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Abstract

Right to be forgotten is a new interpretation of the Right to privacy inherent under right to life. Life is so beauty and protected by Article 21 r/w Article 32 of Indian Constitution. Right to be forgotten is also known as right to eraser i.e. delete all document or sources that impact of human life. The paper analyse extension of right to be forgotten and right to private how to correlates it. The objectives of the research paper is to find out meaning of right to be forgotten, to study need of right to forgotten and its relevancy in digital society.

Key Words: Rights, Constitution, Digital, Development, Right to Private.

I. Introduction

According to Salmon, right is an interest recognized and protected by law of land. It is having five elements without protection of rights cannot talk about civilized society. Our Indian Constitution also combined prominent fundamental rights under Part- III Article 12 to 35. It is spirit of the development of human being. The life & privacy both are correlated and depending each itself. Now a day stating new conceptions of the forgotten rights inherent under right to privacy the forgotten rights gives an individual or individuals the option of removing their private information from the internet in certain situations. The rights also concerned with erasing right which is basic part of digital behaviours. The right is recognized in European Union in 2014 where increased dependency of the internet for promotion of the society. In India, it is introduced through the personal data protection bill that explained forgotten rights. It is not defined under Indian constitution only found in judgment of the Indian judiciary in 2017 when explained importance of the right to privacy.

The personal data protection bill, 2019 is stated word forgotten right under clause 20. According to clause 20 rights to forgotten part of the data principal which talk about restriction & prohibition to anyone continue release personal data it is also part of right to privacy. Data fiduciary is a prominent identity of any person that concerns state, legal entities i.e. Company, individuals and juristic units, etc.

II. Connotation of Right to Be Forgotten

Right to privacy is a personal right having most importance to develop of human ability it is a spirit of all human rights. The forgotten right is extension of these rights without this rights cannot success right to dignity as well as Right to Life. According to the Supreme Court, the right to life mother of all rights and it is also human rights provide by God to everyone. It encompasses more than only the ability to survive and the right to a dignified life. The question 'what is Right to be forgotten' had therefore, remained a problem for those who had made an attempt to define it? There is no proper definition of Right to be forgotten. Many people who are not aware about Right to Forgotten. In India, currently there is no law and constitutional other provisions that specifically provides the Right to be Forgotten.

Forgotten right concept where citizens can seek to remove their information from the internet. And there is a traceable mechanism to validate the same. It is often associated with the right to be left alone under



the ambit of the right to privacy. In the age of social media where every photo, video, post, or message can come back to haunt this right has become vital. These right safeguards a person's dignity as well as privacy. The sole objective of a search engine is to provide information on a relative subject. It is operated under Artificial Intelligence (AI) therefore it is incapable of understanding defamatory or irrelevant information. It has an abundance of knowledge about each human being associated in its database. Since human beings have become so vulnerable on a social platform, it is only fair to ask for the right to privacy and the right to erasure to safeguards one's dignity.

III. Evolution of Right to Be Forgotten In India

In 1998, Mario Costeja González, a Spaniard, had run into financial difficulties and was in severe need of funds. As a result, he advertised a property for auction in the newspaper, and the advertisement ended up on the internet by chance. Mr Gonzales, unfortunately, was not forgotten by the internet. As a result, news about the sale was searchable on Google long after he had fixed his financial issue, and everyone looking him up assumed he was bankrupt. Understandably, this resulted in severe damage to his reputation, prompting him to take up the matter to the court. Ultimately, this case gave birth to the concept of the "right to be forgotten".

The European Court of Justice ruled against the search engine giant Google, declaring that under certain circumstances, European Union residents could have personal information removed or deleted from search results and public records databases¹.

In Europe the right to be forgotten is not required by Google, according to the EU Court, which limited the judgement in 2019 to the European Union alone. The right to erasure commonly referred to as every have a civil right which promotes healthy life as well as dignified to have their personal information deleted from the internet. A traceable process must also be in place to guarantee that data removed from storage media is also deleted from backup storage media. India, at present does not have any statutory provision that provides for right to be forgotten. The Indian security system has seen an alternate wave with the presentation of the new Personal Data Protection Bill² in 2018. The Bill envisages many changes with respect to data handling and security privileges of an individual. However, the Bill guises to fetch in the right to be forgotten which is not accessible in the current legitimate system under the Information Technology Act, 2000 passed by Indian Parliament to deals with all matter related misuse of technology. The enactment also deals cyber security & cybercrime. The Information Technology (Reasonable Security Practices, Procedures and Sensitive Personal Data or Information) Rules, 2011 is new regulation to supervise the cyber society.

Simply put, the right to be forgotten is the ability to ask that personally identifiable material that is publicly available be removed from databases, websites, search engines, and other public platforms once it is no longer necessary or relevant. However, there is an intricate system envisaged under the Section 20 of PDP Bill for setting off the right to be forgotten. The Bill articulates that the right can be sanctioned only on the order of an adjudicating officer after an application recorded by the data principal. Whereas, the choice on whether the right to be forgotten can be granted with respect to any information will rely upon "freedom & liberty mentioned under Article 19(1)". Keeping in view the laws of other countries, the European Union's (EU) General Data Protection Regulation (GDPR) permit individuals to have their personal data erased, but the authorities noted that "organisations do not always have to do it". The GDPR provisions read like a master for the Indian PDP Bill and it further expresses

¹C-507/17, Google LLC, successor in law to Google Inc., v. Commission nationale de l'informatique et des libertés (CNIL)

²Personal Data Protection Bill, 2018.



that an individual can look for the eradication of their information when “there are serious inaccuracies in the data or they believe information is being retained unnecessarily, they no longer consent to processing”. Furthermore, EU noticed that it is not complete right depend on time & circumstance. Consequently, in situations where the information is being utilised to practise the right to freedom and expression or for consenting to a lawful decision or commitment, an appeal for eradication may not be engaged. Additionally, where public interest is included or when an association is utilising information while practicing its authority, it can refuse to delete any information that it considers to be significant for its purposes.

Today, at this point it is not simple to get away from one’s past when one’s personal information can be easily circulated around the web or stay on the internet endlessly, accessible through speedy search results. For people who wish to start afresh, the right to be forgotten remains essentially important and all the more necessary given the expand of our digital footprint. The essential query that encompasses the commencement and nature of the right to be forgotten is: would it be a good idea for us to reserve the right to be forgotten?

In India, the first question previously came up before the judiciary in **Dharamraj Bhanushankar Dave Vs. State of Gujarat**³, before the Gujarat High Court. In its judgment the court did not acknowledge the so-called “right to be forgotten”. Here, in this case the petitioner had been charged with criminal conspiracy, murder, and kidnapping, among others and was acquitted by the Sessions Court, which was further supported by a Division Bench of the Gujarat High Court. The petitioner had claimed that since the judgment was non-reportable, respondent should be banned from publishing it on the internet because it would jeopardise the petitioner’s personal and professional life. The High Court, on the other hand, found that such publication did not violate Article 21 of the Indian Constitution, and that the petitioner had presented no legal basis to prevent the respondents from publishing the judgment.

III. Judicial Interpretation & Right to Be Forgotten

Right to Privacy is the fundamental right under Article 21 of the Constitution of India and it is the most valuable fundamental right extended to be forgotten. According to Article 21 every person entitled right to life & personal liberty. There person word includes citizens and non-citizens also. So that Article 21 is footing of other fundamental rights like equality, privacy protection, social justice, non-discrimination, gender justice, religious & linguistic freedom, use the internet, etc. the Apex Court has explained in **Justice K.S. Puttaswamy (Retd.) and Anr. Vs. Union of India**⁴, the individual has the authority to regulate over his personal data. Individual must be able to regulate his existence over cyber space. Information on the internet is permanent as a result of the effects of the digital era. Although people forget, the internet does not and will not allow people to forget. Any attempt to delete material from the internet does not completely eradicate it. The tracks are still there. Thus, it is argued that forgetting is a battle and preservation is the norm in the digital age⁵.

In the case of **Zulfiqar Ahman Khan Vs. M/S Quintillion Business Media Pvt. Ltd. And others**⁶, Zulfiqar Ahman Khan demanded that articles critical of him be taken down from the news website. According to the Delhi High Court, a person’s life and existence depend on their ability to be forgotten and left alone. Both are included in Article 21 of the Indian Constitution. Today’s internet community has started to evaluate someone’s honesty. Knowledge of internet communication must demonstrate the

³2017 SCC Online Guj 2493

⁴(2017) 10 SCC 1

⁵Ibid.

⁶Laws (DLH)-2019-5-101.



specifics of human lives, both good and bad. Our privacy is being violated. The individuals are spreading rumors online about other people. A person's private information is no longer kept secret in the modern world. Nowadays, people search online and can obtain any information they need. Sometimes anyone has committed a crime as a result of an internet search. It allows a person to delete of private information from the Internet. Despite the fact that the right is not recognized by Indian law, courts have recently determined that it is an essential component of the right to privacy. The Delhi High Court is currently hearing a number of applications asking for the deletion of personal data from the Internet, court documents, and press accounts of the past. Only a few issues have thus far been successful in obtaining that redress from courts. The Delhi High Court has expressed significant judgment of the K. S. Puttaswamy (2017). The decision was milestone in the history of right to Privacy. The Court said the personal data bill also supported to the Forgotten Rights. According to the Orissa High Court, such a right will be enforced through the process of court if necessary. At present, there is no law and other constitutional provision in the country. The Right to be forgotten, requiring erasure of data when it is not needed or following revocation of consent by the subject is recognized under the General Data Protection Regulation⁷, Europe's digital privacy law.

The technology creates what is essentially a permanent store in some form, making it challenging to start over and learn from prior mistakes. People adapt and develop throughout their lives; they are not static. They change. They make errors. However, they have the right to reinvent, change, and learn from their errors. This skill is fostered by privacy, which also frees one from the constraints of any regrettable previous actions. Currently, in India there is no legal framework in regards to right to be forgotten or right to erasure.

In *Sri Vasunathan Vs. The Registrar General & Ors*⁸, petitioner filed to remove only the name of his daughter from the cause title because it would cause harm to her reputation. The Court held the decision in favour of the Petitioner. The judgment indicated right to forget is a fundamental right under right to privacy.

In *State of Punjab Vs. Gurmeet Singh and Ors*⁹ the Apex Court, anonymity can lessen the risk of social exclusion for sexual assault victims. The forgotten right is a very helpful for sexual assault victim and other persons by mistake committed crime. In *Prem Shankar Shukla Vs. Delhi Administration*¹⁰ A three-judge Supreme Court bench led by Justice Krishna Iyer declared that the guarantee of human dignity, which constitutes part of our constitutional tradition. In *Dharamraj Bhanushankar Dave Vs. State of Gujarat*¹¹, the 'Right to be Forgotten' was not acknowledged by the Gujarat High Court. In this instance, the petitioner was accused of murder, kidnapping, and other crimes. Later, the Sessions Court freed the petitioner. This Session Court Judgment which was further supported by a Division Bench of the Gujarat High Court. The petitioner had claimed that until the judgment was non-reportable, no publishing made on the internet because it effects the petitioner's personal and professional life. The High Court found that such publication did not violate Article 21 of the Indian Constitution, and that the petitioner had no legal basis to prevent the respondents from publishing the judgment.

In *Sri Vasunathan Vs. Registrar General*¹², Court has impartiality had noted that the right to be forgotten is product of foreign countries that delicate circumstances concerning women. She had upheld

⁸ W.P. No. 62038/2016.

⁹ MANU/SC/0366/1996.

¹⁰ Prem Shankar Shukla v. Delhi Administration MANU/SC/0084/1980.

¹¹ MANU/GJ/0029/2017.

¹² Writ Petition No.62038 of 2016



a woman's Right to be forgotten. The High Court recognised "Right to be forgotten." The purpose of this case was to remove the name of the petitioner's daughter because it defames her reputation. The court held the judgment in favour of the petitioner. The court held that "Right to be forgotten" is applicable as a rule in sensitive cases concerning women. Subsequently, In *V. Vs. High Court of Karnataka*¹³, the Karnataka High Court recognized right to be forgotten. The purpose of this case was to remove the name of the petitioner's daughter from the cause title since it was easily accessible and defame her reputation. The court held in favour of the petitioner and ordered that the name of the petitioner's daughter to be removed from the cause title and the orders. The court held that the right to be forgotten adopted by western countries in specific matter like cybercrime against women, economic misconduct heinous crime, rape, and acid attack, etc. Noticeably, the right to be forgotten has now been perceived as a basic face of the right to privacy. Which is soul point discussed by Apex Court in landmark judgment of *K.S. Puttaswamy Vs. Union of India*¹⁴ The Supreme Court had stated that the right to be forgotten was subject to certain restrictions, and that it could not be used if the material in question was required for the—

1. To workout of fundamental rights mentioned under Article 19.
2. To fulfillment of accountability & responsibilities under law
3. To implementation of duty related interest of public & public health;
4. To protection of information in the public interest;
5. The purpose of scientific or historical study, or for statistical purposes; or
6. The establishment, executing, or defending of legal claims.

Recently, a Single Judge Bench of the Madras High Court headed by Mr Justice N. Anand Venkatesh, had given an important order regarding "right to be forgotten" (RTBF) or right to erasure as a facet of the fundamental "right to privacy".

In this case, the petitioner's name continued to appear in the High Court's verdict and was freely available to anyone who would type their name into Google search. Despite the fact that the petitioner was acquitted, they were named as an accused throughout the preceding judgment. Therefore, the petitioner contends that this has a negative influence on his public image. As a result, the petitioner requests the High Court to issue an order redacting their name from the verdict.

The Madras High Court ruled that the "right to be forgotten" cannot exist in the administration of justice, especially when it comes to court judgments.

Constitutional Provision & Right to Be Forgotten

The most important and essential right in the Indian Constitution is Right to Privacy. Article 21 provides to types of rights first is Right to Life & Second Right to Personal Liberty. Both are important for existence of the life. In **Justice K.S. Puttaswamy (Retd.)** case, Indian Judiciary explained very nicely right to Privacy is an inherent right and it will be included in the Right to Life enshrined under Article 21 of the Constitution. The Indian Court stated that a person's ability indicates protect to right to privacy and enhancing quality of life include that person's ability to exercise control over his or her online existence. No doubt internet useful for everyone but sometime it is create difficulties in the human life for survival.

¹³ 2017 SCC Online Kar 424

¹⁴(2019) 1 SCC 1.



In **Zulfiqar Ahman Khan** Case is a famous case related to the removal of articles written against him in news website of the Quint. The Delhi High Court observed the Right to be forgotten is becoming inherent part of human being at that time.

Comparative Study Regarding Forgotten Rights

In 1890, William James observed that forgotten is a most significant and intellectual in the files of protection of right to privacy. The James also known as Father of Psychology said that forgotten is a psychology status of mind. Advance generation is depending on use of technology enhancing communication and dissemination of valuable information. But sometimes technology provides unnecessary and useless information about any person's characters. That harmful is in future growth in the society. Professor Whitman accepts a variety of reasons, including the Nazi occupation to a lesser extent, that contributed to European privacy law as a whole, but comes to the conclusion that Europe's emphasis on privacy is the consequence of a centuries old, gradual evolving resistance against to put it another way, while Viktor Mayer-Schönberger is accurate that the Nazis exploitation of centralized data substantially influenced modern European digital data protection regulations, the foundation of these rules is a cultural value of privacy¹⁵. In the Europe by rules are defending privacy and dignity, although only the wealthy class was still given protection. Europe differs from the United States in this strongly ingrained social structure that existed during pivotal years in the creation of privacy laws. The European Convention on Human Rights entered into force in 1953 and is binding on the 47 nations that make up the Council of Europe, including the European Union, Russia, and Turkey. The forgotten rights indirectly accepted by the western countries.

India and the Right to be Forgotten

India does not have an expressed legislation on the right to be forgotten. The elementary legislation governing cybercrime and e-commerce is the Information and Technology Act, 2000¹⁶. Furthermore; India is not equipped with any implemented Data Privacy laws. In order to tackle the inadequacy of laws, the BN Srikrishna Committee was formulated and led to the conceiving of Right to be Forgotten in India¹⁷. This committee was created for the purpose of analysing issues around data protection and promulgate solutions to address the issues and thereby draft the data protection bill¹⁸.

forgotten' and issued an interim order directing the search engine to remove the name of the petitioner from orders posted on its website until further orders were issued.

1. Exercise of the Right to freedom of expression and information;
2. Fulfilment of legal responsibilities;
3. Execution of a duty in the public interest or public health;
4. Protection of information in the public interest;
5. For the purpose of scientific or historical study, or for statistical purposes; or
6. The establishment, executing, or defending of legal claims.

¹⁵Litigation Da Cunha v. Yahoo de Argentina SRL, Open Society Foundations (April 14, 2020 10:45 PM), <https://www.opensocietyfoundations.org/litigation/da-cunha-v-yahoo-de-argentina-srl-and-another>.

¹⁶Information Technology Act, 2000, No. 21, Acts of Parliament, 2000.

¹⁷Aroon Deep, Srikrishna Committee Data Protection Bill released, Media Nama (April 24, 2020 10:21 PM), <https://www.medianama.com/2018/07/223-live-justice-srikrishna-data-protection-report-being-submitted-to-it-ministry/>.

¹⁸Information Technology Rules, 2011, WIPO, Assessed on 23. 01. 2023
<http://www.wipo.int/edocs/lexdocs/laws/en/in/ino98en.pdf>.



Criticism

The development of Internet in human life creates much progress with unwanted problems. Right to be forgotten cannot be applied in criminal activity that held against country. In some situations, it indicates not to remove the data related to a person's ability and activity. The Google Spain decision sheds some light on this by recognising the necessity of important considerations regarding technology-based information. These considerations include protecting the data and government responsibility to secure the data for the public interest as well as communication & information may be open for professional life. After the Google Spain ruling, Google received a flood of requests. Google's 2017 Transparency Report gave some guidance on how it has processed requests and included examples of some of the outcomes of removal requests. Given his former status as a well-known person, one response indicated that we didn't delist the URLs; however, another response stated that they didn't fit the requirements for currently being involved in politics and was a minor at the time; therefore we delisted 13 URLs for him. According to Article 19, limiting children to their unpleasant history can hinder their future and lessen the value of their self-awareness. Although having the right to be forgotten has some benefits, there are also drawbacks, particularly in light of privilege demands and the potential harm they may do to the right to free speech. In the absence of adequate legislative safeguards, online directories risk becoming the 'judge, jury, and executioner' of the right to be forgotten. Imposing such a flexible authority on a personal subject carries risks, especially in light of the need to balance competing freedoms, a task often left to the judicial system. The Electronic Frontier Foundation raised fear that the internet would be blue pencilled as a result of the ambiguous restriction placed on websites.

CONCLUSION

Present time demands or offers protection of personal data that is used by anyone for misuse by anyone. A significant constitutional change should add safety as a reason for suitable limitations under Article 19 in order to implement the right to be forgotten. The option of being forgotten may not be as viable as there is a need for system expansion. For example, when enforcing the right to life and privacy, it is also to protect information rights, when carrying out legal obligations, when concluding a project in the public interest or for the public health, when having quantifiable or scientifically verifiable exploration goals, or when establishing, enforcing, or protecting legitimate situations. In order to strike a balance between the competing rights to privacy and freedom of expression, the Parliament and Supreme Court should carefully evaluate the Right to be forgotten. Data is a precious resource in the digital era that shouldn't be left unmanaged. In this situation, India should enact rigorous data protection laws. Court rulings are not protected by the right to be forgotten, according to a decision by the Madras High Court. Most Indians believe that the right to be forgotten is still in its infancy. To use this privilege in India, it is advised to do the following:

Recent occurrences demonstrate how seriously this Law should be implemented. People must always be protected from threats at advanced stages. A system that makes sense of clear situations and yields unambiguous conclusions is envisioned in order to prevent any potential contradiction between the two fundamental rights.

- An effective information security policy can help implant this in each person straight away. The right to be forgotten can be used by individuals to assist them further protect their security.
- Large-scale automated systems and internet search engines may choose to change their policy, disconnect users, or remove specific information. Yet, big businesses like Google kept certain data even after being accused by a candidate in the Kerala High Court. This proves that it is the least effective way to enforce the law.



- Regardless of how the PDP Bill was rejected, certain courts have interpreted the Right to be Forgotten in their decisions while taking into account international law. There is still more effort to be done in order to build a precise strategy that successfully protects both the right to privacy and the right to free speech and expression, even if the right has been accepted and upheld by the Delhi and Karnataka High Courts. In the meanwhile, they can make their fundamental right to protection known by filing a complaint. But combining all three and using them regularly could aid in the correct growth and application of India's right to be forgotten. It's also significant to observe how the right to be forgotten has evolved in different nations.