RIGHT TO BE FORGOTTEN VS RIGHT TO KNOW: UNRESOLVED JURISDICTIONAL CONFLICTS

Hardik Hazarika, BBA LLB, NMIMS Bangalore

ABSTRACT

The more we enter the digital realm, the more the balance between individual privacy and the public's right to information has gripped the Indian conscience. The issues surrounding the Right to be Forgotten or the Right to Know concede to bigger ideological issues concerning human dignity, transparency, and accountability. The paper analyses the two rights from the Indian perspective, tracing constitutional law through key court cases to some recent enactments like the Digital Personal Data Protection Act, 2023, and the amendments in the Right to Information Act, 2005. Drawing examples from both Indian and international perspectives, the study brings to the fore actual apparent conflicts in protecting individual reputations that obstruct the public interest in accessing key information. To combat these issues, the paper proposes an ideal legislative framework specifically for India. Conventional solutions to the Indian privacy-vs-transparency predicament also attempt to resort to concrete methods and safeguards in respect of both the inevitability of individual rights and the general interest. In conclusion, this paper argues that reasonable balance must be maintained between the two- inculpatory dignity and open governance- in facilitating the digital future of India.

INTRODUCTION

Being in the rights-era, the RTBF-Qualified Right-to-Know battle is riddled with complex technical legalities. Whenever the RTBF stands to be upheld, one can ask that personal data be removed from the Internet as outdated, irrelevant, or defamatory in essence. The spirit of the Right to Know maintains that people shall retain their interest in the information as long as it involves public interest, transparency, or democratic accountability. This dichotomy is especially vivid in India, where in the landmark judgment of Justice K.S. Puttaswamy (Retd.) v. Union of India [(2017) 10 SCC 1], the Supreme Court held that privacy is a fundamental right under Articles 14, 19, and 21 of the Constitution. Thus, a possibility for this battle to be brought under the Right to be Forgotten arises even though no Indian law presently recognizes it. The Right to Know is presently recognized under Article 19(1)(a), which guarantees freedom of speech and expression. Freedom of expression includes the freedom to receive and impart information.

THEORETICAL FOUNDATION

CONCEPTUAL FRAMEWORK: DEFINING THE RIGHT TO BE FORGOTTEN

RTBF is a legal doctrine under which a person may demand the deletion of personal information from online sources, especially search engine origins, which is now outdated, irrelevant, or no longer necessary. The right is in fact, closely connected to the larger concept of information privacy and has gained relevance in the digital age, where online data may have an endless impact on one's reputation and personal autonomy.

Emerging in the aftermath of the prominent 2014 decision of the Court of Justice of the European Union in the case Google Spain v. AEPD and Mario Costeja González, the Right to be Forgotten was recognized as a fundamental legal principle. The Court ruled that a person could apply for the removal of certain personal information appearing somewhere on the Internet in search engine results, through requests considered depending on whether the information is outdated, irrelevant, or excessive. Rooted in European data protection law, the RTBF aims to strengthen individual control over their digital footprint

Yet, the RTBF is not absolute. It is balanced against the right to recall, meaning the public interest in accessing information and in transparency. Criticism states that the RTBF could be

used to expunge important historical information or limit freedom of expression. In their Favor, proponents argue for an emphasis on privacy for everyone and the opportunity to go beyond incidents that may be no longer relevant to present-day life.

When we look at the Right to Be Forgotten and the right to know, it's clear that these two ideas often pull in opposite directions. What makes the debate even trickier is that different countries approach these rights in their own unique ways. Take the United States, for example—there, the focus is very much on free speech and making sure the public can access information. If you spend any time reading about how different countries handle privacy and information, you'll notice a real split in priorities. In America, there's almost an instinctive trust in open discussion and the idea that everyone should be able to know what's going on. It's not just about laws—people genuinely see public access to information as part of what makes their society work. This isn't just a legal technicality—it's something you'll hear in everyday conversations, and it shapes how people think about news, reputation, and even forgiveness. The European approach seems to come from a place of wanting to give people a fair chance to move forward, rather than being stuck with old mistakes following them around forever.

When you put these two perspectives side by side, it's clear why there's so much debate about where to draw the line between privacy and the public's right to know. Each side is shaped by its own history and values, and neither is "right" or "wrong"—they just reflect what matters most to the people who live there. As our lives become more digital, the challenge of balancing privacy with the public's right to know only gets tougher. Every time a new technology comes along or a new case hits the courts, we're forced to rethink where the line should be drawn.

At the end of the day, both the Right to Be Forgotten and the right to know are important. They reflect our desire to protect people from harm while also making sure society stays open and informed. The real challenge is figuring out how to respect both values—so that no one's story is erased, but no one is unfairly haunted by their past either. This ongoing balancing act is at the heart of many debates about privacy and information in our digital age.

RTBF in the Indian Context

Even the RTBF is still in the make in India and thus lacks the legislative umbrella akin to that of GDPR. What the law lacks, the RTBF has some recognition through judicial pronouncements. The apex court of India in the landmark case of K.S. Puttaswamy v. Union

of India (2017) considered that the right to privacy is a fundamental right under Article 21 of the Constitution. This judgment laid down the foundation stone for RTBF in India.

The Data Protection Act, 2023, for data privacy, is India's most recent legislative framework. While the Act provides for the right to correction and erasure of data, the scope and enforcement of the RTBF is still evolving. The Indian courts have started entertaining requests from parties for the removal of information concerning themselves, more so in the cases of acquittals or stale criminal records, but there are still ambiguities and inconsistencies in the application of RTBF.

Balancing RTBF with Other Rights: A key challenge in implementing the RTBF is balancing it with other fundamental rights, such as:

- Freedom of speech and expression (Article 19(1)(a) of the Constitution),
- Public interest and the right to information,
- Open court principle, which supports transparency in judicial proceedings.

Indian legal scholarship and court decisions emphasize that the RTBF cannot be absolute. Each case requires a careful balancing of the individual’s right to privacy and dignity with the public’s right to know and access information. The Right to Be Forgotten is an important but evolving concept in Indian law. Its roots can be traced to the GDPR and the Google Spain case in the European Union, but its application in India is still being shaped by judicial decisions and new legislation like the DPDPA. It is crucial to understand that the RTBF is not absolute and must always be balanced with competing rights such as freedom of expression and public interest. The ongoing development of this right reflects the broader challenges of protecting privacy in the digital era while maintaining transparency and accountability

RIGHT TO KNOW AND ITS EVOLUTION IN INDIA

Although the expression "right to know" is not explicitly furnished in many constitutions, the idea has come to be accepted as an indispensable facet of democratic governance and public participation. The right in India has evolved before the courts through interpretation as well as legislation, particularly as a derivative of the constitutionally guaranteed right to freedom of speech and expression found in Article 19(1)(a).

The right to know is best described as a public right to access information necessary for the exercise of an informed choice and, therefore, is closely linked with freedom of expression that embraces seeking information for oneself and receiving information by others. Through this threefold process—asking for information, receiving it, and imparting it—the right to freedom of expression is understood under Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and India has ratified both.

The Indian Supreme Court has on numerous occasions ruled that free speech and expression would be meaningless without the right to know. The basis of the said judgment is that a well-informed populace is the natural basis for a thriving democracy. Without the availability of information, proper engagement in public affairs, and the scrutiny of the actions of the government would be merely wishful thinking.

The Indian judiciary has been a significant player in creating the right to know. One of the earliest and most influential decisions was the State of Uttar Pradesh v. Raj Narain (1975), in which the Supreme Court declared that "the people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries." This judgment acted as a foundation for all subsequent cases to enlarge the domain of the right to know, especially in terms of government transparency and accountability.

Other significant decisions, such as Secretary, Ministry of Information & Broadcasting v. Cricket Association of Bengal (1995), have fortified the right to freedom of expression as inclusive of the right to receive information and ideas. The Court has again and again held the right to know, particularly in certain contexts, for instance, the right of voters to access information about election candidates, in Union of India v. Association for Democratic Reforms (2002).

The right to access information, though very important, is not an absolute right. Both the Indian Constitution and the RTI Act considered the possibility that certain kinds of information may not be allowed to be accessed due to state involvement in the protection of legitimate interests such as security of the State, public order, privacy, and rights of another. For example, under Section 8 of the RTI Act, those exemptions specifically concern information which in the opinion of the appropriate government would be prejudicial to the sovereignty and integrity of India or information which has been expressly forbidden to be published by a Court of law or

information which relates to personal information the disclosure of which has no relationship to any public activity and which would cause an unwarranted invasion of the privacy of an individual.

Often the courts are called upon to weigh the right to information against other rights, most notably the right to privacy. The landmark decision of the Supreme Court in K.S. Puttaswamy v. Union of India (2017), which recognized the right to privacy as a fundamental right, has added a new dimension to this balancing act. Courts must now engage in a much more in-depth weighing process of the said public right to know and an individual right to privacy, particularly in situations involving personal information and sensitive information.

India's system for the right to know is sufficiently developed, yet various challenges continue plaguing it. They might include withholding information by the bureaucracy, the misuse of exemption clauses, and lack of protection for people who would thus be called whistleblowers. Digitalization has brought up other complications with the right to know opposite the right to be forgotten, especially concerning online information and personal data.

Awareness among the citizens would be another tool for strengthening with the right to information. Better implementation of the RTI Act needs to be ensured, with a more nuanced approach towards balancing transparency with varying degrees of privacy and security. Judicial oversight and engagement from civil society should continue to ensure making the right to know a living reality for every Indian.

COMPARATIVE ANALYSIS

In European Union - The General Data Protection Regulation (GDPR) creates a thorough RTBF enabling people to ask for the deletion of personal data under particular conditions. But this right is weighed against public interest issues and freedom of expression exceptions. In united states system of law gives freedom of expression great weight, hence the RTBF is not very well-known. presently no federal legislation specifically allowing the privilege to be forgotten; the protections of the First Amendment usually exceed claims of individual privacy. In India the RTBF continues to be handled there under development. Seeking to create a framework fit for India's sociopolitical reality, Indian jurisprudence and legislative proposals have selectively taken elements from both the EU and US models.

The main difficulty for India is fitting international best practices to its unique social, legal, and democratic setting. India has to strike a compromise between the right to privacy and the demands of democracy accountability, freedom of expression, and openness. This calls for a sophisticated approach combining regional requirements and constitutional values with world standards.

CONCLUSION AND FINDINGS

Particularly as our lives get more digital, the right to be forgotten is becoming a big legal hot issue in India. Following the Supreme Court's historic decision in Justice K.S. Puttaswamy v. Union of India, privacy is today accepted as a basic right. Many have been motivated to look online for personal information removal, particularly in cases when it is outdated or compromises their dignity. India still does not have a specific law, though, defining the right to be forgotten. Every case must thus be decided by courts individually, usually balancing public knowledge rights to know with privacy and freedom of expression.

Mixed results have come of this. Sometimes courts have mandated the deletion of material in order to protect someone's reputation, especially in cases of an acquittal in a criminal trial. In other cases, though, the courts have prioritized openness or public interest over these considerations. This lack of consistency can confuse people as much as digital platforms.

The Digital Personal Data Protection Act, 2023 indicates legislators seem aware of these problems. The Act tackles data erasure, but it does not completely answers the pragmatic issues of respecting the right to be forgotten. Complete elimination is rather difficult since data is often copied and shared, for example between several websites and even countries. Moreover, not known to many people are their digital rights, which lessens the power of any legal remedy.

India needs to be creatively forward-looking. We need a clear law defining when and how people might exercise their right to be forgotten even as we protect freedom of expression and the public's right to knowledge. One suggestion is to establish special tribunals equipped to fairly and quickly render decisions on these matters. Another is closely working with technology companies to find workable data removal solutions when necessary. Public awareness campaigns help people also to understand their rights and how best to use them.

India still has much to do even if it has come a long way in appreciating the right to be forgotten generally. The law has to keep up with technology and reflect the principles of our democracy. As future lawyers and law students, it is our responsibility to give these problems great thought and assist in the development of answers preserving public interest as well as personal dignity.