
RIGHT TO BE FORGOTTEN IN INDIA: A DOCTRINAL AND JUDICIAL ANALYSIS

Sumit Sharma, Jagannath University, Jaipur, Rajasthan

Dr. Alaknanda Rajawat, Jagannath University, Jaipur, Rajasthan

ABSTRACT

With the rapid expansion of digital platforms and the increasing dependence on the internet for communication, governance, and commerce, personal information is now stored, processed, and disseminated on an unprecedented scale. Digital footprints created by individuals—whether through social media, judicial records, or online publications—often remain accessible indefinitely. This permanence raises significant concerns relating to privacy, dignity, autonomy, and the long-term consequences of digital exposure.

The concept of the Right to be Forgotten has emerged as a response to these concerns. It enables individuals to seek removal, erasure, or restriction of access to personal data that is no longer necessary, is inaccurate, or disproportionately affects their reputation and privacy. While jurisdictions such as the European Union have formally recognized this right under data protection laws, India does not yet have an explicit statutory recognition of the Right to be Forgotten.

In the Indian context, this right has evolved through judicial interpretation, particularly under the right to privacy as recognized under Article 21 of the Constitution. Courts have addressed the issue in specific factual circumstances, especially where continued public access to personal information causes unjustified harm.

This article undertakes a doctrinal and judicial analysis of the Right to be Forgotten in India. It examines constitutional principles, statutory provisions, and key judicial decisions to assess the scope, limitations, and practical challenges associated with this emerging right.

Keywords: Right to be Forgotten, Privacy, Article 21, Data Protection, Digital Rights, Cyber Law, Case Laws

INTRODUCTION

The evolution of digital technology has fundamentally transformed the manner in which information is created, stored, and accessed. Unlike traditional records, digital data is easily replicable, searchable, and accessible across jurisdictions. Search engines and online databases ensure that once information is published, it can remain available indefinitely, often beyond its relevance or context.

This phenomenon has serious implications for individuals who seek to move beyond their past. For instance, individuals acquitted in criminal proceedings or those involved in personal disputes may continue to face reputational harm due to the persistent availability of such information online. The inability to dissociate from outdated or irrelevant information undermines the principles of dignity, autonomy, and personal development.

The Right to be Forgotten seeks to address these concerns by allowing individuals to exercise control over their personal data, particularly where continued access serves no legitimate public interest. In India, however, the recognition of this right remains fragmented and largely dependent on judicial interpretation.

This article adopts a doctrinal approach by analyzing constitutional provisions, statutory laws, and judicial precedents to understand the development and current status of the Right to be Forgotten in India.

CONSTITUTIONAL BASIS: RIGHT TO PRIVACY UNDER ARTICLE 21

The Constitution of India does not expressly recognize the Right to be Forgotten. However, its conceptual foundation lies in the broader right to privacy under Article 21, which guarantees the right to life and personal liberty.

A landmark development in this context was the judgment in *Justice K.S. Puttaswamy v. Union of India*. In this case, a nine-judge bench of the Supreme Court unanimously held that the right to privacy is a fundamental right intrinsic to life and personal liberty under Article 21.

The Court identified informational privacy as a crucial component of the right to privacy. It emphasized that individuals must have the ability to control the dissemination of their personal

data and protect themselves from unwarranted intrusion. The judgment acknowledged that in the digital age, informational control is central to preserving individual autonomy.

Although the Court did not explicitly define or codify the Right to be Forgotten, it referred to the concept while discussing global data protection principles. It observed that individuals should have the ability to limit or control the retention and dissemination of personal information, thereby laying the constitutional groundwork for future recognition of this right.

STATUTORY FRAMEWORK AND RELEVANT LEGAL PROVISIONS

Although India does not have a dedicated statute governing the Right to be Forgotten, several legal provisions indirectly support privacy and data protection:

Information Technology Act, 2000

- Section 43A: Provides compensation where a body corporate fails to protect sensitive personal data
- Section 72A: Penalizes disclosure of personal information without consent

Digital Personal Data Protection Act, 2023

- Recognizes the rights of data principals over their personal data
- Provides for correction, updating, and erasure of personal data
- Imposes obligations on data fiduciaries regarding lawful processing

However, while the Act allows erasure of personal data under certain conditions, it does not explicitly frame a comprehensive “Right to be Forgotten” comparable to international standards such as the GDPR.

Indian Penal Code, 1860

- Section 499: Protects individuals against defamation, indirectly safeguarding reputation.

These provisions collectively contribute to privacy protection but lack a uniform and enforceable framework specifically addressing the Right to be Forgotten.

CONFLICT WITH FREEDOM OF SPEECH AND EXPRESSION

The Right to be Forgotten must be balanced against the right to freedom of speech and expression under Article 19(1)(a) of the Constitution.

Indian courts have consistently held that fundamental rights are not absolute and must be harmonized. In cases involving privacy and access to information, courts apply the principle of proportionality, which requires that any restriction on speech must be necessary, reasonable, and proportionate to the objective sought.

For example, information concerning public officials, criminal convictions, or matters of public interest may not be removed easily, as public access to such information serves democratic accountability and transparency. Therefore, courts adopt a case-by-case approach, weighing individual privacy against public interest.

PRACTICAL ISSUES IDENTIFIED IN JUDICIAL DECISIONS

Judicial decisions reveal several challenges in implementing the Right to be Forgotten in India:

- Digital information exists across multiple platforms, making complete erasure practically difficult
- Search engines may retain cached versions or archived links
- Lack of uniform judicial guidelines leads to inconsistent outcomes
- Enforcement against foreign-based intermediaries and platforms is complex
- Absence of a centralized regulatory authority specifically dealing with such requests

These challenges highlight that judicial recognition alone is insufficient without a comprehensive legal and technological framework.

JUDICIAL RECOGNITION THROUGH CASE LAW

(a) *Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.*

Facts:

The plaintiff sought an injunction against the publication of online articles that reported

allegations of sexual harassment against him during the #MeToo movement. He contended that the allegations were unverified and that their continued publication violated his right to privacy and reputation.

Decision:

The Delhi High Court granted interim relief by restraining further publication of certain content.

Observation:

The Court held that the right to privacy and reputation must be balanced against freedom of speech and expression. It recognized that unverified allegations, when published widely, can cause irreversible harm. While not explicitly invoking the Right to be Forgotten, the judgment reinforced the idea that individuals have a right to protect their digital identity from unjustified harm.

(b) Jorawar Singh Mundy v. Union of India

Facts:

The petitioner had been acquitted in a criminal case under the Narcotic Drugs and Psychotropic Substances Act. Despite acquittal, his name continued to appear in online judgments and search engine results, affecting his employment opportunities and reputation.

Decision:

The Delhi High Court directed the removal of the judgment from certain publicly accessible platforms and ordered search engines to ensure that it does not appear in search results linked to the petitioner's name.

Observation:

The Court explicitly recognized that the continued availability of such information causes disproportionate harm to individuals who have been acquitted. It observed that the right to be forgotten is a facet of the right to privacy and must be protected in appropriate cases. This case represents one of the clearest judicial applications of the Right to be Forgotten in India.

CONCLUSION

The Right to be Forgotten in India is still in a nascent and evolving stage. Its recognition is primarily rooted in judicial interpretation of the right to privacy under Article 21, rather than explicit statutory codification. Courts have acknowledged the need to protect individuals from the enduring impact of digital records, particularly in cases involving acquittal, personal disputes, or sensitive information.

However, the absence of a clear and structured legal framework has resulted in fragmented and inconsistent application. Existing statutory provisions, while supportive of privacy, do not comprehensively address the complexities associated with digital data retention and dissemination.

There is a pressing need for a well-defined legal framework that clearly outlines the scope, limitations, and enforcement mechanisms of the Right to be Forgotten. Such a framework must balance individual privacy with freedom of expression and public interest, ensuring both accountability and dignity in the digital age.

REFERENCES

- Constitution of India, Article 21
- Information Technology Act, 2000 (Sections 43A, 72A)
- Digital Personal Data Protection Act, 2023
- Justice K.S. Puttaswamy v. Union of India
- Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.
- Jorawar Singh Mundy v. Union of India