

## RIGHT TO BE FORGOTTEN: AN ANALYTICAL STUDY IN PRESENT INDIAN SCENARIO

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### Abstract-

*The right to be forgotten is a right to have one's personal information removed from widely available sources. The Supreme Court of India also recognising the right to be forgotten of the person as a part of right to privacy under fundamental rights available in Constitution. The Parliament and the Supreme Court should evolve a mechanism for balancing between privacy, public interest and freedom of expression. The government and parliament should speed up the enactment of the Personal Data Protection Bill 2019.*

**Key Words:-** RTBF, Fundamental Rights, the B. N. Srikrishna Committee, Data Protection Bill.

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### Introduction:-

The increased use of the internet and its pervasive nature, The right to privacy and the right to be forgotten (RTBF) for data has become a worldwide concern. This article will address this issue in terms of analyzing the concept of this RTBF in India and other jurisdictions.

The RTBF, sometimes also recognized as the right to removal of data, the people have a right to have their individual data may be deleted from the websites or Internet. Furthermore, a traceable technique must be in place to ensure that deleted data must be erased from backup storage also.

**Historical Aspects and International Scenario of the RTBF:-**The RTBF originated from the decision of the European Union Court of Justice. Mr. Costeja González, a Spanish person residing in Spain, filed a lawsuit with the European Court of Justice (ECJ) against two national newspapers, Google Spain and Google Inc., in this landmark case. He wanted Google to take down links to an old newspaper item about his prior

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insolvency, stating that there was no need for the out-of-date information to stay online after the liability(Debt) was paid. The ECJ weighed the complainant's privacy rights against Google's economic interests in reaching its decision. As a result, the court found in favour of Mr. Gonzalez, ordering that the information about him and the attachment procedures be deleted. This decision has established itself as a precedent and authority on the right to be forgotten.<sup>2</sup> However, in 2019, a European Union court limited the judgement to the EU, stating that Google is not required to implement the RTBF outside of Europe.

**Process of Erasure of Data in European Union:-** A person can make a request to any entity in the European Union, either verbally or in writing. One month is given to the receiver to respond. Before a request for removal is authorised, it is evaluated based on a number of factors. In EU nations, searches utilising the person's name no longer seem in content search outcomes if the request is approved. Europeans can file a complaint with their local data protection authorities if Google refuses to delink material. Google may face legal action if it fails to obey with a Data Protection Agency verdict.

The General Data Protection Regulation (GDPR) of the European Union (EU) of 2018 establishes the right to be forgotten. According to this Regulation, *“the data subject shall have the right to demand from the controller, without undue delay, the deletion of personal data about him or her.”*<sup>3</sup> Furthermore, the controller is required to delete individual data without excessive delay.

European Court of Justice concluded in year 2019 that the European Union's RTBF does not spread outside EU member state's borders. Currently, the EU, the United Kingdom, and Australia are working hard to make the Right to be Forgotten a reality. *“Controller is defined as “any natural or legal person, public authority, agency, or other body that determines the purposes and means of processing personal data.”*<sup>4</sup>

**Judicial set-up for Right to be Forgotten (RTBF) in our country:-**RTBF is not explicitly available to the general public in India. Courts, on the other hand, have implicitly recognised it as part of the right to privacy.<sup>5</sup> In India, the RTBF, which requires the removal of data, has yet to be recognised. *“In this case, An temporary*

2. Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, M. C. González (2014).

3. Article 17, EU's General Data Protection Regulation (GDPR), 2018.

4. Article 02, EU's General Data Protection Regulation (GDPR), 2018.

5. Under Article 19 of the Indian Constitution.

*direction was delivered by the Delhi High Court to preserve the rights of an American citizen. The petitioner desired the removal of a judgment of acquittal in a case filed under the Narcotic Drugs and Psychotropic Substances Act (1985). As per the petition, the continued existence of judgment on the websites/portals of Google and Indian Law had caused irreparable damage to his social life as well as his career prospects.”<sup>6</sup> The High Court of Delhi issued an interim injunction. It ordered Google and Indian Kanoon to take down links to the verdict from their websites. The petitioner's right to be forgotten must be balanced against the public's right to access the court's records.*

*“Recently, a constitutional court commented about social media users' right to be forgotten in cases of revenge porn, highlighting the necessity for a legal barricade against the growing scourge of revenge porn, some women, would wish to produce and display her character as porn star. Women are the victims in the majority of incidents, including this one. They have the legal right to be forgotten. Capturing photographs and videos with the woman's consent does not excuse the exploitation of such content once the victim-accused connection becomes strained.”<sup>7</sup>*

However, *“In 2016, a Delhi banker, had asked to exercise his right to be forgotten after details of his marital dispute, which was settled in court, kept appearing online. The HC had requested responses from the centre, Google, and an online database.”<sup>8</sup> In a case a lady who had gone to Karnataka High Court for the cancellation of her marriage certificate. The father of that lady also demanded that her name be detached from internet, after parties reached an agreement, and the Karnataka high court accepted his request in this matter.<sup>9</sup> Indian residents do not have an explicit right to be forgotten.” Despite the fact that courts have underlined the importance of this right in various judgements. The court concluded that an person's right to privacy includes ability to control his online presence also.<sup>10</sup>*

**Personal Data Protection Bill, (PDPB) 2018:-**In his report, the B.N. Srikrishna Committee<sup>11</sup> emphasised the importance of getting an individual's agreement to process and use personal data. Harmony between parties must be specific and clear, according to the committee, and it must be able to be revoked as quickly as it was given.

6. J.S. Mundy v UOI 2021 SCC On Line Del 2306, (Judgement on 12.04.21)

7. S. Rout v. State of Odisha 2020 S.C.C. On Line Ori-878

8. [timesofindia.com/india/explained-right-to-be-forgotten/](https://timesofindia.com/india/explained-right-to-be-forgotten/) (Retrieved on Dated 17.11.21)

9. Sri Vasunathan v. the Registrar General, W.P. No. 62038/2016

10. K.S. Puttaswamy versus Union of India (2017) 10 SCC 1

11 The B.N. Srikrishna Committee constituted in August, 2017

The PDPB was introduced in parliament on December 11th, 2019, with the goal of establishing regulations for the protection of individuals' personal data. *“This draft bill titled Rights of Data Principal mentions the Right to be Forgotten. It indicates that the data principal (the person to whom the data is related) has the right to limit or prevent a data fiduciary from continuing to disclose his personal data.”*<sup>12</sup> Under this right a person can de link, remove or remove his/her personal data held by proper agency of data fiduciaries. Data fiduciary is anybody who chooses the goal and means of processing personal data alone or in collaboration with others, whether it be the state, a corporation, a legal entity, or an individual.

Personal data and information are very sensitivities, So the Data Protection Authority (DPA) will be in charge of monitoring about personal data and information of any individual. While the proposed bill has provisions allowing a data principal to request that his or her data be erased, the request must first be approved by the DPA's Deciding Officer. When reviewing the data principal's request, this authority will need to evaluate the relevance of the personal data, the scope of the disclosure. The degree of accessibility sought to be regulated The data principal's role in public life, and the type of disclosure with among other factors may be considered.

A clause on the Right to be Forgotten is included in the draught PDPB of 2018. However, this proposed bill doesn't include this right. Mr. B.N Srikrishna committee's recommendations underlined this right as well. As a result, it was integrated into the 2019 Draft PDPB. Every individual has the right to restrict continued disclosure of individual data by any data fiduciaries, according to the Draft Personal Data Protection Bill, 2019. The following situations are met:-

- I. Disclosure served or no longer serves the purpose for which it was made.
- II. Furthermore, the disclosure was made with the individual's previous consent, which has subsequently been revoked.
- III. Finally, the disclosure was made in violation of the new bill's provisions or any other legislation in effect.<sup>13</sup>

12. Personal Data Protection Bill, 2019 Clause 20 under Chapter V.

13. Section 20, Draft Personal Data Protection Bill, 2019.

**Arguments in Support of the Right to Forget include the following:-** Under Article 21 of our Constitution, the Right to be Forgotten safeguards an individual's privacy. Every person would be able to completely exercise his or her right to life & personal liberty as a result of this. This right would prevent society from stigmatising someone after they have been acquitted of a crime. Additional sanctions, such as social boycotts and career difficulties, may be avoided if a person exercises their right. It would aid in keeping the victim's individuality concealed, particularly in highly delicate circumstances like rape or harming the woman's modesty. The Karnataka High court observed that –*“If any personnel information is released without an individual's agreement, it can be extremely damaging to a person's reputation and emotional well-being. Uploading fraudulent or vengeful posts about a person will not be considered.”*<sup>14</sup>

**Arguments Against the Right to be Forgotten:-**

- I. The RTBF conflicts with Article 19(1)(a),<sup>15</sup>. For example, a rape victim has the right to have her previous incident should be forgotten. A criminal person has not right or claim to seek that his conviction not be publicised, but he does have the right to request that his conviction not be publicised.
- II. II. The proposed Data Protection Bill 2019 leaves data removal to the adjudicating officer's discretion. This could result in data being deleted at random.
- III. III. It may jeopardise journalists' ability to report independently. The adjudicatory officer has the authority to remove items from media organisations that criticise government policy in general.
- IV. IV. Removing complete judgements may limit public criticism of judicial performance in determining the administration of justice's impartiality and objectivity.

**The Right to Forget & Freedom of Expression must be balanced:-**The RTBF is a legal right that allows individuals to have their personal information removed from the internet. However, by using this privilege, one is restricting the public's right to

14. Sri Vasunathan v. the Registrar General, W.P. No. 62038/2016

15. This Article protects the right to information as part of freedom of speech

information, which is protected under First Amendment. Simply said, if this right is widely claimed, the search query results will progressively disappear. As a result, on a case-by-case basis, each of these rights must be balanced. The Justice Sri Krishna Committee also properly points out that the balancing test should be carried out by concern authority in this types of matter.

A complete framework must be established by the law regarding this RTBF and search engines should accept forgotten requests. This will ensure that the state or a firm has a limited role in an individual's personal choices. People should be able to move forward from their shady criminal past.<sup>16</sup>

The RTBF gives lot of advantages for those persons who want to erase old data from the various websites. Sometimes RTBF may create conflict with public records. For example, we know that judgments of courts have been treated as public records and all judgements comes in the definition of public document.<sup>17</sup> *“According to a report by Vidhi Centre for Legal Policy, RTBF cannot be extended to official public records, especially judicial records as that would undermine public faith in the judicial system in the long run. The right to be forgotten creates a conflict between individuals' right to privacy and society's right to information and press freedom.”*<sup>18</sup>

**Conclusion and Suggestions:-**Privacy must be introduced as a justification for rational restraint made under our constitution by a amendment in order to effectuate the RTBF. The RTBF can be limited with the construction of a legal framework. For instance, when exercising one's right to freedom of expression & information, following things must be taken into account:- I) Compliance with lawful responsibilities; II) Fulfilment of a responsibility in the public interest; III) Archiving in public health; IV) Historic research or systematic research purposes; or V) For establishment of Legal claims and its exercised, and defended.

Lastly, we can say that the right to be forgotten is recognised in maximum countries. However, courts have implicitly recognised it as part of the Indian Constitution's Article 21 guarantee to privacy. The PDPB 2019 has already been introduced in our legislature, and it has to be thoroughly debated. As a result, meticulous balance is required in order to execute it in a limited sense. The Data Protection Bill 2019, which is now being debated, should be passed as soon as possible. Individuals would have the lawful right to have their unnecessary and not suitable personal data should be erased from internet.

16. <https://www.iasgyan.in/blogs/right-to-be-forgotten> (Retrieved on Dated 17.11.21)

17. Section 74, Indian Evidence Act, 1872.

18. The fine line that separates judicial transparency and the right to be forgotten” Published in Hindustan Times on dated 24.06.21.