



THE "RIGHT TO BE FORGOTTEN" IN INDIA: BALANCING PRIVACY AND FREE SPEECH

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ABSTRACT

The "Right to Be Forgotten" (RTBF) empowers individuals to request the removal of personal information from public domains to safeguard their privacy in the digital era. Originating from the European Union's General Data Protection Regulation (GDPR), this concept has gradually found a place in India through judicial recognition and legislative frameworks like the proposed Personal Data Protection (PDP) Bill. Section 27 of the PDP Bill¹ formally introduces RTBF, balancing it against the constitutional guarantee of free speech under Article 19(1)(a). The landmark case of Justice K.S. Puttaswamy (Retd.) v. Union of India² laid the foundation for recognizing RTBF as part of the fundamental right to privacy under Article 21.³ Despite this progress, significant challenges remain in reconciling RTBF with the principles of transparency, accountability, and freedom of the press. Courts have adopted a proportionality-based approach to strike a balance between individual rights and public interest, drawing insights from Indian and European jurisprudence. Moving forward, the effective implementation of RTBF in India will require clear guidelines and mechanisms to address these competing concerns.

Keywords: Right to Be Forgotten, Privacy, Free Speech.

INTRODUCTION

The digital age has brought with it an abundance of data—personal, professional, and public—that remains accessible indefinitely on the internet. This permanence has led to growing concerns about individual privacy, especially when outdated or irrelevant information adversely impacts someone's reputation. The "Right to Be Forgotten" (RTBF), a legal concept allowing individuals to request the removal of such data, has gained traction globally,

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¹ Section 27, Personal Data Protection Bill, 2019

² Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

³ Article 21, Indian Constitution 1950

particularly under the European Union's General Data Protection Regulation (GDPR). In India, the RTBF is slowly evolving, primarily through judicial recognition and legislative proposals like the Personal Data Protection (PDP) Bill. However, the challenge lies in balancing this right with Article 19(1)(a) of the Indian Constitution, which guarantees freedom of speech and expression, including the public's right to information.

JUDICIAL EVOLUTION OF RTBF IN INDIA:

The RTBF has not yet been codified in Indian law but has been acknowledged in various judicial pronouncements:

- In **Justice K.S. Puttaswamy (Retd.) v. Union of India** case, the Supreme Court of India recognized the right to privacy as a fundamental right under Article 21 of the Constitution. The judgment laid the foundation for the RTBF, stating that individuals have the right to control the dissemination of their personal information in public domains, subject to reasonable restrictions.⁴
- The right to be forgotten was recognized for the first time in India through the judgment delivered by the Karnataka High Court in the matter of **Sri Vasunathan vs The Registrar-General** in 2017.⁵
- In **X v. Union of India**, the Delhi High Court allowed a petitioner to have his personal details redacted from publicly available judgments to protect his reputation. The court balanced his right to privacy with public interest, emphasizing the need for a nuanced approach to RTBF claims.⁶

THE PERSONAL DATA PROTECTION (PDP) BILL, 2019:

The PDP Bill, introduced to regulate the processing of personal data, explicitly incorporates the RTBF. It empowers individuals to request the erasure of their data under certain conditions, such as when the data is no longer necessary for its intended purpose or when consent has been withdrawn.⁷ However, the RTBF under the Bill is subject to three critical considerations:

1. Firstly, there must be a clear consideration of public interest. Data erasure requests must be weighed against the public's right to access information.

⁴ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

⁵ Sri Vasunathan vs The Registrar-General 2017 SCC OnLine Kar 424

⁶ X v. Union of India 2023:DHC:2806

⁷ Personal Data Protection Bill, 2019, Clauses 20-21

2. The RTBF cannot override Article 19(1)(a) unless reasonable restrictions under Article 19(2) are met.
3. The Bill proposes the establishment of a DPA to evaluate RTBF claims on a case-by-case basis.

BALANCING RTBF AND FREE SPEECH:

The tension between privacy and free speech arises because RTBF inherently involves the removal of publicly available information, which could impede transparency and accountability. The following are certain issues that may arise because of this imbalance;

RTBF claims often involve the removal of information from public records, such as criminal convictions or financial disputes. However, such information about the individuals may affect their reputation, and its removal could hinder public accountability and transparency. For instance, the public's right to know about a politician's past convictions is crucial for informed decision-making in a democracy.

Journalistic content frequently becomes the subject of RTBF requests. However, erasing such content could amount to censorship, stifling investigative journalism and the public's right to information. Courts must carefully evaluate whether the information serves a significant public interest before deciding on its removal.

A key consideration in RTBF cases is the relevance and proportionality of the information in question. Courts often assess whether the continued availability of the information serves any legitimate purpose or disproportionately harms the individual's privacy. Thus, by analysis the need and essence of each of the information, the courts must always ensure to balance both the rights and try not to infringe any of these, as even the violation of one right may affect the personal life of the individual.

COMPARATIVE INSIGHTS:

Under the European Union's GDPR, the RTBF is well-defined but includes exceptions for public interest, journalism, and research. The European Court of Justice's ruling in the Google

Spain case established that search engines could be required to de-index information that violates an individual's privacy, provided it is not of overriding public interest.⁸

In the United States, the RTBF finds limited recognition in the U.S. due to the First Amendment, which prioritizes free speech over privacy. However, certain privacy laws, such as the California Consumer Privacy Act (CCPA), provide limited rights to data deletion.⁹

Thus, India can draw lessons from these jurisdictions to develop a balanced and context-sensitive framework for RTBF.

CONCLUSION

The "Right to Be Forgotten" is a crucial tool for protecting individual privacy in the digital age, but its implementation in India must strike a delicate balance with free speech under Article 19(1)(a). The evolving jurisprudence, coupled with the provisions of the PDP Bill, reflects an attempt to harmonize these competing interests. However, the success of RTBF in India will depend on the development of clear guidelines, robust adjudicatory mechanisms, and a proportionality-based approach that respects both individual and collective rights.

⁸ Google Spain SL v. Agencia Española de Protección de Datos (AEPD), Case C-131/12, European Court of Justice

⁹ California Consumer Privacy Act, 2018, Sections 1798.100-1798.199