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THE RIGHT TO BE FORGOTTEN: NAVIGATING THE TENSION BETWEEN PRIVACY AND FREE EXPRESSION IN THE DIGITAL AGE*

AUTHORED BY - V VISHAL

ABSTRACT

This paper examines the evolution and implementation of the "right to be forgotten" (RTBF), a concept that has gained significant traction in the digital era. Originating from European privacy laws, the RTBF was cemented by the landmark Google Spain judgment and subsequently codified in the General Data Protection Regulation (GDPR). The study traces the development of this right across various jurisdictions, with a particular focus on its emergence in India through judicial interpretations and proposed legislation. The research critically analyses the challenges posed by the RTBF, including its potential conflict with freedom of speech and expression. It highlights the delicate balance required between individual privacy rights and public access to information. The paper also explores the practical implications of implementing the RTBF, discussing the role of search engines as de facto arbiters and the ambiguities in current legal frameworks. Furthermore, the study considers the RTBF's impact on democratic values, historical records, and the free flow of information. It concludes by emphasizing the need for clear guidelines and a nuanced approach to prevent the misuse of this right while ensuring adequate protection of individual privacy in the digital landscape.

Inception of the Right to be Forgotten

The concept of the "right to erasure," commonly known as the "right to be forgotten," is enshrined in Article 17 of the General Data Protection Regulation (GDPR) of 2016.[1] This concept has its roots in French law, which recognizes "*le droit a l'oubli*" or "the right of oblivion."[2] This French legal principle allows rehabilitated criminals to object to the publication of information about their past convictions and imprisonment. The modern interpretation of this right evolved from the European Union's Data Protection Directive of

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[1] General Data Protection Regulation GDPR, 2016, art. 17.
[2] Hillary C. Webb, People Don't Forget: The necessity of legislative guidance in implementing a U.S. Right to be forgotten, 85 GEO, WASH. L. REV. 1304, (2017).

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1995. This directive allowed individuals to request the deletion of certain online information due to its inaccurate or incomplete nature.[3] A significant development occurred in 2014 when the Court of Justice of the European Union (CJEU) ruled on the case of "*Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González.*"[4] This landmark decision established that EU citizens have a right to be forgotten, prioritizing personal privacy over freedom of information within the European Union. This ruling was instrumental in incorporating the right into the GDPR in 2016.[5] The implementation of this right posed challenges, particularly regarding enforcement against both state entities and private search engines. The solution involved designating the state as a regulator to enforce residents' rights against private search engines like Google, Yahoo!, and Bing.

Before the Google Spain judgment, the European Parliament and Council had enacted the Data Protection Directive. This directive intended to govern personal data transfer across EU Member States and provide a foundation for protecting individuals essential freedoms, particularly privacy. Unlike traditional European directives, which often allowed significant discretion in implementation, the Data Protection Directive provided limited flexibility to ensure harmonization of privacy laws across Member States without compromising security. The Google Spain case[6] was groundbreaking in introducing and enforcing a citizen's right to be forgotten, making its analysis particularly significant in the development of data protection law in the European Union

Analysis of the Google Spain Judgment

Prior to the Google Spain Judgment, the European legislature and Council enacted the Data Protection Directive (DPD) to regulate the exchange of personal data across the union's States and protect privacy rights. The DPD aimed to harmonize national privacy laws without compromising security. The Google Spain case, being the first to introduce and enforce the "right to be forgotten," is considered a landmark decision.

Facts of the Case

In 2010, Spanish citizen Mario Costeja Gonzalez filed a complaint with the Spanish Data Protection Agency (AEPD) against Google Inc., Google Spain SL, and a local newspaper. He

[3] Council Derivative 95/46/EC, art. 12 (b), 1995 O.J (L 281) 31.
[4] Case C-131/12
[5] GDPR, supra 1.
[6] Google Spain v. Agencia Espafiola de proteccion de Datos (AEPD), 2014 E.C.R. 317.

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asked for the erasure of personal information relating to a 1998 auction notice for his foreclosed home, asserting that the information had become irrelevant. Gonzalez sought two reliefs: deletion of the newspaper article and removal of links to the article from Google's search results.

AEPD's Decision

The AEPD affirmed Gonzalez's claim against Google, determining that search engine providers are subject to data protection laws because they process data and operate as intermediaries. However, it dismissed the claim against the newspaper, stating that the information was necessary for potential bidders. This decision implicitly formulated the "right to be let alone" and, by extension, the "right to be forgotten."

CJEU's Decision

When Google appealed to the Court of Justice of the European Union (CJEU), the court had to interpret Directive 95/46[7] concerning search engines and newer technologies. The key questions were:

1. Whether search engines' activities constitute "processing of data" under Article 2(b) of Directive 95/46.
2. Whether search engines can be considered "controllers" of personal data under Article 2(d).

The CJEU concluded that search engines process data and are controllers of personal data under Articles 2(b) and 2(d) of Directive 95/46. The court ruled that search engines play an important role in disseminating personal information by making it available to any internet user looking for an individual's name. The court then addressed whether Articles 12(b) and 14(a) of Directive 95/46 allow data subjects to request search engines to prevent indexing of information published on third-party websites, even if the information was lawfully published. Google argued using the "Proportionality Principle," contending that removal requests should be directed to the original publishers. They also raised concerns about the fundamental rights of website publishers and internet users' freedom of speech. However, the CJEU favoured citizens privacy rights over internet users' freedom of speech. The nature of the material, its sensitivity to the private life of the data subject, and the public's interest in gaining access to the information are all factors that the court observed may affect the balance. The CJEU ruled

[7] Council Directive 95/46/EC, 1995 O.J. (L 281) 31.

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that search engine operators are obliged to remove links to web pages containing personal information from search results based on a person's name, even if the information remains on the original web pages and its publication is lawful. This right to be forgotten stems from the right to privacy and is subject to certain conditions:

1. The processing of personal data must be incompatible with the Directive.
2. The data may be insufficient, obsolete, or excessive in relation to the processing purposes.
3. The data is not kept up to date or is retained longer than necessary.

The court stated that if the inclusion of links to lawfully published web pages containing true information is found to be incompatible with the Directive because the information appears inadequate, irrelevant, no longer relevant, or excessive, the links must be erased.[8] The Google Spain judgment was a landmark decision wherein the ECJ ruled that "right to be forgotten" was a facet of right to privacy. While doing so, it included the right to delist or de-index links and extensively considered the potential consequences of such a right, reaffirming that there was adequate reasons to ensure that such a power was not abused. The court held the subsidiaries responsible for the processing of data and an EU entity and subsidiary, however, practical issues of compliance remained as the links of the print article will be removed from Google Spain (or maybe all Google subsidiaries in the EU) but it will be available on other jurisdictions which do not recognize the right to be forgotten such as the US (in Google US) to people disguising their location using a Virtual Private Network.[9]

Incorporation of the 'Right to be Forgotten' into the GDPR, 2016

In January 2012, the European Commissioner for Justice, Fundamental Rights and Citizenship unveiled a plan to formalize the right to be forgotten. On May 13, 2014, the CJEU unequivocally ruled in the Google case that the right to be forgotten can be implemented against search engine operators and third parties who are the publishers of the impugned information on the internet, even if the publication is lawful, establishing a "right to be forgotten" for European Union citizens. A significant consolidation of privacy rules resulted from this verdict. This ruling led to a broad unification of privacy laws.[10] The next step for the enforcement of a legal right was always finding a solid place in a legislation to make it an

[8] Google Spain, 2014 E.C.R. 317. At para 92.
[9]Klint Finley, “In Europe vou will need a VPN to see real search results”, Wired (8" March 2016), available at https://www.wired.com/2016/03/europe-youll-need-vpn-see-real-googlescarch-results, (last accessed 2" October 2019)
[10] Council Regulation 2016/279, 2016 O.J. (L119) 1 (EU).

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enforceable right with all reasonable restrictions and a well-defined scope of the application of the right.

After the Google Spain verdict, the 2012 proposed codification gathered traction. 2018 will mark the start of its implementation. It was formally agreed upon in 2015 and approved by the European Parliament and Council in 2016. The decisions rendered in the landmark Google Spain case are reinforced and incorporated by the codification. In order to establish a uniform legal framework for the RTBF, also known as the right to erasure, and to harmonize data protection throughout the EU, the European Council and the European Parliament passed the General Data Protection Regulation (GDPR) in May 2016. In 2014, Art. 17's title was descriptively altered from "Right to be forgotten and to erasure" to "Right to erasure".[11] The aforementioned provision seeks to mandate that, in response to such a request, the data controller destroy the customer's information. There are several reasons for this, from consent withdrawal to the knowledge becoming irrelevant. Other reasons are as follows:

1) Lack of legality in processing such information,
2) Objection by the user, and
3) Making user data, public without a justifiable cause.

In the event that an order of 'erasure' is made in favour of the user, such information against which an order is made, cannot be stored or transferred any further.

International Developments of Such Right

Since Google is an American firm, there has been a lot of global attention, particularly in the US, to the EU's implementation of the right to be forgotten. It is crucial to keep in mind, nevertheless, that many other countries are presently discussing whether to create a right to be forgotten in their legal and political spheres. India needs to assess the right much more urgently in light of this global discussion. For instance, the right to be forgotten in Argentina[12] has a pop-culture twist since celebrities routinely launch Internet privacy disputes. In one well-known instance, a well-known soccer mogul was sued by an Argentine pop singer who had defeated Google and Yahoo in a 2009 trial court battle but had lost the following year on appeal. The cases in Argentina are based on other strong legal claims because there isn't the same "right to be forgotten" as there is in Europe. Not only Argentina but also a number of

[11] Protection of Individuals with regard to the processing of personal data, EUROPARL (Jan 29, 2018) available at http://www.europarl.curopa.ew/sides/geboc.do?ype-TA&language-EN&reference-P7. (Last accessed on 4th October 2024)
[12] Edward L. Carter, Argentina's Right to be forgotten, EMORY INT'L. REV. Vol. 27, p 23 (2013)

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other non-EU countries struggle with the right to be forgotten. For example, in July 2015, Russian President Vladmir Putin signed into law a bill that mirrored the European Union's right to be forgotten, resulting in more stringent regulations for Russian search engine providers.[13] A legal variant of the right to be forgotten is afforded to Russian citizens. This gives citizens the ability to change the information that comes up when someone searches for their name online, as long as they avoid clicking on links that take them to outdated, unverified, or privacy-violating websites. The search engine providers have ten days to respond, failing which they could face penalties or legal action.

Major Criticisms Against the Enforcement of Such a Right

The Right to be Forgotten has been the subject of much debate and criticism in response to the GDPR and the Google Spain Judgment. There is no expectation of privacy when submitting personal information online, according to several scholars. Others hold that the RTBF's protections would unfairly restrict people's access to information and freedom of speech and force search engines to remove content from the Internet. Technology thinks tanks noted that while the new law gives EU people greater control over their personal data, its implementation will be challenging for governments, small and medium-sized enterprises, and civil society organizations due to the excessive bureaucracy involved. Specifically, the harsh administrative penalties and onerous proof requirements associated with data protection violations may deter new business ventures and obstruct scientific investigation.[14]

Further, the CJEU also held that the respondent falls under the ambit for being subject to the territorial application of the DPD. The parent corporation of Google Search is situated in the United States; yet, Google Spain, a subsidiary, functioned as the Google group's commercial agent in Spain, selling and marketing advertising space. As a result, the Court found an unbreakable link between Google Inc.'s data processing activities and Google Spain's business operations. Therefore, data controllers believe that processing carried out "in the context of the activities" of an EU subsidiary is sufficient to meet the DPD's criteria. The rule was widely implemented due to a teleological interpretation of the DPD.[15]

[13] Brittany Doyle, Russia's "Right to be forgotten" and China's right to be Protected; New Privacy and security legislation, HARV. J.L. & TECH: JOLT Digest (2015)
[14] Stefania Alessi, Eternal sunshine: The right to be forgotten in European union after the 2016 General data protection Regulation, 32 EMORY INT"L L.REV. 145, 172 (2017).
[15] *Ibid.*

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The Court reasoned that a comprehensive interpretation of the regulation was required since the EU legislature sought to ensure effective privacy protection. As a result, the ruling made it possible to file a right of erasure against non-EU data controllers. Google Inc. appealed this part of the ruling to the *Conseil D'état*, or the French Supreme Court, and then to the CJEU, which recently ruled that

> *"where a search engine operator grants a request for de-referencing pursuant to the provisions of the Directive and the GDPR, that operator is not required to carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States, using, where necessary, measures which, while meeting the legal requirements, effectively prevent or, at the very least, seriously discourage an internet user conducting a search from one of the Member States on the basis of a data subject's name from gaining access, via the list of results displayed following that search, to the links which are the subject of that request."*

Essentially ruling that search engines like Google are not obligated to comply with delisting requests made globally, eliminating the right to be forgotten's extraterritorial application outside of the EU.

Development of Such Right in India

The Puttaswamy Judgment[16]

A right to be forgotten in the Indian context was extracted from the realm of "informational privacy" by the Supreme Court's 9-judge bench, which also decided that the right to privacy was a basic right. *"The right to privacy is not merely a common law right but has to be deemed as a fundamental right"*[17] stated the Honourable Justice Sanjay Kishan Kaul. In addition, he recognized in his concurring opinion that informational privacy encompasses the right to be forgotten in both real and virtual realms. This is essential given the internet's pervasive presence. The goal of the right to be forgotten is to guarantee that a person has total control over the data that is shared online. It stands to reason that they would also be in charge of their internet persona and want any information about them removed. Justice Kaul was of the view that "the right to control all information about themselves encompasses one's right to control their existence on the internet. Therefore, just because the information is truthful, it does not

[16] Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors. (2017) AIR 2018 SC (SUPP) 1841.
[17] *Id* at para 219.

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entitle the general public to access it." The rationale behind this was clarified by pointing out the distinction between the application of 'public interest' and anything 'in the interest of the public'. It was stated that the information regarding the latter could be crucial. However, it still will not fall under the garb of public interest so as to justify infringing privacy of an individual.

A right of this kind would not have absolute boundaries; thus, history would not be entirely erased. The following are a few examples of reasonable constraints listed in the judgment:

1) Other fundamental rights (especially freedom of speech and expression)
2) Compliance with legal obligations (such as taxes)
3) Public interest
4) Public health
5) Archiving
6) Scientific, historical or statistical research and
7) Defence of legal claims.

This implies that people have the right to decide what personal information about them should be shared in both online and offline settings. Recognizing that errors are human and shouldn't be used against someone based on information they may have placed online. This totally prevents them from reintegrating into society. In order to foster the ability to change, Justice Kaul stresses the importance of right to be forgotten (as part of right to privacy) and relies on Article 17 of GDPR that provided the right to erasure for the same. The Supreme Court has not declared the "right to be forgotten" to be a fundamental right. Therefore, it is left as a question of judicial interpretation by the High Courts in India. Notably, the Gujarat High Court has decided against such a right, whereas the Karnataka and Kerala High Courts have upheld it.[18]

The Personal Data Protection Bill, 2018

The Information Technology Act, 2000[19] is the piece of legislation in India's legal system that controls electronic commerce and addresses cybercrime. Nevertheless, neither the IT Rules 2011[20] nor this bill acknowledge the concept of online data privacy or the right to be forgotten. The Sri Krishna Committee, chaired by B.N. Sri Krishna, was only formed by the government in response to the 2017 verdict in the Privacy case. Its purpose was to develop a comprehensive

[18] Dharamraj Bhanushankar Dave v. State of Gujarat & Ors 2015 SCC OnLine Guj 2019; Vasunathan v. Registrar General, (2017) SCC OnLine Kar 424.; Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd. & Ors. AIR 2019 Del. 132
[19] No. 21, Acts of Parliament, 2000.
[20] Information Technology Rules, 2011.

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framework that could be implemented and enforced without affecting rights under other laws into consideration. In response to the Committee's recommendations The Government drafted the Personal Data Protection Bill, 2018, a comprehensive piece of legislation that covers every aspect of privacy. Justice Sri Krishna himself said that commerce and industry cannot be compromised in the name of data protection, even while international commitments and citizens' rights must be respected.

The Personal Data Protection Bill and its European equivalent, the GDPR, observe similar effects on citizens. But, in contrast to the GDPR, it's probable that this piece of law has given the State and other similar institutions new liberties that are more vaguely defined or uncertain in nature. This could result in the State applying strange interpretations to such ambiguously written regulations and imposing different types of monitoring based on its whims and fancies.[21] The second issue with this section is that the people making these requests for the "right to be forgotten" are not impartial. The PDP Bill has bestowed this responsibility upon adjudicators; the government selects the members of the Data Protection responsibility for appointment. Put another way, the government will nominate the adjudicators, and during their tenure, they will ostensibly be under its purview.

Striking a balance between the Right to be Forgotten and Article 19 of the Constitution

The core critique of the right to be forgotten has consistently cantered on its potential to limit freedom of expression. This contentious issue highlights a fundamental tension in modern society: the balance between collective rights and individual privacy. On one side, we have the public's entitlement to free speech and expression, which encompasses the right to access and disseminate information. This societal right is deeply rooted in democratic principles and supports the free flow of ideas and knowledge. On the other side, we find an individual's claim to the right to be forgotten - a key aspect of personal privacy. This right empowers people to request the removal or de-indexing of certain personal information from public access, particularly online. The conflict arises when these two rights intersect. When an individual exercises their right to be forgotten, it may result in the removal of information that others argue should remain in the public domain. This creates a complex dilemma: How can we protect personal privacy without unduly restricting public access to information?

[21]Personal Data Protection Bill - A right to be Forgotten, giving government the power to censor, available at: https://www.bloombergquint.com/opinion/personal-data-protection-bill-a-right-to-be-forgotten-giving-government-the-power-to-censor.

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The primary issue is the fact that it is prima facie limiting of the right to freedom of speech and expression established in the Constitutions of various States such as the United States of America[22] and India. The issue before the court is one of freedom of speech and expression vs the right to be forgotten, two things that are diametrically opposed. To address the aforementioned issue, a diplomatic approach needs to be used, noting that the best course of action is to contextualize the two rights and determine which party has the advantage of convenience in having their right realized. The Indian Constitution does not specifically address the right to privacy as a Fundamental Right in Part III. Nonetheless, the right to freedom of speech and expression is specifically included in Article 19 (1) (a) of the Constitution, which addresses a number of public liberties. The Indian judiciary deserves recognition for recognizing the right to privacy as an essential component of Article 21 of the Constitution. When the idea of privacy was previously foreign to Indian legal precedent, Justice Subba Rao's forceful and innovative dissent in the *Kharak Singh v. State of Uttar Pradesh*[23] case gave Article 21 a liberal interpretation, planting the seeds of privacy in the Constitution. Before the groundbreaking ruling in *Justice K.S. Puttaswamy (Retd.)*[24] where the concept of privacy was discussed in detail by a Constitutional Court bench of nine justices and certain other aspects of privacy were acknowledged as well and given constitutional protection under Article 21, the idea and concept of privacy only extended to bodily privacy and domiciliary visits. The Indian Constitution, under Article 19(1)(a), safeguards the right to freedom of speech and expression. However, this right is not absolute and can be subject to reasonable restrictions as specified in Article 19(2). These constitutional provisions allow the State to enact legislation and implement additional guidelines that may place certain limitations on this fundamental right.

In the subsequent sections of this discussion, a compelling argument will be presented against the existence and implementation of the right to be forgotten. The core of this argument rests on the premise that this right potentially infringes upon citizens' constitutionally protected freedoms of speech and expression. The debate centres on the delicate balance between individual privacy concerns and the broader societal interest in maintaining open access to information. The right to be forgotten, while intended to protect personal privacy, may have far-reaching consequences that could potentially undermine the robust tradition of free

[22] US Const. amend. 1.
[23] AIR 1963 SC 1295
[24] (2017) 10 SCC 1.

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expression in India.

This critique will explore how the application of the right to be forgotten might extend beyond its intended scope, potentially leading to unintended restrictions on the free flow of information. It will examine the tension between an individual's desire to control their personal information online and the public's right to access and share information freely. By analysing these conflicting interests, the following sections aim to demonstrate how the right to be forgotten, in its current form, may pose a significant threat to the fundamental right of free speech as enshrined in the Indian Constitution.

Google Case Provides for Excessive Delegation on the Search Engines

In accordance with the GDPR, 2016, the right to be forgotten requires a private organization, such as Google, to determine whether the link that is being asked to be removed meets any of the removal criteria listed in Article 17. The author firmly holds that there is an urgent need for the European Union to come up with certain guidelines to regulate this unlimited power handed over to the search engines and data controllers by the CJEU. Any person making a request to one of these search engines for the removal of certain information from their databases with the purpose of making it inaccessible to the world will not be entertained by the search engines. The provision in the GDPR mentions a well-worded criterion, however it is open to many interpretations and the absence of any sort of guidelines to control the power exercised by the search engines would lead to the conclusion that the search engines are exercising the rights of the individuals in an arbitrary way. Though it might be true that the search engines while justifying the deletion of the concerned entry, have proof to show that the link was deleted as it met the grounds mentioned in the Article 17 of the GDPR or their act is in consonance with the decision of the CJEU which held for the right to be forgotten.

Looking at this situation from the Indian perspective, a certain piece of legislation called the Personal Data Protection Bill, 2018 is on its way to becoming a full force law in India. This law involves the creation of a Data Protection Authority which will be responsible of the requests made by certain individuals with respect to the enforcement of their right to be forgotten. Even this authority will act in an arbitrary manner, unless certain guidelines are framed within which this authority can act and their limitations are well defined in those guidelines. In India, the practice of delegation, to a body run by the executive, has been in effect since long. However, the doctrine of excessive delegation is also in effect. The Supreme

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Court decision in 'In Re: Delhi Laws Act, 1912[25]' held that legislatures in India have wide delegation powers, subject to one limitation: a legislature cannot delegate essential legislative functions such as determining legislative policy and formally enacting that policy into a binding rule of conduct.

Ambiguous Grounds Mentioned Regarding Removal of Information

The right to be forgotten represents an individual's request to have specific data removed so that third parties can no longer identify them. It's been defined as "the right to silence on past events in life that are no longer occurring." Consequently, the regulation of such a right which has far-reaching implications becomes of paramount importance and there is a need for statutory backing to this right. It is a settled position in law that a statute worded vaguely would be held unconstitutional by the courts as it will abridge the right of a fair warning to the citizens before any adverse action is initiated against them. The author also mentions that the same legal proposition covers to the restrictions which are imposed by a law which doesn't seem to include the element of rationality in its provisions.

Section 18 of the Personal Data Protection Bill, 2018[26], which discusses the right to correction and erasure, states that the data principal, i.e. the concerned person, can apply to have certain information about himself removed from the internet or corrected if it is inaccurate in nature and is no longer required for the purpose for which it was processed.[27] Only when there is incorrect personal data which is misleading[28] someone or when there is incomplete[29] personal data which needs to be completed, can a request for correction be made to the concerned data fiduciary under Section 18(2) of the Bill. The conditions mentioned in the current legislation are vague and ambiguous to say the least. They can be bent and skewed by the concerned data fiduciaries to abide by the requests made by the data principals on principals on the basis that it should be requested based on one of the grounds mentioned in Section 18 clause 1 of the Bill. This leads to a huge amount of discretion being handed over to the data fiduciary, or in this case, the search engines and such a provision is liable to be held unconstitutional on the ground of it being vague and open to many interpretations.

[25] In re Delhi Laws Act, 1912, AIR 1951 SC 332.
[26] § 18(1), Personal Data Protection Bill, 2018.
[27] § 18(1)(d), Personal Data Protection Bill, 2018.
[28] § 18(1)(d), Personal Data Protection Bill, 2018.
[29] § 18(1)(a), Personal Data Protection Bill, 2018.

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Chilling Effect on Freedom of Speech and Expression

The implementation of the right to be forgotten raises significant concerns due to its potential conflict with freedom of speech, a fundamental right of utmost importance. In India, Article 19 of the Constitution enshrines the right to free speech and expression as one of the essential liberties granted to citizens. Over time, constitutional jurisprudence has elevated this right to a prominent position through various influential court decisions. The only permissible limitations on free expression are those reasonable restrictions specifically outlined in Article 19(2). No constraints beyond those enumerated in this section can be considered legitimate limitations on the freedom of speech and expression. The list of acceptable restrictions provided in Article 19(2) is comprehensive and definitive.[30]

In the *Shreya Singhal case*[31], it was decided that certain limitations listed in Section 66-A of the Information Technology Act, 2000; such as "information that may be grossly offensive, or which causes annoyance or inconvenience" are unconstitutional because they are ill-defined and have imprecise language. All restrictions must be "couched in the narrowest possible terms." Furthermore, the court determined that Section 66-A was unconstitutional in this case due to its chilling impact on free speech.[32] Should the right to be forgotten remain in its present form, it's likely to have a similar chilling effect on free expression as observed in the case at hand. While this right may be technically valid and within the parameters outlined in the Personal Data Protection Bill of 2018, its practical application could extend far beyond its intended scope. Individuals might invoke this right to remove online personal information they deem superfluous, irrelevant, or inaccurate. However, this subjective interpretation of what constitutes removable data may not align with the general public's perspective. The potential for widespread use of this right raises concerns about its impact on the free flow of information. It could lead to situations where individuals attempt to scrub the internet of data they personally find unfavourable, even if that information serves a legitimate public interest. This broad application of the right to be forgotten could create tension between personal privacy desires and society's need for open access to information.

The Personal Data Protection Bill, 2018's Section 18[33] addresses the right to erasure and correction. Even the CJEU's decision in the Google case was called into doubt since it created

[30] Ram Jethmalani v. Union of India, (2011) 8 SCC 1.
[31] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[33] Supra Note 26.

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and maintained the right to be forgotten, which was seen as a means of limiting free speech and imposing censorship by non-state actors like search engines. Furthermore, rather than risking being fined for non-compliance, the search engines would exercise caution and essentially comply with all demands in order to avoid paying the punishment. Exorbitant fines imposed on data controllers and search engines for failing to respect citizens' right to be forgotten, combined with an ambiguous provision, would render the right to be forgotten null and void in its existing form, suppressing free speech.

CONCLUSION

The right to be forgotten, while aimed at protecting individual privacy in the digital age, presents significant challenges when balanced against the fundamental right to freedom of speech and expression. Developments in the European Union, particularly the GDPR and the landmark Google Spain case, as well as emerging discussions in India, including the Puttaswamy judgment and the Personal Data Protection Bill, 2018, highlight the ongoing debate surrounding this right. The implementation of the right to be forgotten raises several concerns, including potential infringement on freedom of speech, ambiguity in the grounds for removal of information, excessive delegation of power to private entities like search engines, and the risk of a chilling effect on the free flow of information. To address these issues, a careful balance must be struck between individual privacy rights and the public's right to information. This balance requires clear, unambiguous guidelines for implementation, establishment of an independent regulatory body to oversee removal requests, narrow and precise framing of conditions for information removal, and consideration of public interest and historical record preservation. As India moves forward with its data protection legislation, it must carefully consider these factors to ensure that the right to be forgotten does not unduly restrict the fundamental right to freedom of speech and expression. The challenge lies in crafting a legal framework that protects individual privacy while preserving the open, democratic nature of the internet and safeguarding the public's right to access information of legitimate interest.