

# Right to be Forgotten: the Status of a Fundamental Right under Constitution of India

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## ABSTRACT

Right to be forgotten is an essential aspect of modern tech-oriented and IT driven world and shall be granted the status of fundamental right within the scope and boundaries of Right to Life and Personal liberty. Right to be forgotten is one's right to remove personal info (like photographs, videos and other identifying info) from internet searches and other directories under certain circumstances. Right to be forgotten is not recognized by law of India but courts in recent months have held that it is to be part of the Right to Privacy.<sup>1</sup>

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## INTRODUCTION

### “Technology is a useful servant but a dangerous Master”- Christian Lous Lange

The remarkable advancement of internet communication knowledge has given us access to the most intimate details of human lives—both good and evil. Our privacy is decreasing day by day and things seem to go public more often. In present times, person's personal info is no longer confined to just government files and document files but the people are just searched away and the person details are easily accessible over the internet. The dramatic shift in the kind and scope of personal info on the web is a key problem. A simple search may provide a wealth of information about a person, potentially jeopardizing an individual's status and nobility as guaranteed by Article 21 of the Constitution of India. Article 21 states, “No person shall be deprived of his life and personal liberty except according to procedure established by law”.

As explained by SC in case *R. Rajagopal v. State of T.N.*<sup>2</sup> the honorable court held that “the right to privacy is implicit in the right to life and personal liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent—whether truthful or otherwise and whether laudatory or critical, if done so, he would be violating the right to privacy of the person concerned and would be liable in an action for damage.”

### Right to be Forgotten:

Right to be forgotten was first used as a term in the year 2014 in EU in regard to information which is inaccurate, inadequate, irrelevant or excessive. The European Union directive adopted the Data Protection Directive in 1995, to regulate the processing of personal data within the European Union. Right to be forgotten had its conceptual origin in the European Union, found one of its references in the landmark judgment of Google Spain Case. The European Court of Justice observed that the Right to Privacy to be above the economic interest and the Right to Information of the public.<sup>3</sup>

The General Data Protection Regulation (GDPR) was adopted on April 2016, which superseded the Data Protection Directive, 1995. **Article 17 of General Data Protection Regulation (GDPR)** provides **individuals have the right to have personal data erased**<sup>4</sup>. This is also known as the 'right to be forgotten'. In India, currently there is no law that specifically

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<sup>1</sup> Sofi Ahsan, Right to be Forgotten: Government Position, Court Ruling and Law Elsewhere, The Indian Express, December 27, 2021.

<sup>2</sup> (1994) 6 SCC 632

<sup>3</sup> Mario Costeja Gonzalez v. Google Spain, Case No. C-131/12 (13 May, 2014)

<sup>4</sup> Available on <https://gdpr-info.eu/art-17-gdpr/> accessed on 24 September

provides the Right to be forgotten. In 2019 the EU Court restricted the ruling only to the European Union, saying Google does not have to apply the “right to be forgotten outside Europe”.

However in December 11, 2019, Ravi Shankar Prasad, The Ministry of Electronics and Information Technology introduced ‘**The Personal Data Protection Bill, 2019**’ in Lok Sabha. The Bill seeks to provide for protection of personal data of individuals, and establishes a Data Protection Authority for the same. The Bill categorizes certain personal data as sensitive personal data. This includes financial data, biometric data, caste, religious or political beliefs, or any other category of data specified by the government, in consultation with the Authority and the concerned sectoral regulator.<sup>5</sup> This bill is not yet passed in the Parliament. This bill is withdrawn by the Parliament on 03.08.2022. however, it has many sections as which clearly emphasis upon Right to be forgotten’ as a Fundamental right and gave many data protection right to individuals. For example: Sections 9, 18(d), 20(1).

However, the Bill guises to fetch in the right to be forgotten which is not accessible in the current legitimate system under the Information Technology Act, 2000 and Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

**Right to be forgotten** is inherent aspect of Right to Privacy and Right to Privacy is the intrinsic part of the Right to Life and Personal Liberty under Article 21 and as a part of the freedoms granted by Part-III of the Constitution of India. In the case of **Jorawar Singh Mundi v. Union of India**<sup>6</sup>, it was held by Justice Pratibha M. Singh that, “Right to be forgotten and Right to be Left Alone” are inherent aspect of Right to Privacy. Right to be forgotten is also called as the right to erasure.

In **Kharak singh v. State of UP**<sup>7</sup> the SC quoted with the approval J. Field’s observation in **Munn v. Illinois**<sup>8</sup> and held that ‘Life’ in Article 21 of Indian Constitution is used for something more than mere animal existence. The inhibition against its deprivation extends to all the limbs and faculties by which life is enjoyed. In **Menaka Gandhi v. Union of India**<sup>9</sup>, the SC held that the right to live is not merely a physical right but includes within the ambit the right to live with dignity.

In the case of **National Legal Services Authority v. Union of India**<sup>10</sup> a Bench of two judges of SC held that “Right to life is one of the basic fundamental rights and not even the state has the authority to violate or take away the right. Article 21 takes all the aspects of life which makes person’s life meaningful. Article 21 protects the dignity of human’s life, one’s personal autonomy, one’s right to privacy etc.

In the landmark judgment **K.S. Puttaswamy(Retd.) and anr. V. Union of India**<sup>11</sup> held by nine judge’s bench of SC that the right to privacy is a fundamental right. It is an intrinsic part of the Right to Life and Personal Liberty under Article 21 of the Constitution and Right to be forgotten was a part of broader right to privacy. The SC observed that the right of an individual to exercise control over his personal data and to be able to control his/her own life would also encompass his right to control his existence on the internet.

In the **Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd.** that the “right to privacy” includes the right to be forgotten and the right to be left alone as “inherent aspects”, this Court is also of the opinion that the right to privacy is to be protected, especially when it is her person that is being exhibited, and against her will.<sup>12</sup> Reliance has further been placed on the judgment of the Orissa High Court in **Subhranshu Rout v. State of Odisha**<sup>13</sup>,

In **V. v. High Court of Karnataka**<sup>14</sup>, the Karnataka High Court recognized right to be forgotten.

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<sup>5</sup> Available on <https://prsindia.org/billtrack/the-personal-data-protection-bill-2019> assessed on 23 September 2022.

<sup>6</sup> W.P.(C) 3918/2021

<sup>7</sup> Air 1963SC 1295

<sup>8</sup> (1877)94US113

<sup>9</sup> AIR 1978 SC 597

<sup>10</sup> (2014) 5SCC 438.

<sup>11</sup> AIR 2017SC 4161

<sup>12</sup> Available on [https://www.livelaw.in/pdf\\_upload/1629825342565877432021-1-399323.pdf](https://www.livelaw.in/pdf_upload/1629825342565877432021-1-399323.pdf) assessed on 28 September 2022. 2019 SCC OnLine Del 8494.

<sup>13</sup> Ibid.

<sup>14</sup> Available on <https://www.sconline.com/blog/post/tag/right-to-be-forgotten/> assessed on 29 September 2022.

Vasunathan v. Registrar General, 2017 SCC OnLine Kar 424

In the another case **X v. You Tube**, The Court held that, in light of all the circumstances, the plaintiff should be entitled to be “left alone” and “forgotten” and thus entitled to her right to privacy. On 23 August 2021, the High Court of Delhi upheld an actor’s right to privacy under Article 21 of the Indian Constitution and directed internet intermediaries as well as websites to take down the explicit videos of the actor which had been uploaded on to multiple video-sharing platforms without her consent.<sup>15</sup>

**X v. Union of India & Ors.** The High Court of Delhi, India ordered the police to remove content unlawfully published on a pornographic website and search engines to de-index that content from their search results and directed that all parties take action to prevent further publication of similar or identical content. The Court stressed the need for “immediate and efficacious” remedies for victims of cases like this as well as the need to balance the obligations of internet intermediaries and the rights of the users, and set out the type of directions that a court can issue in these cases. While giving a decision in this case, The Court examined comparative law and also The Court noted that Indian courts have issued injunction orders in respect of online content, and referred to *Swami Ramdev and Ano. V. Facebook, Inc. and Ors. 2019 SCC OnLine Del 10701*, *You Tube LLC V.Geeta Shrof 2018 SCC OnLine Del 9439*, *ABC vs. DEF & Ors CS(OS) No.160/2017*, and *Shreya Singhal vs. Union of India (2015) 5 SCC 1*.<sup>16</sup>

In the recent incident of Chandigarh University, Dated 17.09.2022, where private and objectionable videos of several women hostel inmates were leaked on the internet, immediate directions were issued by the authorities to get the video removed completely from the internet within 24 hours.<sup>17</sup>

**Conclusion: Right to be forgotten** emerges from the Right to Privacy u/A 21. The impact of the digital age results in information on the internet being permanent. Humans forget, but the internet does not forget and does not let. However, the SC said in the case of K.S. Puttaswamy that **Right to be forgotten** is a **conditional right**.

The **Puttaswamy judgment** also mentions the **European Union Regulation of 2016** that recognized the right to be forgotten. Justice **Sanjay Kishan Kaul** in the concurring judgment underscored the right to be forgotten and opined<sup>18</sup>, “If we were to recognise a similar right, it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant, or is incorrect and serves no legitimate interest.”

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<sup>15</sup> Available on <https://globalfreedomofexpression.columbia.edu/cases/x-v-youtube/> assessed on 5 October 2022.

<sup>16</sup> Available on <https://globalfreedomofexpression.columbia.edu/cases/x-v-union-of-india/#:~:text=X%27s%20photographs%20were%20not%20obscene,and%20the%20Indian%20Penal%20Code>. Assessed on 6 October 2022.

<sup>17</sup> Available on <https://www.indiatoday.in/india/story/chandigarh-university-objectionable-videos-of-students-protest-arrested-2001594-2022-09-18> assessed on 30 September 2022.

<sup>18</sup> Available on <https://www.barandbench.com/columns/litigation-columns/right-to-be-forgotten-litigants-call-to-erase-the-trials-and-tribulations-of-the-past> assessed on 2 November 2022.