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Right to be Forgotten: A Legitimate Sine-Qua-Non in Indian Law

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ABSTRACT

It is now possible to obtain almost any bit of information from the internet. The internet has revolutionized the world, and tides keep turning in its favour. Personal information is increasingly stored online. Now the typical experience in the human brain is remembering-by-by-default, rather than by default. When it comes to social media, people care more about their information leaving an indelible digital trace because of the age of digital technology. When introduced into the EU, the "Right to Erasure" was hailed as a new data privacy day. According to the above, the creation of the GDPR, individuals in certain circumstances had "the right to be forgotten". The author argues in favour of enforcing such a right as it is legally correct, discussing possible legal issues associated with obstacles. This paper will provide analysis of such a right in the "European Union" with reference to the court decision of the EU. Also, the paper will address arguments for and discuss whether or not it is a fundamental right in India.

Keywords: *Data Privacy, Digital Oblivion, Fundamental Right,Legal Issue, Right to Erasure.*

I. INTRODUCTION

"We are all now connected by the Internet, like neurons in a giant brain" -Stephen Hawking.

The realm of digitization has opened the door to almost all types of information Huge information is available on the Internet, but that is both a benefit and a curse. Certain people don't want their exact whereabouts known on various social media sites. Justifiably, the privacy of a nation should be protected and not broken. Personal space should not be violated.

There is a demanding need for better internet regulation for the people, and in some cases, legislated penalties have been implemented for that purpose. It is quite normal for the public to disclose private information, only to regret it later and wish they hadn't have revealed it in the first place. Once the information is made available on the internet, it will automatically be

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subject to interpretation, as this could be considered as misuse or even abuse of information.

Following this, the SC recently recognized the right to privacy as one of citizens as a facet of Article 21 (to life and personal liberty)[3]. Even though this ruling was welcomed, a great deal of ambiguity still exists regarding personal privacy. Once a person's name is entered into a search engine, personal information about them can be easily discovered. Reputation will be severely harmed. As a result, there may be a situation where one might not want to expose his personal information to anyone. Invisibility has recently come to be regarded as a right. You have the right to erase information pertaining to yourself from social platforms.

Limit, delink, delete, and/or update obsolete personal information are all options available to individuals who have the right to be forgotten. In the event that her data has been improperly or without her consent processed, she has the right to request that it be removed.

As we march ahead in the 21st century, the number of Internet users has mushroomed to a staggering magnitude. Oxford Dictionary defines it as "A global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardized communication protocols." Thus, the Internet without a doubt has been the biggest phenomena of this century. Our current "network society" is a product of the digital revolution and some major socio-cultural changes.

The Internet is the decisive technology of the Information Age due to which today we are living in an era of Digital revolution. Internet has played a significant role in ushering humans from Holocene to Anthropocene. From 2000 toa 2009, the number of Internet users globally rose from 394 million to 1.858 billion. In 2014, the world's Internet users surpassed 3 billion or 43.6 percent of world population.

Until early 1990's internet was largely oblivious to the common person in Rich Western States, "let alone the emerging markets such as China and India. The ARPANET or the Advanced Research Projects Agency Network of the United States Department of Defense considered the precursor to the modern Internet was never thought to be used on such a scale and level, as Internet is done today".

It is said that the "Internet never forgets, it has an unforgiving memory".[4] Internet does not allow a person to overcome his past follies and turn a new leaf. A person's mistake in his

[3] "Article 21 of the Constitution of India states that no person shall be deprived of his life or personal liberty except according to procedures established by law. The state and its citizens have to take responsibility for the right to clean the environment because we live in this environment. It gives us shelter, food, water, light, etc. so we keep our environment safe and clean and pollution-free."

[4] Available at: https://scroll.in/article/931980/humans-were-built-to-remember-only-important-things-the-internet-is-disturbing-that-balance

personal life becomes and remains in public knowledge for generations to come. This aspect provides an ingredient for litigation and legal disputes across the global domains. As such the emergent concept of the Right to be forgotten becomes extremely relevant in such a scenario. The various dimensions of the Right to be forgotten has been dealt with in this paper.

In the digital era, information on the Internet is ubiquitous and seemingly permanently available. The way in which people remember and recall information has also changed significantly, now that much of the world's knowledge is available at the click of a mouse. Search engines have become basic necessities, without which information would be nigh on impossible to find and social media platforms play a crucial role in enabling people around the world to communicate with each other.

The apparent permanence and instant availability of information online has also come at a price. Search engines and social media platforms simultaneously allow access to information that individuals may wish to keep "private" or secret, such as news articles about past crimes, embarrassing old photos, or sex videos posted by ex-partners.

Various types of information – be it truthful, false, outdated or taken out of context - may cause harm to individuals, and may threaten important values, such as dignity or personal autonomy, which are protected by the right to privacy under international human rights law. Meanwhile, private companies collect and retain vast amounts of data such as online shopping habits, cultural preferences, political views, and lists of visited websites. All of these developments have led to concerns about misuse and abuse of personal information for unlawful purposes or identity theft. It is not surprising, therefore, that individuals are increasingly seeking to reassert control over their identity and personal information online.

The "right to be forgotten" has been presented as a remedy to this state of affairs. However, this simplified and misleading term is expressly recognised neither in international human rights instruments nor in national constitutions. Nor is it currently explicitly recognised in the vast majority of countries around the world.

The scope of this "right" remains largely undefined: it ranges from a more limited right protected by existing data protection law to broader notions encompassing the protection of reputation, honour, and dignity. In ARTICLE 19's experience, the "right to be forgotten" usually refers to a remedy which would in some circumstances enable individuals to demand from search engines the de-listing of certain kind of information about them which is discovered by a search for their name. It can also refer to demands to websites' host to erase certain information.

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More broadly, it has been considered as a right of individuals "to determine for themselves when, how, and to what extent information about them is communicated to others" or as a right that gives the individual increased control over information about them. It has been categorized as a privacy right even though it applies to information that is, at least to some degree, public.

The idea of a "right to be forgotten" is not new, however. For example, national law in several countries recognizes that, after a period of time, criminal records should be expunged in order to enable the rehabilitation of offenders in society. Further, it is a familiar concept in newsrooms, where news is a perishable commodity, that information loses relevance over time.

At the same time, the more problematic aspects of a "right to be forgotten" must not be overlooked. Information that may seem trite or trivial to some may be highly relevant to the work of historians, archivists and libraries. Equally, news archives have long been the repositories of our collective memory about world events. Court decisions, bankruptcy filings and other public records are often expected to remain accessible for indefinite periods of time.

Consequently, it would be simplistic to suppose that, just because information is about a person and dated, it should therefore be deleted or de-listed from search results. At its core, the "right to be forgotten" involves making certain information about individuals harder to find, even if it is information that has legitimately been in the public domain for decades. As individuals are empowered to hide true but embarrassing information about them, the potential for abuse becomes clear.

The "right to be forgotten" came to the fore with the decision of the Court of Justice of the European Union (CJEU) in the Google Spain case of 2014. In that case, the CJEU held for the first time that data protection principles applied to the publication of search results by search engines. The CJEU held that individuals had a right to request that search engines operating in the EU de-list search results obtained by a search for their name.

As domestic courts, data protection regulators, search engines, and experts on privacy and freedom of expression have scrambled to come to grips with the implications of the "right to be forgotten," several governments around the world have followed suit, either adopting a dedicated "right to be forgotten" law3 or looking to adopt new legislation on the subject.4 The "right to be forgotten" is therefore no longer a uniquely European idea but instead has taken on a broader significance. There is also a serious risk that the limited safeguards for the right to freedom of expression that were recognised by the CJEU might be missed or ignored by governments who have a poor record on freedom of expression or who want to undermine the free flow of information.

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It is vital that the right to freedom of expression is remembered in the debate. ARTICLE 19 does not advocate for the recognition of the "right to be forgotten" in domestic or international standards. Our focus is pragmatic, and we intend to foster more informed debates about the implications of "right to be forgotten" for freedom of expression and human rights in general. In this policy brief, we therefore propose a framework solution to the issues raised by the "right to be forgotten," grounded in international human rights law and our extensive experience in balancing these rights. Ultimately, the issue at hand is how to strike a proper balance between the right to freedom of expression and other rights in this context. Hence, the policy brief makes detailed recommendations as to the proper substantive and procedural safeguards that should be put in place in order to protect the right to freedom of expression.

The right to be forgotten appears in all these cases as a specification of the individual's right to privacy. The latter is enshrined in both Article 12 of the 1948 Universal Declaration of Human Rights (UDHR), and Article 8 of the 1950 European Convention on Human Rights (ECHR). As a subclass of this human right, namely, "privacy" and the respect for one's "private life", the right to be forgotten should thus be considered a relative, rather than an absolute human right.

Whereas an absolute human right, such as Art. 5 of the UDHR on the ban on torture, entails no balancing, relative human rights, such as the right to be forgotten, have to be balanced against further rights and freedoms protected by the legal system.[5] Among these rights and freedoms, it suffices to mention the right to information, freedom of speech or of the press.

Likewise, in the legal framework of the ECHR, the right to privacy and hence the right to be forgotten are subject to several restrictions "in accordance with the law" and vis-à-vis what "is necessary in a democratic society in the interests of national security, public safety" and so forth. One of our main contentions in the chapter will be that the digital revolution has impacted this traditional framework in two different, albeit intertwined ways.

On the one hand, the use of information and communication technologies (ICTs), such as the internet, social networks and smartphones, has made much easier and even trivial "the identification of the actor in reports of long past events", according to the phrasing of the Briscoe case.

On the other hand, legal issues have increasingly turned into a matter of access to, and control

[5] "There is one absolute prohibition in the Universal Declaration of Human Rights (UDHR) that is universally accepted as unequivocal: Article 5's ban on torture. At times, states may have disputed the definition of what constitutes torture, but virtually none now openly defend the practice, even if some still carry it out in what the UN High Commissioner for Human Rights described as" "some of the darkest corners of our planet."

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and protection over, information in digital environments. Legislators and policymakers have accordingly complemented the canonical protection of the human right to privacy with a new right; that is, the right to the protection of personal data. Consider Art. 8 of the EU's Charter of Fundamental Rights from 2000, which aims to complement the safeguards of Art. 7 on the traditional and pre-digital respect for private life.

Therefore, the right to be forgotten has also evolved in the digital age. As a specification of the individual's right to the protection of her personal data, most of the time, the right to be forgotten should be conceived of today as a right to the erasure – or de-listing – of personal data concerning that individual. In light of these profound transformations, both social and legal, a number of critical issues follow as a result. The first problem concerns whether the rights to privacy and data protection may or may not overlap.

Whereas the protection of privacy can entail no data processing at all; for example, the protection against cases of "unwanted fame" or "false light", the protection of the rights of the data subject may aim to safeguard the data as such, that is, regardless of any harm, prejudice, or privacy issue. In addition, the protection of personal data mostly revolves around the transparency with which such data are collected, processed and used, while the right to privacy mostly regards the protection of an individual's opaqueness, in accordance with the definition by Hannah Arendt.4 Therefore, should the protection of personal data and hence, the individual's right to its erasure, or de-listing, be conceived of as a human right?

A second class of problems has to do with the protection of the right to be forgotten, or to the erasure of personal data, as a relative right. Much as occurs with the right to privacy, the protection of personal data shall be balanced against further rights and freedoms protected by the legal system.

Key differences have been repeatedly stressed between the EU and US legal systems, as to how they have traditionally balanced such rights and freedoms, for example, the right to privacy and freedom of speech. Would those differences be broadened by the digital updating of the right to be forgotten? How should we manage such a right in an interconnected world? Would the only solution be the fragmentation of the internet?

In order to provide a hopefully comprehensive view of these issues, the chapter is divided into four parts. The next section focuses on the 2014 ruling of the EU Court of Justice (EUCoJ) in the Google Spain case, also known as the Conejero González case, in which an informational right to be forgotten was granted in the EU legal system, paving the way for the provisions of Art. 17 of the data protection regulation (GDPR). The third section dwells on the US legal

system and how scholars have reacted to the developments of the EU law, both at procedural and substantive levels. The fourth section scrutinises the current state-of-the-art in Europe, in accordance with the conditions set up by Art. 17 of the GDPR, with its merits and drawbacks.

The last section finally brings us back to the digital version of the traditional right to be forgotten as the individual right to the erasure of personal data. The overall aim of the analysis is to elucidate whether and to what extent this latter right is here to stay, and the reasons why it should deemed under certain circumstances as a human right.

II. DEVELOPMENT OF SUCH A RIGHT IN INDIA

The Supreme Court decision "Justice K.S. Puttuswamy (Ret.) and others v. Union of India" now serves as a binding precedent for the judiciary on the subject of privacy and other related issues. According to the decision, the Hon'ble Bench acknowledged the existence of a 'Right to be Forgotten' as one of the elements of the right to privacy, but chose not to enforce it as a separate fundamental right.

The 'Right to Be Forgotten' has not been deemed a basic right by the Supreme Court. As a result, it is up to India's High Courts to interpret the law. The High Courts of Karnataka and Kerala have both ruled in favour of such a right, whereas the Gujarat High Court has ruled against it.

The petitioner in the matter of ‘Dharamraj Bhanushankar Dave v. State of Gujarat & Ors.' approached the High Court under Article 226 of the Constitution, asking an injunction against the publication of the court's decisions and judgements on the internet. He asked to seek a proper order against it because a simple Google search would reveal all the specifics about the court's proceedings. It was against the court's classification because it was freely available in the public domain.

The implication was that such a conduct is not only unregulated, but also poses a threat to the petitioner's privacy. As he was implicated in an internet case, it has had a negative impact on his personal and professional life. The respondents' counsel simply contended that they were not liable for Google's "crawlers," who scoured the internet for sites to add to its list of webpages that appear on the screen when you hit enter. As a result, the responders had no connection to the content's publishing on the internet.

The Court noted that the petitioner has not identified any specific provisions that have been infringed by the publishing of the impugned judgement, and that it would not be covered under the ambit of the "right to life" inherent in Art. 21 of the Indian Constitution, as claimed by the

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petitioner. The Court noted that "reportable or non-reportable" refers to the classification given to a judgment's reporting in a law-reporter and not its publishing elsewhere, while also noting that the High Court, unlike civil courts, was a "court of record."

Furthermore, in the matter of ‘Vasunathan v. Registrar General'xx, petitions were filed under Articles 226 and 227, and this case was presented before the court, appealing that the petitioner's daughter's name be deleted from all digital records. According to the petition, the decisions reached should not be accessible to the public via search engines such as Yahoo and Google.

The petitioner's major concern was to preserve his daughter's reputation and image, who had been named as a party in the lawsuit. The petitioner was concerned because if a search was made using the petitioner's daughter's name, the judgement would be found and details about her would be revealed. This would be detrimental to her social standing and relationship with her husband. Since the case was brought against her spouse, they were able to reconcile. The petition called for all digital material to be erased or at the very least made inaccessible to the general public. The right to be forgotten in delicate instances was adopted here, as it is in Western countries. “The modesty and reputation of the people involved, especially if it concerns women, should not be made available to everyone indiscriminately,” the High Court stated.

The court ordered the Registry to ensure that the name of the petitioner's daughter would not appear in internet search results and that the title and body of the judgement would be concealed as a result. The Court struck an interesting balance when it decided not to make any changes to the High Court website or a certified copy of the ruling. Following that, in the case of ‘Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd. & Ors.,' the Plaintiff filed a suit seeking a permanent injunction against the prime Defendant Quintillion Business Media Pvt. Ltd., Defendant No. 2 its editor, and Defendant No. 3 the author, who had written two articles against the Plaintiff on the basis of harassment complaints claimed to have been received. The stories, which appeared on October 12th and 31st, 2018, were challenged in the current suit, and an injunction was sought to prevent the publication and re-publication of the same two articles.

The plaintiff claimed that the publication of the stories on Defendant No. 1's digital/electronic platform 'www.quint.com' subjected him to enormous torture and personal grief as a result of the baseless allegations levelled against him. The Plaintiff's complaint was that he should have been given adequate notice prior to the publication of the contested articles, and that by failing

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to do so, the defendants published one-sided accounts that harmed his reputation.

The High Court recognised the Plaintiff's right to privacy, of which the 'right to be forgotten' and 'right to be left alone' were inherent aspects, and directed that any republication of the content of the originally impugned articles dated 12th October 2018 and 31st October 2018, or any extracts/or excerpts thereof, as well as modified versions thereof, on any print or digital/electronic platform be prohibited.

The Republic of India is primarily governed by Common Law. The country has a multibillion-dollar technology industry. The Information Technology Act of 2000 is India's primary law governing cybercrime and electronic commerce. However, neither the Act nor the IT Rules 2011 address the Right to be Forgotten. Furthermore, there is no active Data Privacy Framework in the country. In August 2017, the government established the Srikrishna[6] committee, chaired by retired Supreme Court Judge BN Srikrishna. In July 2018, the committee submitted its report on the data protection law.

The report has the potential to have far-reaching implications for data handling and processing practises by both Indian and foreign companies, as well as government departments. Various technology companies, startups, and industry bodies agree on the need for a law that protects customers while also accelerating India's rapidly growing digital economy.

According to Justice Srikrishna, “citizens' rights must be protected, and states' responsibilities must be defined, but data protection must not come at the expense of trade and industry.” The Committee report places a strong emphasis on obtaining an individual's consent before processing and using personal data. According to the committee, consent must be "informed," "specific," and "clear," and it must be as easily withdrawn as it was given. Section 27 of the bill outlines various scenarios in which an individual will have the “right to restrict or prevent continuing disclosure of personal data,” or the “right to be forgotten.”

They are –

a. If data disclosure is no longer required, or if

b. consent to use data has been revoked, or

c. data is being used in violation of the law[7].

In one of the three cases, an adjudicating officer will decide whether the Right is enforceable.

[6] Shaikh ZoaibSaleem, Whatis the right to be forgotten in India, Live Mint. https://www.livemint.com/Money/yO3nlG7Xj4vo2VJsmo8blL/What-is-the-right-to-be- forgotten-in-India.html.
[7] Aroon Deep, Srikrishna Committee Data Protection Bill released, Media Nama https://www.medianama.com/2018/07/223-live-justice-srikrishna-data-protection-report-being-submitted-to-it-ministry/

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The same officer will have to decide if the individual's right to limit the use of her data outweighs any other citizen's right to freedom of speech or access to information, as protected by the Indian Constitution and the Right to Information Act 200523, respectively.

The important truth remains, however, that the draught bill is subject to multiple changes as part of the legislative process in any Parliament. A Data Protection Agency (DPA) will be established under the proposed data protection law, which will be an independent regulatory entity responsible for the law's enforcement and effective implementation.

The draught Bill stipulates a number of penalties that may be enforced in the event of a violation. Despite these improvements, India's residents may not have immediate access to the "right to be forgotten," as defined in many Western governments, because the country lacks privacy regulations.

III. CONTEXTUALISING THE PROPOSED RIGHT TO BE FORGOTTEN IN CONSTITUTION OF INDIA

Art. 19(1)(a) protects this right, subject to certain limitations imposed by Art. 19(2). Indian free expression law is so deeply rooted in constitutional values that it cannot be reconciled with the right to be forgotten.

Fleischer's initial categorization envisions a data subject as someone who voluntarily gives personal information. As long as the following conditions are followed, online information can be deleted.[8] He objects to the processing of his personal data Personal data has been unlawfully treated and so on and so forth.[9][10] It's not a problem because most privacy policies allow consumers to delete their own content from websites.[11] It is also in conflict with another party's right to free speech that the data subject's privacy be protected. A third party has the right to post personal information on a data subject on their own website under Article 19 of the constitution. Whenever a private entity requests that a data controller delete a link, it is responsible for striking a balance between the two rights outlined above. Indian constitution does not recognise the right to privacy as a constitutional right (ECHR).[12] It is based on the Indian Constitution's article 21, which has been upheld by the courts. A privacy right was

[8] Article 17(1)(b).
[9] Article 17(1)(c).
[10] Article 17(1)(d).
[11] See, for instance Data Policy, FACEBOOK, available athttps://www.facebook.com/full_data_use_policy. (Facebook allows the user to delete the content that they put up. However, if someone shares content about a user, that content cannot be deleted if the user wants to delete it.).
[12] Article 7, ECHR.

investigated in Kharak Singh v. State of Uttar Pradesh.[13] Majority opinion in Gobind v. State of Madhya Pradesh affirmed the constitutionality of the right to privacy.[14]

A limited number of cases have been decided on privacy issues as a result of this, with violations of surveillance being the most common cause.[15] Due to the country's continuous lack of a privacy regulatory law or a data protection regulation that matches international standards, India's discussion has not moved as far as the EU's.[16]

The government is also the sole party that may be prosecuted for violating the right to privacy in India, according to a recent study.[17] A ruling by the Supreme Court in its Petronet investigation made it clear that the right to privacy cannot be invoked in the case of non-state corporations or juristic individuals.[18]

It's also worth noting the Central Information Commission v. Rajinder Jaina ruling.[19] In the case, the petitioner claimed that the Right to Information Act of 2005 violated his privacy. Due to the fact that the material had been made public, the court dismissed the lawsuit. In R. Rajagopal v. State of Tamil Nadu, it was ruled that the right to privacy was not absolute, notwithstanding its mention in Article 21 of the United Nations Charter.

A person's right to privacy is waived when the item is public record. Because of this, if data is submitted, the third party has full control. As an example, the current privacy dispute in India is compared to Fleischer's second category of products. Starting with the fact that actors who are not state actors do not have a right to privacy. Search engines such as Google or private third parties are not legally required to protect the privacy of the data subject. It is also possible to share other people's information with others by making the material public. As a result, in the second classification, the right to privacy is not recognised. The right to be forgotten can

[13] AIR 1963 SC 1295
[14] (1975) 2 SCC 148.
[15] However, the ongoing challenge to The Aadhar (Targeted Delivery of Financial and Other Subsidiaries, Benefits and Services) Bill, 2016 on privacy claims, that has been referred to a five-judge bench of the Supreme Court could possibly clarify the existence of right to privacy as a Constitutional Right. It is believed that the larger bench would conclusively demarcate the specific extent and scope of right to privacy in light of the explicit argument posited by the Attorney General that no right to privacy exists in the Indian Constitution. SeeJustice K.S. Puttaswamy (Retd.) and Another v. Union of India and Others, Writ Petitions (Civil) Nos. 494/2012
[16] It is pertinent to note that the Draft Bill on Right to Privacy, 2014 is pending in the Parliament. The Bill seeks to establish a statutory right to privacy, as stemming from Article 21 of the Constitution, against the Government as well as private persons. The Bill, however, provides exceptions to this proposed right. One of the enumerated exception is of rights and freedoms of Thus, it is submitted that the Bill also envisages a probable competing aspect of the proposed right and other Fundamental Rights, which can only be harmonized by ensuing judicial interpretation. For further explication, seeElonnai Hickok, LEAKED PRIVACY BILL: 2014 VS. 2011THE CENTRE FOR INTERNET AND SOCIETY (2014), http://cis-india.org/internet-governance/blog/leakedprivacy-bill-2014-v-2011 (last visited Feb 12, 2017).
[17] Petronet LNG Ltd. v. Indian Petro Group, (2009) 95 S.C.L. 207 (Delhi).
[18] Apar Gupta, Balancing Online Privacy in India, 6 INDIAN JL & TECH.
[19] 164 (2009) D.L.T. 153.

apply to data uploaded by third parties. This right to be forgotten is recognised by the GDPR. The argument is that such an approach would violate the freedom of expression of a third party.[20]

As mentioned in Article 19, the state's laws and regulations provide its residents the right to free expression. This means that private individuals cannot take advantage of the limitations imposed by Article 19 if it is taken literally. This rule is necessary because without it, freedom of expression would always prevail over the right to be forgotten. There are no acceptable limits that can be applied to Article 19 because a private organisation is unable to do so. Thus, we analyse the various concerns that could develop if laws similar to the GDPR framework were adopted by Indian lawmakers, restricting the right to free expression.

IV. RELEVANT LITIGATION AND LEGAL DEVELOPMENTS IN INDIA

Despite the fact that there are various legal proceedings in India concerning the right to be forgotten, they are not conclusive. In the case of Justice KS Puttaswamy (Retd.) and Anr. V. Union of India and Ors., the Hon'ble Supreme Court of India decided that the right to privacy is a basic right in India. It was based on a re-examination of past cases such as MP Sharma v. Satish Chandra and Kharak Singh v. Uttar Pradesh.

The major issue in all of these cases, however, was the right to privacy, not the right to be forgotten. In fact, many experts argue that the right to be forgotten differs from the right to privacy in that the former involves removing information that was publicly available at the time and not allowing third parties access to it, whereas the latter involves preventing information that is not publicly available from entering the public domain. This argument will substantially separate the Right to be Forgotten from the Right to Privacy, which has recently been the subject of several court decisions.

However, it is argued that they are inextricably linked because the core issue concerns the prevention of information that is believed to be "Private," and the Right to be Forgotten has been widely assumed to be a part of the Right to Privacy in the Indian context.

While the Right to be Forgotten may never have been a focus of Indian law, the Hon'ble Supreme Court of India dealt with a separate idea known as the Right to be Left Alone for the first time in the case of R. Rajagopal v. State of Tamil Nadu in 1994. In that case, a prisoner

[20] This argument holds against the constitutional framework of right to privacy, and not the tortuous nature of the right. An aggrieved party can still take the remedy against infringement of privacy under Tort law. The distinction between tort action stemming from Tort law and privacy infringement under Constitutional provisions was highlighted in Rajagopal.

had written an autobiography while incarcerated, detailing the conditions and the ties that existed between the inmates and several IAS and IPS personnel. He had given his memoirs to his wife with the intention of having it published in a specific magazine.

However, the publishing was limited in a number of ways, prompting the question of whether anyone has the right to be left alone, especially in prison. Which stated that an individual's right to private should be protected by prohibiting the dissemination of material relating to life, marriage, family, procreation, child-bearing, motherhood, and education without his or her permission. The same was upheld by the court.

However, at the same time, a rule was established that provided non-objection to the publication of public records, including court records. The Supreme Court's ruling in the case gave the concept of the Right to be Left Alone new legs. The decision can be considered a forerunner to the current legal battle over the issue. Despite this, there are divergent High Court judgements in the subject due to the lack of a proper Supreme Court judgement in the matter, which might possibly open a Pandora's Box.

Sri Vasunathan vs. The Registrar General of the High Court of Karnataka and Others

In Karnataka, the Karnataka High Court upheld the right to be forgotten. Despite the fact that various legal proceedings concerning the right to be forgotten exist in India, they are inconclusive. The Hon'ble Supreme Court of India decided in the case of Justice KS Puttaswamy (Retd.) and Anr. V. Union of India and Ors. That the right to privacy is a fundamental right in India. It was founded on a re-examination of previous cases like MP Sharma v. Satish Chandra and Kharak Singh v. Uttar Pradesh.

However, the main issue in all of these cases was the right to privacy, not the right to be forgotten. Many experts argue that the right to be forgotten differs from the right to privacy in that the former entails removing information that was publicly available at the time and not allowing third parties access to it, whereas the latter entails preventing information that is not publicly available from entering the public domain. This argument will clearly distinguish the Right to Be Forgotten from the Right to Privacy, which has recently been the subject of several court decisions. However, it is argued that they are inextricably linked because the core issue is the prevention of information that is thought to be "Private," and the Right to be Forgotten is widely assumed to be a component of the Right to Privacy in the Indian context. While the Right to be Forgotten was not previously a major concern, it is now.

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Civil Writ Petition No. 9478 of 2016[21]

Due to a Kerala High Court order dated February 23, 2017, the name of the case is no longer available on Legal Databases. In the current case, the Kerala High Court ruled in favour of the right to be forgotten by requesting that the online legal database Indian Kanoon remove the rape victim's name from a previous judgement in an interim order until further orders were issued.

Dharmraj Bhanushankar Dave v. State of Gujarat[22]

The Gujarat High Court denied the petition for "permanent restraint [on] free public exhibition of the judgement and order" in this case. The case at hand involved a proceeding against the petitioner for a variety of offences, including culpable homicide amounting to murder. The petitioner was acquitted by both the Sessions Court and the High Court. The petitioner was pleased that, despite being classified as 'unreportable,' the judgement was published and indexed by an Online Legal Database. The petition was dismissed by the High Court for the following reasons:

a. The Petitioner failed to show any legal provisions that are attracted to, or pose a threat to, the constitutional right to life and liberty.

b. Publication on a website does not constitute 'reporting,' because reporting only refers to that by law reports.[23]

V. CONCLUSION

The study has gone through all the materials elucidated in preceding chapters. Coming to the conclusion, which goes this way, the judiciary in various jurisdictions has interpreted the Right to Forget in various ways. Closer to home, in India, the courts have upheld the Right not on the basis of the Right to Privacy, but after giving due consideration to the principle of protecting women's modesty. To a large extent, this has reopened the topic to introspection and dissection. Though the court recognised a substantial principle and attempted to clear away the fog of confusion, its ancillary observations that it is recognised for the protection of women's modesty and cases involving women have rendered it a very gender specific observation that has excluded many other significant sections of society and has raised doubts as to what are the rights of women.

[21] Civil Writ Petition No. 9478 of 2016
[22] DharmrajBhanushankar Dave v. State of Gujarat 2015 SCC Online Guj 2019.
[23] Amber Sinha, Right to be Forgotten: A Tale of Two Judgements, The Centre for Internet and Society, (Nov. 21, 2018 7:21 PM), https://cis-india.org/internet-governance/blog/right-to-be- forgotten-a-tale-of-two-judgments

Similarly, this decision contradicts a major Apex Court decision that held that Judicial Pronouncement, as a public record and document, was allowed to be published and thus gave way to the Right to be Left Alone, but a High Court judgement allowed the Right to be Forgotten to apply to a judicial pronouncement and ordered that the name of the party be removed from the record. This is thus in direct conflict with the decision on the Right to be Left Alone. Furthermore, adding to the confusion is the decision of another High Court in the case of that out rightly rejected a petitioner's request that his information be removed from the public domain, but the court rejected it on the grounds that it does not attract any relevant provision of law and that there is no suitable digital framework upon which the judiciary could tread and reach a soli decision. It should be noted that even the legislature has failed to pay the necessary attention to this issue and has failed to establish any framework for the courts.

As a result, in the absence of any relevant statutes, courts in India have also failed to refine the law To summarise, law, as a dynamic subject, must adapt to change, provide solutions, and respond to challenges before significant injustice occurs.

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