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"RIGHT TO BE FORGOTTEN- WORLD WIDE OVERVIEWWITH SPECIAL EMPHASIS ON INDIAN CONTEXT"

AUTHORED BY - AISHWARY THAPLIYAL

ABSTRACT

This paper deals with worldwide overview of the right to be forgotten which is an evolving right. This paper deals with position of this right in various countries. In this paper author has tried to make a special emphasis of this evolving right in respect to Indian laws. The author hasused various case laws where judiciary has developed the Doctrine of Right to be forgotten likeZulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd. (Delhi HC, 2019) 2019 SCC OnLine Del. 8494, Sri Vasunathan v. The Registrar General (Karnataka HC) (2020), Subhranshu Rout Gugul v. State of Odisha, 2020 (Orissa HC), 2020 SCC OnLIne Ori. 878, X
v. YouTube (2021), Jorawer Singh Mundy v. Union of India & Ors [Delhi HC, 2021), 2021 SCC OnLine De. 2306 and various legal provision of Indian laws or legislative bills like Personal Data Protection Bill, 2019 to explain the position of this right in India.

Keywords - Right to be forgotten, Doctrine of Right to be Forgotten, Personal Data Protection Bill 2019

INTRODUCTION

The Right to be forgotten is evolving concept. This right allows people to request that their data should be deleted that data which include any personal information from online platform. As itis an evolving right, it is not recognized in many countries. Media platforms like X formerly known as twitter has seen a rising number of requests for the data to be removed. The case in which Right to be forgotten has been enforced are mainly related to defamatory social media posts, information related to legal convictions, allegation from newspapers which were later termed as disproven, images of individuals used to attract disparaging comments, images or videos of the individuals used without there consent. World Economic Forum's Global Coalition for Digital Safety has taken concern of this matter and has developed Global Principles on Digital Safety. They stated in their Translating International Human Rights for the Digital Context report that

"The principle encourages deeper collaboration and cooperation recognizing that we all have a responsibility to help build a safe, rewarding and innovative digital world." The organization like Google and X have established their own online request forums.[1]

In India, In July 2022 a plea was moved before the bench of Justices Sanjay Kishan Kaul and MM Sundresh which was moved by the estranged wife who stated that the availability of the names, addresses and her other personal information on the web violates her right to forgotten[2].In Europe regulators believe that there is difficulty which is faced by the all the citizens i.e., escaping from their memories and because of Internet everything is record and there is difficulty for them to forget these memories. Especially the teenagers who due to their teen memory released their compromising information and they regret it for later. Europe on January22, 2012, released the EU Data Protection Reform 2012 where the country stated about the "Right to be Forgotten" which stated that "If an individual no longer want his personal to be processed or stored by a data controller, and if there is no legitimate reason for keeping it, the data should be removed from their system[3]."

"Position of Right to be forgotten in Various World Countries"

1- EUROPE

This right was first established in EU in a ruling ***Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) And Mario Costeja González*** [4]in this case the key points which were highlighted were-

1. "Article 2(b) of Directive 95/46 on the protection of individuals with regard to processing of personal data and on the free movement of such data is to be interpretedas the meaning that the activity of search engine consisting in finding information published or placed on the internet by third parties, indexing it automatically, storing ittemporarily and finally, making it available to internet users according to a particular order of preference must be classified as processing of personal data when thatinformation contains personal data."

[1] Shine, I. (2023) *The right to be forgotten allows people to ask for data about them to be removed from the internet. how does it work? World Economic Forum*. Available at: https://www.weforum.org/agenda/2023/11/eu-right-to-be-forgotten-online-data/ (Accessed: 20 April 2024).
[2] Anand, U. (2022) *The right to be forgotten allows people to ask for data about them to be removed from the internet. how does it work?*, *Hindustan Times*. Available at: https://www.hindustantimes.com/india-news/more-power-to-the-right-to-be-forgotten-101658509282031.html (Accessed: 20 April 2024).
[3] Rosen, J. (2012) *The right to be forgotten*, *Stanford Law Review*. Available at: https://www.stanfordlawreview.org/online/privacy-paradox-the-right-to-be-forgotten/ (Accessed: 20 April 2024).
[4] *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario CostejaGonzález* (2014).

"This interpretation is not affected by the fact that the data have already been publishedon the internet and are not altered by the search engine. The operation referred to in that provision must also be classified as such processing where they exclusively concern material that has been already published in unaltered form the media."

2. "Furthermore, the operator of a search engine must be regarded as the controller in respect of that processing of personal data, within the meaning of Article 2(d) of Directive 95/46. Inasmuch as the activity of a search engine is liable to affect significantly, and additionally compared with that of publishers of the website, the fundamental rights to the privacy and to the protection of personal data, the operator ofthe search engine as the person determining the purpose and means of that activity must ensure within the framework of its responsibilities, power and capabilities that the activities meets the requirement of Directive 95/46 in order that the guarantees laid down by Directive may have full effect and that effective and complete protection of data subjects, in particular of their right to privacy, may actually be achieved."
3. "Processing of personal data carried out by the operator of a search engine is liable to affect significantly the fundamental rights to privacy and to the protection of personal data when the search by means of that engine is carried out on the basis of an individual's name, since that processing enables any internet user to obtain through thelists of results a structured overview of the information relating to that individual that can be found on the internet. Information which potentially concerns vast number of aspects of his private life and which without the search engine, could not have been interconnected or could have been only with great difficulty and thereby to establish adetailed profile about him. That is more the cases because the internet and search engines render the information contained in such a list of result ubiquitous. In the lightof its potential seriousness, that interference can't be justified be merely the economic interest which the operator of such an engine has in that processing. A fair balance mustbe sought in particular between the legitimate interest of internet users in access to information and the data subject's fundamental rights under Article 7 and Article 8 of the Charter of Fundamental Rights of the European Union."
4. "Article 4(1)(a) of the Directive 95/46 on the protection of individuals with the regardto the processing of the personal data and on the free movement of such data is to be interpreted as meaning that processing of personal data is carried out in the context of the activities of an establishment of the controller on the territory of the Member state within the meaning of that provision when the operator of a search engine set up in theMember

state a branch or subsidiary which is intended to promote and sell advertising space offered by that engine and which orients its activity towards the inhabitants of that member states."

"In such circumstances, the activities of the operator of the search engine and those of its establishment situated in the member state, although separate are inextricably linked since the activities relating to the advertising space constitutes the means of rendering the search engine at issue economically profitable and that engine is at the same time the means enabling those activities to be performed."

5. "Article 12(b) and subparagraph (a) of the first paragraph of Article 14 of Directive 95/46 on the protection of individuals with regard to the processing of the personal data and on the free movement of such data are to be interpreted as meaning that, in order to comply with the right laid down in those provisions and in so far as the conditions laid down by those provisions are in fact satisfied, the operator of a search engine is obliged to remove from the list of the results displayed following a search mode on the basis of a person's name links to web pages, published by the third parties and containing information related to that person, also in the case where the name or information is not erased beforehand or simultaneously from those web pages, and even, as the case may be, when its publication in itself on those pages is lawful."

   "Since the inclusion in the list of results, displayed following a search made on the basis of person's name, of a web page and of the information contained on it relating to that person makes access to that information appreciably easier for any internet user making a search in respect of the person concerned and may play a decisive role in the dissemination of that information, the data processing carried out by the operator of a search engine is liable to constitute a more significant interference with the data subject's fundamental right to privacy than the publication on the web page."

6. "It follows from the requirement laid down in Article 6(1)(c) to (e) of Directive 95/46 on the protection of individuals with regard to the processing of personal data and on the free movement of such data that even initially lawful processing of accurate data may, in course of time, become incompatible with the directive where those data are no longer necessary in the light of the purposes for which they were collected or processed. Therefore, if it is found, following a request by the data subject pursuant to Article 12(b) of Directive 95/46, that the inclusion in the list of results displayed following a search made on the basis of his name of the links to the web pages published lawfully by the third parties and containing true information relating to him personally is, at this point in time, incompatible

with Article 6(1)(c) to (e) of the directive because that informationappears, having regard all circumstances of the case, to be inadequate, irrelevant, or no longer relevant, or excessive in relation to the purposes of processing at the issue carriedout by the operator of the search engine, the information and links concerned in the listsmust be erased."

"In this context, it is not necessary, in order to find a right of the data subject that the information relating to him personally should no longer be linked by his name by a listof results, that the inclusion of the information in question in the list causes prejudice to him."

"As the data subject may, in the light of his fundamental right under Article 7 and Article8 of the Charter of Fundamental Rights of the European Union, request that the information in question no longer be made available to the general public by its inclusion in such a list of results, those rights override, as a rule, not only the economicinterest of the operator of the search engine but also the interest of the general public infinding that operation upon a search relating to the data subject's name. however, it would not be cease, if it appeared for a specific reasons which is justified by preponderant interest of general public to have that data."

Article 17 of General Data Protection Regulation which was adopted by European Union in the year of 2018 states about "right to erasure" which is like right evolved by the European court of Justice in old law which has been replaced by this new GDPR law[5].

Article 17 of General Data Protection Regulation[6] states that-

1. "The data subject shall have 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 which one of the following grounds applies:
    a. The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
    b. The data subject withdraws consent on which the processing is based according to point of Article 6(1), or point (a) of Article 9(2), and where there is no other legal groundof processing;

[5] Right to be forgotten overview - legal help (no date) Google. Available at: https://support.google.com/legal/answer/10769224?hl=en (Accessed: 20 April 2024).

[6] Art. 17 GDPR – right to erasure ('right to be forgotten') (2017) General Data Protection Regulation (GDPR). Available at: https://gdpr-info.eu/art-17-gdpr/ (Accessed: 20 April 2024).

c. The data objects to the processing pursuant to Article 21 (1) and there are no overriding legitimate grounds for the processing, or data subject objects to the processing pursuantto Article 21(2);
d. The personal data have been unlawfully processed;
e. The personal data have to be erased for compliance with a legal obligation in Union orMember State law to which the controller is subject;
f. The personal data have been collected in relation to the offer of information society services referred to in Article 8(1)

2. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the personal data, the controller, taking account of available technology and the cost of the implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the personal data that the data subject has requested to erasure by such controllers of any links to, or copy or replication of, those personal data
3. Paragraphs 1 and 2 shall not apply to the extent that processing is necessary:
   a. for exercising the right of freedom of expression and information;
   b. for compliance with the legal obligation which require processing by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
   c. for reasons of public interest in the area of public health in accordance with point (h) and (i) of Article 9(2) as well as Article 9(3);
   d. for achieving the purpose in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of that processing ; or
   e. for the establishment, exercise, or defence of legal claims."

"In the case ***Google LLC, successor in law to Google Inc. v Commission nationale de l'informatique et des libertés (CNIL)***[7]**,** commission nationale de l'informatique et des libertés (CNIL) which French Data Protection Authority imposed a penalty of 100000 euro on Google Inc. due to its denial granting a de-referencing request, to apply it to all its search engine's domain name extensions. The company was given a formal notice by the CNIL on 21st May 2015 to apply de-referencing to all the extensions which the company had refused to do and confined

[7] Google LLC, successor in law to Google Inc. v Commission nationale de l'informatique et des libertés (CNIL) (2019). Case No. C-507/17

itself to the removing the links in questions from only the results displayed followingsearches conducted from the domain names corresponding to the versions of its search enginein the Member states. The company requested the Counsil d'Etat (Council of States France) toannul the adjudication of 10th March 2016, it considers that the right of de-referencing doesn'tnecessarily requires that the link at the issue is to be removed, without geographical limitations,from all its search engine's domain names. The conseil referred several issue to the Court of Justice for seeking preliminary seeking to ascertain whether the rules of EU law relating to theprotection of personal data are to be interpreted as the meaning that, where search engine operator grants a request for de-referencing, that operator is required to carry out that de- referencing on all the versions of its search engine corresponding to all the Member state or only on the version corresponding to the Member state of residence of the person benefitting from the de-referencing. The court emphasised that in the globalised world internet users accessalso include those who are outside the EU, making a reference to the information regarding tothe person who has his interest situated in EU and is likely to affect his interest and have immediate and substantial effect on him, then the global de-referencing would need to be meet the objective of EU laws. The courts also stated that Right to the protection of personal data isnot an absolute right, and the balance should be made between right to privacy and the protection of personal data on one platform and the freedom of information of internet user onanother platform."

2- UNITED STATES

Right to be forgotten is not recognized right in US but there are some judicial decisions from which we can analysis there some rights which are nearly in similar nature to this right to some extent. Like in the case of ***Gracia v. Google***[8], "where Gracia in her cameo role for upcoming movie spoke two sentences for total airtime of five seconds. But unknowingly her lines were misused by the director in his different movie named Innocence of Muslims. Film producers showed Gracia but dubbed her lines and due to this dubbing, which was broadcasted over You Tube, Gracia started receiving death threats. Gracia asked the Google to remove the film and later she sued the Google for the invasion of her privacy, intentional infliction of emotional distress, copyright infringement, and other causes of action. In result Nineth U.S. Court of Appeals dismissed her lawsuit, and court stated that Right to Forgotten is recognized by the Court of Justice for the European Union but not in United States". Also, in the case of ***Martin v. Hearst Corporation*** [9]in this case "federal Court dismissed the Martin's case, when she

[8] Gracia v. Google, Inc, 786 F.3d 733 (9th Cir. 2015)
[9] Martin vs Hearst Corporation (2015) 777 F.3d 546

appealed in the Second Circuit provided the decision which was explained by the legal scholar Eric Goldman who explained that the court's decision clearly showed that there is no recognized claim for right to forgotten."

"Position of Right to be Forgotten in India"

In India Right to be Forgotten has been recognized either thorough judicial decision pronounced by the various Hon'ble Courts or through legislations.

a. Judicial Decisions

In India court have played various roles in emerging or developing or recognizing various rights which is beneficial for the individuals. Right to be forgotten lays its foundation or its emergence from Article 21 of the Constitution of India which states that "No person shall be deprived fromhis life or personal liberty except according to the procedure established by law." This right emerged out from the judgement pronounced by Hon'ble Supreme Court of India in the case of ***Justice KS Puttaswamy v. Union of India***[10] where various postulates of Right to Privacy were described and one of them was Right to be let alone, Supreme Court stated that 'Privacyalso includes the reservation of private space for the individual."

In India, where the question of the recognition of right to be forgotten was raised was in the case of ***Dharamraj Bhanushankar Dave v. State of Gujrat***[11], "in this case the petitioner was charged for committing the offence related to criminal conspiracy, murder, and kidnapping. He was acquitted by Sessions Court and his acquittal decision was supported by the Division benchof Gujrat High Court. The petitioner therefore claimed that respondent should be banned from publishing it from internet as it will jeopardise the image of the petitioners in his personal lifeas well as in his professional life. Court in its decision didn't acknowledge the right to be forgotten".

In case of ***V. v. High Court of Karnataka***[12], "Right to be forgotten was recognized by Kerala High Court, the case was related to the removal of the name of the petitioner's daughter from the title cause as it defamed her reputation. The court decided in the favour of the petitioner and court stated that this would be a consistent with the trend in western countries, where the right to be forgotten is applied in sensitive cases concerning women in general as well as in sensitive cases which involves rape or harming modesty and reputation of the individual".

In ***X vs YouTube Delhi HC 2021***[13], "in this case plaintiff was a well-known actor in TV and film

[10] (2017) 10 SCC 1
[11] 2017 SCC OnLine Guj 2493
[12] 2017 SCC OnLine Kar 424
[13]

world of India. She was asked for her participation in the creation of a suit video and the project was drooped. But plaintiff found that producer of the suit video has uploaded the videoon YouTube and website. On the request of plaintiff, producer removed the video. But without consent of plaintiff the defendants in the suit uploaded the suit video on various websites. The suit related to anonymity and against the publication, streaming, or other broadcasting, on the ground that the suit video violated her privacy, and it negatively affected her reputation, and it harmed her career. The court held that the suit video comes within the scope of Rule 3(2)(b) ofthe I.T. Rules, 2021 and Court highlighted that Right to be forgotten and the Right to be left Alone are inherent aspects of the right to privacy."

In ***Jorawer Singh Mundy v. Union of India and Ors***[14], "The Delhi HC Justice Prathiba M. Singh upheld the doctrine of right to be forgotten. The petitioner was the American citizen of Indian origin who travelled India during 2009. A criminal case under NDPS Act, 1985 was registered against him from which he was acquitted from all the charges. Appeal which was filled by Customs was also dismissed by court. But the petitioner has to face disadvantages ashis case was available on the Google search. Due to this availability, he was denied of employment under his expectations. The notice was issued to Google India Pvt. Ltd., Google LLC, Indian Canon etc by the petitioner then also they didn't remove the judgement. As a lastoption petitioner filed a petition to recognize his right to privacy under Article 21 Indian Constitution. As a result, High Court by issuing an interim order directed Google India Pvt. Ltdand Google LLC to remove the judgement from search results and it also directed the Indian Cannon to block the said judgement from being accessed by using search engines like Google,Yahoo etc."

In case **Subhranshu Rout Gugul v. State of Gujrat**[15], "in this case petitioner was charged with various offence which included rape of the classmate. When the court was considering thebail application, the question revolved around the recognition of the Right to be forgotten in Indian law as the video was used to threaten and blackmail the victim. The court has to take cognizance of the impact of the publication of the videos in Facebook and while considering this situation the question of recognition of right to be forgotten was put forward before the court. In this case, right to be forgotten was upheld."

In case of ***Sri Vasunathan v. The Registrar General (Karnataka HC)***, court "in this case stated that right to be forgotten should keep in line with the trend in western countries where it is recognized."

In **Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd**[16], "in this case also it was

[14] 2021 SCC OnLine De. 2306
[15] 2017 SCC OnLine Guj. 2493
[16] 2019 SCC OnLine Del 8494

held by the court that plaintiff's Right to privacy has Right to be left alone and Right to be forgotten as its inherent aspects".

b. LEGISLATIONS

1. Personal Data Protection Bill, 2019

It is based on the recommendations of V.N Sreekrishna Committee in 2019 and in this bill thereis legal acceptance of the right to be forgotten as a recognizable right but this bill is still pendingin the Indian parliament.

2. Information Technology Rules, 2021

"Rule 3(2) of the Information Technology (Intermediary Guidelines and Digital Media EthicsCode) Rules, 2021 states about Grievance redressal mechanism of intermediary which states about that the intermediary shall prominently publish on its website, mobile based applicationor both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanisms by which a user or a victim may make complaint against the violation of the provisions of this rule or any other matters pertaining to the computer resources made availableby it and the Grievance Officer shall-

i. Acknowledge the complaint within the twenty-four hours and dispose off such complaint within the period of fifteen days from the date of receipt;

ii. Receive an acknowledge any order, notice or direction issued by the Appropriate Government, any competent authority or a court of competent jurisdiction.

b- the intermediary shall, within twenty-four hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is prima facie in the nature of any material which.

- Exposes the private area of such individual,
- Shows such individual in full or partial nudity or
- Shows or depicts such individual in any sexual act or conduct or
- is in nature of impersonation in an electric form,
- including artificially morphed images of such individual,
- take all reasonable and practicable measures to remove or disable access to suchcontent which is hosted, stored, published, or transmitted by it:

c- the intermediary shall implement a mechanism for the receipt of complaints under clause(b) of this sub-rule which may enable the individual or person to provide details,as may be necessary, in relation to such content or communication link."

CONCLUSION

Right to be forgotten is evolutionary right which is developing worldwide. This right is recognized in many countries like European Union, US whether through the method of Legislation or through the Judicial Decision or Judicial Pronouncement. In India, right to be forgotten is recognized through the Judicial decision, legislative has also done its efforts to recognize this right by introducing the Personal Data Protection Bill, 2019 but it is yet to be passed in parliament. Indian Judiciary is making its whole effort to recognize this developing right in India.