

NOW A RIGHT TO BE FORGOTTEN TOO?

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In the today's digital era, the amount of information which is being collected and stored over the internet is infinitude, probably more than any other time in the history. Users of social media networks like Instagram, Twitter, Facebook, Whatsapp have almost taken up the role of the press by collecting and transmitting information almost instantaneously and constantly. It would be incomplete to term mobile phones as 'communicating devices', instead they should be correctly be called as the 'world wide web broadcasting devices'. With technological advancement and cheap data services, any piece of information, video, audio or picture can reach a million eyeballs in just a fraction of a second. It does not take much time for an information to get viral over the internet to the extent that most of the time it loses its original source. The information over the internet is pervasive and almost perpetual. Search engines have changed the way people remember and recall information. It assists in assimilating data at a click of a mouse which otherwise would be scattered and forgettable. However, the facts that the internet never seems to forget is threatening. Search engines and social media platforms provides other users access to private information which otherwise they would not want to reveal, such as details of past crimes, old embarrassing photographs, videos, or humiliating news articles. This is a severe threat to privacy creeping into our lives. Such developments has given way to new movement promoting a "right to be forgotten" (RTBF) based upon the concept that one should have control over one's personal information displayed over the web. The right addresses the problem of the inability to escape the past over the internet now that every tweet, status update or picture lives forever.

The term "right to be forgotten" is a relatively new idea, though on 13 May 2014, the European Court of Justice legally solidified it as a human right and sparked a controversy in courtrooms throughout the world. In this famous case of Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González, the Spanish national, Costeja, had filed a complaint with Spain's Data Protection Agency that a google search of his name reflected links to two pages of a Spanish Newspaper bearing public notices of an auction of Costeja's house due to his failure to pay social security debts. The proceedings had concluded and resolved many years ago and were no longer relevant. Costeja claimed that this information over the internet was effecting his reputation and violated his privacy rights. Costeja along with the Data Protection Agency moved the court against Google Spain for the removal of the online archive of the newspaper. The European Court of Justice held that internet search engines fall within the definition of Data Controller and decided against Google Spain. The court ruled that in cases where the information has become 'inadequate, irrelevant or no longer relevant or excessive' the information owner can ask the search engine to de-list the web addresses from search result The judgement stated, "*Thus, if, following a search made on the basis of a person's name, the list of results displays a link to a web page which contains information on the person in question, that data subject may approach the operator directly and, where the operator does not grant his request, bring the matter before the competent authorities in order to obtain, under certain conditions, the removal of that link from the list of results.*" However, such information should not be pertaining to public interest. The RTBF has its root in the

French Jurisprudence which recognizes ‘droit à l’oubli’ or the right to oblivion. The right to oblivion allows a criminal offender who has been rehabilitated to object to the publication of the facts of his conviction and incarceration so that he can spend the rest of his life in an unprejudiced society.

The RTBF is being debated extensively by various other countries regarding its interaction with the right to freedom and expression and right to privacy. Some of them have lauded this development, some are still adapting to it, while others have widely criticised it. California in January 2015 enacted and implemented the RTBF law for the minors, giving them the right to request and obtain removal of content that could otherwise haunt them for years. President of Russia, Vladimir Putin, signed the RTBF Bill into law which came into force from the first day of 2016. This Russian law provides for de-listing of links to obsolete personal information on request of individuals, leaving the actual information on the web platform untouched, subjected to certain conditions. In South Korea, ‘Guidelines on Right to Request Access Restrictions on Personal Internet Postings’ took effects from June 2016. These guidelines seek to address situations where an individual has lost control over the self-posted embarrassing or irrelevant content over the internet but does not apply to third party content. China, in June 2016, refused to recognize RTBF under Chinese law in the first case claiming it in the country. The Chinese courts, however, seems to have left open the possibility of offering some kind of protection if the circumstances justify. In November 2016, the Brazil’s Superior Court of Justice decided unanimously that the RTBF cannot be imposed on google and other search engines as the responsibility of removal would be too much a burden for them, turning them into digital censor. Recently in February 2017, Japan’s top court delivered its first decision involving the RTBF relating to internet searches and rejected a man’s demand that news search results of his arrest on sex charges to be deleted from google. The Court stated that the crime being serious and a matter of public interest, the public’s right to know overweighed the man’s right to privacy. The court further noted that the request for removal of content from the internet will be decided on case-by-case basis after giving due weightage to public interest. Hence, countries across the world are still adapting to this new concept and evolving their definition of the RTBF.

The EU decision has thrown open a worldwide discussion on the RTBF and India did not remain untouched. The Information Technology Act which came into force in the year 2000, is the only Act in our country which covers key issues of data protection such as child pornography, hacking, online fraud, etc. but it does not have any provisions relating to the RTBF. Howsoever, Karnataka High Court, speaking through Justice Anand Bypareddy, was the first court in India to give a ruling on the lines of the Google Spain Case. In this case it was the apprehension of the petitioner’s daughter that if a name wise search is made on search engines like Google or Yahoo, an earlier court order would reflecting her name would appear bearing grave repercussions to her goodwill in the society. The petitioner therefore claimed masking of his daughter’s name from such court order available at various websites. The court ordered in the affirmative directing the registry to endeavour to mask the name of the petitioner’s daughter from certified copy of court orders as well as from court orders in the public domain over the internet excepting the High Court Website. It’s the first judicial pronouncement of the country explicitly acknowledging the RTBF although the order was largely an unreasoned one. The decision leaves many questions unanswered such as the procedure to request a removal from the internet, the criteria of content removal, that whether

it would lead to deletion of the concerned information or just de-indexing from search results, who will be responsible for the removal, search engines or the government, and many more. The Delhi High Court continues to hear a similar case. The judicial concept of RTBF is still at a nascent stage on our country which requires new development of protective legislations and a strong framework for its implementation.

The Karnataka High Court order has paved a way to new battle of seeking right to privacy over the internet in our country. The nature of RTBF is premised over striking a balance of the Right to freedom and expression and the Right to Privacy. Under our Constitutional Law, the right to privacy is innate in the fundamental right to life and liberty guaranteed by Article 21 of the Constitution. This would include the right to be let alone. Further, Article 19 (1)(a) of the Indian Constitution provides for the freedom of speech and expression subjected to certain reasonable restriction. The right to privacy has been conflicted with the right to press, a right derived from article 19(1)(a), and the issue has always been decided by the court by taking into account the concept of 'public interest' and 'public morality'. Further, in the case of *Bennett Coleman and Co. v. Union of India* in 1973 the court held that the freedom of speech and expressions encompasses within itself the right to of all the citizens to read and be informed. Moreover, the Supreme Court in *Reliance Petrochemicals Ltd. v. Proprietors Indian express Newspaper Bombay Pvt. Ltd.* has held that the right to know emanates from the fundamental right of freedom of speech and expression. The question that arises is that the RTBF, if recognised in India, would be taken as an extraction from which fundamental right and what would be its prevailing nature over other derived rights. A RTBF if accepted in India would be on one hand a healthy step towards data privacy and on the other hand will be infringing the right to speech and expression of the author, journalists and web publisher and will also be diminishing the right to know of other citizens of the country. The issue in hand is urgent and requires rules and regulations to be put in place before the courts are overburdened with requesting for deletion of data from the internet. The interacting spheres of the rights is rather complex and debatable. However, what legislator should bear in mind is while attempting to achieve an equilibrium between right to privacy and right to freedom of speech and expression, it is not necessary that there has to be a loser. In fact the RTBF should be understood as the point of equilibrium.