

The Right to be forgotten in India: Balancing privacy and freedom of expression

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ABSTRACT

The rapid expansion of digital technologies has transformed the way personal information is created, stored, and accessed, giving rise to concerns about the long-term consequences of permanent online records. In this context, the Right to be Forgotten (RTBF) has emerged as an important legal response aimed at protecting individuals from the continued accessibility of personal information that has lost its relevance over time. In India, the recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India* marked a significant development in the evolution of informational privacy and opened the possibility for recognising claims related to RTBF. However, the absence of a specific statutory framework has left the scope and application of the right largely dependent upon judicial interpretation. This paper critically examines the constitutional foundations of RTBF in India and analyses the judicial developments that have followed the *Puttaswamy* decision. It further undertakes a comparative study of the European Union's General Data Protection Regulation (GDPR), particularly Article 17, to understand how privacy interests can be balanced with freedom of expression and the public's right to information. Adopting a doctrinal and analytical methodology, the study relies on constitutional provisions, judicial decisions, legislation, and scholarly literature to evaluate the emerging legal position. The study finds that Indian courts have increasingly recognised the harms caused by perpetual digital exposure, particularly in cases involving acquittals, outdated allegations, and the unnecessary disclosure of personal information. At the same time, the research highlights the risks associated with recognising RTBF without adequate safeguards, including its potential impact on transparency, press freedom, and open justice. The paper argues that India requires a clear and balanced legal framework that protects individual dignity and informational privacy while preserving democratic values and legitimate public interest. Such an approach would enable the law to respond more effectively to the challenges posed by the internet's enduring memory in an increasingly digital society.

KEYWORDS

Right to be Forgotten (RTBF); Informational Privacy; Right to Privacy; Freedom of Expression; Digital Personal Data Protection; *Justice K.S. Puttaswamy*; GDPR; Right to Erasure; Digital Memory; Constitutional Law; Open Justice; Human Dignity; Data Protection; Judicial Trends; Digital Rights.

INTRODUCTION

The digital age has transformed the way information is created, shared, and preserved. Unlike traditional records that gradually faded from public attention, information available on the internet often remains accessible indefinitely. Search engines, social media platforms, online archives, and digital databases have created a form of "permanent memory" in which personal information can be retrieved instantly, regardless of the passage of time or changes in an individual's circumstances. While this accessibility promotes transparency and facilitates the free flow of information, it also raises serious concerns regarding privacy, dignity, and reputation. Individuals may continue to be associated with outdated allegations, acquitted criminal proceedings, personal disputes, or youthful mistakes that no longer reflect their present identity. The persistent availability of such information can adversely affect employment opportunities, social relationships, and psychological well-being. In many cases, the internet's inability to forget may prevent individuals from moving beyond their past. The Right to be Forgotten (RTBF) has emerged as a legal response to these concerns. Broadly, it refers to an individual's ability to seek the deletion, de-indexing, anonymisation, or restricted accessibility of personal information when its continued availability is no longer necessary, relevant, or justified by public interest. The right is based on the idea that privacy in the digital era includes a degree of control over one's personal data and the ability to protect individual dignity from unnecessary and disproportionate exposure. Internationally, the concept gained prominence through the decision of the Court of Justice of the European Union in *Google Spain SL v. Agencia Española de Protección de Datos and Mario Costeja González* (2014), which later influenced the incorporation of the "Right to Erasure" under Article 17 of the General Data Protection Regulation (GDPR). However, even within the European framework, the right is not absolute and must be balanced against competing interests such as freedom of expression and the public's right to information.

In India, the discourse surrounding RTBF acquired constitutional significance after the Supreme Court's landmark judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), which recognised the Right to Privacy as a fundamental right under Article 21 of the Constitution. The Court acknowledged informational privacy as an essential aspect of individual liberty and dignity, thereby laying the foundation for future claims relating to digital erasure and control over personal information. Although RTBF has not yet been expressly recognised as an independent constitutional right, several High Courts have addressed issues concerning the removal of online content, anonymisation of judicial records, and de-indexing of search engine results. These judicial developments reflect the growing tension between two important constitutional values: the individual's right to privacy and the freedom of speech and expression guaranteed under Article 19(1)(a). Excessive recognition of RTBF may undermine transparency, press freedom, and the principle of open justice, whereas the absence of adequate safeguards may expose individuals to perpetual stigma and reputational harm. Against this backdrop, the

present study critically examines the emergence of the Right to be Forgotten in India. It analyses post-*Puttaswamy* judicial developments, compares the Indian position with the GDPR framework, and evaluates whether a balanced approach can be developed to reconcile privacy interests with freedom of expression in the digital age. The study argues that India requires a clear and principled framework that protects individual dignity while preserving democratic values and the public interest.

RESEARCH OBJECTIVES

The present study aims to critically examine the emergence and evolving recognition of the Right to be Forgotten within the Indian legal framework in the aftermath of the *Justice K.S. Puttaswamy* judgment. It seeks to analyse how Indian courts have attempted to balance the individual's right to privacy and dignity with the constitutional guarantee of freedom of speech and expression. The study further endeavours to compare the Indian approach with the framework established under the General Data Protection Regulation (GDPR) in order to identify principles that may be adapted to the Indian context. Finally, the research aims to propose a balanced and rights-oriented framework that addresses the challenges posed by permanent digital memory while safeguarding public interest, transparency, and democratic values.

RESEARCH METHODOLOGY

The present study adopts a doctrinal research methodology and is primarily based on qualitative analysis of legal materials. It examines constitutional provisions, judicial decisions, and statutory frameworks relating to the Right to be Forgotten in India, with particular focus on developments following the *Justice K.S. Puttaswamy* judgment. A comparative approach has also been employed to analyse the provisions of the GDPR and draw relevant insights for the Indian context. The research relies on both primary sources, including case laws and legislation, and secondary sources such as books, journal articles, reports, and scholarly writings. Through analytical and comparative methods, the study seeks to evaluate the existing legal position and explore a balanced approach that protects informational privacy while preserving freedom of expression and the public interest.

CONCEPT AND EVOLUTION OF THE RIGHT TO BE FORGOTTEN

The Right to be Forgotten (RTBF) has emerged as one of the most significant developments in contemporary privacy law. It is founded on the broader values of privacy, dignity, and individual autonomy, all of which recognise that people should have a meaningful degree of control over their personal information. In an era where digital platforms preserve and circulate data indefinitely, RTBF seeks to protect individuals from the continuing impact of information that may have lost its relevance over time. The underlying idea is not to erase history, but to ensure that a person's past does not permanently define his or her present identity. The conceptual roots

of RTBF can be traced to the principle of informational self-determination, which originated in European legal thought and emphasises an individual's right to determine how personal information is collected, used, and shared. This principle acknowledges that personal data is closely linked to human dignity and personal autonomy. Modern privacy jurisprudence increasingly recognises that privacy extends beyond protection against physical intrusion and includes the ability to exercise control over one's digital identity and personal narratives.

The contemporary legal recognition of RTBF is closely associated with developments in the European Union. A turning point came with the decision of the Court of Justice of the European Union in *Google Spain SL v. Agencia Española de Protección de Datos and Mario Costeja González* (2014). In this case, the Court held that individuals could request search engines to remove links to personal information that had become inadequate, irrelevant, or excessive in relation to the purpose for which it had originally been processed. The judgment acknowledged that while information may have been lawfully published, its continued accessibility through search engines could disproportionately interfere with an individual's privacy and reputation. The significance of the *Google Spain* decision extended beyond Europe and shaped global conversations on digital privacy and data protection. Its principles were subsequently incorporated into Article 17 of the General Data Protection Regulation (GDPR), which formally recognises the "Right to Erasure." The provision enables individuals to seek the deletion of personal data under specified circumstances, while also preserving exceptions relating to freedom of expression, public interest, scientific research, and legal obligations. Thus, the evolution of RTBF reflects an ongoing effort to strike a balance between an individual's interest in privacy and society's commitment to transparency and access to information.

CONSTITUTIONAL FOUNDATION OF THE RIGHT TO BE FORGOTTEN IN INDIA

The constitutional basis of the Right to be Forgotten (RTBF) in India can be traced to the Supreme Court's landmark decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), which fundamentally transformed the understanding of privacy under the Indian Constitution. In this historic judgment, a nine-judge Bench unanimously recognised the Right to Privacy as a fundamental right intrinsic to the guarantees of equality, freedom, and life and personal liberty enshrined under Articles 14, 19, and 21 of the Constitution. The Court observed that privacy is not a narrow or isolated concept; rather, it is closely connected with human dignity, personal autonomy, and the freedom of individuals to make choices that shape their lives. One of the most significant contributions of the *Puttaswamy* judgment was its recognition of informational privacy as an essential facet of the right to privacy. The Court acknowledged that technological advancements have enabled the large-scale collection, storage, and processing of personal data, often without individuals having meaningful control over how such information is used. In a digital society, where personal information can be preserved and accessed indefinitely, the Court

cautioned that unchecked data practices have the potential to threaten individual liberty and dignity.

Although the Supreme Court did not expressly recognise the Right to be Forgotten as a separate constitutional right, its observations on informational control provided an important foundation for its future development. The judgment implicitly recognised that individuals have a legitimate interest in limiting the unnecessary dissemination of personal information, particularly when such disclosure causes disproportionate harm to privacy and reputation. In this sense, *Puttaswamy* opened the door for subsequent judicial recognition of claims seeking the removal, de-indexing, or restricted accessibility of personal data in the digital sphere. The decision also marked a significant shift in Indian constitutional jurisprudence. Traditionally, privacy was viewed largely as a safeguard against arbitrary State action. However, *Puttaswamy* adopted a broader understanding by acknowledging that threats to privacy may also arise from non-state actors, including private corporations and digital intermediaries that control vast amounts of personal data. This expanded vision of privacy reflects the realities of the information age and provides the constitutional framework within which debates concerning the Right to be Forgotten continue to evolve in India.

POST- JUDICIAL DEVELOPMENTS

The recognition of privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India* marked the beginning of a new phase in Indian privacy jurisprudence. Although the Supreme Court did not expressly recognise the Right to be Forgotten (RTBF), its emphasis on informational privacy encouraged individuals to seek judicial protection against the continued availability of personal information in the digital domain. As a result, Indian courts have increasingly been called upon to address disputes involving online privacy, digital reputation, and requests for the removal or restricted accessibility of personal data. One of the earliest cases reflecting this shift was *Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.* (2019), where the Delhi High Court acknowledged that the right to privacy may, in certain situations, outweigh unrestricted disclosure of personal allegations. The Court recognised that the publication of sensitive information must be balanced against the individual's interest in preserving dignity and reputation, particularly where the information does not serve an overriding public purpose. A more direct engagement with the idea of RTBF emerged in *Jorawar Singh Mundy v. Union of India* (2021). In this case, the Delhi High Court considered the plea of an individual who had been acquitted of criminal charges but continued to face adverse consequences because court records remained easily accessible through online search results. The Court directed the removal of the relevant judgment from certain digital platforms, observing that perpetual association with past criminal proceedings could seriously affect a

person's professional opportunities and social standing, despite the absence of any finding of guilt.

Subsequently, several High Courts have dealt with petitions seeking anonymisation of names in judicial records, de-indexing of search engine results, and protection against the unnecessary disclosure of personal information. These cases demonstrate a growing judicial awareness of the harms caused by the internet's enduring memory and the need to protect individuals from disproportionate and continuing prejudice. At the same time, Indian courts have been cautious in their approach. Rather than treating RTBF as an absolute entitlement, they have preferred to assess each case on its own facts by weighing privacy interests against competing considerations such as freedom of expression, public interest, transparency, and the principle of open justice. This case-by-case approach reflects an attempt to balance constitutional values, but it has also resulted in differing standards and inconsistent outcomes. The emerging jurisprudence suggests that Indian courts recognise the importance of protecting informational privacy in the digital age. However, the absence of a comprehensive legislative framework has left the scope and application of RTBF largely dependent on judicial discretion. This evolving landscape underscores the need for clear statutory guidance that can provide certainty, ensure uniformity, and establish objective standards for resolving future claims involving the Right to be Forgotten.

COMPARATIVE ANALYSIS WITH THE GDPR

Among existing data protection regimes, the European Union has developed the most comprehensive framework relating to the Right to be Forgotten (RTBF). The General Data Protection Regulation (GDPR), particularly Article 17, formally recognises the "Right to Erasure" and grants individuals the ability to request the deletion of their personal data under specific circumstances. This provision reflects the European commitment to protecting informational privacy and ensuring that individuals retain a degree of control over their digital identities. Under Article 17, individuals may seek the erasure of personal data when the information is no longer necessary for the purpose for which it was originally collected, when consent has been withdrawn, when the processing of data lacks a lawful basis, or when deletion is required to comply with a legal obligation. The underlying rationale is that personal data should not be retained indefinitely without justification, particularly when its continued processing no longer serves a legitimate purpose. However, the GDPR does not treat RTBF as an unrestricted right. The Regulation carefully balances privacy interests against other important societal values. Requests for erasure may be refused where the retention of information is necessary to safeguard freedom of expression and information, fulfil legal obligations, protect public health, support scientific or historical research, or serve archiving purposes in the public interest. In this way, the European approach recognises that the protection of privacy must coexist with transparency, accountability, and the public's right to know.

The European experience demonstrates that privacy and free speech need not be viewed as competing absolutes. Instead, a contextual balancing exercise can ensure that neither value is sacrificed at the expense of the other. The legitimacy of an erasure request depends upon factors such as the nature of the information, the role of the individual in public life, the passage of time, and the continuing relevance of the data to public discourse. In contrast, India has yet to establish a dedicated legal framework specifically governing the Right to be Forgotten. Although recent legislative developments, particularly the Digital Personal Data Protection Act, 2023, indicate an increasing recognition of data-related rights, they do not provide a detailed mechanism equivalent to Article 17 of the GDPR. Questions relating to de-indexing, anonymisation, and the removal of personal information continue to be addressed largely through judicial interpretation rather than through clearly defined statutory procedures. As a result, Indian courts have assumed a central role in shaping the contours of RTBF by attempting to balance informational privacy with freedom of expression and the principle of open justice. While this judicial approach has enabled the gradual development of the right, it has also led to uncertainty and inconsistent outcomes. The comparative study of the GDPR therefore offers valuable guidance for India, highlighting the importance of adopting a structured framework that protects individual dignity while preserving democratic values and the public interest.

BALANCING PRIVACY AND FREEDOM OF EXPRESSION

Perhaps the most difficult aspect of recognising the Right to be Forgotten (RTBF) is finding an appropriate balance between an individual's interest in privacy and society's commitment to freedom of expression. Both values occupy an important place within a constitutional democracy and neither can be regarded as absolute. The challenge lies in ensuring that the protection of one right does not unnecessarily diminish the other. Freedom of speech and expression serves as the foundation of democratic governance. Investigative journalism, academic inquiry, public debate, and historical documentation all depend upon the free flow of information. Public access to information promotes transparency, facilitates accountability, and enables citizens to participate meaningfully in democratic processes. If RTBF is interpreted too broadly, there is a genuine risk that it may be used to suppress truthful information, rewrite historical narratives, or shield influential individuals from legitimate public scrutiny. Politicians, public officials, and other persons occupying positions of power could invoke privacy claims to remove information that remains relevant to public interest and democratic accountability. At the same time, unrestricted and indefinite access to personal information can have serious consequences for individual dignity and reputation. The internet's permanent memory often fails to distinguish between information that continues to serve a public purpose and information that merely perpetuates stigma. Individuals who have been acquitted of criminal charges, victims seeking to rebuild their lives, or persons attempting to move beyond past mistakes may continue to suffer social and professional disadvantages because outdated information remains easily accessible online. In

such circumstances, the absence of any protective mechanism may undermine the constitutional values of dignity, autonomy, and the opportunity for rehabilitation.

The resolution of this conflict does not lie in giving automatic preference to either privacy or free expression. Instead, a nuanced and proportional approach is required. Decision-makers must assess the specific facts of each case by considering factors such as the public importance of the information, the role and status of the person concerned, the accuracy and continuing relevance of the material, the time that has elapsed since the events in question, and the extent of harm likely to result from continued disclosure. Such a balancing exercise recognises that privacy and freedom of expression are not necessarily opposing values but complementary rights that must coexist within a constitutional framework committed to both individual dignity and democratic openness. A carefully structured balancing model would therefore allow the Right to be forgotten to operate as a shield against disproportionate and unnecessary harm without transforming it into an instrument of censorship. In the Indian context, where both privacy and free speech enjoy constitutional protection, the future development of RTBF will ultimately depend upon the ability of courts and lawmakers to reconcile these competing interests in a manner that preserves human dignity while safeguarding the public's right to know

FINDINGS AND SUGGESTIONS

The present study indicates that the Right to be Forgotten (RTBF) is gradually finding a place within the broader framework of informational privacy in India. Although Indian law does not expressly recognise RTBF as an independent statutory right, judicial decisions delivered after the *Puttaswamy* judgment reveal an increasing awareness of the harms caused by the indefinite availability of personal information in the digital space. Courts have acknowledged that unrestricted access to outdated or irrelevant information can adversely affect an individual's dignity, reputation, and ability to reintegrate into society. At the same time, the emerging jurisprudence demonstrates a cautious approach, with courts attempting to balance privacy interests against competing concerns such as freedom of expression, transparency, and the principle of open justice. However, the study also highlights significant gaps in the existing legal framework. In the absence of clear legislative guidance, courts have been compelled to decide RTBF claims on a case-by-case basis, often relying on broad constitutional principles. While this approach has allowed the law to evolve gradually, it has also resulted in uncertainty and inconsistent outcomes. Similar cases may receive different treatment depending on the facts and judicial interpretation, creating unpredictability for individuals seeking relief as well as for digital intermediaries responsible for implementing such decisions. In light of these findings, there is a pressing need for India to develop a coherent legal framework addressing the Right to be Forgotten. Any future legislation should clearly define the scope and limitations of the right

and specify the circumstances in which requests for de-indexing, anonymisation, or removal of personal information may be entertained. A simple and accessible procedure should be established to enable individuals to seek redress without engaging in prolonged litigation. At the same time, the framework must incorporate safeguards to prevent misuse of the right by persons attempting to suppress information that continues to serve a legitimate public purpose.

The study further suggests that exceptions relating to journalistic reporting, academic research, historical records, and matters of public interest should be expressly protected. Independent oversight through a specialised regulatory authority or adjudicatory body may help ensure consistency and reduce the burden on constitutional courts. Transparency in decision-making is equally important, as clear reasoning and published standards would enhance public confidence and accountability. Ultimately, the objective should not be to create a mechanism for erasing inconvenient truths or rewriting history. Rather, the law should seek to strike a fair balance between the individual's right to dignity and society's interest in preserving access to information. A carefully designed RTBF framework has the potential to protect individuals from disproportionate digital harm while upholding the constitutional values of free expression, transparency, and democratic accountability.

CONCLUSION

The emergence of the Right to be forgotten reflects one of the most complex legal questions of the digital era: how should the law respond when technology preserves information long after its social relevance has faded? In a world where the internet rarely forgets, individuals may continue to be judged by events from their past, regardless of personal growth, rehabilitation, or changed circumstances. The challenge, therefore, is not simply about deleting information but about preserving human dignity in an age of permanent digital memory. The recognition of the right to privacy as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India* marked a significant turning point in Indian constitutional jurisprudence. Although the Supreme Court did not expressly recognise the Right to be Forgotten, its emphasis on informational privacy created the constitutional foundation upon which subsequent claims have evolved. The decisions of various High Courts demonstrate a growing judicial sensitivity towards the harms caused by unrestricted digital exposure. At the same time, these decisions reveal the difficulties involved in balancing privacy with freedom of expression, transparency, and the principle of open justice. This study finds that the Indian approach to RTBF remains largely fragmented and dependent on judicial discretion. While courts have attempted to protect individuals from disproportionate harm, the absence of a clear legislative framework has led to uncertainty regarding the scope, limitations, and enforcement of the right. The experience of jurisdictions such as the European Union illustrates that privacy and freedom of expression need not be viewed as competing

absolutes. Rather, both can coexist through a carefully designed framework based on proportionality, public interest, and accountability.

India's response to the Right to be forgotten must therefore be guided by constitutional values rather than technological anxiety. The objective should not be to erase history or conceal matters of legitimate public concern, but to prevent the indefinite circulation of information that serves little public purpose while causing serious and continuing harm to individuals. A balanced legal framework, supported by clear procedures and appropriate safeguards, can ensure that the protection of privacy does not become a tool for censorship, nor freedom of expression a justification for perpetual digital punishment. Ultimately, the debate surrounding the Right to be Forgotten is a debate about the kind of digital society India seeks to build. It requires an acknowledgment that while accountability and transparency are essential to democracy, dignity and the possibility of moving beyond one's past are equally important to human freedom. The future development of RTBF in India will depend upon the ability of lawmakers and courts to reconcile these values in a manner that is principled, humane, and responsive to the realities of the information age.

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