

# India's Pace with The Right to Be Forgotten

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## Abstract

In the present times, it is metaphorically yet, righteously said that 'A man should search himself on the Internet once in a while'. Well, it may sound humorous to the ears but it is way more dreadful for the person whose wicked past has been entered in the public domain. What makes it more dreadful is the easy to go word 'technology'. Technology being at the footsteps of every person, it makes it even easier to search anything and everything under the sun, the moon and the whole universe and even the things which are hidden in the deepest core of the Earth. And to this the 'human beings' are not an exception. However, the phrase, 'Right to be Forgotten' or 'Right to Erasure' has come to the rescue of the persons who wish to forget the past not only for themselves but also for the entire world. The roots of Right to be Forgotten have found soil in Indian system at present through the judiciary. Although, now the right is also finding the position through statutory provision by way of the Personal Data Protection Bill, 2019, which is yet at the preliminary stage.

**Key terms** - Right to be forgotten, right to privacy, data protection, Indian Constitution.

## I. INTRODUCTION

In the 21st century, the human beings breathe along with the technology and get the information draped in any corner of the world at the fingertips with the aid of the internet. Due to technological advancements, it is nearly impossible to escape from being scrutinised especially, when you have knocked the doors of the Judiciary, either to seek justice or where you have been dragged at the stairs of it. Since the initial days of the justice system in India, the Courts are open for all and the judgements and orders pronounced by the Hon'ble Courts are public documents as such. But, nowadays with the adaption of rights prevailing and emerging in the developed countries, a few appropriate ones are also made applicable by the judiciary in India within their ambit. One such newly developed right is the 'Right to be Forgotten' which has prevailed in many countries around the world, especially in Europe.

The Right to be forgotten has been seen doing rounds of the Indian Courts since a few days. However, the concept of the right to be forgotten is not enshrined in any Legislative Statute as of now but, it has been making appearance with the aid of the Articles of the

Constitution of India. Therefore, presently the Courts have been deciding the cases in hands claiming the right to be forgotten according to the facts of each case and by applying the principles of natural justice and the present relevant Statutory provisions. In order to keep pace with the changing times, there is a need to have concrete parameters of the enforcement of the right to be forgotten either by way of Legislative Statute or in the guiding light of the Supreme Judicial Authority of India. Although, baby steps are been taken towards passing of the Personal Data Protection Bill, 2019 which has been pending for affirmation with the Legislation.

## II. THE EMERGENCE OF THE RIGHT TO BE FORGOTTEN

With the use of the technology, nowadays, each and every subject matter finds its place on the internet and the rule of equality in this case is applied at par which does not spare the human beings from its coverage. Also, the newspapers which were previously only printed on the paper, have now kept themselves upgraded with the modern changing times and are now available on the

internet as well. Thereby, getting their articles not only printed on the paper but also saved them for lifetime on the Internet which can be revisited anytime and at any place. Although this technological advancement is considered a boon by many, it has not either failed to have ruined lives of many people and gave them sleepless nights as the horrifying past of that person and not so relevant information in the present times which he wishes to forget, is available at ease to any person who desires to dig the past of that person. However, to this dreadful scenario no remedy as such was available then.

But, in 2009, the Spanish man requested the newspaper to remove the article which was published in 1998 on the grounds that it was no longer relevant. But, the newspaper refrained from removing the article stating that it would be inappropriate to do so. Later, the Spanish man approached Google asking it not show the article when his name was searched. But as Google did not accept his request of not showing the article, thus, he sought relief from the Court of Justice of European Union (CJEU). The Court of Justice of European Union while deciding the case of *Google Spain SL and Google Inc. v Agencia Espanola de Protection de Datos (AEPD) and Mario Costeja Gonzalez* [1], on 13 May, 2014 directed Google to delete the 'inadequate, irrelevant or no longer adequate' data from its search results on the request of public. This is considered to be one of the historic judgements delivered by the CJEU.

The ruling overtime came to be known as the 'Right to Erasure' or 'Right to be Forgotten'. The Right to be Forgotten can thus be stated as the right of the man to get his personal information erased upon him making request from the public domain that may be the internet or other public directories subject to certain terms. The right is under the shelter of the right to privacy, which is considered as the fundamental human right. The right to be forgotten has found its place under Article 17 of European Union's General Data Protection Regulation (GDPR) which states that a person can make a request to the organisation to get his personal information erased pertaining under its domain. However, the right to be forgotten isn't that simple as it sounds, as the person cannot remove his personal information

if he does not satisfy the relevant reasons required to do so. The Article 17 of GDPR entails the grounds on which the person can request to erase his personal information from the public domain, some of those are :

- where the data collected is no more relevant,
- where the person had previously consented for the same but withdraws the consent,
- where the data was collected without the consent of that person,
- where the organisation is using the person's data for marketing purpose and that person objects for it,
- where the organisation is required to erase the data by obligation or ruling.

The individual has to thus satisfy the legitimate reason behind his quest for erasure of his personal information from public domain, after the satisfaction of which, the individual's personal information is erased without undue delay i.e. one month's time.

Since, 2014, after the verdict of the CJEU, the Right to be Forgotten has gained much importance and spread its wings over the world. The Right to be Forgotten has been put into practice in territories of Argentina, Philippines and European Union.

### **III. INDIA'S PACE WITH THE RIGHT TO BE FORGOTTEN THROUGH ITS JUDGEMENTS**

When the fire of a particular right is ignited in any part of the World, it does not hinder to speedily spread over the remaining parts. India being a country of scholars and extroverts, the judicial system therein is highly adaptive and gives its utmost best to uplift the basic human rights of the citizens. Similarly, the Right to be Forgotten has paved way in India through the cases before the Courts and is now in its initial development stage. Surprisingly, since 2017, the doors of the Courts are knocked frequently with the relief claimed of redacting the name of a person by the virtue of claiming the right to be forgotten, in spite of the fact that the said right is yet not validated formally by any legislation nor awareness of the right is created.

In{Name Redacted} v. *The Registrar General, High Court of Karnataka* [2], the father of a victim approached the Karnataka High Court with the petition of erasing his daughters name from the orders and judgement as her name been reflected in the orders and judgement which are available to the public at large with a search on the internet, would damage the reputation of his daughter. The Karnataka High Court, in 2017 allowed the petition thereby ordering redaction of the name of the victim from the orders and judgements and uplifted the Right to be Forgotten. Recently the Hon'ble Supreme Court in *Nipun Saxena v. Union of India*, (2019) 2 SCC 703[3], the identity of the victim cannot be disclosed in cases of rape and sexual offences. Therefore, it is now crystal clear that identity of the victim in sexual offences has to be kept secret for security reasons as well as for the reputation of that victim.

On the other hand, the Gujarat High Court in *Dharamraj Bhanushankar Dave v. State of Gujarat & Ors* (2015 SCC OnLineGuj 2019)[4], did not recognise the right to be forgotten. In the present case, the Petitioner was accused in the original case and was prominently charged with allegations of murder, kidnapping and criminal conspiracy amongst the others and was acquitted by the Sessions Court and the same was upheld by the High Court. Therefore, the Petitioner demanded of restricting his use of name in the orders and judgement as it would be detrimental to his personal and professional life. But, the Gujarat High Court held that no such specific provision of the removal of the name is enshrined in any statute as well as the inclusion of the name is not violative of Article 21 of the Indian Constitution. Similarly, the Madras High Court in *Karthick Theodore v. Madras High Court*, 2021 SCC On Line Mad 2755[5], declined the claim of the Petitioner to have his name redacted after the acquittal judgement stating that our judicial is yet to reach the point of redaction of the name of the accused person and that we must wait for an appropriate criteria for doing so.

The Delhi High Court in its judgement of *Jorawer Singh Mundy @ Jorawar Singh Mundy v. Union of India and Ors.*, 2021 SCC On Line Del 2306 [6] ('Mundy Case'), recognised the right to be forgotten and

directed Google, Indian Kanoon and v Lexinto remove the judgement of that court itself concerning the Petitioner. In the case in hand, the Petitioner being an American of Indian origin in 2009 had travelled India during which a case was lodged against him under the Narcotics Drugs and Psychotropic Substances Act, 1985. In 2011, the Petitioner was acquitted of the charges against him and later in 2013, the High Court upheld the Petitioner's acquittal. Thereafter which the Petitioner traveled back to the US to pursue law. However, after a few days he realised that no company was employing him after verification due to his past records which were easily available on the search engines, due to which he suffered great loss. Thus, he approached the Delhi High Court to claim the relief by virtue of Right to be Forgotten and the Court granted him the relief sought by him.

From the judgements of various High Courts dealing with the issue of right to be forgotten, it can be seen that the approach of Courts in implementing the right is selective and differs from the facts of the cases. The Courts are seen inclining towards the gravity of the usage of the right and the genuineness of the facts while granting and declining the luxurious benefits of the right to be forgotten.

#### IV. RIGHT TO BE FORGOTTEN'S SUITABILITY

The Right to be Forgotten is in to a new concept in the Indian Society which is trying to shoot its stems through the Judicial System. The Right to be Forgotten is at large considered to be a part of the Right to Privacy over the world and Right to Privacy has been granted the status of International Human Right. The Supreme Court of India in its recent landmark judgement of *Justice K.S. Puttaswamy (Retd.) v. Union of India* (AIR 2017 SC 4161)[7], has held that Right to Privacy is an integral part of Article 21 of Indian Constitution. Thereby increasing the purview of Article 21 to the right to privacy to a great extend. Inference thus can be drawn that Right to be forgotten which is a part of the Right to Privacy can also be brought under the broad umbrella of Article 21 of the Constitution of India.

The right to be forgotten is closely linked with the right to reputation. If the reputation of any person is in danger by the disclosure of name, then right to be forgotten is given due advantage as could be seen in the cases decided by the Karnataka High Court (supra) and Nipun Saxena Case (supra), where the issue of the reputation of the victim was in question. But, there is no specific provision with regards to the redaction of the name of the accused person after his acquittal. Nor there is any settled case law regarding the same. On one hand in Mundy's case (supra), the right was considered positively whereas, in the other cases the relief was declined, thereby leading to the ambiguity in this subject. The erasure of the name of the Accused after acquittal order won't really have effect on the people really forgetting that the person was at fault as the reputation of the person is damaged since the minute of filing of the FIR or say complaint due to publication (or mouth publicity).

Under the statutory Indian law at present there is no such provision of erasing or removing of the data from the public domain. It is currently only under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which provides for destruction of the whole criminal record so that the juvenile accused does not face any problem in future due to conviction. The House of Lords in 1913 [8], has observed that in cases of minors and matrimonial disputes the publicity may be harmful and so the open justice principle must be refrained. However, recently D. Y. Chandrachud, J., while deciding a matter in 2018 [9], specifically acknowledged the public access to the judgments of the Courts. The Indian courts have followed the principle of public access to the Courts since ages. While enforcing the right to be forgotten, the freedom of press and freedom of speech and expression have to also be considered alongside.

B. N. Srikrishna Committee has framed the Personal Data Protection Bill, 2019 which does envisage the provision of right to be forgotten subject to certain conditions. However, the proposed bill is yet to pass the approval stages in the Legislature.

## **V. DRAWING FUTURE OF RIGHT TO BE FORGOTTEN IN INDIA**

Europe is the birthplace of the right to be forgotten or right to erasure as they call and it is only with the blessings of the European Court of Justice is opened its eyes in 2014 and grew up faster thereby making it to the GDPR. However, the said right is yet a toddler in many other countries and trying to grow up therein too.

No doubt India welcomes new rights and concepts with open arms. But it is also true to its core that the cultural and traditional aspects also play a pivotal role in the judgments of the Indian Judiciary while synthesizing emerging concepts and rights. Nevertheless, Indian Judiciary never fails to amaze with its decisions as can be also seen in the cases where right to be forgotten was in issue. Any person would agree the Courts have taken in discovering the new right. Rather than getting carried away by seeing implementation of the right to be forgotten in the well developed countries, the Indian Courts have held their swords high by dealing with the facts of each cases uniquely and delivering the best of it despite of the fact that this particular subject lacks legislative provisions and there being no guiding light of the Supreme Court of India in the form of precedent.

Even though the if the data concerning an individual is removed, the question yet remains answered about the documents which already have been saved by numerous ones before it totally getting eradicating and also the hard copies which the people can keep in their closets as treasure. However, the right to be forgotten is to make the people forget by erasing the data but, by saving already in one or the other form creating a doubt as to whether in its true sense has the person's right has been upheld.

Nowadays with the people and technology moving with a pace faster than air and with the boundaries fading away with the tool of technology, there is no debate regarding the necessity of a firm statutory provisions for the implementation of the right to be forgotten suitable to the Indian society subject to certain conditions which would

make lives of many people wanting to change their present and future by forgetting dreadful past which is no more relevant.

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