

RIGHT TO BE FORGOTTEN VIS-À-VIS RIGHT TO PRIVACY UNDER CONSTITUTION OF INDIA

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ABSTRACT;The importance of privacy in the digital age has been a topic of extensive debate since the start of this decade. As technological advancements continue, there is massive generation, storage and sharing of personal data on various digital platforms. During this era, both state and non-state actors have witnessed almost an exponential increase in their capacity to gather and analyze data most often without the individual's consent or knowledge. With advancement in digital technologies, informational privacy has become more important forcing legal frameworks and judicial interventions to change. The world's legal system has slowly started interpreting these laws and coming up with new ones to govern Informational Privacy and one crucial factor about Informational Privacy is Right to be forgotten (hereafter referred as RTBF). The RTBF, as a subset of this broader right, allows individuals to request the erasure of their personal data from public or digital platforms, thereby ensuring that their privacy is safeguarded from unnecessary exposure or misuse. The SC in *Justice K.S. Puttaswamy & Anr. v. Union of India & Ors*⁶⁶ affirmed this connection, recognizing RTBF as a part of Right to privacy. The Digital Personal Data Protection (DPDP) Act, 2023 enhances the RTBF in India by establishing a legal mechanism through which individuals can

⁶⁶ *Justice K.S. Puttaswamy & Anr. v. Union of India & Ors*, AIR 2018 SC 1841

seek the removal of their personal data. Following the enactment of the DPDP Act, 2023, the debate surrounding the RTBF in India has resurfaced, raising important questions about its position within the Indian legal framework. To fully understand the implications of the RTBF, it must be analyzed in conjunction with the Right to Privacy, as both fall under the broader scope of informational privacy. This work critically examines the RTBF and the Right to Privacy, considering their constitutional basis under Article 21, recent judicial rulings, and the provisions of the DPDP Act, 2023.

Keywords: Right to be Forgotten, Right to Privacy, DPDP Act, 2023, Data in Digital Age

INTRODUCTION

Privacy is a fundamental element of personal freedom, originating from the Latin term 'privatus,' which signifies something private, secret, or personal, distinct from public or state ownership.⁶⁷ This concept entails the control over one's personal affairs, allowing individuals to decide what aspects of their lives to keep confidential. Globally, the right to privacy is considered as a basic human right under Art.12 of the UDHR of 1948.⁶⁸ In India, this right is enshrined as a fundamental right under Art.21 of the Const., a status that was affirmed by the SC in the pivotal case **Justice K.S. Puttaswamy & Anr. v. Union of India & Ors**⁶⁹

The Puttaswamy case stands as a landmark judgment for several reasons, and one the facet for which it is remembered is its emphasis on recognizing and protecting informational privacy in India. The SC of India held that to make the right to privacy meaningful, the state must establish a robust data protection framework

67 Payal Thaorey, *Informational Privacy: Legal Introspection in India*, II ILI L. Rev. 161, 162 (2019).

68 Aysem Diker Vanberg, THE RIGHT TO PRIVACY REVISITED: DIFFERENT INTERNATIONAL PERSPECTIVE 56 (2021)

69 *Supra* 1

and give due respect to the informational privacy. The Court outlined the state's duty to ensure that such protections are in place, thereby guiding the committee responsible for creating the data protection framework to prioritize these principles. This judgment has significantly shaped the legal landscape concerning privacy and data protection in India, highlighting the necessity for comprehensive measures to protect personal information in the digital age.

The DPDP Act, 2023 strengthens the RTBF in India by providing a legal framework for individuals to request the erasure of their personal data.⁷⁰ This right is derived from the fundamental right to informational privacy, which is a facet of the right to life and personal dignity under Art.21 of the Indian Const. The SC's landmark judgment in *Justice K.S. Puttaswamy & Anr. v. Union of India & Ors*⁷¹ highlighted this connection and established the right to privacy as a fundamental right. The DPDP Act, 2023 builds upon this by granting data principals (individuals) the right to request the erasure of their personal data in certain circumstances.⁷² The Act also outlines the provisions for the establishment of the Data Protection Board of India, which can adjudicate on complaints related to the violation of data principals' rights, including the Right to Be Forgotten.

The inclusion of the RTBF in the DPDP Act strengthens individuals' control over their personal information in the digital space.⁷³ It allows data principals to seek the removal of outdated, irrelevant, or unnecessary personal data, thereby mitigating potential harm caused by the persistence of such information online. This legislative framework, coupled with the SC's recognition of the right to informational privacy, provides a robust legal basis for enforcing the RTBF in

70 Th Digital Personal Data Protection Act, 2023, S.12

71 *Supra* 1

72 Rang Nath Pandey, LAW OF DIGITAL PERSONAL DATA PROTECTION IN INDIA 66 (2024)

73 D P Mittal, COMMENTARY ON THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 65 (2023)

India. It aligns with global trends in data protection and privacy laws, such as the EU GDPR, which also grants individuals the right to erasure

The DPDP Act, 2023 marks a pivotal step in protecting individuals' privacy rights in the rapidly expanding digital landscape.⁷⁴ By incorporating the Right to Be Forgotten, the Act empowers data principals to exercise greater control over their personal information and seek the removal of data that may be detrimental to their interests. This legal framework, built upon the foundation of the fundamental right to privacy, ensures that the right to informational self-determination is upheld in the digital realm.

In 2015, Russia enacted a law empowering individuals to compel search engines to delete their personal information upon request. This deletion can be pursued on grounds such as legal violations, irrelevancy, or inaccuracy. Similarly, the RTBF has gained significant recognition in other countries, including Siberia and Turkey, reflecting a broader global trend towards enhancing individuals' authority over their personal data.

CONCEPTUAL ANALYSIS OF RIGHT TO PRIVACY AND THE RIGHT TO BE FORGOTTEN

Privacy is a fundamental human right that underpins individual autonomy and dignity, allowing control over personal information, freedom from unwarranted surveillance, and the ability to make personal choices without interference. In India, significant judicial and legislative milestones have marked the evolution of privacy rights, notably the Supreme Court's ruling in *Justice K.S. Puttaswamy & Anr. v. Union of India & Ors*⁷⁵, which established privacy as a fundamental right under Article 21 of the Constitution. This landmark decision underscored the necessity for a comprehensive data protection framework to safeguard informational privacy

⁷⁴ Puneet Bhasin, PRACTICAL GUIDE TO DIGITAL PERSONAL DATA PROTECTION ACT, 2023 68 (2024)

⁷⁵ *Supra* 1

against threats from both state and non-state actors, emphasizing the critical nature of protecting personal information in today's digital landscape. Historically, privacy was not explicitly recognized as a fundamental right; early judgments, such as *MP Sharma v. Satish Chandra*⁷⁶ and *Kharak Singh v. State of Uttar Pradesh*⁷⁷, dismissed it as such. However, dissenting views, particularly from Justice Subba Rao, contributed to the eventual acknowledgment of privacy as a fundamental right in the case of *Gobind v. State of Madhya Pradesh*⁷⁸. Further solidifying this right, the Digital Personal Data Protection Act, 2023 empowers individuals to request the deletion of their personal data, thereby enhancing the Right to Be Forgotten and providing greater control over personal information in the digital space.

The RTBF, also referred to as the "right to erasure", is the jurisprudence that gives individuals rights over the deletion of their personal data from online platforms and search engines.⁷⁹ This right is based on the premise of an individual being entitled to their personal information and, if so wishes, to withdraw consent for the use of that information. When the legal basis for processing data is no longer valid, such as when consent is withdrawn or the data is no longer necessary for the original purpose, individuals can demand the erasure of their data. In the event of a successful erasure request, the data controller must remove the personal data and take reasonable steps to inform any third parties holding or processing the same information to delete it as well. This includes removing any links, copies, or replicas of the data.

The RTBF comes from French law. More correctly termed as the "right to oblivion," this right had the purpose of aiding people who had already served their sentence in readjusting to society by prohibiting the publication of information

⁷⁶ *MP Sharma v. Satish Chandra*, A.I.R 1954 S.C 300 (India)

⁷⁷ *Kharak Singh v. State of Uttar Pradesh*, A.I.R 1963 S.C 1295(India)

⁷⁸ *Gobind v. State of Madhya Pradesh* A.I.R 1975 S.C 1378 (India)

⁷⁹ Rahul Kandharkar, AN INSIGHT ON THE DIGITAL PERSONAL DATA PROTECTION ACT, 2023 112 (2023)

about past crimes. The EU Data Protection Directive of 1995 further developed this idea by introducing Art.12, which required member states to provide individuals with the ability to control, rectify, erase, or block data pertaining to them. This is not an absolute right, and there are a number of exemptions to this, including when the data may be required to exercise the right of freedom of expression, compliance with a legal obligation, or performance of a task carried out in the public interest. However, the principle nonetheless remains an important tool for individuals to gain greater control of their online presence and personal information.

The "RTBF" has evolved within the EU context and became a much-hyped legal fight after the landmark judgment in the case of **Google Spain**⁸⁰. In this landmark judgment, the ECJ held that Google was obliged, being the leading search engine, to remove links to personal data at the request of the EU citizens where the information was obsolete or no longer relevant. This judgment marked an important milestone in the evolution of data protection rights.

The principle of the RTBF was formally established in Art.17 of the GDPR enacted in 2016, which empowers individuals to request the deletion of personal data that is no longer necessary or relevant. This legal framework enhances individuals' control over their personal information in the digital landscape and reflects the EU's dedication to safeguarding privacy in an increasingly interconnected environment.

The incorporation of the RTBF into the GDPR has far-reaching implications, highlighting the need to balance individual privacy rights with the public's right to access information. This regulatory advancement sets a significant precedent for

⁸⁰ *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González*, C-131/12, ECLI:EU:C:2014:317

data protection laws worldwide, influencing how personal data is managed and protected across various jurisdictions.

In the landmark judgment of the *TU & RE v. Google LLC*⁸¹, the ECJ determined that the responsibility to prove the inaccuracy of information lies with the data principal. Only when this inaccuracy is established does the duty of the data fiduciary to remove the information arise. Moreover, the court extended the scope of the right to erasure defined in the Google Spain case, now including the removal of photographs or thumbnails even if they link to the original source. This removal, however, must be balanced against the rights and public interest involved.

Close to that time, In 2017, the SC of India, in its landmark Judgement of *Justice K.S. Puttaswamy & Anr. v. Union of India & Ors*⁸² decision, given due recognition to the right to privacy as a fundamental right under Art.21 of the Indian Const. This recognition came from a historic ruling by a Nine-Judge Bench, which underscored the significance of privacy in the digital age. The right to informational privacy has become increasingly critical as technology advances, with individuals leaving digital footprints across various platforms, whether private or governmental. Sensitive personal information is readily available on media platforms, particularly social media, which exposes individuals to potential misuse by malicious actors or exploitation by large corporations for personal gain. The "RTBF" emerges as a vital mechanism, allowing individuals to control the spread of their personal information online, thereby preventing the rampant misuse of freely accessible data on the internet. Nonetheless, several High Courts have acknowledged its importance, drawing inspiration from the observations made by Justices Rohinton F. Nariman and Sanjay Kishan Kaul in the Puttaswamy judgment. These courts have issued interim orders that uphold the "RTBF" as an integral element of the

⁸¹ *TU & RE vs Google LLC*, CJEU - C-460/20

⁸² *Supra 1*

fundamental right to privacy, signaling a progressive shift towards its broader acceptance and implementation in India.

In the 2023 case of *Vyskh K.G. v UOI*,⁸³ the Court permitted the masking of names in family and matrimonial cases, citing the RTBF as the basis for this decision.

In the recent case of *ABC v. UOI and Others*⁸⁴, the HC of Bombay directed to remove the acquittal order of an individual from the official cite of the Court. This decision was made in response to a plea by an individual who had been acquitted but was facing issues in securing employment due to the publicly accessible acquittal order.

RIHT TO BE FORGOTTEN AS A PART OF RIGHT TO PRIVACY UNDER INDIAN CONSTITUTION

The concept of the RTBF has not been explicitly mentioned under the Indian Constitution. However, through a series of judicial pronouncements, the judiciary has recognized and outlined that RTBF is intricately intertwined with the Right to Privacy. In various judgments, the courts have elucidated that the Right to Privacy encompasses not only the protection of personal information but also the right to control and manage one's digital identity. This evolution has been particularly pronounced in cases involving the removal of objectionable or outdated information from online platforms, where the courts have emphasized an individual's right to be free from unwarranted intrusion into their private affairs.

In the Indian context, the Supreme Court's landmark 2017 judgment *in Justice K.S. Puttaswamy & Anr. v. Union of India & Ors*⁸⁵ of India highlighted that the RTBF is encompassed within the broader right to privacy. This recognition underscored the integral role of RTBF in protecting individuals' personal data and maintaining their autonomy over their digital presence.

83 *Vyskh K.G. v Union of India*, WP(C) 26500/2020

84 *ABC v. Union of India and Ors.*, W.P. No. 3499 of 2021

85 *Supra* 3

In 2017, the Karnataka High Court made a significant ruling in the case of **Sri Vasunathan v. The Registrar-General**⁸⁶, which acknowledged the RTBF in India. This decision allowed individuals to request the removal of their names from judgments that could adversely affect their reputations, setting an important legal precedent for the erasure of personal data in sensitive situations.

Later, in 2019, the Delhi HC took further steps to reinforce this right in the case of **Zulfiqar Ahman Khan v. M/S Quintillion Business Media**⁸⁷. The petitioner sought to have two articles removed from a news website that discussed him in the context of the #MeToo movement. The court recognized the RTBF and the Right to Be Left Alone as fundamental aspects of the Right to Privacy. As a result, it mandated the removal of the articles, highlighting the necessity of safeguarding individuals from lasting reputational damage due to unverified claims.

In 2020, the Orissa HC acknowledged in the case of **Subhranshu Rout v. State of Odisha**⁸⁸, that the "RTBF" or the right to be "deleted" is indeed a part of the right to privacy. This case dealt with the removal of objectionable pictures and videos of a girl from social media. The court emphasized that once information enters the public domain, it becomes irretrievable, likening it to toothpaste that cannot be put back into the tube. The Indian Criminal Justice system imposes stringent penalties on accused individuals for serious crimes, yet it lacks mechanisms to protect victims' rights to have objectionable photographs removed from platforms like Facebook servers. The increasing prevalence of harassment, threats, and assaults online has become a significant concern for citizens, highlighting the urgent need for measures to address such insensitive behaviors on social media platforms. The victim in this case struggled unsuccessfully to permanently delete such photos

86 *Sri Vasunathan v. The Registrar-General*, 2017 SCC OnLine Kar 424

87 *Zulfiqar Ahman Khan v. M/S Quintillion Business Media*, CS (OS) 642/2018

88 *Subhranshu Rout v. State of Odisha*, 2021 SCC OnLine Del 2306

from servers, underscoring the challenges faced in managing one's online presence effectively.

In April 2021, the Delhi High Court, in the case of **Jorawar Singh Mundy v. UOI and Ors.**⁸⁹, issued an interim order recognizing the right to be "forgotten" as a component of the fundamental right to privacy.

The Karnataka High Court's ruling in the case of **X v. The Registrar General, High Court of Karnataka & Ors**⁹⁰ stands as a landmark precedent, notably recognizing the RTBF as an integral aspect of the right to informational privacy. The counsel for the High Court contended that masking of the name is permissible only for the victim and not the accused. It was stated that merely because he was discharged or acquitted would not mean that his name should not be used as an accused.

“Right to oblivion; right to be forgotten are the principles evolved by the democratic nations, as one being a facet of the right to informational privacy. Countries like France and Italy, had by themselves evolved the concept of right to oblivion, which dates back to the 19th century. Europe, in the European Union has, over privacy and personal data, evolved the principle of right to be forgotten, as a right to be a part of one's right to personality, which encompasses dignity, honour and right to a private life. The aforesaid principles evolved from time to time, can be paraphrased into what could become right to life under Article 21 of the Constitution of India,”

In the case of **Sredharan T v. State of Kerala**⁹¹, the Kerala HC recognized the significance of the RTBF as a fundamental aspect of the Right to Privacy. The petitioner submitted a writ petition under Art.21 of the Indian Constitution, aiming to protect privacy rights and sought the court's intervention to instruct search engines to eliminate the name and personal details of a rape victim, thereby

⁸⁹ *Jorawar Singh Mundy vs. UOI and Ors*, W.P.(C) 3918/2021

⁹⁰ *X v. The Registrar General, High Court of Karnataka & Ors*, W.P. (C) 1137 OF 2018

⁹¹ *Sredharan T v. State of Kerala*, WP(C).No. 9478 of 2017

preserving her anonymity. The court ruled in favor of the petitioner, affirming the importance of the RTBF, and issued an interim directive for the search engine to remove the victim's name from any published orders on its platform until further notice.

In the case of *Karthick Theodore*⁹², the Madras HC ruled that once information becomes public, individuals can no longer claim a right to privacy over it. The court referenced Justice Kaul's opinion, which stated that the RTBF cannot be invoked when public interest is associated with the information in question. Justice Venkatesh emphasized that administering justice publicly serves the public interest. Critics argue that this interpretation misreads the *Puttaswamy* judgment, which does not suggest that the RTBF ceases to exist once information is public. Justice Kaul's views in the *Puttaswamy* case indicate that even when individuals voluntarily share information, the state must obtain meaningful consent at every stage of its use.

These judicial statements illustrate that the judiciary acknowledges the RTBF as a vital aspect of privacy, closely tied to Art.21 of the Indian Constitution. Nevertheless, the SC of India has yet to explicitly recognize it as a fundamental right within Indian law. Currently, the RTBF exists mainly as a statutory right under the Digital Personal Data Protection Act, 2023, which provides a framework for individuals to request the removal of their personal data from digital platforms, thus allowing them to manage their online presence. Although judicial interpretations have highlighted its connection to the broader right to privacy, formal recognition as a fundamental right is still pending from the SC of India.

92 *Karthik Theodore v Registrar General and Ors*, W.A.(MD)No.1901 of 2021

ENFORCEABILITY OF RTBF IN INDIAN CONTEXT

The enforceability of RTBF against private entities hinges on this interpretation. If personal liberty under Art.21 can be violated by private actors, then the RTBF, as an aspect of the right to privacy, should similarly be enforceable against non-state entities. ⁹³ This is particularly pertinent in the digital age, where private companies like social media platforms and search engines control vast amounts of personal data. These entities can significantly impact individuals' privacy rights, making it essential to extend RTBF protections horizontally. However, recognizing this enforceability raises complex questions about the balance of rights.

One of the most frequent criticisms against the application of the RTBF is whether it could be applied against non-state entities. However, the Const. does not prohibit the horizontal application of Art.21. Art.21 safeguards the personal liberty of an individual, which cannot be violated except by procedure established by law. The Constitution did not limit this protection only to acts of the state; thus, the horizontal application of Art.21 is allowed. The Supreme Court, drawing its powers from Art.32, applied this reasoning in the **Vishaka v. State of Rajasthan**⁹⁴ case, where it issued guidelines that private actors were also required to follow. Similarly, in *Paramananda Katara*, the Court interpreted Art.21 to impose a positive obligation on private doctors, demonstrating that private entities can be held accountable for protecting fundamental rights.

In **'X' v. Hospital 'Z'**⁹⁵, the courts observed that when two fundamental rights come into conflict, the right that best serves the public interest must take precedence. But this balancing of public interest against individual rights is bound to become arbitrary. It uses a utilitarian argument that often ignores notions of justice. Take,

⁹³ OBLIGATION OF PRIVATE PARTIES TO UPHOLD FUNDAMENTAL RIGHTS, available at <https://www.lexology.com/library/detail.aspx> (last visited on June 23, 2024)

⁹⁴ *Vishaka v. State of Rajasthan*, (1997) 6 scc 241

⁹⁵ *'X' v. Hospital 'Z'*, A.I.R 1999 S.C 495

for example, In the case of **Sundarrajan v. UOI**⁹⁶, SC granted permission to construct a power plant in Kudankulam based on the fact that the greater public good outweighed the individual violation of Art.21 which was limited to a certain community. Justice Mishra refused this narrow-based utilitarianism theory and held that "the life of some cannot be sacrificed for the purpose of the eventual larger good." Additionally, Ronald Dworkin argues that such calculations, balancing public interest and individual rights, are frequently influenced by inherent biases, failing to apply egalitarian principles. Simply assigning greater value to one side because it benefits or is supported by more people can lead to majoritarianism. Therefore, while public interest is a critical factor, it should not be the sole criterion in judicial decisions.

In cases where individuals acquitted of charges seek to prevent judgments that mention their names from being publicly accessible, the Hon'ble Delhi HC addressed this issue in the case of **Jorawar Singh Mundy v. UOI**⁹⁷. The court granted interim relief to an American citizen of Indian descent, instructing the legal website 'Indian Kanoon' to remove the judgment following his acquittal under the NDPS Act. However, blocking such judgments could hinder public access to the underlying facts and circumstances of the acquittal.

Rather than completely blocking these judgments, a more effective solution might be to redact the names of the petitioners from the text of the judgments. It is important to consider that if every acquittal led to the blocking of judgments, it could overwhelm Indian courts with numerous applications based on this right. Thus, while protecting individual privacy is crucial, it must be balanced with the public's right to access judicial information.

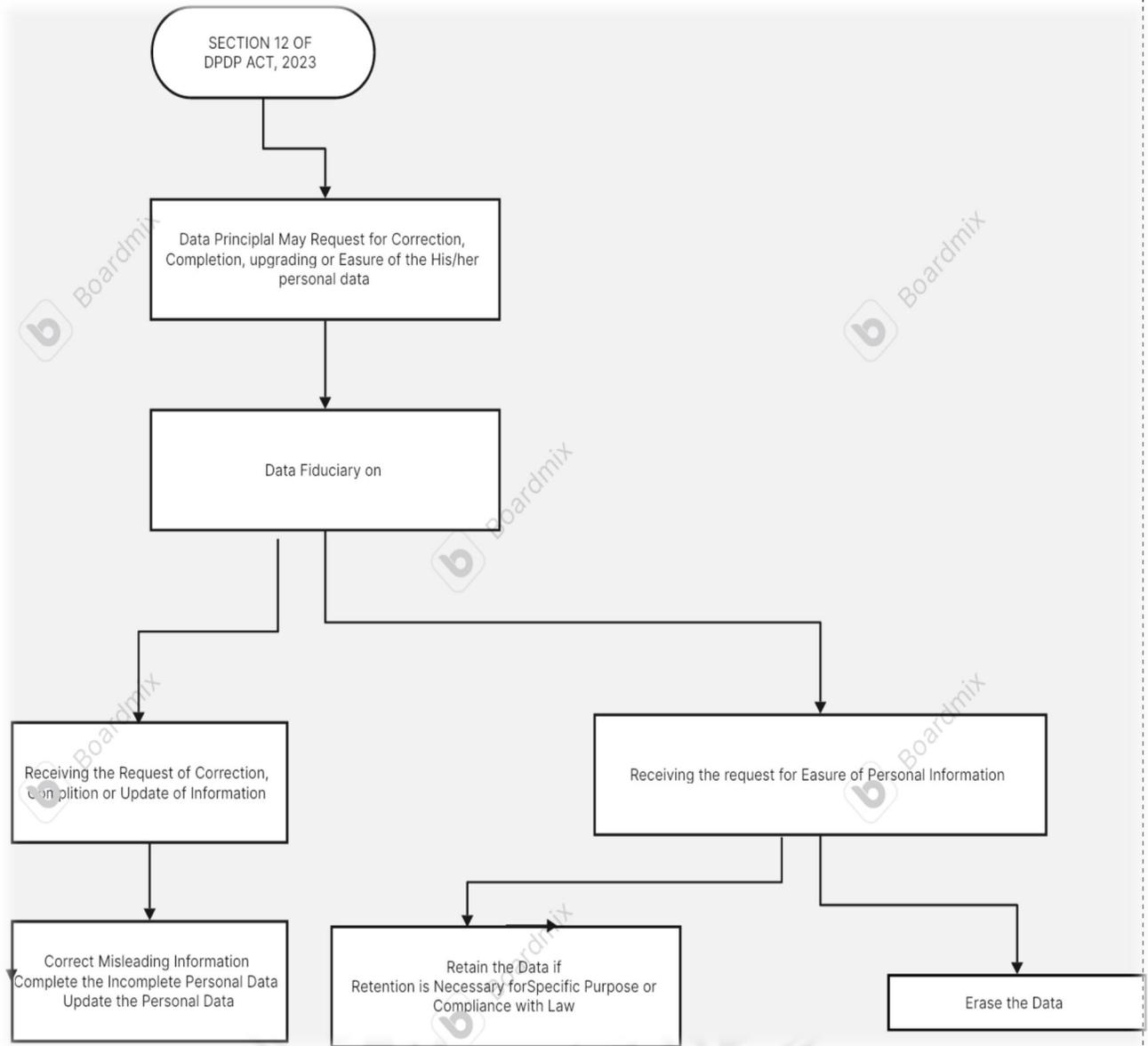
⁹⁶ *Sundarrajan v. UOI*, AIR 2013 SC (SUPP) 615

⁹⁷ *Jorawar Singh Mundy v. UOI*, 2021 SCC OnLine Del 2306

LEGISLATIVE ENACTMENT IN INDIA ON RTBF

The legislature has actively contributed to the protection and regulation of digital personal data by enacting the DPDP Act, 2023.⁹⁸ This legislation aims to strike a balance between individual rights and public interest in the processing of digital personal data. Section 12 of the DPDP Act, 2023 introduces the concept of the right to correction and erasure of personal data, ensuring that individuals, referred to as Data Principals, maintain control over the accuracy and relevance of their personal information. Under Section 12(1), a Data Principal is granted the right to request correction, completion, updating, and even erasure of their personal data that has been processed based on prior consent, including consent given under Section 7(a). This empowers individuals to maintain the integrity of their personal data in line with any legal requirements or procedures currently in force. Section 12(2) places obligations on Data Fiduciaries, the entities responsible for processing personal data. Upon receiving a request from the Data Principal, the Data Fiduciary must take action to correct any inaccurate or misleading data, complete incomplete data, and update any outdated information. This ensures that personal data remains accurate and relevant for its intended purpose. Furthermore, Section 12(3) enables the Data Principal to request the erasure of their personal data through a prescribed procedure. Once such a request is made, the Data Fiduciary is required to erase the data, unless it is necessary to retain it for specific purposes, such as compliance with any applicable laws or regulations. Together, these provisions in Section 12 underscore the DPDP Act's focus on enhancing individual rights regarding the management and protection of personal data, allowing individuals to correct or remove data that is no longer accurate, relevant, or legally required.

98 UNDERSTANDING INDIA'S NEW DATA PROTECTION LAW, available at <https://carnegieendowment.org/research/2023/10/understanding-indias-new-data-protection-law?lang=en> (last visited on June 25, 2024)



Credit: (This Above Diagram has been designed by the Author with the help of the Boardmix)

RIGHT TO BE FORGOTTEN AND CONFLICT WITH OTHER FUNDAMENTAL RIGHTS

The RTBF is a complex and controversial issue that has been the subject of much debate and legal interpretation in recent years. At its core, the RTBF is a concept that allows individuals to request that certain information about them be removed from public records and online platforms. This information may include outdated

or inaccurate information, or information that is no longer relevant to the individual's life or circumstances.

Freedom of speech is a fundamental human right that allows individuals to express their opinions, ideas, and beliefs without fear of censorship or retaliation. It is enshrined in many constitutions and international human rights treaties, including the Universal Declaration of Human Rights. The right to freedom of speech includes not only the right to express opinions, but also the right to seek, receive, and impart information and ideas through any media or medium, including the internet. However, this right is not absolute and may be limited in certain circumstances, such as to protect public safety, national security, and the rights of others. Nonetheless, freedom of speech is considered a cornerstone of democratic societies, as it allows for the free exchange of ideas and promotes open discourse and accountability. In the context of the Indian Constitution, the right to “Freedom of Speech and expression” is protected under Article 19(1)(a). This provision ensures that all citizens of India have the right to express their opinions freely, without fear of censorship or punishment. The Constitution also allows for the freedom of the press, which plays a critical role in a democratic society by providing information, facilitating public debate, and holding the government accountable. However, like all fundamental rights, the right to “Freedom of Speech and expression” is not absolute and is subject to reasonable restrictions. The Constitution empowers the state to impose restrictions on this right in certain circumstances, such as to protect public order, national security, and the sovereignty and integrity of India. The following points elaborate on the discussion surrounding the conflict between fundamental rights and the right to be forgotten:

i. Right to be Forgotten and the “Freedom of Speech and expression”

The RTBF and the “Freedom of Speech and expression” are two fundamental rights that can potentially come into conflict with each other. While the RTBF

allows individuals to request the removal of their personal information from the internet, the “Freedom of Speech and expression” protects the right of individuals and organizations to express their opinions, ideas, and beliefs freely. One of the main concerns with the RTBF is that it can be used to suppress legitimate speech, including journalistic content and other information that is in the public interest. For example, a public figure might request the removal of information about their past mistakes or wrongdoing, which may be relevant to their current activities or behavior. Similarly, a company might request the removal of negative reviews or critical comments about its products or services. Critics of the RTBF argue that it can lead to censorship and a chilling effect on free speech. They contend that the right can be misused to silence dissenting voices or to hide information that is embarrassing or inconvenient. Furthermore, they argue that the RTBF can be used to rewrite history, erasing important events and facts that are part of the public record

- ii. **Right to Information:** Right to Information is like a protective shield of any democratic government. This right is necessary for the smooth functioning of the democratic machinery. Right to Information is an inseparable part of the freedom of speech and expression codified in Article 19(1) (A) of the constitution, which is understood to be the first requisite of liberty. An important characteristic of freedom of speech and expression is considered the freedom to receive and disseminate information without any obstruction.

Right to information means right of every citizen to access information of public interest, which is under the control of public authorities, in order to ensure transparency, accountability in administration and participation of common man in governance. Information is needed by human beings to realize their full social, political and economic potential. It entails a spectrum of knowledge about various issues and involves different stakeholders from market to government. It is the key

which helps make decisions. It is also a public resource collected and stored by government in trust for people. RTBF affects the Right to information of an individual. It will indirectly affect this Right to Information and give a inexpedient right to the state to not disclose information and in turn it minimizes the scope of the general public to access the information.

iii. **Enforceability Against Private Individuals:** The RTBF will normally be claimed against a private party (a media or news website). This raises the question of whether fundamental rights can be enforced against the private individual, which is generally enforceable against the state. Only Article 15(2), Article 17 and Article 23 provides protection against a private act of a private party that is challenged based on its violation of the Constitution.

iv. **RTBF and the Freedom of Press**

Freedom of the press is a cornerstone of any democratic society. It is a fundamental right that enables journalists to report on events and issues without fear of retribution, censorship, or other forms of repression. free press can serve as a watchdog, holding governments, businesses, and other powerful entities accountable for their actions. Journalists can expose corruption, abuse of power, and other wrongdoing, shining a light on issues that might otherwise go unnoticed. By providing information to the public, a free press can help promote transparency and openness in government and other institutions. This can lead to a more informed citizenry and greater trust in public institutions. A free press can help promote debate and discussion on a wide range of issues, providing a platform for different voices and perspectives to be heard. In many cases, a free press can be the only means by which individuals can have their voices heard and their rights protected. Journalists can report on cases of human rights abuses, discrimination, and other injustices, helping to bring attention to these issues and advocate for change.

Freedom of journalism is considered a fundamental right under the Indian Constitution. Article 19(1)(a) of the Constitution of India guarantees the right to “Freedom of Speech and expression” , which includes the freedom of the press. This right enables journalists to freely report, investigate, and express their opinions on matters of public interest without censorship or undue interference from the government or any other authority. However, this right is not absolute and is subject to reasonable restrictions under Article 19(2) of the Constitution, which allows the government to impose restrictions on “Freedom of Speech and expression” in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign countries, public order, decency or morality, contempt of court, defamation, or incitement to an offense. The implementation of the RTBF could pose challenges for journalists in reporting and presenting news and information to the public. It could lead to confusion and uncertainty in the press and media industry, as they would have to wait for the adjudicating officer's decision before publishing certain content. This would impede journalists from freely sharing information and ideas through the media. The "Right to be Forgotten" may seem like a reasonable way to protect privacy, the implementation of the RTBF has the potential to compromise freedom of the press in a number of ways:

- **Censorship of legitimate news articles:** If news articles that contain accurate information about a person are removed from the internet as a result of RTBF requests, it could undermine the ability of the press to report on important issues and hold powerful individuals or organizations accountable.
- **Limited access to historical information:** If individuals have the right to request the removal of historical information about themselves from the internet, it could limit researchers and journalists' ability to access important historical information for investigative reporting.

- Increased power to individuals to control the narrative: RTBF could give individuals more power to control the narrative surrounding their actions and past behavior, making it more difficult for journalists to report on the truth.
- Cost and complexity of compliance: The process of implementing RTBF requests can be complex and expensive, potentially resulting in small or independent media organizations being unable to comply, limiting their ability to report on important issues.

Balancing the right to freedom of the press and the “Right to Privacy” is a complex issue. However, there are a few key principles that can help guide the decision-making process:

- Consider the public interest: When assessing the impact of freedom of the press versus privacy rights, it's important to consider the public interest. If the information being reported is of significant public interest, such as exposing corruption or criminal activity, it may be appropriate to prioritize freedom of the press over privacy rights.
- Ensure accuracy and fairness: In reporting on individuals, it's essential that journalists ensure the accuracy and fairness of their reporting. False or misleading information can harm an individual's reputation and should be avoided.
- Use proportionate measures: If an individual's privacy rights are at risk, journalists should use proportionate measures to minimize the harm. This might include redacting personal information or blurring faces or identifying features.
- Consider the context: When reporting on individuals, it's important to consider the context of the reporting. For example, reporting on the private lives of public figures may be deemed more acceptable than reporting on the private lives of private individuals.
- Respect individual rights: While freedom of the press is important, it's also important to respect the privacy rights of individuals. Journalists should avoid

reporting on information that is irrelevant to the public interest or that could cause unnecessary harm to individuals.

NEED FOR BALANCING RIGHT TO BE FORGOTTEN WITH COMPETING RIGHTS

The RTBF is not an absolute right and must be balanced against other competing rights and interests. One of the most significant challenges in implementing the right to be forgotten is striking an appropriate balance between the individual's "Right to Privacy" and other rights such as freedom of expression, access to information, and public interest.

On the one hand, the RTBF recognizes that individuals have a legitimate interest in controlling the dissemination of their personal information, particularly in cases where that information is outdated, inaccurate, or no longer relevant. The right to be forgotten can help prevent the stigmatization and discrimination of individuals based on their past behaviors or circumstances.

On the other hand, the RTBF must be balanced against other important rights and interests, such as freedom of expression, which includes the right to receive and impart information, and the public interest in accessing certain types of information, such as news articles or historical records.

The right to be forgotten could potentially be used to suppress information that is in the public interest, such as information about public figures or matters of public concern. Therefore, it is important to strike a balance between the RTBF and other competing rights and interests.

Balancing the right to be forgotten with other competing rights and interests requires a careful and nuanced approach. Here are some key considerations for achieving such a balance:

i. Clearly define the scope and limits of the right to be forgotten

The first point is to clearly define the scope and limits of the right to be forgotten. This means establishing the types of personal information that can be subject to the right to be forgotten, as well as the circumstances under which the right can be invoked.

The types of personal information that can be subject to the RTBF may vary depending on the legal framework in which the right is being implemented. For example, under the General Data Protection Regulation (GDPR) in the European Union, individuals have the right to request the erasure of their personal data in certain circumstances. This includes situations where the data is no longer necessary for the purpose for which it was collected, the data subject withdraws their consent, or the data was processed unlawfully.

It is also important to establish the circumstances under which the right to be forgotten can be invoked. For example, the right may not apply in situations where there is a legitimate public interest in maintaining the information, such as information about criminal convictions or professional misconduct. Similarly, the right may not apply in situations where the information is necessary for exercising the right to freedom of expression or for the establishment, exercise, or defense of legal claims.

Defining the scope and limits of the RTBF is essential for ensuring that the right is not overbroad or misused. It can also help to provide clarity and certainty for data controllers and processors, who are responsible for implementing the right in practice. This can in turn promote transparency, accountability, and trust in the handling of personal data.

ii. The second point is to establish clear and transparent rules for implementing the right to be forgotten. Clear and transparent rules are essential for ensuring that the right to be forgotten is applied in a fair and consistent manner, and that data

controllers and processors understand their obligations. Each Data Fiduciary and Data Processor is required to take reasonable security precautions to secure any personal data that is in their possession or under their control. Every Data Fiduciary must have a process and an operational mechanism in place to address Data Principals' complaints. Before processing any personal information about a child, the Data Fiduciary must get verifiable parental consent. A Data Fiduciary is not allowed to treat personal information in a way that could endanger children. A Data Fiduciary is not allowed to follow or observe children's behavior or use targeted advertising for children.

iii. **Criteria for determining whether a request is valid:** Clear criteria should be established for determining whether a request for the removal of personal data is valid. This may include factors such as whether the data is accurate, relevant, or necessary, or whether the data subject has withdrawn their consent.

When considering the public interest, the relevance of the information to the public should be carefully evaluated. Information that is deemed to be of public interest may include news articles, court records, or other types of public records that provide important information about individuals or events that are relevant to society as a whole. However, it is important to note that the public interest in accessing the information must be balanced against an individual's right to privacy. For example, if the information is highly sensitive and could cause harm to an individual's reputation or safety, it may be appropriate to restrict access to that information. In evaluating the public interest, it is also important to consider the context of the information. For example, if the information pertains to a public figure, such as a politician or celebrity, it may be considered more relevant to the public interest than if it pertains to an ordinary individual.

iv. **Process for verifying the identity of the requester:** To prevent fraudulent or abusive requests, a process should be established for verifying the identity of the

requester. This may involve requiring the requester to provide identification documents or other forms of verification

- v. **Oversight and enforcement:** Mechanisms should be established for oversight and enforcement of the rules and procedures, to ensure that data controllers and processors are complying with their obligations and that the RTBF is being applied fairly and consistently. This can be done by creating regulatory bodies, such as data protection authorities, that have the power to investigate and sanction data controllers and processors who violate the rules

CONCLUSION

The Right to Privacy and the RTBF are two deeply interwoven concepts that have gained significant prominence in the digital age, where the proliferation of online platforms and the pervasive nature of digital information pose unique challenges to personal privacy. The Right to Privacy is a broad and fundamental principle that encompasses the ability of individuals to control their personal information and protect it from unwarranted intrusion by the state, private entities, or other individuals. The RTBF, a more specific manifestation of the Right to Privacy, addresses the modern realities of information technology and digital communication. It allows individuals to request the removal of their personal data from the internet when it is no longer relevant, accurate, or necessary, or when its continued availability infringes on their privacy and reputation. This right emerged prominently from European jurisprudence, particularly with the European Court of Justice's decision in the Google Spain case, which underscored the importance of balancing privacy rights against the public's right to access information.

The interconnection between the Right to Privacy and the RTBF is evident in their shared objective of protecting individual autonomy and dignity. Both rights emphasize the necessity of giving individuals control over their personal

information, albeit in different contexts. The Right to Privacy provides the broad framework within which the RTBF operates, ensuring that personal data is not exposed or misused without consent. Conversely, the RTBF offers a concrete mechanism for individuals to enforce their privacy rights in the digital realm, addressing specific situations where personal data should be removed from public access.

Judicial pronouncements and legislative developments have further solidified the relationship between these two rights. In India, the recognition of the RTBF as an integral part of the Right to Privacy has been reflected in various court decisions, following the foundational principles set forth in the Puttaswamy case. The DPDP Act, 2023, which includes provisions for data correction and erasure, exemplifies the legislative commitment to operationalizing the RTBF within the broader context of informational privacy. This legal framework underscores the necessity of balancing the RTBF with competing rights, such as the right to information and freedom of expression, ensuring that the erasure of data does not unduly restrict public interest or access to crucial information.

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