

A Study on Right to Forgotten with Right to Life under Article 21 of Indian Constitution

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Abstract

The emergence of the digital age has brought with it new challenges to individual privacy, especially concerning personal data retention and its accessibility online. One such evolving concept is the Right to be Forgotten (RTBF), which seeks to empower individuals to have certain personal data erased from the internet, thereby safeguarding their dignity and privacy. In India, the Right to be Forgotten is not explicitly codified, but it is increasingly being recognized as an intrinsic aspect of the Right to Life and Personal Liberty under Article 21 of the Indian Constitution. This study examines the development and recognition of the Right to be Forgotten in the Indian legal landscape and its harmonious integration with Article 21. It further explores key judicial pronouncements, such as *Justice K.S. Puttaswamy v. Union of India*, which acknowledged the right to privacy as a fundamental right, thereby laying the foundation for RTBF in India. The paper also analyzes the tension between RTBF and other rights like freedom of expression and the right to information, and attempts to propose a balanced framework that ensures protection of individual dignity while upholding democratic transparency. This study concludes that while the Right to be Forgotten is still at a nascent stage in India, it is a necessary extension of the right to life and privacy in the modern digital context.

Keywords: Right to be Forgotten, Article 21, Indian Constitution, Right to Life, Fundamental Rights, Judicial Interpretation, Privacy, Digital Rights, Environmental Law.

Introduction

The Right to be Forgotten (RTBF) allows individuals to request the removal of their personal data from the internet and public domain when it is no longer necessary or relevant. This right empowers people to have control over their personal information and its availability online¹. It is fundamentally about the erasure of open-source individual data from various platforms, including search engines, databases, and websites, ensuring that outdated or irrelevant information does not persist in the public domain². The RTBF is not absolute; it must be balanced against other conflicting rights, such as the right to free speech and expression. This balance is crucial as it addresses the tension between an individual's privacy rights and the media's right to publish and disseminate information. For instance, an individual may wish to disconnect from information regarding their criminal history to prevent others from easily accessing specific articles about them through search engines³. The RTBF is also recognized within the framework of Indian law, where it is considered part of the broader right to privacy, as established in the landmark case of **Puttaswamy v. Union of India**. This case highlighted that the RTBF is linked to the right to equality and the right to life, which includes privacy. In summary, the Right to be forgotten is a significant legal concept that allows individuals to manage their personal data online, balancing privacy rights with the public's right to information⁴.

Balancing Conflicting Rights: One of the primary limitations of RTBF is the need to balance it against other fundamental rights, such as the right to free speech and expression. This creates a complex legal landscape where the right to privacy may conflict with the media's right to publish information, making it challenging to implement RTBF uniformly across different cases⁵.

Subjectivity in Relevance: Determining what constitutes "irrelevant" or "no longer necessary" information can be subjective. Different stakeholders may have varying opinions on the relevance of certain data, leading to inconsistencies in how RTBF requests are evaluated and granted⁶.

¹ Dixit, T. (2022). Right to be forgotten: Paving the way for the protection of privacy. *International Journal of Applied Research*, 8(9), 109–112. <https://doi.org/10.22271/allresearch.2022.v8.i9b.10143>

² Nath, H. R. (2013). Right to Life and Personal Liberty Under the Constitution of India: A Strive for Justice. *Social Science Research Network*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733238

³ Relevance of Article 21- Right to Life at Epidemic Like Covid 19. (2023). *International Journal For Multidisciplinary Research*, 5(3). <https://doi.org/10.36948/ijfmr.2023.v05i03.2966>

⁴ Immanuel, A. M. P. (2021). The Meaning of 'Life' under the Indian Constitution and the Obligation Not to Render Persons Stateless: With Reference to the NRC in Assam. 3(1), 186–207. <https://doi.org/10.35715/scr3001.1118>

⁵ Wageshwari, T. (2022). Examining The Right To Die In The Context Of Euthanasia: A Critical Analysis. <https://doi.org/10.53555/sfs.v9i1.1876>

⁶ Petrov, Yu. V. (2024). The right to be forgotten: concept, content, problems of legislative regulation. *Юридическая Наука и Практика*, 2024(3), 310–315. <https://doi.org/10.36511/2078-5356-2024-3-310-315>

Public Interest Considerations: In cases where the information pertains to public figures or issues of public interest, the RTBF may be limited. The public's right to know can outweigh an individual's desire for privacy, complicating the decision-making process for authorities handling RTBF requests⁷.

Enforcement Challenges: The enforcement of RTBF can be difficult, especially across different jurisdictions. Variations in laws and regulations regarding data privacy and freedom of expression can lead to challenges in ensuring that RTBF is respected globally⁸.

Potential for Abuse: There is a risk that individuals may misuse the RTBF to erase legitimate information that could be important for public awareness or accountability. This potential for abuse raises concerns about the integrity of information available online and the implications for freedom of expression

Technological Limitations: The effectiveness of RTBF is also limited by technological capabilities. Even if data is removed from certain platforms, it may still exist in other forms or locations, making complete erasure difficult to achieve⁹. The Right to be forgotten offers significant privacy protections; its implementation faces various limitations, including the need to balance conflicting rights, subjective interpretations of relevance, public interest considerations, enforcement challenges, potential for misuse, and technological constraints¹⁰.

The Right to be Forgotten (RTBF) is increasingly recognized as an essential aspect of privacy rights, particularly in the context of the Indian Constitution. This study explores the relationship between RTBF and the Right to Life under Article 21, highlighting key aspects and legal developments¹¹.

Foundation in Article 21: The Right to be forgotten is closely linked to Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The Supreme Court of India has

⁷ Werro, F. (2021). The Right to Be Forgotten (pp. 557–575). Springer, Cham. https://doi.org/10.1007/978-3-030-48675-4_19

⁸ Erasing the archives: right to be forgotten in cyber world. (2022). Russian Law Journal. <https://doi.org/10.52783/rj.v10i2.284>

⁹ Murphy, C. J. (2022). The right to be forgotten: A new human right? *Cifrovoe Pravo*, 3(4), 89–106. <https://doi.org/10.38044/2686-9136-2022-3-4-89-106>

¹⁰ Pagallo, U., & Durante, M. (2014). Legal Memories and the Right to Be Forgotten (Vol. 17, pp. 17–30). Springer, Cham. https://doi.org/10.1007/978-3-319-05720-0_2

¹¹ Antipov, A. V., & Trusov, I. A. (n.d.). Right to be forgotten: ethical and political aspects. *Философский Журнал*. <https://doi.org/10.21146/2072-0726-2023-16-3-163-177>

recognized that this right encompasses the right to privacy, thereby establishing a legal basis for RTBF as a component of the broader right to life¹².

Judicial Precedents: In the landmark case of **Puttaswamy v. Union of India**, the Supreme Court affirmed that the Right to be Forgotten is part of the right to privacy. This ruling underscores the importance of individual dignity and autonomy, suggesting that individuals have the right to control their personal information and seek its removal from public access when it is no longer relevant or necessary¹³

Balancing Rights: The implementation of RTBF must balance the individual's right to privacy with the public's right to information. The courts have emphasized that while privacy is a fundamental right, it should not infringe upon the freedom of expression and the public interest. This balancing act is crucial in determining the outcomes of RTBF requests.

Case Studies: Recent cases, such as that of Ashutosh Kaushik, illustrate the practical application of RTBF in India. Kaushik's petition to remove sensitive information from the internet highlights the psychological impact of online content on individuals and the need for legal mechanisms to address such concerns¹⁴.

Challenges Ahead: Despite the recognition of RTBF, challenges remain in its implementation. Issues such as the subjectivity of relevance, enforcement across jurisdictions, and potential misuse of the right pose significant hurdles. These challenges necessitate a careful and nuanced approach to ensure that the right is effectively protected while maintaining a balance with other fundamental rights¹⁵.

In conclusion, the Right to be forgotten is an evolving concept within the framework of the Indian Constitution, particularly under Article 21. As legal interpretations and societal norms continue to develop, the relationship between RTBF and the right to life will remain a critical area of study and legal discourse¹⁶.

¹² Zarrin, S., & Mendieta, I. U. (2024). Challenges in Upholding Human Autonomy through the Right to be Forgotten. <https://doi.org/10.4995/carma2024.2024.17838>

¹³ Ibid.

¹⁴ Sriram, G., Jones, S., & Vahini, J. B. R. (2024). Ethical Imperatives and Technical Realities: Implementing the Right to be Forgotten in Artificial Intelligence. *Deleted Journal*, 2(12), 3479–3488. <https://doi.org/10.47392/irjaem.2024.0514>

¹⁵ Ibid.

¹⁶ Kelly, M. J., Kelly, M. J., Kelly, M. J., & Satola, D. (2017). The Right to Be Forgotten. *Social Science Research Network*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2965685 Voss, W. G., & Castets-Renard, C. (2016).

Impact of the Right to Be Forgotten On Judicial Precedents

The Right to be Forgotten (RTBF) has significant implications for judicial precedents, particularly in how courts interpret privacy rights and balance them against public interests. Here are some key points regarding its impact:

Recognition of Privacy Rights: The RTBF has led to a broader recognition of privacy rights within judicial precedents. The landmark case of *Puttaswamy v. Union of India* established that the right to privacy is a fundamental right under Article 21 of the Indian Constitution. This case set a precedent that supports the notion that individuals have the right to control their personal information, which is foundational for RTBF¹⁷.

Legal Evolution: The RTBF was first acknowledged in the case of *Google Spain SL v. Agencia Española de Protección de Datos*, which has influenced subsequent judicial decisions globally, including in India. This case serves as a reference point for courts when considering the implications of online information and the rights of individuals to have certain data removed

Balancing Rights in Judgments: Courts are increasingly tasked with balancing the right to privacy against the right to freedom of expression and the public's right to information. This balancing act is evident in various cases where the courts have had to weigh the psychological impact of online content on individuals against the societal interest in accessing that information. For instance, in the case of *Jorawer Singh Mundy vs. Union of India*, the court recognized the individual's claim to have certain data deleted, reflecting the evolving judicial stance on RTBF¹⁸.

Case Law Development: Judicial precedents related to RTBF are still developing, as seen in cases like *Sredharan T v. State of Kerala*, where the court acknowledged the right to privacy without explicitly using the term 'right to be forgotten.' This indicates a growing recognition of the need to protect individuals' reputations and privacy in the digital age, which may influence future rulings¹⁹.

Challenges in Implementation

Proposal for an International Taxonomy on the Various Forms of the “Right to Be Forgotten”: A Study on the Convergence of Norms. Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3418877

¹⁷ Voss, W. G., & Castets-Renard, C. (2016). Proposal for an International Taxonomy on the Various Forms of the “Right to Be Forgotten”: A Study on the Convergence of Norms. Social Science Research Network. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3418877

¹⁸ Ibid.

¹⁹ Weber, R. H. (2011). The right to be forgotten: more than a Pandora's box? 2(2), 120–130. <https://www.jipitec.eu/issues/jipitec-2-2-2011/3084>

The implementation of RTBF poses challenges for courts, including defining the scope of the right and determining the criteria for its application. These challenges can lead to varied interpretations in different jurisdictions, affecting the consistency of judicial precedents related to RTBF²⁰. The Right to be forgotten is reshaping judicial precedents by reinforcing privacy rights, influencing legal interpretations, and prompting courts to navigate the complexities of balancing individual rights with public interests. As this area of law continues to evolve, it will likely lead to further developments in judicial precedents²¹.

Jorawer Singh Mundy vs Union of India²²

Jorawer Singh Mundy, an American citizen, sought help from the court to remove a past judgment from an online database that harmed his reputation, despite being cleared of all charges. The case highlighted the “Right to be forgotten”, which allows individuals to request the removal of personal information from the internet to protect their privacy and social image²³.

Conclusion

The Right to be Forgotten (RTBF) represents a significant evolution in the legal landscape concerning privacy and personal data protection. The RTBF is increasingly recognized as an extension of the fundamental right to privacy, as established in landmark cases like Puttaswamy v. Union of India. This recognition underscores the importance of individual autonomy over personal information and the need for legal frameworks to protect it. The RTBF has influenced judicial precedents by prompting courts to consider privacy rights alongside freedom of expression. Cases such as Jorawer Singh Mundy vs. Union of India illustrate how courts are beginning to acknowledge the need for individuals to have control over their digital footprints, thereby setting important precedents for future cases. The principles of RTBF have transcended borders, with international cases like Google v. Spain serving as a reference point for courts worldwide. This global perspective encourages a more unified approach to privacy rights, influencing how different jurisdictions interpret and implement RTBF. In conclusion, the Right to be forgotten is a pivotal aspect of modern privacy law, shaping judicial precedents and influencing the discourse on individual rights in the

²⁰ The Right To Be Forgotten was first acknowledged in the globally famous case of Google Spain SL, Google Inc v Agencia Española de Protección de Datos, Mario Costeja González (2014).

²¹ Vardanyan, L., Kocharyan, H., Hamulak, O., Mesarčik, M., Kerikmäe, T., & Kookmaa, T. (2023). The Unwanted Paradoxes Of the Right to Be Forgotten. Masaryk University Journal of Law and Technology. <https://doi.org/10.5817/mujlt2023-1-3>

²² W.P.(C) 3918/2021 & CM APPL. 19941/2021

²³ Ibid.

digital age. Its ongoing evolution will be critical in defining the balance between privacy and public interest in the years to come. As technology evolves and more personal data becomes available online, the RTBF will likely continue to develop. Courts will need to adapt their interpretations and applications of this right to address new challenges, ensuring that privacy rights keep pace with technological advancements. Courts face the challenge of balancing the RTBF with public interests, such as the freedom of the press and the public's right to information. This balancing act is crucial in ensuring that the implementation of RTBF does not infringe upon other fundamental right.

Suggestions/ Recommendations

The Right to be Forgotten (RTBF) is a developing area of law that requires careful consideration and ongoing refinement. Here are some suggestions to enhance its effectiveness and implementation:

Clear Legal Definitions: Establishing clear definitions of what constitutes "personal data" and "sensitive information" is essential. This clarity will help individuals understand their rights and the scope of the RTBF, as well as assist courts in making consistent rulings

Streamlined Processes for Requests: Implementing a standardized process for individuals to request the removal of their data can simplify the procedure. This could include online platforms where users can submit requests, track their status, and receive timely responses from data controllers.

Balancing Rights: It is crucial to develop guidelines that balance the RTBF with the right to free speech and the public's right to information. Courts should be equipped with criteria to evaluate the necessity of removing data against the public interest, ensuring that the RTBF does not unduly infringe on journalistic freedom

Public Awareness Campaigns: Increasing public awareness about the RTBF and individuals' rights can empower more people to exercise their rights. Educational campaigns can inform citizens about how to navigate the process and the implications of their digital footprints

Regular Review and Adaptation: The legal framework surrounding the RTBF should be regularly reviewed and adapted to keep pace with technological advancements and societal changes. This could involve periodic assessments of how effectively the RTBF is being implemented and whether it meets the needs of individuals in a digital age

International Cooperation: Given the global nature of the internet, international cooperation is vital for the effective implementation of the RTBF. Countries should work together to create harmonized standards and practices that respect individuals' rights while considering the implications for cross-border data flows . Providing training for judges and legal practitioners on the nuances of the RTBF can enhance the quality of judicial decisions. This training should cover the intersection of privacy rights with other fundamental rights, ensuring informed and balanced rulings.