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## **THE RIGHT TO BE FORGOTTEN**

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### **ABSTRACT**

Privacy is a variable concept it includes both physical and mental privacy both in the real and virtual world, including the right to be forgotten. Each living being on this planet is advantaged with a sensation of self-protection. Each human, contingent upon their own ability, attempts to save themselves from substantial damage which can be additionally arranged as Physical security. It can't be interfered by any individual despite the fact that no individual is brought into the world with actual protection privileges. With change in time people have gained a sense for their status, respect and feeling. This change has helped in the advancement of actual security to mental protection lastly to mental privacy. The question of Right to Privacy being a fundamental right has been bantered around the Indian legal system since the longest time from MP Sharma to K.S Puttaswamy.

## 1. INTRODUCTION

The right to privacy states to the exact right of an individual to regulate the collection, use and disclosure of his personal information. The term Personal information can be explained in the form of personal habits, various activities, family, educational , communications, clinical and monetary records. Right to Privacy is synonymous with the **right to be let alone**.<sup>1</sup>

According to Black's Law Dictionary "*right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned*" is defined as Privacy.

Therefore, Right to Privacy means:

- "Right to personal autonomy.
- Right of a person and person's property to be free from unwarranted public, scrutiny or exposure."<sup>2</sup>

## 2. PRIVACY

Privacy is a basic freedom assured to each person by temperance of their existence. Privacy likewise reaches out to bodily integrity, individual independence and freedom of speech to agree and dissent or move or think. The right to privacy is to limit government and private activities that compromise the privacy of people.

The issue of Right to Privacy was raised without precedent for a debate of constituent assembly, where an motion was moved by K.S. Karimuddin, where B.R. Ambedkar gave it just grandiose help and Right to Privacy was therefore not fused in the Indian Constitution.<sup>3</sup>

This basic right to protect an individual's privacy has been enshrined in the Universal Declaration of Human Rights, 1948 ("UDHR") as follows:

*"Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to*

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<sup>1</sup> Justice K.S. Puttaswamy Vs. Union Of India (2017) 10 SCC 1

<sup>2</sup> Black's Law Dictionary (10th Ed) (Thomson Reuters) (2014)

<sup>3</sup> Privacy in India, <https://www.legalserviceindia.com/legitimate/article-676-lawful-examination-of-right-to-privacy-in-india.html> (last visited Jul 26, 2022)

*the protection of the law against such interference or attacks.*"<sup>4</sup>

### 3. LEGAL DEVELOPMENT OF RIGHT TO PRIVACY

The right to privacy had been deciphered as an unsaid right however in the end advanced as a basic right under the Constitution of India. The developing infringement of this right by the State urged the Indian Judiciary to play a powerful job in ensuring this right. Article 21 has procured throughout the long term a few multidimensional viewpoints, it has loosened up its degree and paid significance to two words-"Life" and "Opportunity "Right to Privacy is one such right which has extended the degree of Article 21 greatly.

*M.P. Sharma v. Satish Chandra*<sup>5</sup>

Initially privacy was not considered as a crucial right. It was firstly held by an eight-judge bench of the Supreme Court in the year 1954 in the case *M.P. Sharma v. Satish Chandra* case, while managing the ability to search and seize documents from the Dalmia Group, excused the presence of a right to privacy on the premise that the creators of Constitution didn't mean to subject the force of search and seizure to a basic right of privacy. They felt that the Constitution prohibits language like the Fourth Amendment of the US Constitution, and found no help to import the possibility of a focal right to protection in search-and-seizures, through what they called a 'strained construction'.<sup>6</sup>

*Kharak Singh v. State Of U. P. & Others*<sup>7</sup>

A similar case made a rebound following ten years under the consideration of a six-judge bench of the Supreme Court for the same. In the judgement of *Kharak Singh vs. State of UP*, where the Supreme Court dismissed the presence of such right once more. The Supreme Court held that there is no crucial Right to Privacy except to strike down the arrangement which permitted night visits for the cause of infringement of 'individual freedom'. The right to privacy was conjured for this situation to challenge the reconnaissance of a charged individual by the police. Kharak Singh was captured for dacoity yet was discharged in view of an absence of proof. He

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<sup>4</sup> Universal declaration of human rights United Nations, (<https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Article%2012,against%20such%20interference%20or%20attacks.>)(last visited Oct 26, 2022)

<sup>5</sup> AIR 1954 SCR 1077

<sup>6</sup> Protecting the right to privacy Law Teacher, <https://www.lawteacher.net/free-law-essays/constitutional-law/protecting-the-right-to-privacy-constitutional-law-essay.php> (last visited Aug 22, 2022)

<sup>7</sup> 1963 AIR 1295, 1964 SCR (1) 332

was brought under surveillance by Uttar Pradesh Police under such routine, which was legalized under *Chapter XX of the Uttar Pradesh Police Regulations*.

Kharak Singh then, contested the established legitimacy of Chapter XX and the powers it gave upon police authorities, as it abused his central rights under Article 19(1)(d) and Article 21<sup>8</sup>. The 6-judge bench held that such night time domiciliary visits about were unlawful, yet the remainder of the Regulations were maintained. All the more critically, the seat held that the right of privacy is certainly *not a fundamental right under the Constitution*.

In the same case, in a disagreeing judgment *Justice Subba Rao*, said that Right to Privacy is a fundamental part of individual freedom however any such arrangement was not consolidated and pronounced as a fundamental right under the Indian Constitution.

#### *Gobind v. State Of Madhya Pradesh*<sup>9</sup>

Then, following eleven monotonous years, the Supreme Court in a three judge bench when confronted with a identical issue in *Gobind v. state of Madhya Pradesh*, upheld the presence of a fundamental right to privacy under Article 21. For the first time interestingly the right to privacy which was being challenged since years acquired a little acknowledgment under the Indian Constitution. The court expressed that the right to privacy isn't unequivocally given under the Constitution of India however can be suggested from Article 21 of the Indian Constitution and subsequently isn't totally defined out rightly. Subsequently, sensible limitation can be forced on a singular's right to privacy and this is not really settled through a complete examination of current realities of the case and through the convincing state interest test. The Supreme Court incorporated the right to privacy and held that an infringement of such privacy could be challenged plausibly if it violates any law.

The right to privacy can be inferred through different fundamental rights including the right to individual freedom, right to move openly all through India and the ability to speak freely. The court thought that the right to privacy can't be outright and ought to consistently be exposed to some sensible limitations. It was fought that the sensibility of the limitations not really settled just when the laws and enactments that are abusing the right to privacy are exposed to the

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<sup>8</sup> The Constitution of India, 1950, Art. 12.

<sup>9</sup> 1975 SCR (3) 946

convincing state interest test. Solely after the convincing state interest test is fulfilled through made to order advancement, the right to privacy of an individual can be limited.

***R. Rajagopal v. State of Tamil Nadu***<sup>10</sup>

Again the extension and sphere of the right to be left alone or the right of privacy came up for thought under the consideration of the Supreme Court in R. Rajagopal v. Territory of T.N. during 1994 in this case the right of privacy of a denounced detainee was in issue. By interpreting the Constitution and considering case laws from the and United States and United Kingdom, Justice B.P. Jeevan Reddy held that “however the right to privacy was not clearly mentioned as a fundamental right, it could unquestionably be derived from Article 21 of the Constitution and could surely be gathered from Article 21 of the Constitution.

***People's Union of Civil Liberties v. the Union of India***<sup>11</sup>

One more critical case recognised with the right of privacy was the People's Union of Civil Liberties v. the Union of India The case was principally associated with the issue of 'phone tapping'. It held that tapping the phone line of an individual, marginalised his right to privacy, except if it was needed in the gravest of grave conditions, for example, public emergency. While it might appear to be that the right to privacy is enough ensured as a fundamental right, it is crucial for remember that apart from a some limited cases, fundamental rights given to the individual are restraints mainly put on activity of the State. Accordingly, such a limitation won't secure a person against the activities of any private person.

***Justice K.S. Puttaswamy Vs. Union Of India***<sup>12</sup>

The new judgment on Right to Privacy has changed the components of privacy rights in India. The Supreme Court of India, on August 24th 2017 conveyed a judgment on Justice K.S. Puttaswamy versus Union of India. A 9 judge bench was formed to decide on the question that whether Right to Privacy is a Fundamental Right. Henceforth the unanimous decision of the nine judges expressed that Right to Privacy comes within the ambit Fundamental Rights in India.

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<sup>10</sup>1994 SCC (6) 632

<sup>11</sup>(1997) 1 SCC 301

<sup>12</sup> *Supra note. 1 at 3*

The fight in court for Right to Privacy began very nearly two years prior exactly when the Attorney-General for India had stood up in the midst of the test for the Aadhaar Scheme, and submitted that the Constitution didn't guarantee any essential basic security. The three initially appointed judges hearing the case referred the question to a greater seat of five judges which, in this manner, suggested it further higher bench of nine judges. The decision conveyed in the present case pays huge significance to freedom, opportunity, pride and obviously Privacy.

Accordingly, *K.S. Puttaswamy V. Union Of India* in overruled the previous judgements in *M.P. Sharma* and *Kharak Singh*. The court held that Right to Privacy is a fundamental and basic right and extends to the individual covering all data regarding that individual and the decisions that person makes. The right to privacy is ensured as an inborn piece of the right to life and individual freedom under Article 21 and as a piece of the prospects ensured by Part III of the Constitution. Highlighting the fact that right to privacy is a fundamental right and its place among the Golden Trinity of Article 14 (Right to Equality), Article 19 (Right to Freedom) and Article 21 (Right to Life and Personal Liberty) is secured.

The court further held that "the right to privacy is secured as a natural piece of the right to life and individual freedom under Article 21 and as a piece of the opportunities ensured by Part III of the Constitution".<sup>13</sup>

In this unique context, the Lead Judgment depends on an article that addresses privacy through a diagrammatic construction that, distinguishes nine kinds of privacy<sup>14</sup>:

Substantial privacy: Privacy of the actual body against infringement and restrictions of real development

Special Privacy: Privacy of a space, like day to day life and personal relations

Communicational Privacy: Right against admittance to correspondence, or command over it

Restrictive Privacy: Right to utilize property as a way to protect realities or data

Scholarly Privacy: Privacy of thought, brain, sentiments and convictions

Decisional Privacy: The capacity to settle on cozy choices

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<sup>13</sup> *Ibid.*

<sup>14</sup> Paragraph 141, Part L of the Lead Judgment, *Supra* note. 1 at 3

Associational Privacy: Privacy to make the decision of who to cooperate with

Social Privacy: The capacity to control the degree of access even while directing openly noticeable exercises

Educational Privacy: An interest in keeping data about the self from being scattering, and controlling the degree of admittance to the same data

#### 4. LIMITATIONS ON RIGHT TO PRIVACY

Since the fundamental rights are not to be perused in a storehouse, any encroachment of fundamental rights will in this manner need to finish the essential assessments of Articles 21 and 14 of the Constitution. These tests are<sup>15</sup>:

- The *requirement for a presence of a law*,
- The *law ought not be discretionary*; and
- The *encroachment* of the right by such law ought to be corresponding for accomplishing *legitimate state aim*,

At present as against the non-state parties, i.e, private persons, privacy is perceived as a precedent-based common law, rather than an established right. The authorization will rely upon realities and conditions of the case. Under the Information Technology Act, 2000 and rules outlined thereunder there are restricted arrangements as for assurance of individual data and touchy information and individual data.

The Lead Judgment takes note of the tests for the sensible limitations on the right to privacy in Para 3(H) of the conclusion<sup>16</sup>. It holds that a law which infringes upon the right to privacy should *withstand the touchstone of permissible restrictions on fundamental rights*". Any encroachment of privacy should be by a law which is "*fair, just and reasonable*".

While a legal right might be changed, corrected, or dissolved by a straightforward demonstration of enactment, a fundamental right isn't dependent upon alteration or invalidation by the parliament. Any concise edition of a fundamental right, should meet the tests recommended under Article 21, Article 19, or the particular right it attempts to override.

#### 5. RIGHT TO BE FORGOTTEN(RTBF)

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<sup>15</sup> Paragraph 180 of the Lead Judgment and Paragraph 3(H) of the Lead Judgment, *Supra* note. 1 at 3

<sup>16</sup> *Supra* note. 1 at 3

The right to be forgotten (RTBF) enables people to request companies and establishments to erase any personal data belonging to them available on the internet and public domain. It is a right of a person to have open-source individual data erased from the web, web indexes, data sets, sites, and other public stages once it is not generally needed or pertinent.<sup>17</sup>

The presence of Right to be Forgotten is dependent upon the equilibrium of other clashing rights, like the right to free discourse and articulation or different rights of free media and publication. To cite an example, an individual might wish to de-connect data about his criminal history to make it harder for others to find explicit editorial pieces about him when they Google or web search the person. This puts an individual's right to privacy, developed from Article 21, in direct struggle with the media's right to publish and investigate, flowing and acquired from Article 19.

### 5.1 LEGAL EVOLUTION OF RTBF

The *Right To Be Forgotten* was first acknowledged in the globally famous case of *Google Spain SL, Google Inc v Agencia Española de Protección de Datos, Mario Costeja González* (2014). Also referred to as, *Google v. Spain*.<sup>18</sup>

#### *Summary*

In *Google v. Spain*, the European Court of Justice decided that the European residents reserve an option to demand that business firms that offer search results, like Google, which accumulate individual data for their benefit and profit should eliminate connections to private data when asked, given the data is as of now not pertinent. The Court however didn't say newspapers publishers should eliminate articles on their website. The Court observed that the fundamental right to privacy is more essentially noteworthy than the financial interests of the business firms and, in certain conditions, the public interest in access to such Information. The European Court asserted the judgment of the Spanish Data Protection Agency which upheld freedom of press and dismissed a solicitation to have the article concerning individual bankruptcy eliminated from the site of the press association.<sup>19</sup>

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<sup>17</sup> Right to be Forgotten Drishti IAS, <https://www.drishtias.com/everydayrefreshes/day-by-day-news-articles/right-to-be-forgotten-2> (last visited Aug 26, 2022)

<sup>18</sup> Case C-131/12 (Official Case No) ECLI:EU:C:2014:317 (Neutral Citation) ILEC 060 (CJEU 2014)

<sup>19</sup> Epic - the right to be forgotten, (*Google v. Spain*) Electronic Privacy Information Center, <https://epic.org/privacy/right-to-be-forgotten> (last visited Jul 26, 2022)



The Right to be forgotten obtained prominence globally. In *Puttaswamy V. Union Of India*<sup>20</sup>, the Supreme Court of India expressed that the Right to be forgotten was a part of the more extensive right to privacy. The Right to be forgotten is somewhat founded on both Article 14's right to respect and mostly on Article 21's right to privacy.

In the same way in the United states in the case of *Melvin v. Reid*<sup>21</sup>, the court acknowledged that right to be forgotten is an integral part of the much broader right to privacy and held that “any person living a life of rectitude has that right to happiness which includes a freedom from unnecessary attacks on his character, social standing or reputation”.

## 5.2 GENERAL DATA PROTECTION REGULATION (GDPR)

The GDPR went into power in 2016 subsequent to passing of the law by European Parliament, and as of May 25, 2018, all such commercial internet companies were needed to be compliant with the same. Interestingly, the right to be forgotten is incorporated and to be found in the General Data Protection Regulation (GDPR) along with the right to erasure. *Article 17* of this Regulation is named *Right to Erasure* and contains objective standards which would direct a deletion. However, there has been no such law still enacted in force India.

Further, the right to be forgotten is found in *Art.17 (2)* of the GDPR. Assuming the regulator has disclosed the individual information in any given situation, and in case one of the above purposes behind eradication exists, such regulator must take reasonable measures, then he shall also further the same to the remaining regulators in information handling that all connects to the individuals information, just as duplicates or recreates of the individual information, should be deleted.<sup>22</sup>

Notwithstanding the deletion, as indicated by *Art. 19 of the GDPR* the regulator should illuminate all beneficiaries of the information about any amendment or eradication and consequently should utilize all means accessible and exhaust every proper measure.<sup>23</sup>

## 5.3 DEVELOPMENT UNDER THE INDIAN LAW

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<sup>20</sup> *Supra* note. 1 at 3

<sup>21</sup> Cal.App. 285, 297 P.91 (1931)

<sup>22</sup> Article17 GDPR Right to eradication ('right to be forgotten')

<sup>23</sup> Art. 19 GDPR Notification obligation regarding rectification or erasure of personal data or restriction of processing (<https://gdpr-info.eu/issues/right-to-be-forgotten>)

In *Puttaswamy v. Union of India*,<sup>24</sup> the Supreme Court of India expressed that the Right to be Forgotten was a part of the more extensive right to privacy. The Right to be Forgotten is to some degree dependent on Article 14's right to equality and halfway on Article 21's right to life and thus including privacy.

Presently in India the fundamental rights under the constitution Article 19 and 21 are only enforceable against the state or agencies of the state and not against private parties and non-state entities.

#### 5.4 ENFORCEABILITY AGAINST PRIVATE INDIVIDUALS

The issue is that for all intents and purposes in many cases, the Right to be Forgotten will be utilized against a non-state entity like a private individual or media or news site. This brings up the issue of whether fundamental rights, which are regularly and usually enforceable against the state, might be authorized and actionable against private individuals also.

In the current circumstances only Articles 15(2), 17(2), and 23 of the constitution give security against a private party's private acts being tested in light of the fact that it violates the Indian Constitution.

Prompting the issue that right to privacy be also included in the above list of certain rights that can be contested against private individuals, hence question still needs to be countered by the enactment of any legislation in India. Although no such law is in enforcement but The Data Protection Bill, 2019 is pending in the legislature.

In the vacuum of any present data protection bill in India the Right to be Forgotten has been in dispute, there have been a few clashing and surprising mediations of the said right by different high courts in on-going years. In India, courts have habitually endorsed or dismissed Right to be Forgotten request while absolutely ignoring the more extensive sacred issues that it raises

In the *Puttaswamy*<sup>25</sup> case practically every one of the six judgements given by the judges features the requirement for a data and information protection law to control activities of the state and non-state parties too. The actual and long term use and implementation of the right to

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<sup>24</sup> *Supra* note. 1 at 3

<sup>25</sup> *Ibid*

privacy should be tried in the perspective on this judgment, which will act as a guiding principle for the development of Right to be Forgotten. The Lead Judgment calls upon the central government to draw out a data protection act dependent on the rules set down in the decisions of the court.

### **5.5 PERSONAL DATA PROTECTION BILL, 2019**

The Right to be Forgotten falls under the domain of a person's right to privacy, which is represented by the Personal Data Protection Bill that is yet to be passed by Parliament.

Section 20 under Chapter V of this draft bill named "*Rights of Data Principal*" makes reference to the "*Right to be Forgotten*." It expresses that the "data principle, i.e. the individual with whom the information is connected will reserve the option to limit or forestall the proceeding with revelation of his own information by a data fiduciary.

*Section 20*<sup>26</sup> unequivocally perceives the 'right to be forgotten' and execution of the Bill would permit people a more noteworthy independence in regards to the utilization and control of one's very own data on the web.

In this way, extensively, under the Right to be forgotten, persons can de-connect, limit, erase or right the exposure of their own information held by data fiduciaries. Any data fiduciaries implies any individual, including the State, an organization, any juristic person or any person who alone or associated to others decides the reason and method for handling of such individual information.

In the situation that the individual information and data is not really settled freely by the individual concerned, yet will be administered by the Data Protection Authority (DPA). This implies that while the draft charge gives a few arrangements under which an information chief can look for that his information be eliminated, however such rights are reliant on upon authorisation by the Adjudicating Officer who functions for such DPA.

While evaluating the information chief's solicitation, this official should inspect the affectability of the individual information, the size of revelation, level of availability looked to

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<sup>26</sup> The Personal Data Protection Bill, 2019

be limited, public stature of the information head in open public life and the idea of the divulgence are among some different factors which will be concerned.

## 5.6 CASE STUDY RELATING TO RIGHT TO BE FORGOTTEN (RTBF)

*Sredharan T v. State Of Kerala*<sup>27</sup>, In the present case a Civil Writ Petition filled in the year 2016, the Kerala High Court passed a interim order requiring and ordering Indian Kanoon to eliminate the name of an rape victim from their website which was mentioned on its website alongside the two other decisions delivered by the Kerala High Court in Writ petitions filled by the said victim. The court perceived and recognized the Petitioner's right to privacy and notoriety, without unequivocally utilizing the term '*right to be forgotten*'.

*Jorawer Singh Mundy vs Union of India and Ors*<sup>28</sup>, wherein Hon'ble Justice Pratibha Singh gave protection to an American Citizen, namely Jorwar Singh Mundy who argued for a for relief against Indian Kanoon, a law data and case law database, for removal of the Delhi High Court's decision in a NDPS Act case, wherein the Plaintiff was the accused. In spite of the fact that he was vindicated of all charges in the reprimanded case, he demonstrated that the accessibility of the judgment online was a stain on his social image. The appeal expressed that *"That the Right to be Forgotten reflects the claim of an individual to have certain data deleted so that third persons can no longer trace them. This right enables a person to silence the past events of his life that are no longer occurring. Thus, the right to be forgotten entitles individuals to have information, videos or photographs about themselves deleted from certain internet records so that search engines cannot find them."*

Lately, a TV big name reported by the Indian Express recently reported that Ashutosh Kaushik, the Winner of Roadies 5.0 and Bigg Boss (2008), has approached the Hon'ble Delhi High Court with a petition to issue directions to have all internet content related to his various past sensitive incidents including a 2009 drunken driving case and an altercation at a cafe in Mumbai in the year 2013 to be cleared away from the internet. The petitioner had moved Delhi High Court with the supplication that orders be given to Google and pertinent elements to work with the evacuation of posts, recordings, articles and any data identified with alleged episodes that he was involved. His request referred to that his essence on the web is a wellspring of "*utmost psychological pain*" to him. The request specifies that the posts and recordings on web

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<sup>27</sup> Sredharan T v. State Of Kerala, Civil Writ Petition No. 9478 of 2016

<sup>28</sup> W.P.(C) 3918/2021),

identified with him have caused the petitioner mental agony for his small acts, which were mistakenly performed ten years prior and still the recorded recordings, photographs, articles of the equivalent are accessible on different web search tools online <sup>29</sup>

The Madras High Court lately was called upon to practice its writ purview for the same right, for coordinating the name of a denounced individual, vindicated from his charges in investigative stage, to be redacted in the first judgment of conviction. The petitioner had argued for acknowledgment of his "right to be forgotten" as a subcategory of the right to privacy guaranteed under the Article 21 of the Constitution. the Madras High Court vide its Judgment named *Karthick Theodore v. Madras High Court and Ors.*<sup>30</sup>. But in a order passed by Hon'ble Mr. Justice N. Anand Venkatesh dated August 03, 2021, they did not issue the desired writ.

## CONCLUSION

The assurance provided under the standards of "Right to be forgotten" must be offset with the public interest in having admittance to the openly available data that has fallen in access to general society area regardless of the said individual's right. There is a need for regulation through legislation and interference of courts needed to keep a harmony between right to be forgotten practiced by the individual on one hand, on the other the interest of people in general needs to be understood and by understanding the nature and gravity of the offense, while following natural law principles, i.e. being just, fair and reasonable.

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<sup>29</sup> Explained: The 'right to be forgotten' in India, and Ashutosh Kaushik's case in Delhi HC The Indian Express, <https://indianexpress.com/article/explained/the-right-to-be-forgotten-india-explained-7418661/> (last visited Sep 26, 2022)

<sup>30</sup> W.P. (MD) No. 12015 of 2021 and WMP (MD) No. 9466 of 2021