
THE RIGHT TO BE FORGOTTEN: CONFLICTS BETWEEN FREE SPEECH AND PRIVACY IN THE DIGITAL ERA

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ABSTRACT

The advancements and the advent of new technology in the digital era has made communication easier and smoother among individuals as well as groups and also led to the change in ways in which people express themselves. However, these advancements have raised critical concerns over the conflict between free speech and right to privacy, especially in the context of Right to be Forgotten. This was primarily brought in the European Union's General Data Protection Rights (GDPR) gives individuals the power to request the removal of personal data from online platforms when such information is no longer relevant or accurate. While the 'Right to be Forgotten' deals with the protection of individual's privacy, it creates friction with the 'Free Speech', affecting the exchange of Information. On One Hand, the Right to be forgotten removes the information from online platforms could limit the flow of information and lead to censorship. On the other hand, the supporters of the Right to be Forgotten argue that individuals must not be haunted by damaging online information could affect the personal as well as their professional lives. This paper explores the evolving legal landscape of the Right to be Forgotten, analysing the various case laws with both the Indian and Global perspectives. It challenges the court's face striking the balance between Privacy and Free speech. The paper navigates how different jurisdictions decide on this dilemma and the future of digital rights in the Information-driven world.

INTRODUCTION TO RIGHT TO BE FORGOTTEN

The Right to be Forgotten is the right to have the private information of individuals removed from internet searches and other directories in some circumstances. This issue arose when individuals decide for the development of their life, which was disturbed or damaged due to their past actions which pop up when someone searches about them online. This right entitles people to have their data being removed or deleted from the search engines so that it cannot be recovered or retrieved by third parties. This right in turn results in the infringement of the right of free speech and making a conflict between free speech and the right to privacy. This right also affects the accessibility and the flow of information online.

In the age of today's internet, private information can remain online forever, cropping up years later to affect people, in ways they had never imagined. Whether it was a news article, a minor legal matter, or an older social media comment; the continuity of online content can be a serious issue for a person's privacy and reputation. This has given rise to increasing debates on the Right to Be Forgotten, a principle whereby people can demand for delisting or removal of private information that is no longer relevant or needed. Though this right is firmly rooted in the European Union, India has just started exploring its legal boundaries. While not formally provided for by Indian law, Right to be forgotten has been hotly argued in Indian courts, in Justice **K.S.Puttaswamy V. Union Of India**¹ the Right to privacy has been held as a fundamental right under Article 21 of the Indian Constitution.

The Indian understanding of the Right to be Forgotten is yet to develop and is confronted with special challenges, especially in reconciling it with 'freedom of speech and expression', provided under Article 19(1)(a) of the Indian Constitution. Indian courts have exercised restraint in granting delisting or removal orders, particularly when the information forms part of the public record or has ongoing public interest. For example, Indian High Courts have witnessed petitions requesting the removal of acquittal records or matrimonial disputes from internet databases. Courts have been inconsistent in their rulings, tending to balance harm to the individual against the public's access to information. In contrast to the European Union's wider scope of application of the Right to be Forgotten, India tilts towards a more limited use, so that the right of privacy does not prevail over journalistic freedom, legal openness, or the right to know of the public. As India proceeds with the establishment of its data protection

¹ AIR 2017 SC 4161

regime, the challenge will lie in forming a sophisticated balancing act between dignity that is personal and the democratic worth of unrestricted access to information.

FREE SPEECH IN INDIA

In India, Article 19(1)(a) of the Indian Constitution guarantees all the citizens to express their opinion freely by word of mouth, writing, printing or any other medium of communication which is known as Free Speech. But that as a right is not absolute and is subject to certain restrictions commonly known as the reasonable restrictions. The restrictions must be justified on any of the following grounds; sovereignty and integrity of the nation, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, or incitement to an offence. Also it is ensured that the restrictions must not be arbitrary in nature and must have a rational connection with the purpose sought to be achieved.

Though it was a very challenging task, the Indian courts have interpreted the Right of free speech in various cases which helped in the evolution of the right to be an integral part of the Indian Constitution. In the case of **Romesh Thappar V. State of Madras**², the court struck down the law banning a journal for disturbing Public order, stating that 'Public order' was not a ground for restriction under Article 19(2) and also reinforced the importance of speech in Democratic Governance.

In the case of **Brij Bhushan V. State of Delhi**³, the court held that pre-censorship of a newspaper violated free speech and pronounced Freedom of Press as a part of Freedom of Speech guaranteed under Article 19(1)(a) of the Indian Constitution. Also in the case of **Bennett Coleman & Co. V. Union of India**⁴, the court struck down the Government's restrictions on page limits of newspapers as they directly impacted the right to Free Expression and also ensured that Freedom of Press is a part of Freedom of Speech. In the case of **S.Rangarajan V. P.Jagjivan Ram**⁵, the court held that the restrictions speech must be based on a clear and present danger and; mere fear or anticipation of disturbance is not a sufficient ground for restricting speech.

² [1950] 1 S.C.R. 594

³ 1950 AIR 129

⁴ 1973 SCR (2) 757

⁵ 1989 SCR (2) 204

In the Landmark Judgement of **Maneka Gandhi V. Union of India**⁶, the Supreme Court established that Free Speech includes the right to receive information from abroad and that the restrictions on Free Speech must stand on the test of reasonableness, fairness, and non-arbitrariness, thus expanding the protective scope of civil liberties in India.

Like in these decided cases the free speech and the reasonable restrictions for it have been interpreted, considering various circumstances by the Indian Judiciary. Though it was a challenging task for determining whether the restrictions are reasonable in the cases, the Indian courts have stood on the side of Justice as the right has been guaranteed as a Fundamental Right, which has to be preserved and procured for the Citizens of the State by the State itself.

RIGHT TO PRIVACY IN INDIA

Initially, Right to Privacy was not explicitly mentioned in the Indian Constitution. However, overtime, through Judicial Interpretation; was recognised as a Fundamental Right under Article 21 of the Indian Constitution, which guarantees right to life and personal liberty, where Right to Privacy is considered a part of Personal Liberty. Right to Privacy is a right, where an individual has a right to be left alone; personal information; protect their body, mind and personal space; and also can decide who gets access to their personal data and information. It generally protects individuals from Unwanted Surveillance by the Government; unwanted data collection; and intrusion by others into one's personal life.

Though Right to Privacy is a Fundamental right, it is not absolute and it is subject to Reasonable restrictions. Some such restrictions are allowed, when it is sanctioned by Law; when aimed at a legitimate Public Purpose, that is the restriction is for national security or for maintaining public order; and when such restriction is necessary in a Democratic society, by maintaining the balance between individual Right to Privacy and the State's interest.

The Indian Judiciary has interpreted the Right to Privacy in various Landmark cases. In the case of **Kharak Singh V. State of UP**⁷, the issue was that the police surveillance and the domiciliary visit affect the Right to privacy under Article 21 of the Indian Constitution stating that Right to Privacy must be a part of Personal Liberty. But the Court in a majority opinion held that Privacy is not a right guaranteed under the Indian Constitution. Whereas, in the case

⁶ 1978 AIR 597

⁷ AIR 1963 SC 1295

of **Govind V. State of MP**⁸, the Court recognised the Right to Privacy as a part of Personal Liberty under Article 21, but subject to reasonable restrictions in the Public Interest. In the case of **R. Rajagopal V. State of Tamil Nadu**⁹, the issue was about the unauthorised publication of a person's personal life without consent, which has been held violative of privacy, unless it pertains to public records. The Supreme Court in this case, also explicitly recognised the Right to Privacy as implicit under Article 21 of the Indian Constitution.

In the Landmark decision on the case of Justice **K.S.Puttaswamy V. Union of India**¹⁰, the 9-judge bench decided that the Right to Privacy is a Fundamental Right and overruled the previous contrary decisions (like the Kharak Singh Judgement). It also gave a robust and broad definition of privacy, covering bodily autonomy, data protection and informational Privacy.

The Right to Privacy being considered a part of the Personal Liberty under Article 21 of the Indian Constitution is an important decision by the Indian Judiciary, which is the transformative step in Indian Constitutional Law. It guarantees that Life and Personal Liberty are not merely physical existence but also about dignity, autonomy and freedom of the individual. In an increasingly digital and data-driven world, the constitutional protection of privacy of individuals under Article 21 ensures that individual dignity remains at the heart of democracy in the Indian Constitution.

THE CONFLICT WITH REGARD TO THE RIGHT TO BE FORGOTTEN IN INDIA

The new cyber environment has focused a tremendous constitutional dilemma involving two paramount rights such as the Right to Privacy and the Right to Free Speech. At the heart of this dispute is the new doctrine of the Right to Be Forgotten, the concept that people should be able to delete personal information or old records from the public sphere, especially when they are no longer needed or pertinent. Although the Right to Privacy, particularly since the **K.S.Puttaswamy decision**, has been staunchly accepted as one of the pillars of Article 21 of the Indian Constitution; the Freedom of Speech contained in Article 19(1)(a) continues to remain a keystone of democratic government. Balancing the two in the RTBF context is a tall legal and ethical order.

⁸ 1975 AIR 1378

⁹ AIR 1995 SC 264

¹⁰ AIR 2017 SC 4161

The Right to Be Forgotten usually emerges in situations where people want to delink historical convictions, private controversies, or old content from search engines and public records. This is particularly pertinent in the era of digital permanence, where digital data can be searched, stored, and transmitted without end. From the privacy point of view, an individual ought to be allowed to dictate how long their data is available to the public in case such information is in error, not relevant, or outrageously damaging. As an illustration, an individual acquitted of a criminal charge might want to delete online mentions of the case in order to prevent social discrimination and stigma.

But this assertion of privacy crosses straight over into the public right to know and the media right to report, which are both constituent parts of free speech. When information is published lawfully, it enters the public domain. To withhold it later; presumably in the name of privacy can trigger fears of censorship, erasure of the historical record, and restrictions on freedom of the press. The possible abuse of Right to be Forgotten to clean up individual backgrounds or stifle negative public records is a real risk.

In India, the law governing Right to be Forgotten is in its formative stages. While the **K.S. Puttaswamy judgement** left open the likelihood of the Right to be Forgotten forming a part of the general right to privacy, but also it did not provide the right a complete legal sanction. Some High Courts, such as the Delhi High Court and the Orissa High Court, have acknowledged the concept in specific contexts (e.g., matrimonial disputes, acquittals), but there is no uniform national policy yet. Importantly, the Personal Data Protection Bill (now replaced by the Digital Personal Data Protection Act, 2023) proposed Right to be Forgotten as a statutory right, subject to adjudication by a Data Protection Board.

On one hand, the supporters of this right claims that this right completes the Right to Privacy guaranteed under Article 21 of the Constitution of India as a whole; whereas, the people who oppose this right that this Right to be Forgotten affects the proper flow of information and also affects the freedom of Press guaranteed which is also Guaranteed under Article 21 and the right to Free Speech which is Guaranteed under Article 19(1)(a). Equilibrating these conflicting rights, requires a case-by-case determination informed by proportionality, public interest, and contextual sensitivity. Courts need to consider whether upholding certain information is in the legitimate public interest, whether it is indispensable, and whether deleting it would be

disproportionate to impair free speech. A careful, principled approach more than one rigid approach is necessary than a granting the right to be absolute.

In summary, the tension between privacy and free speech in the Right to Be Forgotten case captures the larger issue of reconciling individual dignity with societal transparency. As India builds out its data protection and digital governance regime, this tension will continue to be a central concern of constitutional litigation and judicial deliberation until built completely.

THE RIGHT TO BE FORGOTTEN -ABROAD

The **Right to Be Forgotten** has emerged as a vital legal concept in the digital age, where personal information can be stored, indexed, and accessed without any restriction online. While interpretations and enforcement vary globally, several jurisdictions have taken clear stances, either incorporating the Right to be Forgotten into law or addressing it through judicial decisions according to the facts and circumstances of the cases. Here, is an analysis of how various countries interpret and address the Right to be forgotten, particularly in Europe, North America and other Asian Countries.

Beginning with United Kingdom; where the European Union in the case of **Google Spain SL V. Agencia Española de Protección de Datos**¹¹ (2014), the Chief Justice of European Union held that the individuals have the right to request for the removal of links to personal data that is inadequate, irrelevant or excessive from search engine results. The Court emphasized that the individuals' privacy rights may override the interest of search engines and the public's right to information, particularly when such data is inaccurate or irrelevant. This case impacted in the General Data Protection Rights (GDPR) 2018, in which the Article 17 consisted of the 'Right to Erasure' which was an enlightening move but it was not absolute as it was subject to restrictions under certain circumstances such as freedom of expression, legal claims, or public interest. The UK government in its Data Protection Act, 2018 included Right to be forgotten, which is enforceable and exceptions same as the European Union's model.

Continuing with United States, which stand in contrast with the European Union's view and does not formally recognise the Right to be Forgotten; and has a strong emphasis on Freedom of Speech and Press as guaranteed by the First Amendment. The idea of removing of personal

¹¹ ECLI:EU:C:2014:317

information or data from a Public Domain is generally seen as a form of Censorship. However, in the **California Consumer Privacy Act (CCPA)**, 2018, the individuals were granted the right to request deletion of personal information collected by Business. But still these rights are applied primarily only to the Consumer data and not public records or journalistic content.

Then in Canada, there is no Legislations regarding Right to be Forgotten, but the **Office of the Privacy Commissioner** has proposed including the right under the **Personal Information Protection and Electronic Documents Act**. The idea is still under consultation and the courts have to decide upon to agree the inclusion of this right.

Then Japan, which has taken a cautious but a yet evolving step regarding this right. In 2017, the **Supreme Court of Japan** ruled that the court must weigh Privacy over Freedom of Speech, allowing the Right to be Forgotten in limited circumstances, particularly when data severely affects dignity of individuals and serves no more public interest.

Then in South Korea, the **Korea Communication Commission** introduced the 'Request for Temporary Block' policies, allowing individuals to seek for removal of outdated or harmful content, which will be decided by the courts with regard to the facts and circumstances. But still it is not enforceable and lacks legal finality.

That's how the viewpoint on the Right to be Forgotten varies across the various jurisdictions and countries and even according to the facts and circumstances in which individuals claim for such right, where the courts having most supreme authority decide upon which deems fit to do. As an overall analysis we can come to a conclusion that many countries has given the authority for guaranteeing such right is given to the Judiciary, that is, the Courts. Likewise, giving such authority on deciding matters of the Right to be Forgotten to the Courts is the most reliable solution as the courts only come to a conclusion, because the court decides whatever deems fit be the decision for the case for granting of such right.

SOLUTION FOR OVERCOMING THE CONFLICT

Some of the ideas, which can help in the proper implementation of the Right to be Forgotten or solves the challenges on the Implementation of the Right to be Forgotten, so that the conflict between the Right to Privacy and Free Speech does not arise. They are:-

- Establishing a clear Legal and regulatory framework for the Right to be Forgotten, which means that there must be enactment of specific laws that define the scope, criteria, and the procedure for exercising the Right to be Forgotten. The most important benefit from this solution is that it reduces ambiguity and ensures fair and consistent application. For example, the European Union's GDPR, which suggests on the procedure and exceptions for the Right to be Forgotten.
- Constituting a Data Protection Authority or an Adjudicating body for deciding on the matters of the Right to be Forgotten. The creation of an Quasi-judicial body to handle the requests and adjudicate on matters of erasure of data; offers a specialised, faster and less expensive remedy than courts, as the courts can spend its time on matters with more importance. For example, India in Section 18 of the Digital Personal Data Protection Act, 2023, proposed the Data Protection Board.
- Define Public Interest Criteria in law or Guidelines, which may help the board for deciding whether the claim for the Right to be Forgotten is valid or not. It ensures that the decisions are consistent and not overly subjective. For example, defining and clarifying what constitutes the terms "public interest", "Journalistic Freedom", "freedom of expression" and "historical significance", helps the adjudicating body to decide on such matters.
- Encouraging technological innovations for Privacy protection, makes the enforcement of the Right to be Forgotten practical, without deleting the content universally. For instance, developing tools like de-indexing, anonymising and geo-blocking contents, can help in the enforcement of the Right to be Forgotten practically.
- By entering into treaties or agreements for cross-border data removal in Right to be Forgotten cases, where one claim for erasure of data on digital platforms with the help of the existing treaties with such platform.
- Ensure Transparency and Public Accountability, which ensures that there is no misuse of the Right to be Forgotten in any circumstances. It mandates that all the Right to be Forgotten removal are reviewed with transparency and with the option for media and public accountability or challenge.

Through these various ideas and solutions, there can be a proper enforcement of the Right to be Forgotten without any conflict between Free Speech and the Right to Privacy. The Right to be forgotten is both necessary and complex, in which the mentioned solutions helps in the removal or easing such complexities.

CONCLUSION

The Right to be Forgotten, though creates a conflict between Free Speech and the Right to Privacy; is necessary in the dynamically changing digital era. This right, though having many complexities, must be viewed as a solution for the protection of Individual's Privacy. The main objective of this right is to give individuals a balanced control over their personal data. A quality implementation of the Right to be Forgotten will definitely help for a movement in power balance, providing every individual the control of their information in the Information Driven Society. Thus, we would like to conclude that Right to be Forgotten as a Right must be ensured to each and every individual, whether absolute or amounting to restrictions. But, if provided with the restrictions, it should be reasonable, as the Personal Data and Privacy of the individuals matter over the Freedom of speech and expression.