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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **RIGHT TO BE FORGOTTEN AND RIGHT TO PRIVACY IN INDIA: JUDICIAL AND LEGAL PERSPECTIVE**

AUTHORED BY - DR. CHANDRALEKHA V<sup>1</sup>

## ***Abstract***

Right to be forgotten is the right to remove irrelevant personal information from the website, internet and social media network. As of now it is an infant right because, this right is not legally provided in some of the countries including India. The Digital Personal Data Protection Act 2023 is passed recently by the parliament does not expressly protect this right. It gives the right to erase personal data after the purpose for which it was collected is accomplished unless it is required by the law. This right is recognised in European Union and some developed countries as human right. Indian Judiciary upheld this right as part of right to privacy in some of the cases. Still there is no proper legislation to protect right to be forgotten in India. Now the question is: to what extent does the individual have right to be forgotten in India? How can it be balanced with other fundamental rights provided by the Indian Constitution? This article highlights the situations in which judiciary recognised and balanced right to be forgotten as part of right to privacy and relevant statutes which recognise this right.

**Key words:** right to privacy, freedom of speech and expression, personal data protection.

## **1.1 Introduction**

Right to be forgotten is a right that allows an individual to seek deletion of private information from the internet. This right has recognition in foreign countries especially in European Union. In India there is no law which expressly recognises the right to be forgotten. But in the recent years, appellate courts in India held that, it is an integral part of fundamental rights.

In this digital era all information is available through access of internet. The general tendency of human being called 'forgetting things' has been changed to 'remembering things', because most of the online interactions and transmissions of information leaves behind a

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<sup>1</sup> Assistant Professor, Shri Dharmasthala Manjunatheshwara Law College Center for Post Graduate Studies and Research in Law, Mangaluru, Karnataka.

permanent digital footprint. The people store personal information on the internet because human brain may experience ‘forgetting things’ but not the internet. When this personal information becomes public or if any public information relating to a person is not relevant, then the necessities of protection of right to privacy arise. Internet has no tendency of forgetting things but instead it always remembers things. So sometimes we need to erase irrelevant information from the internet forcefully to protect the right of individual and it is termed as right to be forgotten in the present day.

## 1.2 What is ‘Right to be forgotten’?

It is a right that allows an individual to request for deletion of his information from the internet or website. Any information which is not relevant or is inaccurate information relating to a person can be removed from the internet or public platform through the procedure established by law in European Union and this right is recognised as right to be forgotten.

Right to be forgotten can be claimed for removal of inadequate, irrelevant or excessive information from the internet. It must be removed from the search engine. Thus any information which is relevant for public interest cannot be removed and also the person can claim to remove any information relating to him and not third party information. This right gives to an individual right to preclude media from revealing true facts about their private life where no public interest prevails<sup>2</sup>.

Right to be forgotten can be understood in two senses. Firstly it is a right to delete information about oneself often called right to be erasure and secondly the right to remove information about one in search engine, often called right to delisting<sup>3</sup>. This can be used in three levels- a) one has the right to delete information posted online by him. And many, if not all, social networks provide this feature. b) right to delete information that was originally posted online by oneself but re-posted by others using original post. c) One has the right to delete or delink information that is available online about oneself, regardless of its origin<sup>4</sup>. It may be posted from the government record or judicial pronouncement. But such right should not conflict with the fundamental rights of others.

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<sup>2</sup> Frans Werro, (ed), *Right to be Forgotten; A Comparative Study of the Emergent Right's Evolution and Application in Europe, The America and The Asia* 1 (Springer Publication, Switzerland, 2020)

<sup>3</sup> Ignacio N Cofone (ed) *Right to be Forgotten A Canadian and Comparative Perspective* 4 (Taylor & Francis publication, e-book, 2020)

<sup>4</sup> *Id.* at 5

### 1.3 History and Development of Right to be Forgotten

The right to be forgotten has developed to its present form, due to technology or as a response to the technology<sup>5</sup>. Earlier personal data of any individual were confined to papers or documents which was not accessible easily by everyone even though it was not private. Now such information can be assessed by any individual from anywhere through search engine or web. These developments in the field of artificial intelligence cannot be prevented. But when it comes to the question of violation of right to privacy of an individual, the necessity of legal protection and legal regulations are inevitable. As a result the concept of right to be forgotten is developed and recognised by various nations in the world.

Right to be forgotten also known as ‘right to be delisted’, for the first time got its recognition by the European Union after the decision in Google Spain Case<sup>6</sup>. The case was between a Spanish Citizen and Google Spain regarding Spanish Data Protection Authorities request to remove the personal data relating to its Citizen from the search engine. One Mr. Mario Costeja Gonzalez suffered huge loss in his business and there was forced sale of his property to recover social security debts. The Spanish Ministry of Labour and Social Affairs ordered the Spanish newspaper, *La Vanguardia*, to publish this news and it was published through internet also. Later Mr. Gonzalez fixed all his financial crisis, but everyone assumed him as bankrupt. The Court of Justice, European Union, held that the internet search Engine is responsible for publishing entire information that includes personal information of third party and ordered for the removal of information from the Google Search Engine. The ruling was based on Data Protection Directives of European Union 1995. Subsequent to this decision a new Data Protection Regulation was introduced which included right to be forgotten as ‘Right to Erase’<sup>7</sup>.

At present in India there is no specific law which provides for right to be forgotten. In *Puttaswamy v. Union of India*<sup>8</sup> the Supreme Court of India recognised right to privacy as part of Fundamental Right and any information which violates right to privacy can be requested for removal from internet or website or public platform.

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<sup>5</sup> Kelly, Michael and Satola David, “The Right to be Forgotten” Vol 1, *UILR*, p 1-64, 2017

<sup>6</sup> Google Spain S L, Google Inc. v. Agencia Espanola De Protection De Datos, Maro Costeja Gonzalez, Decided by the Court of Justice, European Union on May 13<sup>th</sup> 2014.

<sup>7</sup> Reagan Macdonald and Estelle Masse, Three things you should Know about Google Spain Case, *available at* : <https://www.accessnow.org/three-things-you-should-know-about-the-google-spain-case/> (Last visited on July 10<sup>th</sup> 2024)

<sup>8</sup> MANU/SC/0911/2017

### 1.4 Right to be Forgotten viz-a-viz Right to Privacy

Right to privacy is a compendium of domestic privacy, physical privacy, privacy in marital or sexual relation, right to be let alone against undue publicity, defamation, public disclosure of private facts, surveillance and interception of communication<sup>9</sup>. In simple words it means right to safeguard the privacy of his own, his family, marriage, procreation, children, education, etc. Any person publishing or disclosing or interfering in the private life of a person without his consent amounts to violation of privacy right<sup>10</sup>.

Privacy uses the theory of natural rights, and generally responds to new information and communication technologies<sup>11</sup>. Privacy rights are inherently intertwined with information technology<sup>12</sup>. Right to privacy and its protection are great challenges to the Indian government as it needs to be balanced with Right to information. In *Mr. X v. Hospital Z*<sup>13</sup>, Supreme Court held that disclosing that Mr. X tested HIV positive, to a third person by the doctor violates right to privacy. Recently nine judges bench of Supreme Court of India unanimously held that privacy is constitutionally recognised and protected right under article 21 of the constitution which guarantees right to life and personal liberties<sup>14</sup>.

Right to be forgotten also deals with privacy right of an individual and can be considered under article 21 of Indian Constitution. Right to privacy prevents the publication of private information of an individual without his consent whereas right to be forgotten is a right which requires the removal of information which was already published to the public. It was not private information at the time of publication but now such information is no longer relevant and not required by the society. Moreover it affects the privacy of individual. Such information will be removed from the internet through this right, so that the person will not face any problem in the future. Thus right to privacy includes information that is not public whereas the right to be forgotten involves removing information that was publicly known at a

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<sup>9</sup> P. Ishwara Bhat, *Fundamental Rights- A Study of their interrelationship* 324 (Eastern Law House Publication, New Delhi, 2004)

<sup>10</sup> Right to Privacy under Article 21 and Related Conflicts, Hinailiyas, available at: <https://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html> (Last visited on April 4, 2025)

<sup>11</sup> Dr. G.P. Tripathi, *Constitutional Law – New Challenges* 406 (Central Law Publications, Allahabad, 2<sup>nd</sup> edn., 2018,)

<sup>12</sup> *Id*

<sup>13</sup> (1998) 8 SCC 296

<sup>14</sup> *Justice K S Puttaswamy v. Union of India*, MANU/SC/0911/2017

certain time and not allowing third parties to access the information anymore<sup>15</sup>.

Right to be forgotten mainly deals with removal of irrelevant information from the internet or websites. Right to privacy prevents publication of or disclosing of private information to a third party through any mode. In case of publication of any information through online without the consent of the individual, it can be removed with the help of right to be forgotten. So in this digital era right to be forgotten can be considered as part of right to privacy.

Right to be forgotten also denotes the right to be left alone which refers to the expectation of a person that the society will not interfere in the choices made by a person so long as they do not cause harm to others<sup>16</sup>. The Delhi High Court in *X v. YouTube Channel*<sup>17</sup>, an actress requested to remove her videos from YouTube Channel through court of law. The Delhi High Court by upholding the view that right to privacy includes right to be forgotten and right to be left alone ordered the removal of the same.

## 1.5 Legal Provisions Relating to Right to be Forgotten

There is no single legislation which safeguards right to be forgotten in India. Depending upon the situation there are some statutes which directly or indirectly provides for the same

### 1.5.1 Digital Personal Data Protection Act, 2023

Much awaited and discussed Digital Personal Data Protection Act, 2023 finally received the Assent from the President on 11<sup>th</sup> August 2023. The main objective of this Act is to provide for the processing of digital personal data in a manner that balances the right of individuals to protect their personal data and the need to process such personal data for lawful purposes and for matters connected thereto<sup>18</sup>. According to this Act, Personal Data of an Individual can be collected only for lawful purposes with the consent of that individual either expressed or implied<sup>19</sup>. Section 8 imposes an obligation upon the Data Fiduciary<sup>20</sup> that once

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<sup>15</sup> Right to privacy viz-a-viz right to be forgotten, Akash Krishnan available at : <https://blog.ipleaders.in/right-to-privacy-vis-a-vis-right-to-be-forgotten> (Last visited on June 10<sup>th</sup> 2025)

<sup>16</sup> Right to Privacy and Right to be Forgotten, available at: <https://www.drishtias.com/pdf/1627293345-right-to-be-forgotten-4.pdf> (Last visited on June 10<sup>th</sup> 2025)

<sup>17</sup> SCC online Del HC 4193, 2021

<sup>18</sup> The Digital Personal Data Protection Act, 2023 (Act. 22 of 2023)

<sup>19</sup> The Digital Personal Data Protection Act, 2023 (Act. 22 of 2023) s. 6

<sup>20</sup> The Digital Personal Data Protection Act, 2023 (Act. 22 of 2023) s. 2(i)

the purpose is accomplished, the personal data of Data Principal<sup>21</sup> need to be erased unless retention is necessary for compliance with any law for the time being in force<sup>22</sup>. Regarding right to be forgotten the original Personal Data Protection Bill 2019 had express provision under Clause 20(1) which read as “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”<sup>23</sup>.

The Srikrishna Committee (2018)<sup>24</sup> also observed that the right to be forgotten is an idea that attempts to instill the limitations of memory into an otherwise limitless digital sphere<sup>25</sup>. But this right may need to be balanced with competing rights and interests of others.

There is no express right to be forgotten provided under the present Act According to section 12, Data Principal has right to correction and erasure of personal data. Section 12(3) says that “A Data Principal shall make a request in such manner as may be prescribed to the Data Fiduciary for erasure of the individuals personal data, and upon receipt of such a request, the Data Fiduciary shall erase her personal data unless retention of the same is necessary for the specified purpose or for compliance with any law for the time being in force”<sup>26</sup>. Thus as per this Act personal data of any individual cannot be collected without express or deemed consent of the individual and once the purpose is accomplished or if data principal makes request, it must be erased.

### 1.5.2 Information Technology Act 2000

The Information Technology Act, 2000 (**IT Act**), provides for punishment *inter alia* for violation of privacy, publishing or transmitting obscene material in electronic form, publishing

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<sup>21</sup> The Digital Personal Data Protection Act, 2023 (Act. 22 of 2023) s. 2 (j)

<sup>22</sup> The Digital Personal Data Protection Act, 2023 (Act. 22 of 2023) s. 8 (7)

<sup>23</sup> The Personal Data Protection Bill, 2019, Cl. 20(1)

<sup>24</sup> The Committee was constituted in August, 2017 by the Ministry of Electronics and Information Technology, to examine issues related to data protection, recommend methods to address them, and draft a data protection Bill. It submitted its report and draft Bill on July 27, 2018.

<sup>25</sup> The Digital Personal Data Protection Bill, PRS Legislative Research, available at: <https://prsindia.org/billtrack/digital-personal-data-protection-bill-2023> (Last visited on June 10<sup>th</sup> 2025)

<sup>26</sup> The Digital Personal Data Protection Act, 2023 (Act. 22 of 2023) s 12(3)

or transmitting material containing sexually explicit act, etc<sup>27</sup>. Further, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021<sup>28</sup> (**IT Rules**) casts an obligation upon the intermediaries such as internet service providers and search engines to take all reasonable and practicable steps within 24 hours of receipt of a complaint, to remove or disable access to content which exposes the private area of an individual, shows an individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct<sup>29</sup>.

To protect individual's personal data and privacy there are certain laws in India. As per IT Act, transmitting of certain prohibited information amounts to punishable offence. But right to be forgotten is claimed regarding information which are public in nature at the time of publication and later it become irrelevant and outdated, but causes inconvenience to the individual. To remove such information already published, these laws are not useful. So in several cases the courts in India recognised the right to be forgotten as part of right to dignified life under article 21 of Indian Constitution

### **1.6 Right to be Forgotten- Judicial Approach**

If the private life of an ordinary citizen is subject to unreasonable publicity and excessive curiosity, law supports right to privacy of that citizen. Even though there are some differences, right to be forgotten is always used to protect the privacy of an individual in the digital era. The request to remove certain information from the internet is available only if that information

1. is no longer relevant to the present context or outdated; or
2. is false or inaccurate or excessive.

In *X v. State of Kerala*<sup>30</sup>, the petitioner requested direction from the court for removal of name and other personal information of a rape victim from the judgment uploaded to internet. The Kerala High Court passed an interim order requiring Indian Kanoon and other search engines including Google and Yahoo, to remove the name of a rape victim which was

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<sup>27</sup> Information Technology Act, 2000, (Act 21 of 2000), s 66 E

<sup>28</sup> IT Rules, Published on 25<sup>th</sup> February 2021

<sup>29</sup> Right to be forgotten, Sapna Chaurasia, TMT Law Practice, available at: <https://www.lexology.com/library/detail.aspx?g=abd8fb99-391d-4f35-a44d-68360ea1e670> (Last visited on February 27<sup>th</sup> 2025)

<sup>30</sup> Civil Writ Petition No. 9478 of 2016, the case details are not available in law reports to protect the identity of victim and these information is collected from secondary sources. Available at: <https://amlegals.com/right-to-be-forgotten-in-the-light-of-the-court-of-justice-of-the-european-unions-judgment-against-google/#> (Last visited on April 2<sup>nd</sup> 2025)

published on its websites by recognizing her rights under confidentiality of the Petitioner under s. 228A of the Indian Penal Code and her right to privacy and a dignified life provided under article 21 of the Indian Constitution<sup>31</sup> The court recognised the Petitioner's right to privacy and reputation, without explicitly using the term right to be forgotten<sup>32</sup>. The legal position in the matter of female victim's right to secrecy about sexual offences, safeguards her privacy interest in a better manner as compared to male victims. In *R. Rajagopal v. State of T.N.*<sup>33</sup>, the Supreme Court laid down that if the publication is based on and is in conformity with the information available in public records, the publisher is absolved from legal action. Depiction going beyond official record may bring liability for defamation<sup>34</sup>.

Similarly in *Sri Vasunathan v. the Registrar General & ors*<sup>35</sup>, the petitioner had prayed for the removal of the name of his daughter from the digital records maintained by the High Court in a judgment passed by the Court to the extent that it is not visible for search engines like Google and Yahoo<sup>36</sup>. The Karnataka High Court accepting the petition ordered to remove the name of petitioner's daughter from the cause title of the case published on the internet. Since there is no law particularly on these matters courts in India repeatedly held that it is included under article 21 of the Constitution.

The decisions of Supreme Court and High Courts in India are free to publish unless expressly prohibited by the same court. All original Judgments of apex courts are categorized as Government Work<sup>37</sup> and free from copyright infringement cases<sup>38</sup>. Apart from this Judicial Precedent<sup>39</sup> is recognised as an important source of law in India. To quote the relevant rulings of Superior Court availability of judgment is very essential. For these reasons the decisions of

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<sup>31</sup> The case of rape survivor's right to be forgotten in India by Global freedom of expression, newsletter, Columbia University, available at: <https://globalfreedomofexpression.columbia.edu/cases/the-case-of-the-rape-survivors-right-to-be-forgotten-india/> (Last visited on April 2<sup>nd</sup> 2025)

<sup>32</sup> The right to be Forgotten, Lucy Rana and Rima Majumdar, available at: <https://www.mondaq.com/india/privacy-protection/1103662/the-right-to-be-forgotten> (Last visited on August 20<sup>th</sup> 2024)

<sup>33</sup> AIR 1995 SC 264

<sup>34</sup> *Supra* note 8 at 331

<sup>35</sup> 2017 SCC OnLine KAR 424

<sup>36</sup> Petition to remove name from judgment affecting reputation of person allowed, court recognises 'Right to be Forgotten' Saba available at: <https://www.sconline.com/blog/post/2017/02/07/petition-to-remove-name-from-judgment-affecting-reputation-of-person-allowed-court-recognises-right-to-be-forgotten/> (Last visited on February, 7<sup>th</sup> 2025)

<sup>37</sup> Copyright Act 1957, (Act 14 of 1957) s 2 (k)

<sup>38</sup> *Eastern Book Company v. D B Modak*, (2008) 1 SCC 1

<sup>39</sup> Precedent refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues

courts in India are freely available through various sites on internet. But sometime such publication of decisions may affect the right to dignified life of an individual.

In *Jorawer Singh Mundy v. Union of India and ors*<sup>40</sup> the court directed the Google, Lex.in and Indian Kanoon websites to remove the judgment till further order. In this case the petitioner as Indian professional American Citizen by birth had huge business transactions and investments in India. In 2009 when he visited India he was arrested under Narcotics Drugs and Psychotropic Substances Act, 1985 and trial court acquitted him from all charges in 2011 and it was upheld by the apex court in 2013. Later he pursued law at the University of San Diego School of Law and when he started looking out for employment opening, he faced huge disadvantage because potential employer, who wanted to conduct his background verification before employing him was able to get this judgment by Google search. The Petitioner then issued a legal notice to Respondents i.e. Google India Private Ltd., Google LLC, Indian Kanoon and vLex.in and only Lex.in is stated to have removed the said judgment<sup>41</sup>. So this case was filed through writ petition and court directed them to remove the judgment from the Search engines.

Delhi High Court, in *Zulfiqur Ahmad Khan v. Quintillion Business Media Pvt Ltd*<sup>42</sup> took one step forward and held that any republishing of the initially challenged articles' text or any excerpts from them, as well as any modified versions of those texts, on any print or digital/electronic platform be prohibited while the current lawsuit is pending<sup>43</sup>. Thus right to be forgotten is granted in above mentioned cases by the court only after believing that granting of this right will not violate other person's right instead the petitioner himself suffered. In *Puttaswamy's Case*<sup>44</sup> Supreme Court held that right, to be forgotten is subject to certain restrictions and it cannot be used if the information is required for

1. The exercise of Fundamental Rights under article 19 of Indian Constitution
2. The fulfillment of legal responsibilities under the law
3. The execution of duty related to public interest and public health

<sup>40</sup> W.P.(C) 3918/2021 & CM APPL. 11767/2021

<sup>41</sup> *Jorawer Singh Mundy v. Union of India and ors*, W.P.(C) 3918/2021 & CM APPL. 11767/2021, available at: [https://www.livelaw.in/pdf\\_upload/16186364774292021-393948.pdf](https://www.livelaw.in/pdf_upload/16186364774292021-393948.pdf) (Last visited on April 2<sup>nd</sup> 2025)

<sup>42</sup> CS (OS) 642/2018, available at: <https://indiankanoon.org/doc/172009054/> (Last visited on April 2<sup>nd</sup> 2025)

<sup>43</sup> Right to be Forgotten: An evolving fundamental right in the digital age, Parth Kaushal, available at: [https://www.latestlaws.com/articles/right-to-be-forgotten-an-evolving-fundamental-right-in-the-digital-age-194334#\\_ftn7](https://www.latestlaws.com/articles/right-to-be-forgotten-an-evolving-fundamental-right-in-the-digital-age-194334#_ftn7) (Last visited on January 12<sup>th</sup> 2025)

<sup>44</sup> MANU/SC/0911/2017

4. The protection of information in the public interest
5. The purpose of historical study or scientific or statistical survey purpose
6. The establishment, executing or defending of legal claims<sup>45</sup>.

Right to be forgotten is evolving concept in India. The apex court became lenient and upheld this right in several legislations. For example the Hon'ble Supreme Court has passed an order recently in the matter of *XXXX vs Kancherla Durga Prasad & Others*<sup>46</sup> which has directed its Registry that, personal information of a Petitioner and a Respondent in a sexual harassment case should be masked on the internet so that their details are not thrown up by search engines<sup>47</sup>.

### 1.7 Challenges for Right to be Forgotten

1. **Freedom of Speech and Expression and Right to be forgotten**- article 19(1)(a) of Indian Constitution provides freedom of speech and expression to our citizens. Journalism which is considered as fourth pillar of democracy is protected under this right. It is argued that right to privacy prevents Media and Journalists from publishing personal information of any individual without their consent. Right to be forgotten prevents Media companies and Journalists from disclosing certain people's history and their past deeds. In other words this information may not be available for publication. Right to be forgotten cannot be used to remove some of the information required by the public. For instance, a person charged with criminal offence and after conviction for the same, he cannot request for right to be forgotten from publication of judgment in social media or internet because that history may be relevant for future investigation.

One of the most significant challenges is striking the right balance between an individual's right to privacy and public's right to access information<sup>48</sup>. Thus granting right to be forgotten may lead to censorship and also suppressing of legitimate information that may be in public interest.

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<sup>45</sup> Right To Be Forgotten In India-A Critical Analysis, Arti Aasha, available at: [https://www.researchgate.net/publication/371338423\\_RIGHT\\_TO\\_BE\\_FORGOTTEN\\_IN\\_INDIA-A\\_CRITICAL\\_ANALYSIS](https://www.researchgate.net/publication/371338423_RIGHT_TO_BE_FORGOTTEN_IN_INDIA-A_CRITICAL_ANALYSIS) (Last visited on April 2<sup>nd</sup> 2025)

<sup>46</sup> (WP (C) 3918/2021)

<sup>47</sup> The Sexual Harassment of Women at Workplace (prevention Prohibition and redressal) Act 2013 –concept of Right to be forgotten- A Study, Sridharan Rajagopalan, available at: <https://hr.economicstimes.indiatimes.com/news/workplace-4-0/employee-wellbeing/the-sexual-harassment-of-women-at-workplace-prevention-prohibition-and-redressal-act-2013-concept-of-right-to-be-forgotten-a-study/96988050> (Last visited on January 14<sup>th</sup> 2025)

<sup>48</sup> Right to be forgotten: Balancing privacy and information freedom in India, Prime Legal Articles available at: <https://primelegal.in/2023/07/24/title-the-right-to-be-forgotten-balancing-privacy-and-information-freedom-in-india/#:~:text=The%20Right%20to%20be%20Forgotten%20stems%20from%20the%20belief%20that,outdated%2C%20inaccurate%2C%20or%20excessive.> (Last visited on April 2<sup>nd</sup> 2025)

2. **Legal Challenge**- through Writ Petition right to be forgotten is claimed against public record like Judgment. The decisions of High Courts and Supreme Courts are Public records<sup>49</sup> and if its availability through internet is prevented, then rule of precedent will lose its importance in such cases.
3. **Deciding the criteria for removal of information** is a critical task for implementing right to be forgotten. Identifying the information which are irrelevant, outdated or no longer require public disclosure, etc. is challenging for every court. If this right is provided as a right then misusing of the same may be very common.
4. **Jurisdictional issue**- World Wide Web transude information beyond borders. Removal request by one country may affect the availability of that information in another country.
5. **Enforceability** – internet service provider or Google, Yahoo etc, are private persons and if right to be forgotten is considered as part of fundamental right then question arises whether this right can be claimed against private individual.

### 1.8 Findings and Suggestions

At present there is no law that specifically provides for right to be forgotten in India. The IT Act, 2000 along with IT rules can help to remove illegally uploaded content by third party and also it may punish those persons who upload such content on the internet. But at the time of uploading it may be legally publishable information but subsequently because of change in circumstances that may become irrelevant to the society. People may forget but internet has no tendency of forgetting things. Every one may not be able to file Writ Petition before the court of law. So there should be a Statutory Authority to monitor such situation and to issue order for removal of information if it is according to law.

The second challenge is regarding balancing of right to be forgotten with other fundamental rights. Right to be forgotten will not prevent freedom of speech and expression as it demands to remove the information which is already posted on internet and now it become out dated. It is a remedy for the innocent persons to protect their privacy in their future life. So right to be forgotten is considered as part of right to dignified life and liberty as provided under article 21 of Indian Constitution.

It was settled rule that right to life and personal liberties can be enforceable only against

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<sup>49</sup> Indian Evidence Act, 1872, (Act 1 of 1872) s 74(2)

state and its instrumentalities. So if right to be forgotten is considered as part of right life then it is the duty of state and its instrumentalities to protect the fundamental right of its citizen from private entities. Apart from these, recently the Constitutional Bench of Supreme Court in *Kaushal Kishor v. State of U.P*<sup>50</sup>, held that article 19 and article 21 of Indian Constitution are enforceable against persons other than state and its instrumentalities.

It is hereby suggested to pass a legislation to protect right to be forgotten of every innocent individual. Through this legislation the government can establish Statutory Authorities consisting of legal and technical experts to decide when this right can be exercised. The persons can approach these authorities whenever required and authority can decide the legal necessity / implications and technical feasibility of the same and only after that it may or may not direct to remove that information from the internet. This procedure may save the time of the High Courts and Supreme Court in India. Whenever the parties make request to this Authority if viable the decisions of Apex Court can be published without disclosing the names of the party/s.

### 1.9 Conclusion

Every development in the field of information may either lead to a new legal issue or provide a solution to the existing problems. The violation of privacy through internet or social media was not thought of earlier. Now this right to be forgotten can help to remove slanderous, libelous and any illegally uploaded information from the internet. At present right to be forgotten is a complex issue because balancing between right to privacy and freedom of speech/press is a challenging task.

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<sup>50</sup> Writ Petition (Criminal) No. 113 of 2016) available at: [https://main.sci.gov.in/supremecourt/2016/27156/27156\\_2016\\_3\\_1501\\_40744\\_Judgement\\_03-Jan-2023.pdf](https://main.sci.gov.in/supremecourt/2016/27156/27156_2016_3_1501_40744_Judgement_03-Jan-2023.pdf) (Last visited on April 2<sup>nd</sup> 2025)