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Applicability of Right to be Forgotten in Present Times of Digital Age under Indian Legal Environment

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ABSTRACT

The advent of the digital age has transformed the Internet into a vast repository of information, accessible through countless links. While this has revolutionized data access and communication, it has also introduced significant privacy challenges. The concept of the "Right to be Forgotten" (RTBF) has emerged as a potential solution to these challenges, aiming to allow individuals to request the removal of personal information from the Internet. This paper explores the applicability of the RTBF in the context of the Indian legal environment, examining its historical evolution, current relevance, and future potential. By reviewing the evolution of privacy rights, particularly in the context of digital advancements, and analyzing existing frameworks in various countries, this study aims to assess the need for and implications of implementing the RTBF in India. The paper also addresses the legal, social, and technological challenges associated with this right, proposing recommendations for integrating the RTBF into India's legal system. Through a comparative analysis of global practices and a detailed examination of Indian legislative and judicial perspectives, this research highlights the critical balance required between privacy rights and freedom of expression in the digital age. The study concludes with suggestions for enhancing the legal framework to better protect individuals' privacy while navigating the complexities of modern digital interactions.

Keywords: *Right to Be Forgotten, Indian Legal Environment, Privacy Rights, Online Privacy.*

I. INTRODUCTION

(A) Background of the Study

The Internet has evolved into an unrivaled data warehouse, accessible via a plethora of unique "links," or Uniform Resource Locators (URLs). The Internet, which was developed by humans, has a limitless ability to remember anything from a pin to a jet. Armed with the information that we have previously given to the internet with our agreement, we are becoming a threat to

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our own privacy. Being permanently linked to specific websites and the internet threatens our ability to maintain privacy and keep our personal information secret, leading to the concept of the "Right to be Forgotten." The issue is, "Will the right to be forgotten succeed in safeguarding the right to privacy and leading us to a long-forgotten society?"

According to data from Internet World Stats, the Internet has proven to be one of the most powerful platforms in just a few years; it has grown from 16 million to 4,157 million users since 1995. Because of its popularity, it has a tendency to disclose every piece of information in minute detail. In the pre-digital age, one had to hope that mistakes and humiliations would be forgotten with time. Now, if you search for your name on the internet, there is a good chance you'll come across stories about someone accused of theft in childhood or a video of them smoking in youth. The right to be forgotten is not explicitly recognized in international human rights treaties or state constitutions.

II. HISTORY AND EVOLUTION OF PRIVACY AND RIGHT TO BE FORGOTTEN

Louis Brandeis and Samuel Warren were the first to describe a "legal right to privacy" efficiently in 1890. They described it as the right to preserve one's "inviolable individuality" against unwanted disclosure or intervention. They essentially demanded the "right to be left alone." Traditional legal or societal protections of personal property and space, intimate situations, or personal possessions did not include privacy rights. However, the current growth of the "right to privacy" is intimately linked to the industrial-age technical progress, which has permitted new intrusions into private elements of life, ranging from telephones or cameras to flying aircraft. As a result, the law has reacted to preserve the private realm. Consequently, digital technology—computers, databases, the Internet, mobile communications, and so on—requires further conceptual and legal growth of privacy rights.

Public data like bankruptcy filings and criminal procedures were available in the analogue era, but they were kept "in practical darkness in courtroom basements or segregated file cabinets." It was tough to find the records and put them together into a usable dossier. We now access and organize data in a different way thanks to the digital era. Digital records are now kept by the government and are frequently connected to the Internet or other networks. In this context, Jerry Berman and Deirdre Mulligan identify three major digital breakthroughs that have a substantial influence on privacy:

1. Increase in data generation and a corresponding increase in data gathering of personal information.
2. The possibility for anyone with an internet connection to gather and analyze data

globally.

3. Lack of control systems for analogue data protection.

The Right to be Forgotten (RTBF) appears in the context of individuals regaining control over access to information about themselves. Initially tied to the notion of rehabilitation in criminal sentencing, the RTBF's primary notion was to limit public attention to specific facts about oneself. This concept was later extended to include insolvency processes. Many nations established legislation enshrining the RTBF in the context of prior criminal actions throughout the twentieth century.

III. INDIA'S “RIGHT TO BE FORGOTTEN” IN THE FUTURE

Contrary to common assumptions, the RTBF is not a new notion. The idea that information about a former convict's incarceration is damaging to their recovery is formalized in the French concept of *droit d'oubli* and British law, where a free individual has the right to erase information about their served terms while looking for work. It is now possible to de-list or remove URLs from search results by requesting that search engines such as Google remove them, or to erase personal data by asking that websites do so. As India moves towards the twenty-first century, where individuals' decisions are influenced by the internet, the court is under increasing pressure to preserve citizens' rights. However, building a comprehensive data protection framework that may include the RTBF is still in its early stages. The necessity for such a right must be balanced against the current legal framework and socio-political climate in order to launch such laws. The Indian legislative and judiciary have raised the issue of privacy several times, but with little result.

(A) Review of Related Studies

Kumar, Ashwinee (2021) discusses that due to the sensitive nature of personal data and its economic importance, data protection necessitates extreme caution. Personal data is a critical aspect of the human right to privacy. Indian politicians have separated data protection from privacy due to the country's heavy dependence on the internet and technology-driven devices. The Personal Data Protection Bill of 2018 aims to comprehensively examine privacy and data protection, notably the 'right to be forgotten.' The study and Bill's primary shortcomings regarding the right to erasure or "be forgotten" are addressed, providing a solution to the problem.

Federico Fabbrini and Edoardo Celeste (2020) explore the extraterritorial application and EU data protection legislation, suggesting that while the EU may extend its strict data protection

requirements outside its boundaries, this may conflict with international comity responsibilities and legal diversity. They point out the challenge of navigating between imposing high standards of data protection globally and respecting national sovereignty.

Bertram et al. (2019) analyzed 3.2 million URLs requested for delisting from Google Search over five years. They found that requests often come from a small group of individuals, and a significant portion relates to criminal history. The study highlights the complexity of balancing personal privacy with the public good in multi-party privacy conflicts on the Internet.

Ajay Pal Singh (2018) characterized the RTBF as the right to remain silent on past life experiences that no longer exist, allowing individuals to request the removal of their personal data from online records. He discusses the tension between privacy and freedom of speech, suggesting that the RTBF may be seen as a form of Internet censorship.

Andrés Guadamuz (2017) examined the history and future of the RTBF, noting that the European Union's Court of Justice approved a limited version of the right in *Google Spain v Costeja González*, and it was later included in the General Data Protection Regulations.

Michael Kelly and David Satola (2017) discussed the EU's version of the RTBF, based on intermediary responsibility, which holds Internet search engines accountable as "data controllers." They highlight the practical challenges of implementing compliance systems and balancing digital rights across jurisdictions.

Dr. Jayanta Ghosh and Uday Shankar (2016) explored privacy and data protection in India, emphasizing the need for advanced privacy protection and the impact of data protection on individual rights. They stress the importance of a right-based approach in India's legal framework.

Lee, Jongwon (2016) examined the implications of the RTBF for IT companies, suggesting that it creates new opportunities for the industry in the age of big data. He argues for a flexible business strategy to adapt to right-to-forget regulations.

Minhui Xue et al. (2016) used a data-driven strategy to investigate the RTBF in conventional media sources, finding that violent crime, traffic accidents, and financial malfeasance are common topics for delisting. They also highlight the "Streisand effect," where attempts to conceal information make it more widely known.

Seyed Dorraji and Mantas Barcys (2014) reviewed the state of privacy in the context of rapid technological change. They emphasize the need for a balance between regulation and technological growth to protect privacy effectively.

Korenhof et al. (2014) focused on 'time' as a significant factor in deciding data retention and erasure under the RTBF. They argue for considering the temporal aspect in balancing interests when evaluating RTBF requests.

Sougata Chattopadhyay (2013) discussed intellectual property in the digital environment, highlighting the challenges of copyright in the age of digital content and the importance of balancing user rights with copyright protection.

(B) Objectives of the Study

1. To understand the concept and need for the "right to be forgotten" in India.
2. To discuss existing frameworks of different countries towards this approach.
3. To analyze the requirement of the legal framework for the applicability of this law in India.
4. To compare the right to be forgotten with different laws and study different case studies.
5. To suggest recommendations for improvement in the law and its future applications.

(C) Statement of Problem

The Internet has been the most significant phenomenon of our century, resulting in a "network society" driven by the digital revolution and significant socio-cultural shifts. The Internet's role in the Information Age has led to the Digital Revolution, marking a transition from the Holocene to the Anthropocene epoch. It is often said that the Internet does not forget or forgive. A person cannot start over online, as past mistakes remain public knowledge for years. This feature of the Internet adds a layer of complexity to personal privacy, highlighting the necessity for the "right to be forgotten" to help individuals manage their digital footprints and protect their privacy in the digital age.

(D) Scope of the Study

The goal of this study is to provide a broad review of the right to be forgotten (RTBF). One of the first things we learned as law students about balancing rights is that basic rights do not have a hierarchical order. We have determined if one basic right has justified precedence over another by assessing the conflict between them. We recognize that, given our limited understanding of the subject, writers may today take a position that differs from the one we were taught.

The CJEU's decision in favor of privacy above public interest was shocking to us from a technical point of view, but we were not surprised by the decision. While we understand the

CJEU's desire to improve the effectiveness of the right of persons to privacy, we consider that this approach was not the best from a procedural standpoint. Overall, we believe that the existence of an RTBF is essential. However, several parts of its current implementation cause us to worry. Furthermore, we recognize the need for a greater understanding of the sorts of issues that are prone to be forgotten.

(E) Methodology

To discuss the framework for the right to be forgotten in the Indian scenario, we have studied its aspects in various parts. Descriptions of these sections are given below:

1. We believe that such a right should be enforced in India since it is legally solid, and we will examine the potential legal barriers to recognition. This section focuses on the European Union's Court of Justice's landmark ruling on the right to a private and family life. Additionally, the study will examine the reasons for and against India's recognition of the right to be forgotten as a fundamental right in the nation.
2. We will explore various situations and viewpoints from various countries in this area. It is imperative that the law works more to implement the "right to be forgotten," taking into account all viewpoints and rights. A delicate balancing act is needed between the "right to privacy" and the "right to freedom of expression."
3. Though India is not just one of the world's top IT service suppliers, it is also its largest market. Unfortunately, Indian residents are not shown the same level of respect by legislators as European citizens, but it was the Indian Supreme Court that cleared the road for data privacy to be recognized as a basic right. A comprehensive investigation of privacy and data protection, notably the "right to be forgotten," is what the Personal Data Protection Bill of 2018 is all about. When it comes to the "right to erasure" or "be forgotten," this research will identify the report's and Bill's fundamental problems, investigate them thoroughly, and then provide a fix.

(F) Expected Outcome

There is no legal or constitutional protection for privacy in India, despite the fact that it is a fundamental right in Europe. However, it has been indicated by court rulings that Article 21 of the Constitution already includes it. Despite the fact that the right is officially recognized, it has thus far been restricted to enforcement against governmental monitoring. Given India, the right to be forgotten, if created, would have a minimal and insufficient foundation in the lack of any specific right to privacy and any regulations safeguarding citizens' personal data on an online forum. Furthermore, it will be argued that India's free speech jurisprudence has

progressed sufficiently to override the right to be forgotten. The “right to be forgotten” has several constitutional defects that preclude it from being used in India.

IV. CONCLUSION

In the contemporary digital age within the Indian legal framework, the applicability of the Right to Be Forgotten (RTBF) presents a nuanced and evolving landscape. This pertains to the recognition and enforcement of individuals' rights to have certain personal information removed from online platforms, databases, or search engine results. This notion is particularly relevant given the proliferation of digital data and the increased significance of privacy concerns in the online sphere. In the current digital era, the application of the Right to Be Forgotten (RTBF) within the Indian legal milieu underscores a complex and evolving paradigm. This concept refers to individuals' entitlement to request the removal of specific personal information from online platforms, databases, or search engine results. Against the backdrop of escalating digital data and heightened privacy apprehensions in the online domain, the RTBF assumes considerable relevance and complexity within the Indian legal landscape.

The current status of Right to Be Forgotten (RTBF) in India refers to the evolving legal landscape surrounding the recognition and enforcement of this concept within the Indian legal framework. It encompasses recent developments, judicial interpretations, and government initiatives related to RTBF, highlighting its relevance in the context of privacy rights and digital data protection. The legal basis for RTBF in India primarily stems from constitutional provisions and judicial interpretations, notably the landmark judgment of the Supreme Court in *Puttaswamy v. Union of India* (2017). In this case, the Supreme Court recognized the Right to Privacy as a fundamental right under Article 21 of the Indian Constitution. While the judgment did not explicitly mention RTBF, it laid the foundation for its implicit recognition within the broader. While RTBF is rooted in the right to privacy, its application and enforcement have been subject to judicial.

The Union Government recently informed the Delhi High Court about the evolving acceptance of the Right to Be Forgotten (RTBF) concept in India, categorizing it under the Right to Privacy. This assertion aligns with a Supreme Court judgment that acknowledged the Right to Privacy as a fundamental right, encompassing the RTBF and the right to be left alone. The RTBF, inspired by a 2014 decision of the Court of Justice of the European Union, entails the removal of personal information from public platforms once it becomes irrelevant. In India, it stems from the broader right of privacy under Article 21 of the Constitution, partially derived from the right to dignity.

However, implementing the RTBF presents challenges, particularly in balancing privacy with other rights like freedom of expression. Ambiguities exist in judicial interpretations, compounded by the absence of a data protection law. To address these issues, the Personal Data Protection Bill 2019 aims to safeguard individuals' privacy and establish a Data Protection Authority. Additionally, the Information Technology Act, 2000, offers protection against data breaches. Moving forward, Parliament and the Supreme Court must deliberate on RTBF and establish a framework to balance conflicting rights. India needs a comprehensive data protection regime to regulate the use of personal data effectively. Therefore, expediting the enactment of the Personal Data Protection Bill 2019 is crucial.

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