BLOGS

Right to be Forgotten in India

Samridhi M · 28 Oct 2024

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Introduction

The concept of the right to be forgotten offers individuals the authority to request the removal of their private information from online platforms, websites, or other public domains, particularly in certain exceptional situations.

Often referred to as the right to erasure, this notion was initially established by the European Union in May 2014. While India currently lacks a dedicated law that explicitly grants the right to be forgotten, a significant development took place on December 11, 2019.

Ravi Shankar Prasad, the Minister of Electronics and Information Technology, introduced the **Personal Data Protection Bill** to the Lok Sabha. Despite not having been ratified by Parliament yet, this bill holds a pivotal purpose – safeguarding an individual's privacy concerning their personal data. Within the framework of the Personal Data Protection Bill, Chapter 5 focuses on the Right of Data Principal.

Embedded within this chapter, **clause 20** underscores the concept of the Right to be Forgotten. More specifically, clause 20(l) stipulates that a data principal – an individual linked to the data – possesses the entitlement to restrict or halt the continued disclosure of their personal data by a data fiduciary.

Consequently, the Right to be Forgotten empowers users to unlink, eliminate, or rectify personal information associated with them.

Emergence of the Right to Be Forgotten in the Indian Context

The legal discourse surrounding data protection and privacy in India was notably framed by the landmark case of ***Justice K.S. Puttaswamy v. Union of India***. This pivotal Supreme Court verdict established the fundamental right to privacy. Acknowledging the significance of data protection, various Standing and Parliamentary Committees have underscored the imperative for comprehensive regulations.

In a significant stride, the **Justice B.N. Srikrishna Committee** presented a comprehensive data protection bill in May 2018, delving into the relatively nascent concept of the 'Right to be Forgotten,' aimed at safeguarding personal data.

Concurrently, Ravi Shankar Prasad, the Minister of Electronics and Information Technology, introduced The Personal Data Protection Bill to the Lok Sabha on December 11, 2019.

The Right to Be Forgotten

Under specific circumstances, individuals hold the privilege to request the removal of personal information, including images, videos, and identifiable data, from publicly accessible platforms like internet searches and web directories.

Section 43A of the Information Technology Act of 2000 mandates compensation by businesses failing to secure sensitive personal data, resulting in unauthorized loss or gain. Notably, the 'Right to be Forgotten' is not explicitly incorporated into the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, as issued by the Government of India.

However, avenues for registering grievances with the appointed Grievance Officer are established, facilitating the removal of content disclosing personal information without consent.

The Case of Ashutosh Kaushik

In 2021, reality **TV personality Ashutosh Kaushik, known for winning Bigg Boss and MTV Roadies in 2008, invoked the "Right to Privacy"** and "Right to Be Forgotten" before the Delhi High Court. Seeking the erasure of online content pertaining to his 2009 drunk driving arrest and a 2013 cafe dispute, Kaushik's petition resonates with the French concept of the right of obliviousness.

The Precedent of Mario Costeja Gonzalez vs. Google Spain

A significant milestone in the evolution of the 'Right to Be Forgotten' was the case of ***Mario Costeja Gonzalez vs. Google Spain*** in 2014. Here, the European Court of Justice ruled in favor of Gonzalez, ordering Google to erase outdated, irrelevant, or inadequate data from its search results. This case underscored the primacy of the right to privacy over economic interests and public information access.

The Progress of the Right within India

The concept of the 'Right to be Forgotten' made its initial appearance in India through the case of ***Dharamraj Bhanushankar Dave v. State of Gujarat***. Although the petitioner sought to restrict the online publication of a non-reportable judgment due to its potential harm, the court did not explicitly recognize the 'Right to be Forgotten.'

The 'right to be forgotten' found recognition in the case of ***Jorawar Singh Mundy vs. Union of India***. The court acknowledged the delicate balance between an individual's right to privacy and the public's right to information. Prioritizing the former, the court mandated the removal of access to the judgment from websites.

While the 'Right to Be Forgotten' is a subset of the broader right to privacy enshrined in Article 21 of the Indian Constitution, its specific status as a fundamental right remains ambiguous.

The Personal Data Protection Bill, 2019, presents an opportunity for this right to become statutory, as Section 20 of Chapter V explicitly recognizes it. Even as the Supreme Court of India has not categorically labeled it a fundamental right, the impending legislation could solidify the 'Right to Be Forgotten' as a pivotal aspect of data protection in India.

Challenges and Potential Solutions

The introduction of the Right to Be Forgotten, with its aim of safeguarding individual privacy, presents a range of intricate challenges that necessitate thoughtful resolution. Striking a harmonious balance between personal rights and the broader implications for journalism, freedom of expression, and speech is a complex endeavor that requires careful consideration.

Impediment to Journalism

Implementing the Right to Be Forgotten may inadvertently pose obstacles to the realm of journalism. This could lead to a state of confusion within the press and media industry, as they may need to await decisions from adjudicating officers before disseminating news and information. Such delays might hinder the prompt communication of critical information and ideas through various media platforms.

Infringement on Freedom of Expression

The universal right to Freedom of Expression serves as a cornerstone of democratic societies. However, the removal of online content under the Right to Be Forgotten might potentially encroach upon citizens' ability to freely express their thoughts and opinions. The shift in power dynamics, allowing individuals to demand content removal, could potentially stifle citizens from voicing their viewpoints through published materials, television broadcasts, the internet, or other mediums.

Potential Curbs on Freedom of Speech

Prominent voices, including Rosen, have raised concerns about the potential implications of the Right to Be Forgotten on freedom of speech. Granting individuals the authority to erase their past actions from public accessibility could hinder open discourse and the critical process of scrutiny.

The public's access to information about an individual's past actions remains crucial for informed judgments, and the implementation of this right could potentially limit this vital aspect of speech.

Proposed Measures for Resolution

In order to navigate the intricate equilibrium between the Right to Be Forgotten and fundamental rights such as freedom of expression and speech, several thoughtful measures could be considered.

An avenue for resolution could involve enshrining the Right to Privacy as a distinct provision under **Article 19(2) of the Indian Constitution**. This would establish a legal framework that allows for the protection of personal information while simultaneously recognizing the significance of freedom of speech and expression.

Conclusion

While the intentions behind the Right to Be Forgotten are commendable in their aspiration to shield individuals from the enduring repercussions of their past actions, the practical execution of this right necessitates a nuanced and comprehensive approach.

Striking a sensitive equilibrium between personal rights and the broader implications for journalism, freedom of expression, and speech requires meticulous consideration. While a dedicated legal framework for the Right to Be Forgotten is yet to materialize in India, the discourse surrounding this topic highlights the intricate interplay between the right to privacy and the democratic values of expression and information dissemination.