THE RIGHT TO BE FORGOTTEN: A LEGAL THEORY IN INDIA THAT HAS YET TO BE CODIFIED

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ABSTRACT

We now have unprecedented access to the most intimate details of human lives - both good and evil - thanks to the unparalleled rise of information and technology. The lines between private and public life are blurring more than ever. With a cup of tea in hand, we enjoy the latest controversy, but have we ever considered what it would be like if we were in their shoes? Consider the most humiliating thing we've ever done, and then imagine a world where everyone knows about it; it's difficult for all of us. Through the handles of virtual world it's now possible to determine an individual's or an institution's reputation. An underlying concern is the unrivalled shift in the nature and scope of personal information available online. This paper aims at the need for a codified law in India to ensure that the citizens have a "Right to be Forgotten" as no one be prevented from curtailing his fundamental right to life.

INTRODUCTION

Amid massive technological upheavals, the growing demand for comprehensive data protection legislation and evolving concerns about data processing reverberates louder than ever. In India, the digital environment has changed considerably in recent years, and sectoral regulators have issued many recommendations, policies, and regulations to address specific concerns about data protection and consumer interests.

The right to be forgotten relates to formerly publicly available material and an individual's demand that third parties not have access to it, as opposed to the right to privacy, which refers to information that is not publicly available.

After two years of deliberations on the Personal Data Protection Bill, 2019, the Joint Parliamentary Committee submitted its long-awaited report to the Indian Parliament on Dec. 16, 2021. This is, hopefully, the culmination of a series of JPC extensions, paving the way for a solid data protection law in the world's greatest democracy. However the enforcement of "Right to be Forgotten" as such a right still remains unanswered.

RIGHT TO BE FORGOTTEN

The "right to be forgotten," which gained a lot of attention after the EU Court of Justice's 2014 verdict, established the foundation for the GDPR's right of erasure clause. The GDPR explains the exact conditions in which the right to be forgotten applies in Article 17. An individual has the right to have their personal data erased if the following conditions are met:

- Personal data is no longer required for the purpose for which it was gathered or processed by an organization.
- When an organization relies on an individual's consent as the legal basis for data processing, that individual withdraws their consent.
- An organization relies on legitimate interests to justify the processing of a person's data, the individual objects to the processing, and the organization has no overwhelming legitimate interest in continuing the processing.
- Personal data is being processed for direct marketing purposes by an organization, and the individual has objected to this processing.
- An organization processed a person's personal data in an unauthorized manner.
- In order to comply with a legal rule or requirement, a company must delete personal data.

- To provide information society services, an organization has processed a child's personal data.
- The right of an organization to process someone's data, on the other hand, may take precedence over their right to be forgotten. The following are the reasons stated in the GDPR that override the right to be forgotten:
- The information is being collected in order to enjoy the right to freedom of expression and information.
- The information is being used to comply with a legal requirement.
- The information is being used to carry out a task in the public interest or to exercise an organization's official power.
- The information being processed is required for public health reasons and is in the public interest.
- The information being processed is required for the practice of preventative or occupational medicine. This only applies when the data is processed by a health practitioner who is bound by a professional secrecy agreement.
- The data represents critical information that serves the public interest, scientific research, historical research, or statistical purposes, and erasure of the data would likely impede or halt progress toward the processing's goal.
- The information is being used to develop a legal defence or to pursue additional legal claims.
- Furthermore, if an institution can demonstrate that the request was baseless or disproportionate, it can request a "fair cost" or deny a request to wipe personal data.

Thus, there are numerous variables at play and each request must be assessed separately. However, the GDPR's new privacy rights might be a considerable compliance burden for certain businesses.

THE LEGAL THEORY YET TO BE CODIFIED IN INDIA

According to Justice Kaul's concurring opinion in the K. S. Puttaswamy[1] decision, the right to be forgotten is not just a common law right, but also an element of the right to life under Article 21. The right to be forgotten is an important aspect of the right to privacy in the modern day, according to Justice Kaul, who cited European Union jurisprudence on the matter. Justice Kaul

[1] Justice KS Puttuswamy (Retd.) v Union of India, (2017) 10 SCC 1 (India).

also pointed that in the present age of the internet, when data mining is a burgeoning industry, the right to be forgotten is a mechanism by which individuals can retake control of the information they have put out into the public domain. In this landmark judgment the Hon'ble Supreme Court had stated that the right to be forgotten was subject to certain limitations, and that it could not be used if the information in question was needed for the exercise of the right to freedom of expression and information, the fulfillment of legal responsibilities, the execution of a duty in the public interest or public health, the protection of information in the public interest, scientific or historical research or for statistical purposes or for the establishment, executing, or defending of legal claims. Further, the "right to be forgotten" cannot exist in the administration of justice, especially when it comes to court judgments.[2] Thus, apart from the above developments a systematic approach was not witnessed and still the right needs a medium to get enforced.

WAY FORWARD

It's safe to assume that right to be forgotten in India is still in its early stages. The following proposals could be made to properly implement this right in India:

i. A unique set of principles is required in addition to the Personal Data Protection Bill, 2019 as the bill is silent about how the right is to be enforced.
ii. The right to information and the right to freedom of speech and expression should be clearly demarcated.
iii. The law must also focus on provisions regarding de linking wherein the personal data got eradicated.
iv. The methodologies adopted in International jurisdiction can also be taken into consideration.

CONCLUSION

In India, the right to privacy, which is a basic right in Europe, is neither constitutional nor statutory. However, judicial precedence has suggested that it was inherent under Article 21 of the Constitution. Despite the fact that the right is now recognised, it has thus far been limited to enforcement against governmental monitoring. So it's always better to codify the right to forgotten to provide a dignified life to the individual beings.

[2] Karthick Theodore v. Madras High Court, 2021 SCC Online Mad 2755