

Right to be Forgotten: Navigating the Right to Privacy and Regulations in Digital India

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Abstract:

India's rapid proliferation of digitization and the increasing internet access, concerns relating to privacy, data protection, and the right to delete personal information—often called the "Right to Be Forgotten" (RTBF)—have gained significant attention in the digital landscape. Inspired by the landmark decision of the European Court of Justice and the General Data Protection Regulations (GDPR), India has enforced the Digital Personal Data Protection Act (DPDP), 2023 to deal with online digital information concerns like the Right to Privacy, Erasure of data, the Freedom of speech & Expression and Right to Information. In India, Article 21 of the Constitution guarantees the Right to Privacy, which was reinforced by the landmark Puttaswamy judgment (2017) and also affirmed the RTBF. This paper explores the RTBF in the context of digital India, by analyzing its legal foundations, constraints, and effective implications for online content regulation. By establishing a comparative legal analysis of international legal measures, this study further explores that regulatory authority, formulation of explicit guidelines for balancing individual rights, enhancing technological solutions for data erasure, and increasing public awareness are essential steps to ensure effective implementation in the digital era. By navigating the complex interplay between privacy rights and public interest, RTBF can become a robust mechanism for safeguarding digital privacy in India.

Keywords: Data Protection, Right to be Forgotten, Right to Privacy, Online Personal Information and Legal Framework.

Introduction

The digital world has ushered in a time marked by an unprecedented collection of personal information. Every action taken online—be it clicking, purchasing, or interacting—leaves a digital footprint, resulting in a comprehensive and complex account of our existence. This extensive data collection raises critical questions regarding the safeguarding of personal information and the capacity to manage one's own privacy. In this context, the Right to be Forgotten (RTBF) plays a prominent role. The Right to be Forgotten that attracting the Right to Privacy, means that a person has the right to get their personal information removed from online public domain, if they wish so, to ensure their digital privacy.

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 allows individuals to a fresh start and also facilitates for moving from its past irrelevant information that could negatively impact their present and future life.

The vast and enduring nature of the online access poses a significant challenge to our right to be forgotten. However, with attempts to erase the content from online platform, offcuts may remain accessible online. This concern is particularly evident in the sphere of artificial intelligence, where data cannot be completely removed from the database. Consequently, it intrusion into the individual's autonomy regarding their Rights, which allows individuals to manage their digital presence, faces significant challenges in the current technological eco-system.

Right To be Forgotten: Legal Evolution and Development

Liberty is an expression that is valued in a dignified human life.¹ It is a natural law idea and a desire for human civilization.² Liberty, which covers a variety of rights, raised to the status of distinct fundamental rights and other related rights.³ In order to endorse liberty, it is essential to preserve and protect the privacy of an individual; hence, privacy has to be treated as a right.⁴

Right to be forgotten is defined as “the ability of individuals to limit, de-link, delete, or correct the disclosure of personal information on the internet that is misleading, embarrassing, irrelevant, or anachronistic.”⁵ In 2014, the Court of Justice of the European Union (CJEU) established the ‘Right to be Forgotten’ by stating that “*Every individual has the right – under certain conditions – to ask search engines to remove links with personal information about them.*”⁶

Global Perspective

The origin of this Right can be traced back to the French jurisprudence on the 'Right to oblivion' or *Droit a loubli* in 2010. This Right of oblivion aided convicted criminals, who had completed their imprisonment terms, by removing the publication of particulars of their crimes and their criminal life.⁷ In AEPD (Agencia Española de Protección de Datos), a Spanish data protection agency and Mario Costeja González v. Google Spain SL, Google Inc, the Court of Justice of the European Union (CJEU) rendered a decision in a case in 2014 involving Mario Costeja González, who asked Google to take down links to newspaper articles that mentioned his previous debts. As to the ruling of the CJEU, people have the Right to ask for links to be removed from search engine results if they contain excessive, irrelevant, or outdated information unless there is a robust public interest in maintaining it. It Means, the European Court of justice legally freezes the “Right to be Forgotten” as a human right in the Costeja case against Google but Not absolutely. In a ruling against Google, the European Court of Justice confirmed that persons inside the European Union had the entitlement to demand the removal of their personal information from search results and public records databases under certain conditions. However, in 2019, the European Union court implemented a limitation on the ruling, asserting that Google is not legally bound to uphold the 'Right to be forgotten' internationally.⁸

In Google LLC v. CNIL⁹ the CNIL, the French data protection authority, fined Google for failing to delist search results globally when complying with Right to be Forgotten requests. Google argued that delisting should only be applied within the EU. The case raised questions about the territorial scope of the Right to be forgotten and the balance between the Right to privacy and freedom of expression.

In NT1 & NT2 v. Google LLC¹⁰, the UK High Court ruled in a case involving two individuals with criminal convictions but argued that their names should be removed from Google search results. The Court sided with Google, finding that the information was still relevant and in the public interest. This

case highlighted the difficulty in balancing an individual's Right to be forgotten with the public's Right to access information.

The scope of the right to privacy have widened in the multi-dimensional sphere over a period of time viz, bodily privacy, territorial privacy, communication privacy, and information privacy. Amongst these mentioned privacies, communication privacy and informational privacy are two essential types of privacies that are directly related to personal information or personal data. Regarding the Right to Privacy, Article 12 of the UDHR focuses on the importance of privacy. It conveys that a person shall not be arbitrarily interfered with his privacy at family, home, or correspondence and not to attack upon his honour and reputation. Therefore, it can be said that privacy requires non-encroachment of body and property by others without authorization.¹¹

The UDHR, 1948: The UDHR is the first UN instrument that recognizes privacy as one of the most important human rights, although subsequently, the right has been recognized by numerous other international, regional, and domestic legal and human rights instruments. It can be argued that through the UDHR, the 'right to privacy' became an international human right before it was constitutionally recognized as a fundamental right.¹² To recognize privacy as one of the human rights, Article 12 of the UDHR is worded as follows: "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 the protection of the law against such interference or attacks."¹³

United States of America

In favour of, free speech and expression over privacy rights in context to the Right to be Forgotten, the American Legal System have its own long Judicial Journey since 1931 i.e. *Melvin v Reid*. It was the first US Case, that indirectly focused on the Right to be forgotten, and was decided in 1931 by the California Fourth District Courts of Appeals.¹⁴ Eventually, in 1998, the Children's Online Privacy Protection Act (COPPA) is a US federal law came in the picture with the object of protecting the personal information of children under 13 years old by establishing the more responsibility of website operators and others online service providers. Subsequently, California Privacy Rights Act 2020 granted California residents greater control over their personal data collected by business entities, and it imposed increased responsibilities on organizations operating within California for managing and safeguarding such data. Additionally, The State of New York (USA) has also empowered its citizens by providing the right to access, the option-in consent, and the right to delete with respect to their online information under the enactment of the New York Privacy Act 2021.¹⁵

The survey, conducted in June 2019 by Pew Research Center provides significant insights into public opinion on digital privacy and the Right to be Forgotten in the United States. It highlights a strong preference for personal control over online information with 74% of U.S. adults saying it is more important to be able to "keep things about themselves from being searchable online," while 23% say it is more important to be able to "discover potentially useful information about others." Moreover, an overwhelming majority of U.S. adults (85%) believe that all Americans should have the right to have potentially embarrassing photos and videos removed from public online search results. About two-thirds (67%) say this should be a right for all Americans when it comes to information about employment history or work records, and more than half (56%) say all Americans should have the

right to have negative media coverage about themselves removed from public search results.¹⁶ Beyond the issue of what should be available in online search results, the survey explored whether Americans believe everyone should have the right to have certain personal data about themselves permanently deleted by the people and organizations who have it. Nearly nine-in-ten Americans (87%) agree with this idea when it comes to potentially embarrassing photos and videos and other information.¹⁷

European Union

Since 1995, a long journey of Legislative enactments and judicial endeavors has been made in European countries to establish a balance between Privacy Rights and legal framework. Eventually, by aiming to provide control of personal data to the citizens and to simplify data erasure process and regulatory environment for international business, introduced a robust enactment as General Data Protection Regulation 2018. It delineates the specific circumstances in which the Right to be forgotten is applicable. It contains the provisions that an individual is entitled to erase their personal data by making a request to the controller and the controller shall have the obligation to erase such personal data without undue delay and if such personal data are no longer required in relation to the purposes for which it was collected or otherwise processed (Article 17 & 18 GDPR)¹⁸

However, an organization's Right to manage an individual's data may take precedence over their Right to delete their data from their memory. The General Data Protection Regulation (GDPR) outlines several situations that overrule the Right to erasure. In order to exercise the fundamental Right to freedom of expression and access

We delist URLs from all of Google's European search results—results for users in France, Germany, Spain, etc.—and use geolocation signals to restrict access to the URL from the country of the requester. The following charts below depict the total number of requests received and the total number of URLs requested to be delisted.¹⁹

Sr NO.	Request to Delist	Year
1	1,520,459	2023
2	1,700,097	2024

Sr. No.	URLs Request to be Delisted	Year
1	5,873,587	2023
2	6,701,542	2024

South Korea was one of the first countries to engage in the debate of the “right to be forgotten” by following the Google Spain ruling in the EU. By Following intense public discussion and consultation regarding the right to de-list, the Korea Communications Commission (KCC), a government agency, pushed the debate further by developing guidelines aimed at protecting this right. The KCC's guidelines vary significantly different from the right to de-list developed in the EU. First, the principles are not established in law. Second, they primarily concern online users' own posts rather than articles

posted by a third party, since Korean law already grants people the right to request the deletion of information by a third party if it is deemed damaging to one's reputation. The guidelines also seek to expand the right to de-list beyond search engines, ordering internet companies to accept removal requests in some "exceptional cases" where a user's control of content was formerly limited or blocked. Last but not least, reports on the guidelines suggest that if a user requests de-listing, the content in question will be deleted. This approach is at odds with the right to de-list developed in the EU, raising serious concerns for free expression and creating risks for censorship.²⁰

Indian Perspective: Judicial Response

In the case of *KS Puttuswamy vs Union of India*²¹, the Supreme Court of India acknowledged the Right to Privacy as a fundamental right. The Court noted that an individual's Right to have authority over their data and control their own life would also include their Right to govern their presence on the Internet. This laid the groundwork for acknowledging the Right to be Forgotten, which asserts that individuals have the Right to privacy and have the ability to determine whose information is accessible to the public. The subject has been discussed in various High Courts.

*Sri Vasunathan vs. The Registrar General*²², the petitioner sought the removal of her daughter's name, which was propping up on specific search engines due to her involvement in a case of marriage annulment published online. The Court ruled that, despite the lack of a statute specifically addressing this case, it would only allow for the same in India given the growing significance given to people's rights to privacy and the establishment of laws about the Right to be forgotten in other jurisdictions, such as Europe.

The case of *Dharmraj Bhanushankar Dave vs. the State of Gujarat*²³ gave a contrasting judgment in a comparable case where a person not guilty of any crimes had petitioned to have his name taken down from public domains. Here, the Gujarat High Court adopted a more positivist approach to reasoning, ruling that it could not find the publishing to violate the petitioner's fundamental rights in the lack of the required legislative support. As a result, it declined to enforce the petitioner's Right to be forgotten.

In the case of *Kancherla Durga Prasad vs. State of Karnataka*²⁴, the Apex Court concluded that, given the social rejection they experienced as a result of being involved in a prior divorce, a couple who had been estranged had the Right to have their personal information removed from the Internet. This ruling will have a significant impact on future High Court decisions. It will have great persuasive power in any dispute involving the Right to be forgotten or even the broader Right to privacy that may arise in the future.

The petitioner in *Jorawer Singh Mundy vs Union of India*²⁵ was an American citizen of Indian descent. In 2009, the individual in question faced allegations under the Narcotics Drugs and Psychotropic Substances Act of 1985 during his travel to India. Nevertheless, in 2011, he was exonerated from all accusations, and his exoneration was affirmed in 2013. The petitioner asserts that upon his return to the United States, he encountered discrimination and disadvantage due to the unrestricted accessibility of the judgments' contents on the Internet. The petitioner issued a legal notice to the relevant websites; however, only one website responded by removing the judgments, while the remaining websites were included as respondents. The petitioner kindly urges the Court to instruct the defendants to eliminate the ruling, safeguarding his entitlement to be eradicated from public view.

In the case *Zulfiqar Ahman Khan vs Quintillion Business Media Pvt. Ltd. & Ors*²⁶, the plaintiff initiated legal proceedings by filing a lawsuit seeking an injunction against the defendant. The plaintiff was identified as the culprit in these published reports. The plaintiff said that the dissemination of the narratives on the digital platform 'www.quint.com' by the first defendant resulted in significant psychological distress and emotional anguish experienced by the plaintiff. After considering both side of contentions, the Court acknowledged the plaintiff's reputation, the Right to Privacy, and the Right to be Forgotten by mandating the removal of the contentious item online platform. Moreover, any other news outlet or website was prohibited from republishing these assertions. In the case of *Subhranshu Rout vs State of Odisha*²⁷, the Orissa High Court, in the context of a bail application, proceeded to elucidate the concept of the Right to be forgotten and affirmed its applicability to people as a fundamental aspect of their Right to privacy. In the case of *X vs YouTube Channe*²⁸, the Delhi High Court awarded protection to an actress who brought a lawsuit against the republishers of her obscene movies. The Court affirmed the actress's Right to be forgotten.

Legislative Actions

According to Section 43A of the Information Technology Act of 2000, organizations that possess sensitive personal data and fail to maintain appropriate security to safeguard such data, resulting in wrongful loss or wrongful gain to anybody, may be obligated to pay damages to the affected person. However, the 'Right to be forgotten' is not specifically included in the Government of India's notification of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. It does, however, provide procedures for filing complaints with the designated Grievance Officer in order to have content that exposes personal information about the complainant removed from the internet with or without the consent of the complainant.²⁹ Additionally, India enacted robust legislation under the title of "Digital Personal Data Protection Act of 2023" intending to provide the protection of individual Personal Information/data that he/she does not want to share with anyone without his/her free consent and also ensures the harmonious equilibrium between the rights of individuals and the public interest in processing digital personal data. The Act Provides the data principal the Right to correct and erasure personal data. It states that data fiduciaries must respond to the data principal's request by updating, correcting, completing, or destroying the data. As stated in Section 16(4) the data principal is obligated to provide verified and authentic information. In addition, Section 18(1) of the Act outlines the exceptional circumstances in which this Right to erasure does not apply. These circumstances include, when the data is necessary for carrying out judicial or quasi-judicial duties, when the data is required for enforcing legal rights or claims, when data is processed to prevent, detect, investigate, or prosecute any offense or law violations, and when the data is processed by a person based in India under a contract outside the territory of India. In the section above, the second clause stipulates that the Union Government has the authority to exempt the application of the Act in cases where data is necessary for statistical purposes or the preservation or prevention of incitement to cognizable offenses about public order, security, sovereignty, integrity, and friendly relations with other states. As per the following data, we can evaluate the effective legislative and judicial measures in the form of practical implementation of right to be Forgotten in India.

Sr. No	Request Made by	Request For Removal	No. of Request	Period
1	Government & Courts	For content Removal from Google India.	2191	Ist Half 2023
2	Government & Courts	For content Removal from Google India.	1677	IInd Half 2023

The Indian government made about 1.6 thousand content removal requests from **Google** during the second half of the year 2023, a decrease compared to the first half in the same year.³⁰

Sr. No	Request Made by	Request For	No. of Request	Period
1	Government & Courts	For content Removal from Facebook India.	70,000+	Ist Half 2023
2	Government & Courts	For content Removal from Facebook India.	91,000+	IInd Half 2023

Indian government made about 92 thousand requests for content removal from **Facebook** between July and December 2023. This was the highest number of requests recorded since 2013.³¹

On the Request of Government the Content Restricted in Facebook India in January -June 2023.³²

Sr. No	Page Group	Profiles	Posts
1	468	1180	5340

Reasons of Content Removal: During the second semester of 2023, defamation and fraud were the leading reasons for most content removal requests made by the Indian government to the search giant, Google. Cybercrime, Privacy, Nudity/Obscenity, copyright, Bullying, and others were also on the list.³³

Balancing the Right to be Forgotten, Right to Information, and Freedom of Speech and Expression

In this age, personal data is not less than a digital currency.³⁴ However, the individual can only gain knowledge/information through communication. Jeffery Rosen in his paper argues that the Right to be Forgotten interferes with someone's right to receive information.³⁵ By recognizing this complex interplay, India's Judicial, legislative and administrative bodies have made significant efforts to recognise the Right to Privacy in the Digital-legal Era in furtherance to balancing the Fundamental rights i.e. Ar 19 & Ar. 21. Striking a harmonious equilibrium among these rights is crucial in India's evolving digital and legal framework.

The Right to Information Act, 2005 ensures government transparency, allowing individual access to public records. However, RTBF, as recognized in the Puttaswamy judgment (2017), provides individuals the right to request the removal of personal information from public domain. After the Puttaswamy Judgment, the Justice BN Srikrishna Committee on “A Free and Fair Digital Economy”³⁶ was constituted in July 2017, which submitted its Report in 2018. The Report had recommended that the right to be forgotten may be adopted based on five-point criteria, including:

Sensitivity of data

Scale of disclosure or degree of accessibility

Role of DP in public life

Relevance of data to public

Nature of disclosure and activities of data fiduciary

Now, this study also highlights another conflict between Article 19(1)(a) of the Indian Constitution that guarantees Freedom of Speech & Expression, allowing individuals and the media to publish information lawfully, is one side and RTBF (on another side), however, may restrict free speech, especially if individuals use it to erase criticism, suppress dissent, or alter public records. In response to that Judiciary has played an active role, as discussed above, to prevent misuse of RTBF while protecting individuals from unwanted digital exposure. The courts often rely on a proportionality test, ensuring that removals do not unreasonably limit free speech. Moreover, the legislative action in form of DPDP act 2023 is also a significant role in maintaining the balance between the Right to freedom of speech, Right to Information and Right to be Forgotten by establishing the Exceptional circumstances in which the Right to erasure can not be used.

Challenges in Implementing the Right to be Forgotten in Digital India: A Data Protection Perspective.

The Right to be Forgotten (RTBF) is an emerging concept in India's digital privacy landscape, it is largely influenced by global legal outcomes such as the General Data Protection Regulation (GDPR) of the European Union. While the Digital Personal Data Protection Act (DPDP), 2023, introduces certain provisions related to data erasure/removal, its effective implementation faces multiple legal, technological, and social challenges. These are as follows;

1. Constitutional Conflicts

The constitutional conflict between the Right to Privacy (Article 21) and the Right to Freedom of Speech and Expression (Article 19(1)(a)), along with the Right to Information (RTI), 2005 is one of the biggest challenges before the judiciary & Legislatures by striking a balance between an individual's request to remove personal data and the public's right to access information, particularly when it involves public figures, judicial records, or historical events.

2. Absence of a Robust Legal Framework

Unlike the GDPR, which explicitly recognizes RTBF under Article 17 and other relevant provisions, India's Digital Personal Data Protection Act (DPDP), 2023 does not clearly define the scope, criteria, or mechanisms for enforcing RTBF. The absence of detailed guidelines creates uncertainty regarding:

To Whom the request for data removal can be made and in which manner, in case of multi data controllers/processors?

What type of digital information qualifies for deletion?

The lack of a structured process makes it difficult to enforce RTBF consistently across different cases.

3. Jurisdictional Challenges

The internet is a global platform, and enforcing RTBF is complicated by cross-border data flow issues. A website or search engine outside India may not be legally bound to honor RTBF requests for Indian citizens.

4. Resistance from Tech Companies and Search Engines

Big data companies like Google, Facebook, and Twitter often resist RTBF implementation, arguing that it contradicts principles of free expression and open access to information. Unlike the EU, where GDPR mandates compliance, Indian laws currently lack strict penalties for non-compliance, making enforcement weak. Additionally, digital platforms claim that removing search results or online content could lead to censorship risks and a lack of transparency.

5. Technological Challenges to Erase the data on digital platforms.

Technological Challenges include:

Backup copies and cached data: Deletion of data may persist in server backups or cached search results, making full removal difficult.

Decentralized content storage: Blockchain-based records, decentralized cloud storage, and peer-to-peer networks making nearly impossible to remove certain data permanently.

6. Lack of Public Awareness and Institutional Mechanisms

Being a new legal concept (RTBF) in India, many individuals are unaware of their digital rights. Additionally, India lacks a dedicated Data Protection Authority (DPA) to handle RTBF claims, which leads to delays and inconsistencies in enforcement. The absence of explicit legal frameworks and robust mechanisms results in a fragmented implementation process.

7. Lack to balance between 'Public Interest' and 'Harm'

The GDPR allows RTBF claims unless the information is in the public interest (i.e., concerning a politician, criminal records, or public safety issues). In India, the lack of clear parameters to determine the "public interest" and "harm" makes decision-making subjective. Courts and regulatory authorities may struggle to differentiate between genuine requests for privacy and attempts to conceal truthful but unfavorable information.

8. Potential for Misuse and Suppression of Truth

RTBF could be misused by powerful individuals, corporations, or political entities to erase critical relevant information, for the public Interest, like Negative media coverage, by manipulation of Corruption allegations and criminal history records. This may raise concerns regarding censorship, manipulation of public narratives, and restriction of journalistic freedom.

Conclusion and Suggestions

The Right to be Forgotten (RTBF) is an evolving concept in India's Socio-legal and digital landscape, closely linked to the Right to Privacy under Article 21 of the Indian Constitution. With the rise of digitization and increasing concerns over online data privacy, the enforcement of the Digital Personal Data Protection Act (DPDP), 2023, marks a significant step toward addressing these issues. However, the implementation of RTBF remains complex due to legal ambiguities, conflicts with freedom of speech & Information, and technological challenges in data erasure.

A comparative analysis with global frameworks, particularly the General Data Protection Regulation (GDPR) of the European Union, highlights the necessity for India to refine its legal approach by balancing privacy rights with the right to information and freedom of expression. The lack of clear regulatory guidelines and institutional mechanisms for adjudicating RTBF requests further complicates enforcement. Moreover, cross-border jurisdictional issues and resistance from digital platforms hinder its practical implementation.

Despite these challenges, RTBF has the potential to become a powerful tool for protecting individual privacy in the digital age. However, its successful implementation in India requires a structured legal framework, strong enforcement mechanisms, and public awareness initiatives to ensure that the right is neither misused nor infringes upon broader democratic values.

Suggestions for Effective Implementation of RTBF in India

Data Protection Authority (DPA): A regulatory body should be established to resolve overseas RTBF requests, assess their validity, and ensure transparency in decision-making.

Legal Criteria for RTBF Requests: The government must provide well-defined guidelines to determine the conditions under which RTBF applies, ensuring a fair balance between privacy and public interest. By Categorisation of information such as sensitive personal data, outdated information, or irrelevant content should be removed on Priority.

Technological Solutions for Data Erasure: Collaboration with IT companies is needed to develop automated and AI-driven mechanisms for efficient content removal while preventing misuse.

Strengthen Cross-Border Data Protection Framework: Given the global nature of digital platforms, India should participate in bilateral and multilateral agreements to ensure compliance with RTBF requests by international companies.

Ensure a Balance Between Fundamental Rights: The safeguards against the misuse of RTBF to suppress legitimate journalism, public records, or historical facts, must be the part of present law

A judicial review process should be established to handle disputes related to content removal requests.

Raise Public Awareness About Digital Privacy Rights: Government-led campaigns and educational programs should inform citizens about RTBF, their digital rights, and how they can request data removal.

Introduce Data Retention and Expiry Policies: Mandatory data retention limits should be implemented, ensuring that personal information is automatically erased after a defined period, reducing the need for RTBF requests.

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