information that serves the public interest, scientific research, historical research, or statistical purposes” and “where erasure of the data would likely to impair or halt progress towards the achievement that was the goal of the processing”^{xxvi}.

Limitation on the geographical reach of the RTBF under GDPR: CNIL which is a National Commission on Informatics and Liberty and an independent French administrative regulatory body imposed fine of 100,000 euros upon Google when it asked the latter to remove damaging and false information about a person and delisting of links containing information was done by Google selectively confining it only to European region. The imposition of fine was challenged by the Google and other interested parties on the ground that the obligation of complete erasure

might be used by the authoritarian government to cover up human rights abuse. The European Court of Justice remarked^{xxvii}:

"Currently, there is no obligation under EU law, for a search engine operator who grants a request for de-referencing made by a data subject... to carry out such a de-referencing on all the versions of its search engine,"

This decision effectively confines the extent of “right to be forgotten” to a specific geographical region. The court also held that the details of someone’s personal life and criminal acts are not necessarily have to be removed if the information comes within the scope of citizen’s right to know but such results should fall down search results listing. The final decision to determine as to what information be removed or kept with certain restrictions falls upon Google which makes it a quasi-judicial authority on “the right to be forgotten”. The RTBF thus is not accessible globally and also such discretion given to Google might cause information asymmetry and create arbitrary spread or curtailment of information.

In India, prior to Puttaswamy judgment (2017) there was no concept of RTBF but this judgment elevated the right to privacy to the status of a fundamental right under Article 21, and since then RTBF has been recognized as one facet of this right by Indian Courts in their different judgments. Justice BN Srikrishna Committee has also recommended the introduction of RTBF. The Digital Personal Data Protection Act 2023 (DPDP Act) also recognizes RTBF in a limited manner by providing the right to erasure. Section 8(7) of the act explicitly states that a data principal (person whose data is being processed or used) shall have “the right to erasure of her personal data in accordance with the applicable laws” and the data fiduciary (entity to which the data has been entrusted) to whom the erasure request is made shall “erase the personal data of the data principal that is no longer necessary for the purpose for which it was processed unless retention is necessary for a legal purpose”^{xxviii}.

Contemporary approaches of the Indian legal system towards RTBF

The RTBF is in its developing stage in India and still exists only as one aspect of the right to privacy. The Indian courts through their judgments are in the process of determining the extent and scope of this right.

In “*Dr. Ishwarprasad Gilda vs. Union of India & Others’ case*”^{xxxix}, a doctor was accused of various offences under IPC such as cheating (Section 417), causing death by negligence (Section 304A), personating a public servant (Section 170) and of illegal procurement of medicines for HIV patients. After one of his patients died, the cases were filed against him but he was later exonerated by the trial court. Relying upon the trial court’s order he asserted that there was no evidence of him being engaged in any illegal activity and approached Delhi High Court praying for “directions to the respondents like Press Information Bureau, Google and the Press Council of India to remove all ‘irrelevant’ news content causing ‘grave injury’ and sought to enforce his Right to be Forgotten”.

The Indian Kanoon site was directed by the Delhi High Court to hide the name of a man in the judgment who was acquitted by the trial court in 2018, in a case involving charges of causing criminal intimidation (Section 506) and rape (Section 376). The Hon’ble Justice Prathiba M Singh also asked the site to disclose its policy on the right to be forgotten^{xxx}.

Rekha Palli J. of the High Court of Delhi also observed that, “the Right to be Forgotten depends on how far it has to be stretched and that the rights of a person have to be balanced”. The obiter dicta were made while discussing a case pertaining to RTBF.

In *Vysakh KG case*^{xxxi}, the Kerala High Court pondered over the issue of permanent availability of “judicial orders and judgments” on online platforms which has a high potential of infringing the ‘right to be forgotten’ of the parties. It also attempted to ascertain the length of time and conditions that would allow the parties to claim this kind of entitlement. The Kerala High Court ruled that RTBF should be recognized and it would provide case-by-case guidance on the removal of said content, till the law gets settled in this regard by a dedicated legislation. While considering petitions to enforce the RTBF against the uploading of court orders or judgements on the internet, A. Muhamed Mustaque J and Shoba Annamma Eapen J noted that “the publication and reporting of judicial proceedings are part of freedom of speech and expression”.

The Calcutta High Court while directing the police to “withdraw” the photographs and WhatsApp messages - of a deceased woman with her friend, disclosed under the RTI Act, remarked that right to privacy includes the person’s right to carry their secrets to the grave. The identities of two people who were found not guilty of charges were displayed in articles that the Karnataka High Court ordered seventeen media outlets to temporarily remove.

It is also maintained by the courts that the RTBF is not absolute but it must be balanced with the right to know. Although the new right to be forgotten is portrayed as a slight extension of the current data privacy rights, it actually is “the biggest threat to free speech on the Internet in the coming decade”.^{xxxii} An individual's right to manage his or her personal information and to be in charge of their own life would also include the right to regulate their online presence on the Internet^{xxxiii}.

In “*Zulfiqar’s case*”^{xxxiv}, the demand was made for the removal of articles written against an individual by a digital news platform, “The Quint”. The High Court of Delhi observed that, “right to be forgotten and the right to be left alone are integral parts of individual's existence”.

In *Jorawars’ case*^{xxxv}, because the man's employment chances were impacted by the ruling clearing him in a narcotics case, the Delhi High Court ordered Google to remove it.

In *Dharmaraj’s case*^{xxxvi}, the Gujarat High Court has refused to recognize RTBF and declined the plea of Dharmaraj, who was declared not guilty in a case involving kidnapping and murder, of prohibiting online availability of the judgment against him.

In a case^{xxxvii}, the Karnataka High Court upheld a woman's right to be forgotten in cases of horrific crimes against her. The court declared that:

“If the right to be forgotten is not recognised in matters like the present one, any accused will surreptitiously outrage the modesty of the woman and misuse the same in the cyber space unhindered.”

The Odisha High Court and the Supreme Court respectively held that RTBF is a remedy for prevention of harassment of victims of online dissemination of sexually explicit videos or photos^{xxxviii} and the social ostracism of such victims can be prevented by maintaining their anonymity^{xxxix}.

Thus, we can say that Indian courts have been deliberating upon and recognizing the RTBF in different ways, although the contours of the RTBF are still not clearly defined but there is no array of doubt that this right exists and must be utilized to protect the informational privacy of the individuals.

Conflict of RTBF with the right to freedom of speech and expression and right to know

The RTBF and the right to freedom of speech and expression which also includes right to know within its ambit are generally seen as contradictory, since, the former preserves the sanctity of the information related to personal affairs of the individual and requires non-dissemination, erasure, deletion, removal of such information whereas the latter advocates the creation, deliberation, discussion, dissemination, presentation, publication of the information.

If the RTBF is enforced strictly without recognition of any exception then it might affect the journalists in presenting news and keeping their published online content safe and intact. It could cause information asymmetry or partial or incorrect information being spread. It could cause unnecessary obstruction to the media and chaos in the press as they would have to think first about the consequences even before publishing the information. Overall, spread of ideas and information might get hampered. In India, where freedom of speech and expression is an expressly recognized fundamental right under Article 19(1)(a), some advocate that explicit recognition of RTBF would be a direct attack on this right and be done with caution. Removal or deletion of online content will restrict the scope for discussion on matters affecting public interest. The RTBF while giving primacy to individual's privacy ignores that there are some truths about individuals that must be exposed, told and published in public interest. Moreover, people would feel hesitant in expressing their viewpoints on particular matters scared of being guilty of violating the person's RTBF. The usual working of these rights pits them against each other and the right to freedom of speech and expression being a constitutional right and, in many countries, also a fundamental right holds a transcendental position which makes any challenge to it difficult. In South America the RTBF has been condemned because of the perspective that it is susceptible to be misused by hard core criminals in hiding their crimes. That way the RTBF might also be seen as a hindrance to the public interest.

Measures needed to resolve the conflict between RTBF and the right to freedom of speech and expression:

It is undeniably important to strike a balance between RTBF and other fundamental rights. This necessitates the clear demarcation of the scope and application of this right. The two conflicting rights are influenced by the Constitution, other laws of the land and the methods of interpretation adopted by the Courts. It is not easy to reconcile these two rights for the law courts and more so

for the businesses which are not even equipped with such level of legal knowledge and aptitude. But as difficult as it might seem, it is possible for these rights to co-exist and a harmonious balance between the two can be established by adopting certain measures:

- ❖ One right must not be favoured arbitrarily over the other and while deciding upon the conflict due consideration must be given to both the rights.
- ❖ The laws may provide which right ought to be given priority in the conflicting situations, e.g., Article 10 of the ECHR while recognizing the freedom of speech and expression qualifies the same by providing in the Para 2 that the exercise of this right may be subject to restrictions in the interests of national security and for the protection of the reputation or rights of others *inter alia*^{xi}.
- ❖ While resolving the conflict the Courts might look into the status of the two conflicting rights for instance if one is a fundamental right and the other is not an explicitly recognized right the Court has to weigh the importance of both and has to determine whether the latter right can be treated as an exception to the former right.
- ❖ The laws of the State might prescribe rules which clearly provide what needs to be done in the prescribed set of circumstances, predetermining the outcome leaving no or little discretion.
- ❖ The State authorities might provide for certain “pre-determined standards” to be followed but which also provide room for discretion of the law courts.
- ❖ The conflict can be left to be decided on the case-to-case basis having regards to the different factors involved in the cases without laying down any rules or standards to be followed^{xii}. But this approach enlarges the discretionary power of the decision makers deciding upon the RTBF claim manifold. The Google has been following this approach after CJEU’s ruling in the 2014 case^{xiii}.
- ❖ The State might presume in favour of one right while keeping such presumption rebuttable, for instance, it can be generally presumed that the right to freedom of speech and expression must be preserved being a fundamental right and the aggrieved party putting the cause of RTBF must show how the operation or prevalence of RTBF over the freedom of speech is justifiable in the given case.
- ❖ The private institutions like big companies and social media intermediaries might recognize a private RTBF without the command of State laws or explicit recognition of

RTBF by the State laws^{xliii}. This approach will work in the countries where RTBF is not already recognized and is helpful as it prevents the constitutional problem of conflict between the two rights. The private RTBF will create the balance but it is susceptible as to how such mandates by private companies will be acceptable to the common public hindering their free speech, e.g., Google has adopted such approach when it favoured the right to be forgotten of the EU residents and allowed their delinking or deletion request.

- ❖ Instead of completely removing the information from search engines, the information can be de-ranked in the search results. So that the given unpleasant facts containing story does not appear as a primary search result but if the given set of information is searched particularly, it can be accessed. That way both free speech and privacy can be reconciled.

The State ought not to enforce RTBF where it puts undue restriction on freedom of speech and expression.

Conclusion

Right to be forgotten is one crucial facet of right to privacy. It is a value of utmost importance in the internet driven world. It is the only magical weapon which provides second chances to those individuals who have become prisoners of their dark pasts and helps them in starting their life afresh. This is in consonance with justice and also with the rehabilitative theory of punishment. Although it has not been explicitly mentioned as a fundamental right in the Indian constitution but being a part of right to privacy which is one fundamental right inherent in Article 21, it holds utmost importance and its aid must be given to the needy. As perpetual depiction of someone as a man of bad character for one or two wrongdoings in one's life can cause severe emotional and psychological detriment to that individual. But while utilizing RTBF, the public interest should not be overlooked. The contours of the RTBF must be defined as clearly as possible and where the public interest is involved right to freedom of speech and expression ought to be used unhindered. In order to maintain a harmonious balance and to mitigate or resolve the potential conflicts between these two rights, the various approaches that can be followed include setting standards, rule-making, or creating presumption in favour of one right or the consideration of the matter on the case-to-case basis. It is well settled that right to be forgotten and the right to freedom of speech and expression both are extremely important human rights and both should remain operative. Essentially, there is a need to develop harmony and balance in their operation

while not giving absolute primacy to one over the other. For this reason, it is imperative to define the contours of the RTBF. The legislature via a suitable legislation can formulate and recognize the RTBF while the law courts through their judgments and judicial interpretation can help immensely in the evolvement and shaping of this right. The European jurisprudence favours this right and by perusal of the series of the afore-mentioned recent case laws in India, it is conspicuous that the Indian Courts too have recognized the RTBF following the European approach as evolved through Google Spain SL, General Data Protection Directives, General Data Protection Regulation. In India, the latest legislation dealing with data protection recognizes RTBF in a limited form of the right to erasure and the Indian Courts are widening and explaining the contours of RTBF through case laws. The RTBF is at the nascent stage and is still developing, nevertheless, it is certainly an important right helping in the protection of data privacy of individuals.

References:

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- ⁱ Louis Brandeis and Samuel Warren, "The Right to Privacy," *Harvard Law Review* 4, no. 5 (December 1890): 193.
- ⁱⁱ Justice K.S. Puttaswamy (Retired). vs Union of India and Ors., Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1.
- ⁱⁱⁱ Federico Fabbrini and Edoardo Celeste, "The Right to Be Forgotten in the Digital Age: The Challenges of Data Protection Beyond Borders," *German Law Journal* 21, no. S1 (March 2020): 56. doi:10.1017/glj.2020.14
- ^{iv} Maria Romana Allegri, "The Right to be Forgotten in the Digital Age," in *What People Leave Behind Marks, Traces, Footprints and their Relevance to Knowledge Society, Frontiers in Sociology and Social Research* 7, eds. Francesca Comunello, Fabrizio Martire, Lorenzo Sabetta, (Switzerland: Springer, 2022), 238, <https://doi.org/10.1007/978-3-031-11756-5>
- ^v Yulia Razmetaeva, "The Right to Be Forgotten in the European Perspective" *TalTech Journal of European Studies* 10, no.1 (June 2020): 59, <https://doi.org/10.1515/bjes-2020-0004>
- ^{vi} Marco Bassini and Oreste Pollicino, "Reconciling right to be forgotten and freedom of information in the digital age: Past and future of personal data protection in the European Union," *Diritto Pubblico Comparato ed Europeo* (2014): 642.
- ^{vii} Jef Ausloos, "The 'Right to be Forgotten' - Worth remembering?" *Computer law & Security review* 28, (2012) 143 - 152.
- ^{viii} European Commission, "A Comprehensive Approach on Personal Data Protection in the European Union" COM (2010) 609 final.
- ^{ix} Jeffrey Rosen, "The Right to Be Forgotten," *Stan. L. Rev. Online* 64, no. 88, (February 2012): 88.
- ^x Saloni Singhvi, "Right to Be Forgotten: A Forgotten Right," *International Journal of Legal Studies and Research* 9, no. 2 (September 2020): 250.
- ^{xi} Xavier O'callaghan Munoz, *Freedom of expression and its limits, honor, privacy and image*, (Spain: EDERSA, Madrid D.L., 1991)
- ^{xii} Patricia Sánchez Abril and Jacqueline D. Lipton, "The Right to be Forgotten: Who Decides What the World Forgets?" *Kentucky Law Journal* 103, no. 3 (2014): 368.

- ^{xiii} Manasvi Gupta, “A Study on Right to be Forgotten,” *International Journal of Law Management & Humanities* 4, no. 3 (2021):587.
- ^{xiv} Google Spain SL and Google Inc v Agencia Espan˜ola de Proteccio´n de Datos (AEPD) and Mario Costeja Gonz´alez, Case C-131/12, 13 May 2014, at paras 26–28.
- ^{xv} Eleni Frantziou, “Further Developments in the Right to be Forgotten: The European Court of Justice’s Judgment in Case C-131/12, Google Spain, SL, Google Inc v AgenciaEspanola de Proteccion de Datos,” *Human Rights Law Review* 14,(2014):765. doi: 10.1093/hrlr/ngu033.
- ^{xvi} *Supra* note 10, at para 80.
- ^{xvii} *Id.*, at para 81,99.
- ^{xviii} Dr. J.V.J. Van Hoboken, “The Proposed Right to be Forgotten Seen from the Perspective of Our Right to Remember, Freedom of Expression Safeguards in a Converging Information Environment,” (Amsterdam:2013), Prepared for the European Commission,4.
- ^{xix} Rolf H. Weber, “On the Search for an Adequate Scope of the Right to Be Forgotten,” *Journal of Intellectual Property, Information Technology and E-Commerce Law*6, no.1(2015):7.
- ^{xx} Binoy Kampmark. “To Find or Be Forgotten: Global Tensions on the Right to Erasure and Internet Governance,” *Journal of Global Faultlines* 2, no. 2 (2015):5. <https://doi.org/10.13169/jglobfaul.2.2.0001>. accessed from JSTOR on 30 Nov. 2023.
- ^{xxi} Andr´es Guadamuz, “Developing a Right to be Forgotten,” in *EU Internet Law: Regulation and Enforcement* (November 2017), 59-76. doi = {10.1007/978-3-319-64955-9_3} accessed through https://www.researchgate.net/publication/320985071_Developing_a_Right_to_be_Forgotten
- ^{xxii} Dawn Carla Nunziato, “The Fourth Year of Forgetting: The Troubling Expansion of the Right to Be Forgotten,” *University of Pennsylvania Journal of International Law*39, no.4 (2018) :1012.
- ^{xxiii} Robert C. Post, “Data Privacyand DignitaryPrivacy: Google Spain, The Rightto BeForgotten, And The Construction Of The Public Sphere,” *Duke Law Journal* 67,no.981 (2018):985.
- ^{xxiv} Aidan Forde, “Implications of the Right To Be Forgotten,” *Tulane Journal of Technology & Intellectual Property*18, no.83(2015):101.
- ^{xxv} Ben Wolford, Everything you need to know about the "Right to be forgotten", accessed through<https://gdpr.eu/right-to-be-forgotten/>
- ^{xxvi} *Id.*
- ^{xxvii} Google LLC v. CNIL, C-507/17, 2019 EUR-Lex CELEX No. 62017CJ0507 (Sept. 24, 2019).
- ^{xxviii} Section 8, The Digital Personal Data Protection Act, 2023.
- ^{xxix} <https://indianexpress.com/article/explained/explained-law/right-to-be-forgotten-8466283/>
- ^{xxx} SK v. Union of India & Ors. W.P.(C) 5400/2023 and CM APPL. 21149/2023
- ^{xxxi} Vysakh K.G. v. Union of India & Anr. and other connected cases [2022 LiveLaw (Ker) 665]
- ^{xxxii} Jeffrey Rosen, “The Right to Be Forgotten,” *Stan.L. Rev. Online* 64, no.88 (February 2012), accessed through <https://www.stanfordlawreview.org/online/privacy-paradox-the-right-to-be-forgotten/>
- ^{xxxiii} *Id.*1.
- ^{xxxiv} Zulfiqar Ahman Khan v. M/S Quintillion Business Media Pvt. Ltd. And others CS (OS) 642/2018.
- ^{xxxv} Jorawer Singh Mundy v. Union of India and Ors. 2021 SCC OnLine Del 2306.
- ^{xxxvi} Dharmaraj Banu Shankar Dave v. State of Gujarat SCA No. 1854 of 2015.
- ^{xxxvii} X vs. Registrar General W.P. No. 62038/2016.
- ^{xxxviii} Subranshu Raot v. State of Odisha WP (C)/4159/2020.
- ^{xxxix} State of Punjab v. Gurmeet Singh and Ors 1996 SCC (2) 384.
- ^{xl} Edward Lee, “The Right to Be Forgotten v. Free Speech,” *I/S: A JOURNAL OF LAW AND POLICY*12, no.1(2015): 95.
- ^{xli} *Id.*,p.102.
- ^{xlii} Case C-131/12, Google Spain SL v. Costeja, 2014 E.C.R. 317 at ¶ 97, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=152065&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1033117> (emphasis added).
- ^{xliii} Edward Lee, “The Right to Be Forgotten v. Free Speech,” *I/S: A JOURNAL OF LAW AND POLICY* 12, no.1 (2015): 103.