THE RIGHT TO BE FORGOTTEN IN INDIA: RECONCILING PRIVACY RIGHTS WITH FREEDOM OF SPEECH AND EXPRESSION

Runjun Baruah[1] & Dr Syed Wajid Ul Zafar[2]

ABSTRACT

The Right to Be Forgotten developed through European jurisprudence recognises an individual's right to request the removal of certain personal information from the internet, especially when such data is outdated, irrelevant, or infringing upon their privacy. This concept has generated substantial debate across the globe, and its applicability in the Indian context constitutes the central concern of this study. This research paper examines the complex relationship between privacy and freedom of expression in the context of the "Right to Be Forgotten" in India. Against the backdrop of rapid growth in digital information and communication, this study scrutinizes the legal framework, its evolution, and its implications on individuals' rights and societal values. Through an extensive analysis of relevant case law, legislative developments, this paper seeks to explain the complexities and difficulties in harmonizing privacy protection and the fundamental right to freedom of expression. The findings and recommendations presented herein seek to provide a comprehensive understanding of how India can navigate this intricate intersection, fostering a digital environment that respects individual privacy while upholding the principles of free speech and access to information. The analysis also considers subsequent Indian data-protection legislation, while distinguishing a qualified statutory right to erasure from the wider question of removing publicly accessible information.

Keywords: Right to Privacy, Freedom of expression, Right to be forgotten, Human Rights, Data Protection.

[1] Runjun Baruah, Assistant Professor, Jorhat Law College, Assam.
[2] Dr Syed Wajid Ul Zafar, Resource Person, CDOE, University of Kashmir.

Introduction

Right to Privacy and Freedom of Expression are both significant human rights widely acknowledged across legal systems. Article 12 of Universal Declaration of Human Rights provides that; Individuals must not face unjust intrusions into their privacy, family life, home, or personal communication, and they must not be subjected to assaults on their honour and reputation. Every person is entitled to legal protection against such interference or attacks. Article 17 of International Covenant on Civil and Political Rights provides; "No individual should endure unjust or unwarranted violations of their privacy, family life, residence, or personal communication, and they should not be subjected to unlawful assaults on their dignity and reputation. Every person is entitled to legal protection against such intrusions and assaults." Article 19 of Universal Declaration of Human Rights says; every individual possesses the inherent right to express their opinions and thoughts freely, without any form of interference or restriction. This fundamental right encompasses the ability to form and maintain opinions and to actively engage in the sharing, reception, and dissemination of information and ideas using any medium, irrespective of geographical boundaries or constraints. Article 19 of International Covenant on Civil and Political Rights says; Every individual is entitled to the fundamental right of freedom of expression. This right encompasses the liberty to seek, receive, and disseminate information and ideas without any geographical limitations. It can be exercised through spoken words, written communication, printed materials, artistic expression, or any other preferred means of communication. Article 19(1)(a) of Indian Constitution also recognises Freedom of Speech and Expression as a Fundamental Right.

But, in the contemporary digital environment, the fundamental principles of privacy and freedom of expression have increasingly come into tension. As the world becomes increasingly interconnected through the internet, individuals share more personal information online than ever before, making the boundaries less distinct between their public and private lives. Simultaneously, the dissemination of information has become easier, leading to a proliferation of digital footprints that can have lasting consequences. In this complex landscape of online interactions, the concept of the "Right to Be Forgotten" (RTBF) has emerged as a important legal and ethical question, seeking to strike a balance between preserving personal privacy and upholding freedom of expression. The concept of the Right to be forgotten is based on the principle that individuals should possess the authority to manage the accessibility of their personal information on the internet. This right enables people to petition for the deletion of

specific personal data or information that has become obsolete, outdated, inaccurate, or excessive in its presence. Its principal purpose is to safeguard an individual's privacy and mitigate the potential harm to one's reputation resulting from outdated or erroneous information. The Right to Be Forgotten, originally recognized in the European Union (EU) through the landmark ruling by the European Court of Justice (ECJ) in the case of Google Spain v. AEPD and Mario Costeja Gonzalez (2014) allows individuals to request the removal of specific personal information from search engine results. This ruling prompted international discussion about the careful balance between individual rights and societal interests, igniting debates on the practicality and implications of implementing such a right in different jurisdictions worldwide.

India, with its large and diverse population, is no exception to the challenges posed by the RTBF concept. As one of the world's fastest-growing digital markets, India has witnessed an substantial growth in internet users and data generation. This proliferation of digital information has raised important questions about how Indian law and society should address the tensions between privacy and freedom of expression. This research paper aims to explore and analyse the Right to Be Forgotten within the Indian context, considering its legal foundations, practical implications, and socio-cultural nuances. To understand the implications of the Right to Be Forgotten in India, it is necessary to examine the historical and legal backdrop. India's commitment to safeguarding the right to privacy is enshrined in its Constitution, where it has been recognized as a fundamental right. The authoritative judgment in the case of Justice K. S. Puttaswamy (Retd.) v. Union of India (2017) firmly established that the right to privacy is intrinsic to individual freedom and dignity. Furthermore, India's Information Technology Act, (2000), and the subsequent amendment in 2008 have laid down the legal framework for regulating cyberspace. These laws primarily focus on issues such as data protection and intermediary liability. However, the concept of the Right to Be Forgotten has not been explicitly addressed in Indian legislation. Instead, it has been largely influenced by global developments and discussions. The concept of the Right to Be Forgotten has evolved primarily through European legal frameworks. The General Data Protection Regulation (GDPR), implemented in 2018 extended and solidified the right's principles, making it applicable not only to search engines but also to any organization handling personal data (Lee, 2016).This comprehensive legislation has influenced discussions worldwide, including within India. Google, being one of the most prominent search engines globally, has been central to of Right to be forgotten-related controversies. It has been compelled to remove certain search

results upon request, but the company often faces difficult determinations about the balance between privacy rights and public interest, particularly in the case of public figures or historical events. These dilemmas have created a blueprint for addressing similar challenges in India. The Digital Personal Data Protection Act, 2023 subsequently introduced a specific statutory framework for digital personal data. Its section 12 addresses correction and erasure, subject to statutory limitations and the commencement of the relevant provisions. This is distinct from a general entitlement to delete news reports, public judgments or historical records. The Digital Personal Data Protection Rules, 2025 also form part of the developing regulatory setting; the operative status of particular provisions must be assessed against commencement notifications.

Legal Recognition and Constitutional Challenges of the Right to Be Forgotten in India:

While India lacks specific legislation pertaining to the Right to be Forgotten, it is important to note that there have been continuing discussions regarding its potential implementation within the nation. The legal framework of India does acknowledge the Right to Privacy as a fundamental right, enshrined under Article 21 of the Constitution, which provides "Protection of Life and Personal Liberty," to every individual, regardless of their citizenship status, is entitled to the safeguarding of their life and personal liberty, subject only to a legally established procedure. In the absence of specific legislation addressing the Right to Be Forgotten in India, its implementation is primarily guided by judicial decisions. Indian courts have been confronted with cases that demand a nuanced understanding of privacy and freedom of expression. One such case is the landmark Puttaswamy judgment, which recognized the right to privacy as a fundamental right but also emphasized that it is not absolute. This leading decision is the foundation of the 'Right to Privacy' jurisprudence in India. A unanimous decision by a nine-Judge Bench reaffirmed the status of the right to privacy as a fundamental right enshrined in the Constitution of India. The Court asserted that the right to privacy was an integral component of the freedoms guaranteed under fundamental rights and constituted an inherent aspect of dignity, autonomy, and liberty. This legal saga commenced with the central question of whether the right to privacy could be considered a fundamental right, first raised in 2015 during arguments concerning the legal validity of the Aadhaar database. The State's Attorney General contended that the existence of the right to privacy as a fundamental right was in doubt due to the earlier decisions in *M.P. Sharma v. Satish Chandra, District Magistrate, Delhi* (1954), handed down by an eight-Judge Bench, and *Kharak Singh v. State of Uttar Pradesh* (1964) decided by a six-Judge Bench. The State's argument rested on the

observation in both cases that the Constitution did not explicitly safeguard the right to privacy as a fundamental right. Nevertheless, subsequent judgments in the years that followed recognized the right to privacy as a fundamental right. However, these subsequent decisions affirming the existence of the right to privacy were delivered by benches with fewer judges than M.P. Sharma and Kharak Singh. Owing to concerns regarding the precedential value of these judgments and acknowledging the fundamental importance of the right to privacy, the case was referred to a nine-Judge Bench of the Supreme Court. The constitutional foundation of the Right to Be Forgotten in India can be traced to the landmark judgment of the Supreme Court in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1. In this historic decision, a nine-judge Constitution Bench unanimously recognised the right to privacy as a fundamental right protected under Article 21 and other freedoms guaranteed by Part III of the Constitution of India. The Court emphasised that privacy constitutes an essential element of human dignity, individual autonomy and personal liberty. Significantly, the judgment acknowledged informational privacy as an important dimension of the broader constitutional right to privacy, recognising the necessity of protecting individuals against unwarranted interference with their personal information. The principles established in this judgment are particularly relevant to the Right to Be Forgotten because the continued accessibility and dissemination of personal information through digital platforms may adversely affect an individual's dignity, reputation and informational autonomy. Nevertheless, the Court also clarified that the right to privacy is not absolute and may be subject to constitutionally permissible restrictions. Consequently, the recognition of informational privacy provides an important constitutional basis for examining claims concerning the removal or restricted accessibility of personal information from digital platforms. Although the judgment did not establish an independent and unrestricted Right to Be Forgotten, its recognition of privacy, dignity and individual autonomy has significantly influenced the subsequent development of privacy jurisprudence in India. Therefore, the principles articulated in *Puttaswamy* remain fundamental to understanding the relationship between the Right to Be Forgotten and freedom of speech and expression under Article 19(1)(a) of the Constitution. In doing so, it overruled prior Supreme Court judgments in M.P. Sharma and Kharak Singh, to the extent that they denied the recognition of the right to privacy under the Indian Constitution. Beyond establishing the right to privacy as a fundamental right, this case also advocated the necessity of enacting new legislation concerning data privacy, broadened the ambit of privacy in personal domains, and deliberated on privacy as an intrinsic societal value. A further legislative development is the Digital Personal Data Protection Act, 2023. Section 12 provides for

correction, completion, updating and erasure of personal data, but its operation is qualified by the conditions and exceptions contained in the Act. The statutory framework must be distinguished from the broader Right to Be Forgotten invoked in litigation concerning search results, journalistic archives and judicial records. The Digital Personal Data Protection Rules, 2025 provide additional regulatory detail, although enactment or publication of rules should not be conflated with commencement of every operative obligation. The EU General Data Protection Regulation, particularly Article 17, provides a useful comparison: its erasure right is expressly subject to exceptions, including those related to freedom of expression and information, legal obligations and public-interest considerations.

However, the lack of a clear legal framework for the RTBF poses several challenges. First, there is a significant uncertainty regarding the scope and extent of the right in India. What constitutes "personal information"? How should public interest be weighed against individual privacy? These questions remain largely unanswered. Second, there is the issue of enforcement and compliance. Even if an individual successfully obtains an order to remove specific information from search engine results, it may not guarantee that all instances of that information will be removed from the internet. The cross-border character of the internet means that information can be hosted on servers located outside India, making enforcement challenging. An additional issue is the choice between deleting the original content and de-indexing a search result. The latter may reduce the prominence of personal information while leaving the source intact for legitimate access. Courts and regulators must consider the accuracy and age of the material, the position of the person concerned, any ongoing public interest and the least restrictive effective remedy. A general removal direction without such analysis risks suppressing information of legitimate public value.

Reconciling the Right to Privacy with Freedom of Speech and Expression: Constitutional Perspectives:

Right to privacy and Freedom of speech and expression are both fundamental rights guaranteed under Indian Constitution. Honourable Supreme Court of India has elucidated that for the survival of democratic setup there must be a harmonious balance between privileges guaranteed by the Constitution (Subramaniam Swamy v Union of India, 2016). The implementation of the Right to be forgotten in India is fraught with a range of challenges and controversies, rendering it a highly intricate and sensitive issue. At its core, it entails a delicate

balancing act between an individual's Right to privacy and the Right to freedom of expression enjoyed by the public (Bogen, 1979). This careful balance necessitates meticulous scrutiny and deliberation from lawmakers and the judiciary to ensure that the law fulfils its intended purpose without inadvertently transforming into a tool for censorship. One of the principal challenges in this endeavour is the need to strike an optimal balance between safeguarding an individual's Right to privacy and upholding the public's Right to access information (Wacks, 2013). Detractors argue that conferring individuals with the authority to request the removal of specific information from the public domain may create opportunities to potential censorship. Such a scenario could empower individuals to suppress legitimate information that holds public interest or significance. To mitigate this concern, it becomes imperative to establish a set of clear criteria and established procedures for assessing and adjudicating removal requests. These guidelines should serve as a safeguard against the wrongful invocation of the Right to be Forgotten and ensure that it is not misused as a tool for suppressing information of genuine public importance (United Nations General Assembly, 2011). Additionally, the implementation of the Right to be Forgotten in India must grapple with the challenge of defining the scope and limits of this right. Determining what types of information are eligible for removal and under what circumstances can become contentious issues. Striking a balance between an individual's right to have outdated or irrelevant information erased and the public's right to preserve historical records and access essential data is a difficult task. The law must delineate clear parameters to address these issues effectively. Moreover, the practical implementation of the Right to be forgotten raises questions about the enforcement mechanism (Siniarska, 2017). The judiciary and relevant authorities must possess the capacity to adjudicate removal requests promptly and impartially, ensuring that the process does not become overly cumbersome or inefficient. Adequate resources and expertise must be allocated to handle these cases effectively, given the potential volume of requests. Furthermore, another pressing concern involves international considerations, the cross-border character of the internet means that information can easily transcend national borders. Decisions to remove content locally may have ramifications beyond India's jurisdiction, necessitating a careful consideration of how such situations will be managed in compliance with international norms and agreements. In evaluating competing claims, the decision-maker should also distinguish personal data processed for ordinary commercial purposes from judicial records and reporting that may serve public accountability. The availability of correction, contextualisation or limited de-indexing can sometimes address disproportionate harm without erasing the historical record. Any remedy should follow a reasoned, case-specific proportionality assessment.

Conclusion and Suggestions

The Right to Be Forgotten in India is a complex and evolving concept that requires careful consideration in light of the country's legal framework, socio-cultural dynamics, and global precedents. Balancing privacy and freedom of expression in the contemporary digital environment is a challenge faced by nations worldwide, and India is no exception. As India continues to grapple with issues of data protection, privacy, and freedom of expression, it is essential to develop a nuanced understanding of the Right to Be Forgotten. The implementation of the Right to be Forgotten in India is a complex task that demands a judicious balance between individual privacy rights and the broader societal right to access information. By establishing clear criteria, procedures, and enforcement mechanisms, lawmakers and the judiciary can navigate these challenges and controversies effectively, ensuring that the Right to be Forgotten serves its intended purpose without undermining the fundamental principles of freedom of expression and the public's right to know. To provide a broader perspective on the Right to Be Forgotten in India, it is instructive to compare its implementation with other countries. The European Union, as a pioneer in recognizing the right to be forgotten, offers valuable insights. India can learn from the EU's experiences, both in terms of defining the scope of the right and establishing mechanisms for enforcement. Similarly, the United States, with its strong commitment to freedom of expression presents a contrasting approach. The U.S. approach emphasizes minimal government intervention in regulating online content, prioritizing the protection of free speech over privacy concerns. This stance offers an alternative perspective for India to consider. The legislative developments of 2023 and 2025 should therefore be integrated into future scholarship and practice, but with care: a right to erasure of digital personal data under specified statutory conditions is not identical to a comprehensive Right to Be Forgotten enforceable against all publishers and archives. Clear commencement analysis and attention to statutory exemptions remain essential.

The concept of the right to be forgotten based on the principle of personal privacy and data protection seeks to empower individuals to control their online narratives and protect their dignity and reputation. It acknowledges that the digital age has given rise to unprecedented challenges, such as the permanence and accessibility of information on the internet. In this context, the right to be forgotten serves as a valuable tool for safeguarding individual rights

and freedoms. However, this right must be balanced against the fundamental principles of freedom of expression and access to information, which are foundations of a vibrant democracy. India has a rich tradition of democratic values and a diverse, pluralistic society, making the protection of these principles of utmost importance. Any attempt to restrict or curtail freedom of expression should be approached with caution, considering its potential impact on democratic discourse, public discourse, and the free exchange of ideas. The Indian judiciary and legislative bodies face the significant responsibility of crafting a legal framework that respects both the right to be forgotten and freedom of expression. Striking the right balance is crucial to ensure that individuals' privacy rights are protected without stifling open and meaningful dialogue in a democratic society. This requires careful consideration of factors such as the nature and scope of personal data, the public interest, and the potential for abuse or misuse of the right to be forgotten. Moreover, the implementation of the right to be forgotten in India should be accompanied by effective mechanisms for accountability and transparency. Clear guidelines and safeguards should be put in place to prevent the misuse of this right and to protect against censorship and abuse.

In this evolving landscape, it is essential for stakeholders, including the government, legal experts, civil society organizations, and technology companies, to engage in a meaningful dialogue that considers the diverse perspectives and interests at play. Only through thoughtful and inclusive discussions can India develop a framework that upholds the principles of privacy and freedom of expression while adapting to the challenges of the digital age. The right to be forgotten in India represents a pivotal moment in the ongoing conversation about the intersection of privacy and freedom of expression. It is a reflection of the broader global struggle to balance individual rights with societal interests in an increasingly digital and interconnected world. The path forward will require careful deliberation, collaboration, and a commitment to upholding the values that underpin a democratic and inclusive society.

References

1. Bogen,S.D, (1979) Balancing Freedom of Speech. *Maryland Law Review*, *38,* 387.
2. *Google Spain* v. *AEPD and Mario Costeja Gonzalez* (2014) C-131/12.
3. *Justice K. S. Puttaswamy (Retd*.) v. *Union of India* (2017) 10 SCC 1.
4. *Subramaniam Swamy* v. *Union of India* (2016) 7 SCC 221. https://indiankanoon.org/doc/80997184/
5. *M.P. Sharma* v. *Satish Chandra, District Magistrate, Delhi* (1954) SCR 1077.
6. *Kharak Singh* v. *State of Uttar Pradesh* (1964) 1 SCR 332.
7. Lee, E (2016) Recognising Rights in Real Time: The Role of Google in the EU Right to be Forgotten. *UC Davis Law Review*, *49*, 1021-1031.
8. Wacks, R. (2013) *Privacy and Media Freedoms*. Oxford University Press.
9. Privacy Library (2023). Retrieved from https://privacylibrary.ccgnlud.org/case/justice-ks-puttaswamy-ors-vs-union-of- india-ors
10. Prime Legal. The Right to Be Forgotten (2023). Retrieved from https://primelegal.in/2023/07/24/title-the-right-to-be-forgotten-balancing-privacy-and-information-freedom-in-india/
11. United Nations General Assembly. Promotion and Protection of the Right to Freedom of Opinion and Expression (2011). Retrieved from https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf
12. Siniarska, D.B. (2017) *Protecting the Right to Freedom of Expression under European Convention on Human Rights*. Council of Europe. https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814