



Right To Be Forgotten

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This article is based on **“The fine line that separates judicial transparency and the right to be forgotten”** which was published in The Hindustan Times on 24/06/2021. It talks about the issues involved with the right to be forgotten.

Recently, the Delhi high court has granted relief to a petitioner seeking to exercise **‘right to be forgotten’** (RTBF). The petitioner, who was earlier acquitted in a narcotics case, had come before the high court praying for the removal of the judgment of his acquittal from online platforms.

The court’s order assumes significance by removing it from online platforms to protect an individual’s right to privacy and the need to balance it with the right to information of the public and maintenance of transparency in judicial records.

The Right To Be Forgotten

- The ‘right to be forgotten’ is the right to have publicly available personal information removed from the internet, search, databases, websites or any other public platforms, once the personal information in question is no longer necessary, or relevant.
- RTBF gained currency after the 2014 decision of the Court of Justice of the European Union (“CJEU”) in the Google Spain case.
- RTBF has been recognised as a statutory right in the European Union under the **General Data Protection Regulation (GDPR)**, and has been upheld by a number of courts in the United Kingdom, and in Europe.
- In India, there is no law that specifically provides for the right to be forgotten. However, the **Personal Data Protection Bill 2019** recognised this right.

Google Spain Case

- In this case, the CJEU ruled in favour of a Spanish national who had requested Google to remove two links to newspaper articles about him.

- It held that personal information found to be inadequate, irrelevant, or excessive in relation to the purposes of the processing should be erased, even if it was published lawfully.

RTBF in India & Need

- In India, RTBF doesn't have legislative sanction yet. However, in the Puttaswamy judgment, the Supreme court held that the right to privacy is a fundamental right.
- In the Puttaswamy judgment, the Supreme Court 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".
- Currently, many High courts have expressly recognised the right to be forgotten in their judgments, taking note of international jurisprudence on this right.
- With deeper integration of technology and the digitisation of data, a simple Google search can yield a plethora of information about an individual, which may hurt a person's reputation & dignity guaranteed under Article 21 of the constitution.
- At a time when the judiciary is entering Phase III of its ambitious eCourts project, rights such as RTBF will have to be coded into any technology solution that is developed for judicial data storage and management.

Challenges Associated With Right to Be Forgotten

- **Legal Challenge:** Right to be forgotten may get into conflict with matters involving public records.
 - For instance, judgments have always been treated as public records and fall within the definition of a public document according to Section 74 of the Indian Evidence Act, 1872.
 - According to a report by Vidhi Centre for Legal Policy, RTBF cannot be extended to official public records, especially judicial records as that would undermine public faith in the judicial system in the long run.
- **Information in the Public Domain is Like Toothpaste:** Like once toothpaste is out of the tube one can't get it back in and once the information is in the public domain, in the digital era, it will never go away.
- **Individual vs Society:** Right to be forgotten creates a dilemma between the right to privacy of individuals and the right to information of society and freedom of press.

Way Forward

- **Making Privacy as Reasonable Restriction:** In order to implement the right to be forgotten, privacy needs to be added as a ground for reasonable restriction under Article 19 (2) by a major amendment to the Constitution.

- **Balancing Privacy & Information:** There is need for development of framework, the right to be forgotten can be restricted. For example:
 - In exercising the right of freedom of expression and information;
 - Compliance with legal obligations;
 - The performance of a task carried out in public interest, or public health;
 - Archiving purposes in the public interest;
 - Scientific or historical research purposes or statistical purposes; or
 - The establishment, exercise or defence of legal claims.

Conclusion

Given that the Personal Data Protection Bill 2019 is already tabled in parliament, there needs to be a comprehensive debate. So as to minimize the conflict between the two fundamental rights that form the crucial part of the golden trinity (Art. 14,19 and 21) of the Indian constitution.

Drishti Mains Question

Striking the right balance between right to privacy of individuals and right to information of society, will be key to the development of Right to be Forgotten India. Discuss.
