

Breaking Digital Barriers: Reimagining the Right to Be Forgotten in India for Gender-Inclusive Online Spaces

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Abstract

The rapid growth of digital platforms has raised increasing worries about privacy, online harm, and vulnerabilities related to gender, especially for women. They are disproportionately affected by issues like cyberstalking, image-based abuse, character assassination, and the non-consensual sharing of personal data. In this context, the Right to Be Forgotten (RTBF) emerges as a crucial legal safeguard for reclaiming digital dignity and autonomy. This paper examines the evolving trajectory of the RTBF in Indian law, tracing its development through judicial pronouncements, data protection debates, and emerging regulatory frameworks. By situating the RTBF within the broader theme of breaking digital barriers and building gender-inclusive online spaces, the study highlights how the absence of a clear statutory mechanism in India continues to hinder timely redressal for women and marginalized users facing online harm. The paper argues that a robust, accessible, and gender-sensitive RTBF is essential not only for protecting privacy but also for addressing structural digital gender disparities. Through doctrinal analysis, comparative perspectives, and case-based insights, the research proposes legal and policy reforms aimed at operationalizing the RTBF as a tool for empowerment, safety, and inclusion in India's digital ecosystem. Ultimately, the study underscores that remembering and strengthening the RTBF is integral to creating online spaces that are safer, more inclusive, and more responsive to the lived experiences of women in the digital age.

Keywords: Right to Be Forgotten; Digital Privacy; Gender-Inclusive Online Spaces; Online Gender-Based Violence; Data Protection Law in India; Cyber Safety; Digital Dignity; Women's Online Safety; Privacy Rights; Judicial Interpretation; Digital Harassment.

Introduction

As digital presence becomes ever more prominent, people increasingly seek control over their personal data and digital footprints. This need is reflected in the "Right to Be Forgotten" (RTBF), allowing individuals to request the deletion of their personal information from online platforms when it is outdated, irrelevant, or if it jeopardises their privacy. Emerging from European privacy legislation as the "right to erasure," its significance was reinforced by the 2014 "Google Spain case," which required search engines to remove data that is "inadequate, irrelevant, or no longer relevant" when asked. The European Court of Justice confirmed that individuals can request search engines to delete links containing their personal information. [1]
[2]

Recently, India's Supreme Court agreed to hear an important case that could reshape the understanding of the "right to be forgotten" in the absence of a formal law. This move underscores the growing acknowledgement of this right and its expected influence on how it is understood and applied in India. The paper will explore how RTBF is interpreted in India, review relevant judicial precedents, discuss challenges from inconsistent court rulings, and suggest steps to develop a strong legal framework.

Objectives of the Study

- ✓ To analyse the development and present state of the Right to Be Forgotten (RTBF) in India..
- ✓ To explore how weak RTBF protections contribute to gender-based digital harm and exclusion.
- ✓ To identify the key legal and procedural challenges in implementing the RTBF in India.
- ✓ To analyze the relevance of the RTBF in creating safer and more gender-inclusive online spaces.
- ✓ To propose practical legal and policy reforms for strengthening a gender-sensitive RTBF framework in India.

Research Methodology

This research uses a qualitative and doctrinal approach, mainly relying on secondary sources. It examines Indian laws, court judgments, policy documents, and expert reports to understand how the Right to Be Forgotten (RTBF) has developed in the country. A comparative review of global models, especially the European Union's framework, is included to identify useful insights for India. The study also analyzes gender-focused literature and documented cases of online harm to understand the RTBF's importance for women's safety and inclusive digital spaces. Overall, the methodology is descriptive and analytical, aiming to connect legal developments with real-life digital challenges.

Understanding the Right to Be Forgotten

The "Right to Be Forgotten" allows individuals to request the deletion of their specific data, preventing third parties from tracking them. It grants people the ability to remove personal information from digital platforms when such data is outdated, irrelevant, or harms their privacy. This right is closely connected to the fundamental right to privacy. [3] [4] [5]

The Right to Be Forgotten (RTBF) enables individuals to request the deletion or removal of personal data that is outdated, irrelevant, misleading, or potentially harmful. This right originated from the landmark Google Spain case decided by the Court of Justice of the European Union (CJEU) and has since become a key aspect of global privacy protections. In India, RTBF is still developing, primarily through judicial interpretations under Article 21—covering the right to life and personal liberty. Indian courts have increasingly recognised that unrestricted online circulation of personal information can damage a person's dignity, reputation, and mental health. However, India currently lacks a detailed statutory framework

for RTBF enforcement, resulting in inconsistent rulings. This changing legal environment underscores the importance of clear laws, especially as digital footprints significantly impact personal and professional lives. [1] [2] [3]

Digital spaces have amplified the challenges faced by women, who are disproportionately targeted with cyberstalking, online harassment, doxxing, morphed images, revenge pornography, and the non-consensual circulation of private information. These harms not only violate women's privacy but also restrict their participation in online platforms, reinforcing existing gender disparities. The persistence of harmful content online creates lasting reputational, emotional, and social damage, often discouraging women from engaging freely in digital environments. In such scenarios, the RTBF becomes more than a privacy tool—it becomes a critical mechanism for restoring dignity, ensuring safety, and enabling women to reclaim their digital identities. Strengthening the RTBF through gender-sensitive legal frameworks is therefore essential in creating inclusive and empowering online spaces.

gender is understood as the set of social expectations, roles, and identities that shape how individuals—especially women—experience the world, both offline and online. When we look at gender from a legal perspective, it becomes clear that different groups face digital risks in unequal ways. Women, in particular, are far more likely to encounter cyberstalking, the non-consensual sharing of private images, online character attacks, and targeted harassment—harmful acts that often remain permanently visible on the internet. These are not just problems created by technology; they are reflections of deep-rooted gender inequalities that the law must confront.

Examining the Right to Be Forgotten with a gender-sensitive perspective, this research emphasises that legal rights are interconnected. Their significance lies in their ability to shield those most exposed to digital harm. Consequently, recognising gender is crucial to demonstrate why India requires more robust legal protections to ensure the online dignity, privacy, and safety of women and marginalized groups. This approach supports the broader aim of fostering digital environments that are secure, equitable, and inclusive for all.

Comparative approaches also show that the Right to Be Forgotten has developed differently across jurisdictions. Argentina has addressed the issue through litigation concerning the removal or de-indexing of personal information, while Japan has also considered claims seeking recognition of a right to be forgotten. In the United States, California has adopted specific statutory mechanisms, including the Online Eraser Law for minors and the Delete Act, supported by proposed regulations for an accessible deletion mechanism. These approaches demonstrate that data erasure may be structured through judicial remedies, age-specific protections, or statutory deletion systems, offering useful comparative perspectives for India. [6] [7] [8] [9] [10]

Judicial Recognition

A pivotal moment in the recognition of the Right to Be Forgotten (RTBF) in India occurred with the 2017 ruling in *Justice K.S. Puttaswamy v. Union of India*.¹ This landmark case recognised the right to privacy as a fundamental right in the Indian Constitution, effectively including the RTBF within its scope.² While acknowledging this right, the Supreme Court clarified that it is not absolute. The Court delineated specific scenarios in which the RTBF might not apply, including instances involving **public interest, public health, archiving, research, or legal claims**.³ Moreover, the Court stated that recognising this right allows individuals to remove their personal data when it is no longer relevant or lacks a legitimate purpose. It is also noteworthy that the Supreme Court had earlier recognised the right to privacy as a fundamental right under Article 21 of the Constitution in the Kharak Singh case.⁴ [11] [12] [13] [14]

Recent legislative endeavours in India further reflect the growing recognition of data protection rights. The **Digital Personal Data Protection Act, 2023**, explicitly recognises the right to "erasure".⁵ Furthermore, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, require intermediaries to delete or restrict access to privacy-violating content within 24 hours of receiving a complaint.⁶ [15] [16]

Important Judicial Decisions Concerning the Right to Be Forgotten in India

In India, various judicial decisions have shaped the understanding and application of the Right to Be Forgotten (RTBF). The landmark case of *Rajagopal v. State of Tamil Nadu* (1994) introduced the idea of the "right to be let alone" But clarified that public records, such as court judgments, remain accessible to the public. In 2017, the Gujarat High Court in *Dharamraj Bhanushankar Dave v. State of Gujarat* dismissed a request to remove acquittal details from public records, emphasising judicial transparency. Similarly, the Orissa High Court in 2020, in a "revenge porn" case, stressed the importance of a wider debate on the RTBF, highlighting its complexities and the need for clear legal guidelines.

In 2021, the Delhi High Court broadened the RTBF in a criminal case, allowing personal details to be removed from search results to protect the petitioner's reputation and career. The Supreme Court (July 2022) further reinforced this right by directing its registry to devise a mechanism for redacting personal details of individuals in a contentious marital dispute from search engines. In December 2023, the Kerala High Court decided that the RTBF does not apply to

¹ *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors.*, (2017) 10 SCC 1.

² The Economic Times. (2017, August 24). Right to privacy is a fundamental right: Supreme Court. Retrieved from <https://economictimes.indiatimes.com/news/politics-and-nation/right-to-privacy-a-fundamental-right-supreme-court/articleshow/60205844.cms>

³ LiveLaw. (2017, August 24). Right To Privacy A Fundamental Right: SC. Retrieved from <https://www.livelaw.in/right-to-privacy-a-fundamental-right-sc-read-judgment/>

⁴ *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295.

⁵ The Gazette of India. (2023, August 11). The Digital Personal Data Protection Act, 2023.

⁶ The Gazette of India. (2021, February 25). Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. (Specifically, Rule 3(1)(a) and 3(2)(b)).

ongoing cases, citing principles of open justice and public interest, but left room for future case-specific considerations. Most recently, in July 2024, the Himachal Pradesh High Court ordered the redaction of names of both the accused and the victim in a rape case, highlighting that someone who is acquitted should not carry the burden of unproven allegations indefinitely. These decisions showcase India's developing judicial approach to the RTBF, aiming to balance privacy, transparency, and public interest.

Key Indian Judgments on the Right to Be Forgotten

In the landmark case *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632, the Supreme Court examined the concept of the "right to be let alone." It clarified, however, that this right does not apply to the publication of public records like court decisions, which are deemed appropriate for public discussion.

In the *Dharamraj Bhanushankar Dave v. State of Gujarat*, R/SCR.A/7841/2017 case, the Gujarat High Court rejected a request to delete acquittal details from public records, reaffirming the significance of maintaining public access to court orders.

In 2020, the Orissa High Court addressed a criminal case related to "revenge porn," emphasising the urgent need for broader discussions on the "right to be forgotten." The court observed that establishing this right involves complex legal challenges that demand clear boundaries and effective remedies. (The specific citation for the 2020 Orissa HC case concerning "revenge porn" and the "right to be forgotten" is not standardised; it is usually referenced by year and court or specific petition number if available).

In 2021, the Delhi High Court expanded the "right to be forgotten" in a criminal case, permitting the removal of particular details from search results to safeguard the petitioner's social reputation and career opportunities.

In July 2022, a Supreme Court Order represented an important step. The Court instructed its registry to create a process to remove the personal information of a couple involved in a heated marital dispute from search engines, expanding the scope of the right to be forgotten. (This refers to the order in *XYZ v. The Registrar General, Supreme Court of India & Ors.*, T.P.(C) No. 1118/2022).

In December 2023, the Kerala High Court, in WP(C) No. 34749 of 2023, decided that the "right to be forgotten" does not apply to ongoing court cases. The court cited the importance of open justice and public interest as reasons. It acknowledged that, in certain situations and over time, this right might be relevant, but it emphasised the need for clear legislation on the issue.

In July 2024, the Himachal Pradesh High Court directed the removal of the names of both the accused and the victim in a rape case. The court highlighted that once a person is acquitted, they should no longer bear the burden of the allegations. (The specific case number is not included, but the central principle of the decision is evident).

The **Right to Be Forgotten (RTBF)** has become an essential legal principle in the digital era, especially when examined in the context of **crimes against women and sexual offences**. Survivors of rape, molestation, trafficking, and other gender-based crimes often face lifelong trauma that is worsened when their personal details, past cases, or sensitive information continue to circulate online. Even after legal proceedings conclude, digital traces—such as news reports, social media posts, or leaked documents—can repeatedly resurface and cause secondary victimisation, shame, and social stigma. RTBF helps address this problem by giving survivors the power to request removal, de-indexing, or restriction of such information, thereby safeguarding their dignity, privacy, and psychological recovery.

In cases of **sexual offences against women**, the relevance of RTBF is even stronger because Indian society often attaches stigma to victims rather than perpetrators. The uncontrolled digital circulation of details about the survivor can discourage reporting of crimes, affect rehabilitation, and expose them to further harassment or cyber-bullying. By allowing the selective erasure of harmful and unnecessary online content, RTBF becomes a vital tool to protect women's safety and autonomy in the digital space. Strengthening this right—through clear legal frameworks, faster removal mechanisms, and accountability for digital platforms—can significantly contribute to creating a safer environment for women and ensuring justice beyond the courtroom.

Arguments For and Against the Right to Be Forgotten

The "Right to Be Forgotten" sparks considerable debate, with strong arguments presented both in its favour and against its absolute implementation.

Arguments in Favour

The **Right to Be Forgotten (RTBF)** is a crucial mechanism in today's digital landscape. It supports **reformatory justice**, allowing offenders who have served their sentences to live reformed lives by mitigating the perpetual accessibility of past information. This is especially vital in the **new digital age**, where data is instantly and globally accessible, presenting unprecedented challenges to managing one's online presence. The RTBF offers **protection from "double jeopardy"**, preventing continuous accessibility of past information from feeling like an ongoing punishment, particularly for vulnerable individuals like **young people, adolescents, and children** who are susceptible to cyberbullying.

Moreover, the RTBF plays a key role in combating half-truths and false information that can remain online even after legal issues are resolved. It strongly supports the right to privacy and personal data control. This is especially important given the common sharing of private photos or personal details without permission, which the RTBF seeks to address by facilitating content removal. Ultimately, the RTBF is vital for reducing digital harm caused by outdated or incorrect information, which can seriously affect both personal and professional lives. It helps ensure individuals are not unfairly penalised for their past, particularly when they have moved forward, and prevents them from enduring the consequences of illegally shared personal data.

Arguments Against

Concerns about the Right to Be Forgotten often begin with the serious risk of **censorship**. Limiting public access to information—except in cases involving **defamation, copyright infringement, or criminal activity**—raises fundamental questions about **transparency** and **democratic accountability**. Any restriction on information must therefore be approached with **extreme caution** to ensure it does not compromise the openness and integrity of the digital public sphere.

Another major criticism centres on the potential violation of **fundamental rights**, particularly the **freedom of expression**. Critics argue that removing lawful and publicly relevant information could restrict individuals' ability to **exchange ideas, access knowledge, and participate in democratic discourse**. This highlights the essential need to ensure that the pursuit of privacy does not overshadow or diminish these **constitutionally protected freedoms**.

The impact on **journalism** is equally significant. Journalists rely on **historical records** and **accurate past information** to report responsibly and hold individuals and institutions accountable. If such information becomes inaccessible, it may affect their **livelihood** and weaken the **democratic role of the press**. Restricting access to past data could obstruct **investigative journalism** and hinder the **public's right to know**.

Concerns further extend to issues of **integrity and accountability**. If information about individuals involved in financial wrongdoing or public controversies—such as high-profile defaulters like **Vijay Mallya**—is erased, it could reduce incentives for **responsible behaviour**. Transparency plays a critical role in maintaining accountability, and excessive erasure risks undermining this **core democratic principle**.

There is also apprehension regarding **partisan or selective removal** of information. If powerful individuals or groups can influence the deletion of unfavourable content, it may distort **public memory**, create **biased narratives**, and violate the **right to information**. Such selective erasure threatens both **fairness** and the **neutrality** of the informational environment.

Some critics caution that the Right to Be Forgotten could influence **social behaviour** by excessively sanitising online content. Over-removal of information may prevent society from understanding **behavioural patterns**, learning from **past mistakes**, or forming **informed judgments**. This raises important questions about the extent of individual control within shared digital spaces.

Finally, concerns related to **net neutrality** arise when selective deletion affects the availability of online information. Removing certain content may indirectly provide **preferential treatment** to other information, undermining the principle that all online content should be **equally accessible**. Protecting net neutrality is therefore essential to maintaining a **free, open, and unbiased** digital ecosystem.

Difficulties Caused by Inconsistent Judicial Methods

The **Right to Be Forgotten (RTBF)** faces significant criticism, primarily due to concerns about **censorship**. Opponents argue that it inherently constitutes a form of censorship, which is generally undesirable unless information is unlawful under defamation, copyright, or criminal law. This raises concerns about the potential **violation of fundamental rights**, particularly the **freedom of expression**. There are also concerns about its impact on journalists' livelihoods, as restricting access to or reporting on past information could hinder their ability to perform their democratic role and disclose relevant histories, potentially affecting their right to a livelihood.

Furthermore, critics suggest the RTBF could **compromise integrity**. For example, removing information about financial defaulters might reduce the incentive for responsible behaviour. It also raises concerns about the removal of partisan content, which could infringe upon the **right to free expression and information**. Some express concern that the RTBF could be a tool for **controlling social behaviour by unduly sensitising** human actions. Finally, there are **concerns about net neutrality**, as while online information facilitates judgment, the RTBF's application could potentially be exploited to violate the principles of net neutrality.

Implementing the Right to Be Forgotten (RTBF) effectively in India requires a comprehensive and multi-layered approach. Central to this is developing a solid legislative foundation, starting with the passage of a dedicated data protection law that clearly incorporates the RTBF. This legislation should specify exact data erasure standards and establish an independent data protection authority staffed with experts in privacy, technology, and law. Such an authority will ensure informed, consistent, and impartial decision-making.

It is crucial to prevent overreach when applying this right. Clear limitations, safeguards, and oversight are essential to prevent misuse. Judicial bodies should create guidelines that strike a balance between individual privacy and public interest, taking into account factors like the type of information, its relevance, and how long ago it was published.

Industry self-regulation plays a crucial role. Promoting responsible data practices among digital platforms and data-handling entities—like data minimisation, secure deletion, and better anonymisation—can greatly enhance RTBF implementation. Additionally, more investment in research and development is essential to tackle new technical challenges related to data removal.

Equally crucial is **public awareness**. Educating individuals about their **data privacy rights**, responsibilities, and available legal remedies will help build a culture of **responsible digital behaviour** and empower citizens to exercise their rights effectively.

Ultimately, the core purpose of the RTBF is not to **erase history** or **manipulate public memory**, but to ensure that certain information becomes **less prominent** when its continued availability is **unjustified or harmful**. This principle is reflected in the EU's approach, which supports the removal of **incorrect, inadequate, or misleading information**, while ensuring that **relevant and legitimate information** remains accessible to the public.

Conclusion

The 'Right to Be Forgotten' is becoming increasingly significant in legal and technical contexts, emphasising its growing importance in privacy rights. In India, current regulations rely on judicial interpretation because there are no specific laws yet, but future legislation is expected to provide a clearer regulatory framework. These efforts to acknowledge this right reflect a move towards a more comprehensive and robust approach to digital privacy within the country.

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