



Right to Be Forgotten

For Prelims: [Supreme Court of India](#), [Right to be forgotten](#), [Personal data](#), [Right to privacy](#), [Right to Information Act, 2005](#)

For Mains: Right to be forgotten and government steps to protect privacy, Related Challenges, Data Privacy Rights

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Why in News?

Recently, the [Supreme Court of India](#) has agreed to hear a case that could redefine the "[right to be forgotten](#)" in India, where no statutory framework currently exists.

- This right, also known in **European privacy law as the "right to erasure,"** pertains to an individual's ability to remove their digital footprint from public view when it violates their privacy.
- The outcome is expected to significantly influence how this right is understood and implemented in the country.

What is the Right to Be Forgotten?

- **Definition:** The right to be forgotten allows **individuals to request the removal of their [personal data](#) from digital platforms** when it is outdated, irrelevant, or harmful to their privacy.
- **European Context:** Established by the **Luxembourg-based Court of Justice of the European Union (CJEU)** in 2014, the right to be forgotten was highlighted in the "Google Spain case" that required Google to remove 'inadequate, irrelevant, or no longer relevant' data upon request.
 - The court ruled that search engines must address requests to remove information that is no longer relevant or excessive in light of time elapsed.
 - In the EU, the right to be forgotten is enshrined in **Article 17 of the General Data Protection Regulation (GDPR)**, which emphasises informational self-determination and the right to control personal data.
- **Other Nations:** Countries like **Canada, the United Kingdom, Argentina, and Japan** have adopted similar laws. In 2023, a Canadian court upheld the right to demand search blocks on personal data.
 - **California:** The 2015 Online Eraser law allows minors to remove their posted information. The **2023 DELETE Act extends this right to adults**, allowing them to **delete personal information collected by data brokers.**

How is the Right to Be Forgotten Interpreted in India?

- **Current Status:** India does not have a specific statutory framework for the right to be forgotten. However, the concept has been referenced in the **context of privacy and digital rights.**
- **Judicial Recognition:** The 2017 ruling in [Justice K.S. Puttaswamy v. Union of India](#) recognised the [right to privacy as a fundamental right](#) under the Constitution, which implicitly includes the right to

be forgotten.

- In the Puttaswamy case, the Court **acknowledged the right to be forgotten but clarified that it should not be absolute**. It outlined scenarios where this right may not apply, such as for **public interest, public health, archiving, research, or legal claims**.
- Stated that the recognition of such a right would only mean that an individual should be able to remove their personal data **when it is no longer relevant or serves no legitimate interest**.
- [Digital Personal Data Protection Act, 2023](#): This Act recognizes the right to “erasure” but the application of these laws to court records and publicly available data remains unclear, with conflicting interpretations in the courts.
- [Information Technology Rules, 2021](#): Obligates intermediaries to remove or disable access to content violating privacy within 24 hours of a complaint.

What are the Judicial Precedents Related to the Right to Be Forgotten?

- **Rajagopal vs. State of Tamil Nadu Case, 1994**: This landmark case discussed the “**right to be let alone**” but distinguished it from the publication of public records, such as court decisions, which remain a legitimate subject for **public comment**.
- **Dharamraj Bhanushankar Dave vs. State of Gujarat, 2017**: The Gujarat High Court denied a request to remove details of an acquittal from public records, emphasizing that court orders should remain accessible.
- **Orissa HC (2020)**: The Orissa High Court, dealing with a criminal case involving “revenge porn,” emphasised the need for extensive debate on the right to be forgotten.
 - The Court noted that the implementation of this **right presents complex issues requiring clear legal boundaries and redressal mechanisms**.
- **Delhi HC (2021)**: Extended the right to be forgotten in a criminal case, allowing the removal of details from search results to protect the petitioner’s social life and career prospects.
- **Supreme Court Order (July 2022)**: The Supreme Court directed its registry to create a mechanism for removing the personal details of a couple involved in a contentious marital dispute from search engines. This expanded the interpretation of the right to be forgotten.
- **Kerala High Court (December 2023)**: Ruled that the **right to be forgotten cannot be applied to ongoing court proceedings**, citing concerns about open justice and public interest.
 - The court suggested that **legislative clarity is needed** but acknowledged that the right could be considered depending on specific case details and time elapsed.
- **Himachal Pradesh High Court (July 2024)**: Directed the redaction of names of both the accused and the victim in a rape case, highlighting that once acquitted, an individual should not continue to carry the stigma of the accusations.

What Challenges arise from Inconsistent Judicial Approaches?

- **Lack of Uniformity**: The varied rulings by different High Courts create confusion about the application of the right to be forgotten, leading to **inconsistent enforcement and potential legal uncertainty**.
- **Balancing Privacy and Public Interest**: Courts struggle to balance individual privacy rights with the principle of open justice and public access to information, making it difficult to establish clear guidelines.
- **Impact on Public Records**: The distinction between personal privacy and public records, as discussed in **Rajagopal vs. State of Tamil Nadu, 1994**, poses challenges.
 - Courts must navigate how to protect personal privacy without undermining the accessibility and legitimacy of public court records.
- **Need for Legislative Clarity**: **The absence of a comprehensive legal framework contributes to the inconsistent application of the right**, highlighting the need for legislative intervention to define clear standards and procedures.
- **Potential for Overreach**: Courts’ differing approaches may prompt concerns about **overreach and the integrity of digital records**.
 - There is a risk that private entities might face undue pressure to remove content, potentially affecting the accuracy and completeness of online information.
- **Balancing Rights**: Courts need to balance the Right to Be Forgotten with freedom of speech and

expression. Additionally, there is a need for **clear guidelines** to resolve conflicts between Right to Be Forgotten and the [Right to Information Act, 2005](#).

- **Other Challenges:** Enforcing the Right to Be Forgotten across digital platforms and jurisdictions is challenging due to compliance issues and technical constraints like **data replication**.
 - Ensuring compliance from search engines, websites, and other intermediaries requires robust legal and technical mechanisms. Complete removal of information from the internet can be technically difficult.
 - **Restriction to Journalism:** It could restrict journalists from disclosing certain people's histories and past activities which could hinder journalists' ability to impart information and ideas freely through media, affecting the democratic role of journalism.

Why 'Right to Be Forgotten' Should Be Adopted?

- **Control Over Personal Information:** Individuals should have the right to control their **personal information and identity in the digital age**.
 - Governments and private entities can significantly interfere with privacy by tracking and recording online activities.
 - Many instances of personal information, such as intimate photos or private details, are **shared online without consent**.
 - The 'Right to Be Forgotten' addresses this issue by allowing individuals to remove such content from public access.
- **Mitigating Digital Damage:** The presence of **outdated or incorrect information** can have **long-lasting negative effects on an individual's life**, including their personal relationships and professional opportunities. This right helps mitigate such harms by allowing for the removal of outdated or irrelevant data.
 - Individuals should not be **continually penalised for their past**, especially when they have moved on or changed. The right ensures they are not unjustly judged based on outdated information.
- **Right to Privacy:** There is no right to access private information that is unlawfully made public.
 - Right to Be Forgotten ensures that individuals are **not compelled to live with the repercussions of unlawfully disclosed personal information**.

Way Forward

- **Legislative Framework:** Enact a comprehensive data protection law with 'right to be forgotten', define clear criteria for data erasure, and establish an independent data protection authority.
 - This body would possess expertise in privacy, technology, and law, ensuring consistent and impartial decisions.
- **Overreach:** Prevent misuse of the 'right to be forgotten' through clear definitions, limitations, and oversight mechanisms.
 - Develop clear judicial guidelines for balancing privacy and public interest in 'right to be forgotten' cases, considering factors such as the **nature of the information, public interest, and time elapsed since publication**.
- **Industry Self-Regulation:** Encourage industry self-regulation to develop responsible data handling practices. Promote data minimisation and secure data deletion procedures.
 - Invest in research and development to address **technical challenges related to data deletion and anonymization**.
- **Public Awareness:** Conduct public awareness campaigns to educate individuals about data privacy rights and responsibilities. **Foster a culture of responsible online behaviour**.

Conclusion

The "Right to Be Forgotten" is gaining importance in legal and technical domains, reflecting its **growing role in privacy protections**. In India, the lack of specific legislation means this right is currently addressed through judiciary, but future legislation is anticipated to provide a clearer framework with the ongoing efforts to recognize this right.

Drishti Mains Question:

Q. Analyze how the Supreme Court of India and various High Courts have interpreted the 'Right to Be Forgotten.' What are the implications of these interpretations for privacy rights in India?

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q1. 'Right to Privacy' is protected under which Article of the Constitution of India? (2021)

- (a) Article 15
- (b) Article 19
- (c) Article 21
- (d) Article 29

Ans: (c)

Q2. Right to Privacy is protected as an intrinsic part of Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately imply the above statement? (2018)

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution.
- (b) Article 17 and the Directive Principles of State Policy in Part IV.
- (c) Article 21 and the freedoms guaranteed in Part III.
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution.

Ans: (c)

Mains

Q.1 Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. **(2017)**

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