

Legal Issues in ‘Data Privacy and Protection’

Issue: Whether Right to be Forgotten is Sufficiently Recognized by Law?

What is Right to be Forgotten?: Definition and Background

- ❖ Right to have publicly available personal information taken down from internet when it no more relevant.
- ❖ Envisaged in the General Data Protection Regulation ('GDPR'), upheld by courts in Europe and in the United Kingdom. In 2014, in the case of *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*, the European Court of Justice asked Google to delete “*inadequate, irrelevant or no longer relevant*” data from its search results, when a member of the public requests so.
- ❖ In 2016, EU adopted a new GDPR (which came into effect from 2018) containing Right to be Forgotten enshrined under Article 17 of the GDPR. The Article states as follows:

“Right to erasure (‘right to be forgotten’) - The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay...”

India's Position on Right to be Forgotten

- ❖ No recognition as a statutory right.
- ❖ The concept has, however, been recognized and encouraged by various courts. While some concurred that the right formed an inherent part of Right to Privacy, some observed otherwise.
- ❖ **Dharmraj Bhanushankar Dave v. State of Gujarat, [2015 SCC OnLine Guj 2019]**

“The petitioner has not been able to even prima facie point out that provisions of which law are attracted in this petition. The prayers prayed for in this petition would not amount to any violation of Article 21 of the Constitution as averred by the petitioner. The judgment in appeal is part of the proceedings and the said judgment is pronounced by this Court and therefore, merely publishing on the website would not amount to same being reported as the word "reportable" used for judgment is in relation to it being reported in law reporter and not its publication anywhere else while taking into consideration the important fact that High Court was a court of record.”

Relevant Case Laws

❖ **Sri Vasunathan v. The Registrar, [2017 SCC OnLine Kar 424]**

“... “This would be in line with the trend in the Western countries where they follow this as a matter of rule “Right to be forgotten” in sensitive cases involving women in general and highly sensitive cases involving rape or affecting the modesty and reputation of the person concerned.”

❖ **KS Puttaswamy v. Union of India, [(2017) 10 SCC 1]**

“... this right to control dissemination of personal information in the physical and virtual space should not amount to a right of total eraser of history, this right, as a part of the larger right of privacy, has to be balanced against other fundamental rights like the freedom of expression, or freedom of media, fundamental to a democratic society...an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/ information is no longer necessary, relevant, or is incorrect and serves no legitimate interest. Such a right cannot be exercised where the information/ data is necessary, for exercising the right of freedom of expression and information, for compliance with legal obligations, for the Supra performance of a task carried out in public interest, on the grounds of public interest in the area of public health, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or for the establishment, exercise or defence of legal claims. Such justifications would be valid in all cases of breach of privacy, including breaches of data privacy.”

Relevant Case Laws (Contd.)

❖ **Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd., [W.P. (C) 3918/ 2021]**

“Accordingly, recognizing the Plaintiff's Right to privacy, of which the `Right to be forgotten' and the `Right to be left alone' are inherent aspects, it is directed that any republication of the content of the originally impugned articles dated 12th October 2018 and 31st October 2018, or any extracts/ or excerpts thereof, as also modified versions thereof, on any print or digital/electronic platform shall stand restrained...”

❖ **Subhranshu Rout v. State of Odisha, [BLAPL No.4592/2020]**

“...No person much less a woman would want to create and display gray shades of her character. In most of the cases, like the present one, the women are the victims. It is their right to enforce the right to be forgotten as a right in rem. Capturing the images and videos with consent of the woman cannot justify the misuse of such content once the relation between the victim and accused gets strained as it happened in the present case. If the right to be forgotten is not recognized in matters like the present one, any accused will surreptitiously outrage the modesty of the woman and misuse the same in the cyber space unhindered. Undoubtedly, such an act will be contrary to the larger interest of the protection of the woman against exploitation and blackmailing, as has happened in the present case. The sloganeering of “betibachao” and women safety concerns will be trampled...”

Relevant Case Laws (Contd.)

❖ **Jorawar Singh Mundy v. Union of India, [W.P.(C) 3918/2021 & CM APPL. 11767/2021]**

Whether a Court order can be removed from online platforms is an issue which requires examination of both the Right to Privacy of the Petitioner on the one hand, and the Right to Information of the public and maintenance of transparency in judicial records on the other hand?

“It is the admitted position that the Petitioner was ultimately acquitted of the said charges in the case levelled against him. Owing to the irreparable prejudice which may be caused to the Petitioner, his social life and his career prospects, inspite of the Petitioner having ultimately been acquitted in the said case via the said judgment, prima facie this Court is of the opinion that the Petitioner is entitled to some interim protection, while the legal issues are pending adjudication by this Court. Accordingly, Respondent Nos. 2 and 3 are directed to remove the said judgment...from their search results...”

Right to be Forgotten under Personal Data Protection Bill, 2018

- ❖ B.N Srikrishna Committee recognized Right to be Forgotten under S. 27 of the PDP Bill, 2018. The Section provided –

Right to Be Forgotten. — The data principal shall have the right to restrict or prevent continuing disclosure of personal data by a data fiduciary related to the data principal where such disclosure –
a) has served the purpose for which it was made or is no longer necessary; b) was made on the basis of consent under section 12 and such consent has since been withdrawn; or c) was made contrary to the provisions of this Act or any other law made by Parliament or any State Legislature.

- ❖ The scope of Right to be Forgotten under PDP Bill, 2018 was restrictive and did not include Right to Erasure.

Right to be Forgotten Under Personal Data Protection Bill, 2019

❖ *Section 20: Right to be Forgotten –*

(1) The data principal shall have the right to restrict or prevent the continuing disclosure of his personal data by a data fiduciary where such disclosure—

- (a) has served the purpose for which it was collected or is no longer necessary for the purpose;*
- (b) was made with the consent of the data principal under section 11 and such consent has since been withdrawn; or*
- (c) was made contrary to the provisions of this Act or any other law for the time being in force.*

(2) The rights under sub-section (1) may be enforced only on an order of the Adjudicating Officer made on an application filed by the data principal, in such form and manner as may be prescribed, on any of the grounds specified under clauses (a), (b) or clause (c) of that sub-section:

Provided that no order shall be made under this sub-section unless it is shown by the data principal that his right or interest in preventing or restricting the continued disclosure of his personal data overrides the right to freedom of speech and expression and the right to information of any other citizen.

Right to be Forgotten Under Personal Data Protection Bill, 2019 (Contd.)

❖ *Section 18: Right to correction and erasure –*

(1) The data principal shall where necessary, having regard to the purposes for which personal data is being processed, subject to such conditions and in such manner as may be specified by regulations, have the right to-

(a) the correction of inaccurate or misleading personal data;

(b) the completion of incomplete personal data;

(c) the updating of personal data that is out-of-date; and

(d) the erasure of personal data which is no longer necessary for the purpose for which it was processed.

(2) Where the data fiduciary receives a request under sub-section (1), and the data fiduciary does not agree with such correction, completion, updation or erasure having regard to the purposes of processing, such data fiduciary shall provide the data principal with adequate justification in writing for rejecting the application.

THANK YOU!

Questions?

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