
THE RIGHT TO BE FORGOTTEN: A COMPARATIVE LEGAL ANALYSIS ACROSS BRAZIL, FINLAND AND INDIA

Vedika Agarwal & Taranjeet Singh, Symbiosis Law School, Pune

Chapter 1: Introduction and Scheme of Study

Introduction:

With the arrival of the digital age, technology has transformed the way in which information is created, disseminated, and preserved. The access to instant and indefinite storage often causes situations where data that's once published is often immortalised, impossible to erase yet accessible. While such access may assure greater transparency, at the same time, there have been instances where such access has created serious issues regarding "an individual's right to privacy", their right to autonomy, and their right to dignity. As a result, the concerns led to conversations and discourse about "the Right to be Forgotten"; which "is essentially the right" an individual has to remove access to their "information from the public record", post having accomplished its legal purpose. "The right to privacy" finds its roots in "Article 12¹ of the United Nations Declaration of Human Rights" that enshrines that "*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*"

This provision creates a two-fold obligation on the state, including: preventing unjustified interference with "an individual's" private "life and" reputation, which incurs the obligation for safeguarding privacy and reputation from unwarranted interference by state or non-state actors. This means that individuals can expect legal remedies in lieu of unwarranted interference. This research analyses how the right to privacy and reputation is addressed across Brazil, India, and Finland, highlighting current and emerging legal frameworks in each country.

¹ "Universal Declaration of Human Rights, art. 12 (Dec. 10, 1948, G.A. Res. 217 (III) A.)".

Statement of the problem:

- Whether the “*Digital Personal Data Protection Act, 2023 (DPDP)*²” provides an adequate institutional design to enforce the RTFB in practice?
- Whether India requires an Ombudsman or similar quasi judicial mechanism for impartial adjudication of RTFB disputes?
- Whether Indian courts could play a navigating role to ensure constitutional balance between privacy and the public/community’s right to know?

Research Objectives:

- To evaluate the adequacy of the DPDP³ in enforcing the Right to Be Forgotten (RTBF).
- To examine whether an ombudsman mechanism could strengthen India’s institutional framework for data protection and enhance accountability.
- To explore how Indian courts should balance the competing claims of privacy rights and the public’s right to know, ensuring neither constitutional value is undermined.
- To propose recommendations for legislative and judicial reforms that can make the enforcement of RTFB both effective and consistent with democratic principles.

Research gaps:

- To understand the extent to which the Indian Legislature can create a sphere for acknowledging and institutionalising a mechanism for an Ombudsman solely focussing in this arena while adhering to the global principles.
- To understand how the Indian legal frameworks have been insufficient to understand this particular right and the measures that can be taken to mitigate the differences when compared to the international standards.
- Despite growing debates around “the Right to Be Forgotten (RTBF)”, there is limited

² *Digital Personal Data Protection Act, No. 22 of 2023 (India).*

³ “*Digital Personal Data Protection Act, No. 22 of 2023 (India)*”.

comparative analysis of how India; Brazil and Finland, three major democracies with distinct constitutional cultures are shaping the contours of this right.

Research Questions:

1. Whether the “*Right to be Forgotten (RTBF)*” is coherently a shade of the liberties covered under Articles 14⁴, 19⁵ & 21⁶?
2. Whether “the Right to be Forgotten” gives rise to public interest activism or a right to individual privacy?
3. Whether the DPDPA 2023⁷ is adequate to reinforce the Right to be Forgotten?
4. Whether the creation of an Ombudsman could facilitate the delivery and assurance for a Right to be Forgotten?

Literature Review:

Books-

1. **“The Right To Be Forgotten: A Comparative Study of the Emergent Right’s Evolution and Application in Europe, the Americas, and Beyond edited by Franz Werro”⁸**

The literature compares how Brazil and Finland approach the “Right to Be Forgotten (RTBF)”. In Brazil, it is not clearly written into law but has grown through court decisions based on privacy and dignity. Judges weigh personal privacy against freedom of information, with exceptions when content has historical or social value. Finland follows the GDPR model, handling RTBF requests case by case, balancing privacy with public interest. Overall, the comparison shows how countries try differently to balance personal privacy, media freedom, and “the public’s right to know”.

⁴ “India Const. art. 14.”

⁵ “India Const. art. 19”.

⁶ “India Const. art. 21”.

⁷ “Digital Personal Data Protection Act, No. 22 of 2023 (India)”.

⁸ Marcelo López Alfonsín, Argentina: “The Right to Be Forgotten, in *The Right To Be Forgotten: A Comparative Study of the Emergent Right’s Evolution and Application in Europe, the Americas, and Asia* 239, 243 (Franz Werro ed., *Ius Comparatum – Global Studies in Comparative Law* vol. 40, Springer 2020).”

2. Geopolitics, History, and International Relations by Addleton Academic Publishers⁹

In Brazil, the Right to Be Forgotten (RTBF) has grown mainly through court rulings rooted in privacy and dignity. In the 1993 Candelaria massacre case, a man wrongly linked to the crime was allowed to clear his name. Brazil's data law (LGPD, 2020) allows deletion of personal data in limited cases but stops short of granting a full RTBF, ensuring speech and transparency remain protected.

3. "Viktor Mayer-Schönberger, Delete: The Virtue of Forgetting in the Digital Age (2011)".¹⁰

Mayer Schönberger argues that digital permanence is a social problem: the ability to forget once a natural feature of human life has been undermined by always-on storage and searchable archives. He proposes technical fixes (data expiry, automated deletion) and legal norms that reintroduce controlled forgetting. This book helps frame India's policy choices (e.g., time-bound retention rules) and supports Finland's and Brazil's institutional conversations about technical remedies and cross-border limits.

4. "Daniel J. Solove, The Future of Reputation: Gossip, Rumor, and Privacy on the Internet (2007)".¹¹

Solove examines how online speech affects reputations and the inadequacy of traditional privacy law to address networked harms. His taxonomy of privacy injuries (information collection, processing, dissemination) clarifies why simply "removing" a link may not fix reputational damage. This book is especially useful when weighing individual rehabilitation against the public's right to know, as seen in Brazil's cautious balancing and India's concerns about reintegration.

5. "Christopher Kuner, Transborder Data Flows and Data Privacy Law (2013)".¹²

⁹ "Anis H. Bajrektarevic & Valentina Carvajal Caballero, *Navigating the Global Digital Economy: GDPR's Influence on Data Protection in Europe, Latin America, and the Caribbean*, 16 *Geopolitics, Hist. & Int'l Rel.* 50 (2024), <https://www.jstor.org/stable/48813030> (last visited Sept. 22, 2025)".

¹⁰ "Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age*" 65–72 ¶¶ 2–3 (Princeton Univ. Press 2011).

¹¹ "Daniel J. Solove, *The Future of Reputation: Gossip, Rumor, and Privacy on the Internet*" 89–95 ¶¶ 1–2 (Yale Univ. Press 2007).

¹² "Christopher Kuner, *Transborder Data Flows and Data Privacy Law*" 142–50 ¶¶ 4–5 (Oxford Univ. Press 2013).

Kuner provides a rigorous, comparative account of how legal regimes handle cross-border data flows, enforcement, and jurisdictional limits. Kuner's analysis explains Finland's EU rooted enforcement advantages under the GDPR, highlights the LGPD's cross-border gaps in Brazil, and clarifies practical enforcement challenges for India under the DPDP Act. His book grounds the technical and diplomatic side of RTBF policy.

Research Articles:

1. "Anis H. Bajrektarevic & Valentina Carvajal Caballero, Navigating the Global Digital Economy: GDPR's Influence on Data Protection in Europe, Latin America, and the Caribbean"¹³

Brazil's data protection law, the **LGPD** (2020), modeled on the EU's GDPR, modernizes the country's privacy framework by unifying fragmented rules and granting people clear rights to access, correct, and delete their personal data. It applies not only to Brazilian entities but also to foreign companies offering services in Brazil. While Brazil doesn't explicitly name a "Right to Be Forgotten," data erasure rights exist, carefully balanced with freedom of expression and public interest, ensuring dignity, accountability, and democratic safeguards.

2. "Luca Belli, The Right to Be Forgotten Is Not Compatible with the Brazilian Constitution. Or Is It? Future of Privacy Forum (Mar. 23, 2021)"¹⁴

Brazil's "**Right to Be Forgotten (RTBF)**" stems from privacy protection, notably highlighted in the *Candelaria Massacre* case, where courts emphasized dignity over lasting stigma. Unlike Europe's GDPR model, Brazil treats RTBF more as a constitutional safeguard than a statutory right. In 2021, the Supreme Federal Court ruled that a broad RTBF blocking true information over time violates freedom of expression. Instead, courts apply a "**case-by-case balance** between privacy and public interest". While Brazil's LGPD grants data erasure rights, it stops short of a full RTBF. This cautious approach reflects Brazil's democratic commitment to individual dignity.

¹³ "Anis H. Bajrektarevic & Valentina Carvajal Caballero, *Navigating the Global Digital Economy: GDPR's Influence on Data Protection in Europe, Latin America, and the Caribbean*, 16 *Geo. Hist. & Int'l Rel.* 50 (2024), <https://www.jstor.org/stable/48813030> (last visited Sept. 22, 2025)".

¹⁴ "Luca Belli, *The Right to Be Forgotten Is Not Compatible with the Brazilian Constitution. Or Is It?*, *Future of Privacy Forum* (Mar. 23, 2021), <https://fpf.org/blog/the-right-to-be-forgotten-is-not-compatible-with-the-brazilian-constitution-or-is-it/> (last updated July 10, 2025)".

3. “Mario Viola de Azevedo Cunha & Gabriel Itagiba, Between privacy, freedom of information and freedom of expression: Is there a right to be forgotten in Brazil”? ¹⁵

This article explores Brazil’s developing approach to the “Right to Be Forgotten (RTBF)”, balancing privacy, dignity, and “freedom of expression”. Unlike the EU’s GDPR model, Brazil lacks a specific RTBF law, but courts recognize it, mainly to protect individuals from media exposure. With the LGPD and ongoing court rulings, Brazil is defining RTBF within its democratic and legal framework, carefully navigating privacy and free speech in the digital age.

4. “Rafael Silveira e Silva, Right to Be Forgotten or Right to Know: Brazilian Ratio Decidendi” ¹⁶

Brazil finds itself in a very special intersection of privacy, dignity, free “expression, and public information. The Right to be Forgotten (RTF)” evolved from the constitutional protections of privacy, honor, and image, which evolved from cases involving the “Candelaria” massacre, to protect people from being exposed to media indefinitely. Brazil’s approach carefully balances individual dignity with transparency and historical record, evolving case by case in the digital era.

5. “Fabio Alonso Vieira & Carolina Barbosa de L Cunha V da Costa, The perspective of the Brazilian Federal Supreme Court on the right to be forgotten” ¹⁷

In Brazil, RTBF balances privacy, dignity, and freedom of expression. Courts protect individuals from ongoing harm if public interest concerns are not there. The 2021 STF ruling limits broad RTBF, favoring case-by-case reviews. Brazil cautiously balances rights while preserving transparency and historical record.

Research Methodology:

This research methodology has adopted a doctrinal way of study and research, largely focusing on the interpretation and analysis of the various legal documents. Our research commences with a thorough understanding of the DPDP Act, 2023, “the Indian Constitution as well as the”

¹⁵ “Mario Viola de Azevedo Cunha & Gabriel Itagiba, *Between privacy, freedom of information and freedom of expression: Is there a right to be forgotten in Brazil?*, 32 *Computer L. & Sec. Rev.* 634 (2016), <https://www.sciencedirect.com/science/article/abs/pii/S0267364916300875>”.

¹⁶ “Rafael Silveira e Silva, *Right to Be Forgotten or Right to Know: Brazilian Ratio Decidendi*,” 14 *Beijing L. Rev.* 1895 (2023), *Beijing Law Review - SCIRP*.

¹⁷ “Fabio Alonso Vieira & Carolina Barbosa de L Cunha V da Costa, *The perspective of the Brazilian Federal Supreme Court on the right to be forgotten*, *Int'l Bar Ass'n* (June 24, 2021), <https://www.ibanet.org/Brazilian-Federal-Supreme-Court-perspectives>”.

relevant judicial precedents and jurisprudence in India; largely focussing on the precedent set by the “Honourable Supreme Court of India in Justice K.S. Puttaswamy v Union of India (2017)”¹⁸.

Furthermore, this paper envisages a comparative analysis of the jurisprudence in this field across Brazil, Finland, and India by focusing on the interpretation of the leading international frameworks “along the lines of the European Union’s General Data Protection Regulation” that individually assess an individual’s right to be forgotten.

“Scope and Limitation” to the Research:

Scope:

The scope of this research is to analyse the Right to Be Forgotten (RTBF) within India, Finland and Brazil. It particularly focuses on the legal frameworks such as DPDP Act, GDPR and judicial interpretations, and the conflict with fundamental rights.

The research is highly centred on critical and a detailed “analysis of the Right to be Forgotten” against the Indian and the global background. While the paper primarily focuses on the Indian context, we also aim to highlight the jurisprudential aspects across India, Finland, and Brazil. While in India, the right is still in the nascent stage, with the precedent set by *Justice Puttaswamy v UOI* playing a leading role, yet the jurisprudence in India is underdeveloped.

Brazil, on the other hand, emphasises the principle of proportionality, which is largely based on judicial precedents. The said right is covered under Article 5, sub-items X, XI and XII of the “Brazilian Constitution, which states that the right to a private life” of the individual is solid and inviolable.

Superior Tribunal de Justiça across various cases *Aida Curi Case* ruled that the historical character of the chain of events and the impossibility of disengaging the said involved parties. As was held in *Xuxa v Google Brasil*¹⁹, the Court explicitly mentioned that the search engines are not compelled to eliminate results or exercise prior control on the content.

¹⁸ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).

¹⁹ *S.T.J., REsp No. 1.316.921-RJ (Braz.)*.

Limitation:

The research aims at a comprehensive, comparative doctrinal account; the limitations arise from the reliance of secondary and tertiary sources that could be misleading. The study aims at understanding the feasibility of the right given the globalised world we live in, yet it could fail to fully cover the practical and operational dimensions of the enforcement of such a right in Indian jurisprudence.

Scope of further research:

The Right to Be Forgotten is still shaping, and this leaves much room for more study. Future work can look at how countries could enforce RTBF across borders on a global internet, or how new tech like AI and deepfakes makes erasure rights more complicate. There is also space to see when privacy must give way to journalism and history, and if independent bodies outside courts may handle RTBF disputes in a more fair manner. Lastly, research can explore cultural attitudes on forgiveness and reputation, showing how law and society together give meaning to forgetting.

Chapter 2 Finland Jurisprudence**Statutory Framework**

The Finnish regime for “the Right to Be Forgotten (RTBF)” is situated within the “EU General Data Protection Regulation (GDPR)” and is expressly provided for in Finnish law through the Data Protection Act. While the Constitution of Finland protects privacy, direct enforcement of the RTBF depends upon Article 17 and the domestic law on data protections.²⁰

Institutional Design & Ombudsman Mechanism:

The Finnish Data Protection Ombudsman (Tietosuojavaltuutettu) is the primary independent supervisory authority for RTBF claims. Data subjects may seek rectification or erasure of personal data from controllers, usually digital platforms or public authorities, regarding their rights under the GDPR. The Ombudsman will decide on the complaint, review compliance, and can order rectification where data are incomplete or data were processed unlawfully.

²⁰ “Christopher Kuner, *Transborder Data Flows and Data Privacy Law* 142–50 ¶¶ 4–5 (Oxford Univ. Press 2013)”.

However, the Ombudsman's action should be considered administrative and not strictly judicial, and the orders apply only to EU data controllers. The Ombudsman decisions can be appealed and are subject to judicial review but, the Ombudsman does not offer a tribunal dedicated to the RTBF and does not consider other proposed reforms to develop by trial process to consider claims.

Judicial Trends and Key Issues

- Finnish practice follows the CJEU's **Google Spain**²¹ given a legal basis, generally needing to be balanced on an individualized basis the interest of privacy (including rehabilitation from prior offenses) versus "the interest of the public to have access to the information" collected.
- Courts and the Ombudsman tend to be cautious in favor of erasure of irrelevant data for private individuals, but uphold "the public interest/historical record/freedom of expression in the case of public figures, criminal cases", and journalism.

Gaps & Critiques

- **Institutional Gaps:** Though the Ombudsman affords expedient recourse, there is no specific RTBF ombudsman or independent review board, as has been suggested for complex privacy disputes on occasion. RTBF claims are managed in conjunction with broader concerns about data protection, rather than separately.
- **Transparency & Accessibility:** Case law and administrative decisions are not systematically published, leaving ambiguity over success rates, balancing criteria, and clear precedents.
- **Practical Constraints:** Cross-border enforcement is limited: removals can only affect access from EU/Finland, not globally. RTBF rights do not trump significant public interest, transparency, or historical memory.
- **Comparative Insufficiency:** While Finland's system is strong, it is relatively conservative in the granting of RTBF erasures compared to some other EU countries,

²¹ *Google Spain SL v. Agencia Española de Protección de Datos (AEPD)*, Case C-131/12, 2014 E.C.R. I-317.

particularly with regard to criminal cases or media archives. There is no user guidance or support provided to claimants during active review of the process.

Chapter 3: Indian Jurisprudence

“India's Information Technology Rules (2021) and the Digital Personal Data Protection Act (2023)” offer incomplete recognition of the right to deletion and also provide for the right to correction of personal data in certain circumstances. “**Section 12 of the Data Protection Act**”²² provides individuals with a "right to rectification" and a "right to erasure" or "right to be forgotten," but there are stated provisions that allow competing interests to interfere with those rights. These provisions still require the development of their specifics for full applicability, and further, may evolve as the jurisprudence surrounding privacy develops further.²³

EVOLUTION OF RTBF IN INDIA

In India, a nuanced position has been taken through evolving judicial interpretation - not through a specific statute. In a landmark ruling, the “apex court ruled that the Right to Privacy, set out in Article 21 of the Constitution, is a "fundamental right", which paved the way for recognizing RTBF. Decisions from earlier cases, such as *Rajagopal v. State of Tamil Nadu* (1994)²⁴ articulated a ‘Right to Be Let Alone,’ and subsequent decisions by various High Courts” and the Supreme Court have explored RTBF within the broader privacy framework.²⁵

- The Kerala High Court (2016) ordered the removal of a judgment identifying a rape victim, reflecting sensitivity toward personal dignity.
- The Gujarat High Court (2017) declined to remove non-reported judgments from search engines, upholding transparency and the public interest.²⁶
- The Karnataka High Court (2017) and Delhi High Court (2019) highlighted RTBF as a developing legal norm, sometimes allowing redaction of names or removal from public

²² *Digital Personal Data Protection Act, 2023 (India)*

²³ “Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* 65–72 ¶¶ 2–3 (Princeton Univ. Press 2011)”.

²⁴ “*R. Rajagopal v. State of T.N.*, (1994) 6 S.C.C. 632 (India)”.

²⁵ “Viktor Mayer-Schönberger, *Delete: The Virtue of Forgetting in the Digital Age* 65–72 ¶¶ 2–3 (Princeton Univ. Press 2011)”.

²⁶ 2017 SCC OnLine Guj 2493.

records after weighing privacy and individual rights.²⁷

However, the Supreme Court in 2024 clarified limitations: judicial records are public documents, and RTBF cannot override transparency and legitimate public access in all cases.

CHALLENGES WAYFORWARD

One of the most significant challenges is balancing the “individual's right” of privacy and the public right to know. Article 19 of the Indian Constitution provides freedom of expression permitting citizens to express themselves freely but there may be a disagreement with an individual's desire to have certain information deleted from public view. Courts are now faced with complicated decisions in balancing the “individual's right to privacy” and dignity alongside the public's right to know, especially when the information to be deleted has public interest. Courts may be faced with balancing the head of privacy and dignity alongside the head of the public interest and how can they evaluate the public interest to revoke privacy. As there is no clear indication on how to evaluate these requests, courts will need a well-established public interest test to determine when privacy should outweigh public interest. RTBF presents many legal, technical, and ethical challenges.²⁸

The challenges in implementation of the right to be forgotten (RTBF) include cross-border enforcement, negotiating privacy and freedom of speech concerns, difficulties in technical data removal, and threats to the provisions of investigative journalism. A global standardization as well as laws that are clear will be required to avoid the RTBF from infringing on other rights. Its development over time reflects the ongoing predicament of the balance between privacy, speech, and the importance of public knowledge in the digital age; the EU leans toward protection, the USA toward transparency, and India is slowly growing recognition through litigation and developing laws.

The future of the concept is through layered statutory creation that is sensitive to rights such that individuals regain control of lived experiences without engaging or undermining democracy and public knowledge in the process..²⁹

²⁷ 2017 SCC OnLine Kar 424.

²⁸ “Anuprash Rajat & Gaurav Bharti, *Right to Be Forgotten in India: A Critical Legal Analysis*, 4 Indian J.L. & Legal Rsch., Issue 4, ISSN 2582-8878 (2021)”.

²⁹ Dr.ArTiMr.Dasfullpaper-1.pdf page 3

RECOMMEDATIONS:

- **Judicial Guidelines Implementation:** RTBF legislative statutes could help create a more formal framework for courts and authorities, creating a more uniform statutory interpretation and application. Additionally, this would create an established process for individuals to request the removal of information and create parameters for the removal of such information such as age of information, public relevance, and the role of the individual in the business of public life.
- **Legal Recourse and Penalties:** Failure to comply with valid RTBF requests will cause liability and orders to comply with the law. Individuals will also have the right to pursue action and damages for unauthorized data processing.
- **Periodic Review and Updates:** Establish a foundational procedure to periodically review and update guidelines as technology, society, and privacy evolves. As a result, this will facilitate on-going discussions around new issues, such as AI-driven profiling or data aggregation challenges, as they arise.
- **Independent Review Board:** Formally institute a Data Protection Authority or an Independent Review Body, tasked with oversight of RTBF requests while fostering a transparent decision-making process that promotes a consideration of each request on its individual merits. A more transparent and rigorous approach must incorporate measures which ensure the fairness, neutrality and due process in legal contexts and considerations. All of these recommended changes will, in totality, provide to India in the creating of a legal framework surrounding RTBF, that simultaneously protects the right to individual privacy while balancing the legal rights of other individuals and the greater common, community good.³⁰

Chapter 4: Brazilian Jurisprudence

In Brazilian jurisprudence the right to be forgotten (RTBF)³¹ arose mostly through jurisprudence in place of formal legal authorisation. It is mostly based on constitutional

³⁰ “Sanjay Vashishtha, *The Evolution of Right to Be Forgotten in India*, SCC Times (Jan. 27, 2022)”

³¹ Marcelo López Alfonsín, Argentina: “The Right to Be Forgotten, in *The Right To Be Forgotten: A Comparative Study of the Emergent Right’s Evolution and Application in Europe, the Americas, and Asia* 239, 243 (Franz Werro ed., *Ius Comparatum – Global Studies in Comparative Law* vol. 40, Springer 2020)”.

guarantees for privacy, honour, and human dignity, especially Article 5 of Brazil's 1988 Constitution³². The Superior Tribunal de Justiça (STJ) developed its contours by weighing the “right to privacy against the public interest in information.” Criminal law particularly talks about the right to be forgotten for social reintegration after serving a penalty. The prohibition on lifelong penalties (Art. 5, XLVII(b))³³ forms the basis for a “right to be released from the memory” of one’s crime, supported by statutory provisions like Article 202 of the Sentence Execution Act³⁴, “Article 93 of the Criminal Code³⁵, and Article 748 of the Criminal Procedure Code”³⁶. These ensure that former convicts, once their penalty is served, may not have criminal facts permanently reflected in police records except for recurrence or as legally required.³⁷

Statutory Framework in Brazil

LGPD³⁸ creates a framework “for the protection of personal information”. LGPD is based in part on the EU General Data Protection Regulation (GDPR),³⁹ gives principles such as purpose limitation, data minimisation, and proportionality. Article 1⁴⁰ gives data subjects with the right to confirm, access, update, anonymise, and erase their personal data. This legislative right to erasure is the closest Brazilian equivalent to the European right to be forgotten. However, Article 7⁴¹ and 16⁴² include exclusions that allows processing for legal compliance, public interest, and journalistic objectives.⁴³

Case Laws of Superior Tribunal de Justiça (STJ)

Brazilian jurisprudence has developed mostly via significant STJ rulings, particularly in media and Internet-related circumstances:

³² *Braz. Const. art. 5 (1988)*

³³ *Braz. Const. art. 5, (1988) XLVII(b).*

³⁴ *Lei No. 7.210/1984 (Sentence Execution Act), art. 202.*

³⁵ “*Braz. Penal Code (Decree-Law No. 2.848/1940) art. 93 (Braz.)*”

³⁶ *Braz. Crim. Proc. Code (Decree-Law No. 3.689/1941) art. 748 (Braz.).*

³⁷ “*Fabio Alonso Vieira & Carolina Barbosa de L Cunha V da Costa, The perspective of the Brazilian Federal Supreme Court on the right to be forgotten, Int'l Bar Ass'n (June 24, 2021), <https://www.ibanet.org/Brazilian-Federal-Supreme-Court-perspectives>*”.

³⁸ “*Lei Geral de Proteção de Dados Pessoais (LGPD), Law No. 13,709, August 14, 2018, Brazil*”.

³⁹ “*Christopher Kuner, Transborder Data Flows and Data Privacy Law 142–50 ¶¶ 4–5 (Oxford Univ. Press 2013)*”.

⁴⁰ *Lei Geral de Proteção de Dados Pessoais (LGPD), Lei No. 13.709, de 14 de agosto de 2018, art. 18 (Braz.).*

⁴¹ “*Lei Geral de Proteção de Dados Pessoais (LGPD), Lei No. 13.709, de 14 de agosto de 2018, art. 17 (Braz.)*”.

⁴² “*Lei Geral de Proteção de Dados Pessoais (LGPD), Lei No. 13.709, de 14 de agosto de 2018, art. 16 (Braz.)*”.

⁴³ “*Anis H. Bajrektarevic & Valentina Carvajal Caballero, Navigating the Global Digital Economy: GDPR's Influence on Data Protection in Europe, Latin America, and the Caribbean, 16 Geo. Hist. & Int'l Rel. 50 (2024), <https://www.jstor.org/stable/48813030> (last visited Sept. 22, 2025)*”.

· **Candelária Massacre Case**⁴⁴: Convicts sought to prevent media commemoration of crimes long after serving sentences. The STJ acknowledged their suffering but ruled against the right to be forgotten, emphasizing the historical and public significance of such facts.

· **Aida Curi Case**⁴⁵: Relatives of a victim of homicide argued for removing details of the 1958 case from journalistic documentaries years later. The STJ declined, citing the impossibility of isolating the event from collective memory and historical records.⁴⁶

· **Xuxa v. Google Brasil**⁴⁷: Maria da Graça "Xuxa" Meneghel attempted to convince Google to deindex search results following a previous scandal. The STJ decided against her, by mentioning "freedom of information and the press trumped individual privacy, and that Brazilian law did not recognise an absolute right to be forgotten on the internet." The "notice and take down" strategy, which requires notification before content removal, was embraced by application providers rather than search engines.⁴⁸

Supremo Tribunal Federal (STF) Ruling

The STF in 2021, issued a landmark judgment in Aída Curi case⁴⁹, The Brazilian Supreme Court rejected an autonomous right to be forgotten, ruling that privacy, honor, and dignity must be balanced with freedom of expression and information. Remedies should align with defamation, privacy, and data protection laws, not create a separate right to erase lawful information. This ruling limits "the right to be forgotten", prioritizing journalistic freedom and historical truth.

Constitutional Basis and Criminal Law Foundations

Brazilian criminal law particularly addresses the right to be forgotten for social reintegration

⁴⁴ *Candelária Massacre (Braz., Superior Tribunal de Justiça [S.T.J.], Special Appeal (Recurso Especial) No. 1.334.097-RJ.*

⁴⁵ *Aída Curi v. TV Globo Ltda., Superior Tribunal de Justiça [STJ], REsp No. 1.335.153/RJ, 4ª Turma, 28 May 2013 (Braz.).*

⁴⁶ *Marcelo López Alfonsín, Argentina: "The Right to Be Forgotten, in The Right To Be Forgotten: A Comparative Study of the Emergent Right's Evolution and Application in Europe, the Americas, and Asia 239, 243 (Franz Werro ed., Ius Comparatum – Global Studies in Comparative Law vol. 40, Springer 2020) "*

⁴⁷ *Xuxa Meneghel v. Google Brasil Internet Ltda., Superior Tribunal de Justiça [STJ], REsp No. 1.316.921/RJ, 3ª Turma, 8 Aug. 2013 (Braz.).*

⁴⁸ *"Luca Belli, The Right to Be Forgotten Is Not Compatible with the Brazilian Constitution. Or Is It?, Future of Privacy Forum (Mar. 23, 2021), <https://fpf.org/blog/the-right-to-be-forgotten-is-not-compatible-with-the-brazilian-constitution-or-is-it/> (last updated July 10, 2025) "*

⁴⁹ *Aída Curi v. TV Globo Ltda., Superior Tribunal de Justiça [STJ], REsp No. 1.335.153/RJ, 4ª Turma, 28 May 2013 (Braz.).*

after serving a penalty. The prohibition on lifelong penalties (Art. 5, XLVII(b))⁵⁰ forms the basis for a “right to be released from the memory” of one’s crime, supported by statutory provisions like Article 202 of the Sentence Execution Act⁵¹, “Article 93 of the Criminal Code”⁵², and Article 748 of the “Criminal Procedure Code”.⁵³ These ensure that former convicts, once their penalty is served, may not have criminal facts permanently reflected in police records except for recurrence or as legally required.⁵⁴

Chapter 5:

Conclusion:

The “Right to be Forgotten (RTBF)” resides at the juncture of privacy, dignity, freedom of express, and public interest, which various jurisdictions have shaped differently. In Finland, RTBF embraces the GDPR framework, wherein the Ombudsman provides procedural access and proportionality considerations, albeit without the benefit of specialized tribunals and full procedural transparency regarding RTBF determination remaining problematic for claimants' understanding. In India, RTBF is still in its nascent stages, orientating itself around judicial precedents like Puttaswamy and now supported by the DPDP Act, 2023, which creates Data Protection Officers⁵⁵. However, implementing the use cases is challenging, and there is a heightened need to develop judicial standards, especially with regard to public interest cases from criminal records. Brazil has adopted a contextual approach: where dignity is protected because the information has lost relevance, but courts will not delete historical truths and facts central to collective memory. Taken together, these experiences serve as a reminder that we need standards that are harmonized, transparent mechanisms, and meaningful adjudication that is sensitive to both individual rights and democratic values in the digital age.

Suggestions:

The “Right to Be Forgotten (RTBF)” is not just a legal tool but a reflection of how societies balance dignity, privacy, and memory. Based on the comparative study of India, Finland, and

⁵⁰ *Brasil Constituição Federal de 1988, art. 5, XLVII(b).*

⁵¹ *Lei No. 7.210/1984 (Sentence Execution Act), art. 202.*

⁵² *Braz. “Penal Code (Decree-Law No. 2.848/1940) art. 93 (Braz.).”*

⁵³ *Braz. Crim. Proc. Code (Decree-Law No. 3.689/1941) art. 748 (Braz.).*

⁵⁴ *See Constituição Federal [C.F.] [Constitution] Oct. 5, 1988, art. 5 (Braz.).*

⁵⁵ “*Rafael Silveira e Silva, Right to Be Forgotten or Right to Know: Brazilian Ratio Decidendi*”, 14 *Beijing L. Rev.* 1895 (2023), *Beijing Law Review - SCIRP*.

Brazil, the following five suggestions can be incorporated by government:

1. Special Ombudsman for RTBF

India should establish a dedicated quasi-judicial body, like Finland's Data Protection Ombudsman, to handle RTBF disputes quickly and fairly.

2. Clear Judicial Guidelines

Courts should adopt a structured test when deciding cases considering time passed, relevance, public interest, and historical value to ensure consistency.

3. Strengthen the "DPDP Act"

The "Digital Personal Data Protection Act, 2023" should explicitly recognize RTBF, reducing ambiguity and reliance on lengthy litigation.

4. Transparency from Platforms

Digital platforms must publish annual reports on RTBF requests, showing acceptance rates and reasons for rejection. This would build accountability and trust.

5. Balance Privacy and Public Memory

Like Brazil's cautious approach, India should protect individuals seeking reintegration but safeguard journalism, collective memory, and democratic transparency.