Implementing the Right to "Delete" one's Digital Social Identity: Exploring the Legal Pathway

Dr. Upma Gautam
Assistant Professor, University School of Law and Legal Studies
Guru Gobind Singh Indraprastha University, New Delhi, India
Email: upma@ipu.ac.in

Ms. Sonali Sharma
Research Scholar, University School of Law and Legal Studies
Guru Gobind Singh Indraprastha University, New Delhi, India
Email: Sonali.phd.021165@ipu.ac.in

Abstract
"A man's house is his castle."
This age-old English proverb finds a recognition in the right to privacy which famously became a fundamental right after enduring a lengthy phase of tussle which commenced from *M. P. Sharma v Satish Chandra*, 1954 [1] and determinedly went on through *Kharak Singh v The State of U. P*., 1963 [2], *Gobind v State of Madhya Pradesh,* 1975 [3], *R. Rajagopal v State of T. N.*, 1994 [4], *People's Union of Civil Liberties v Union of India*, 1997 [5], *Distt. Registrar & Collector v Canara Bank*, 1997 [6], *Selvi v State of Karnataka*, 2010 [7] and *National Legal Service Authority v Union Of India*, 2014 [8] eventually saw a silver lining after the noteworthy judgment of *Justice K. S. Puttaswamy (Retd.) v Union of India*, 2017 [9] whereby privacy was distinguished into bodily, communicational, intellectual, spatial, proprietary, decisional, associational, behavioural and informational privacy. Indeed this judgment has culminated a timeworn struggle between the right to freedom of speech and expression and right to privacy withal has opened a pandora's box of several other rights which are covered under the umbrella of right to privacy. The right to be forgotten is one such right to name a few. This right became a legal reality for the citizens of Europe on May 13, 2014 when the Court of Justice of the European Union delivered a historic judgment in the contentious case of *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González*, 2014 [10]. This notable judgment had a laudable impact on Indian jurisprudence which is manifested by the Personal Data Protection Bill, 2018 and the impressive judgment of the Karnataka High Court in *Vasunathan v The Registrar General, High Court of Karnataka*, 2017 [11] howbeit, it is evident that the right to be forgotten is a missing keystone in the realm of Indian criminal reformation system which was showcased by the Gujarat High Court in *Dharamraj Bhanushankar Dave v State of Gujarat*, 2017 [12]. It is an old saying that *every saint has a past and every criminal has a future* but the present criminal (in)justice (*sic*) system of India attaches a stigma to an individual and this not only hampers his personal growth but altogether infringes the growth of the society as a whole. Ultimately these individuals either become habitual offenders and falls into the vicious circle of crime or goes into a state where they are unable to be productive for the society and are rather a burden which needs to be borne by the State itself. The critics of the right to be forgotten takes the plea that it is against the right to freedom of speech and expression, freedom of media or fundamental right to democratic society but can the information surrounding an individual, which is no longer relevant to anybody in the society, needs to candidly appear in the electronic platform to satisfy the fundamental right of speech and expression of a handful of individuals? It is the need of hour that the society owe responsibility to a person who has suffered long enough for his past deeds and wants to have a fresh start in his life ergo, the gordian knots surrounding this right be resolved so that a judicious implementation of this right on the basis of the test of proportionality along-with legitimacy be done in the interest of mankind.
Key words: Right to Privacy, Right to be Forgotten, *Google Spain*.

I. Introduction to the Right to be Forgotten: Recollecting the Proposition

Emily Clow lost a job in October, 2019 because her prospective employer saw her personal pictures online. The employer re-posted her pictures with a caption: [13]
"I am looking for a professional marketer - not a bikini model. Go on with your bad self and do whatever in private. But this is not doing you any favors in finding a professional job."
This case is not about the validity of the decision of the company rather it is about the fact which is much more important. The fact of "deleting" or "forgetting".
Since the inception of time forgetting a piece of information was the norm and remembering an information was an exception withal in the present era where technology has made any information just a click away forgetting an information is no longer an exception rather has become a norm in the society. Information is readily available in our bags, pockets, wrists and may be in the future in our body; in the form of a chip as well. Storage of the information has also become a lot easier and cheaper as they are no longer stored in cumbersome devices such as cassettes, CDs or Floppies rather in compact forms such as SIM, Micro-chips, memory cards and the nebulous 'iCloud' ergo one shouldn't be befuddled by their sizes as these small devices are capable of carrying humungous data. This technological advancement has created a society that can be called a 'networked society' in which there exists a shift of balance towards remembering rather than forgetting. This shift has sown the seeds of a debate surrounding 'right to be forgotten' and the extent up to which this right can be implemented.
Not so long ago the phrase 'right to be forgotten' was considered merely a fiction and not reality. Fans of movies like *Men in black* can relate this concept with the *neuralyser* which was used by the protagonist to wipe the memory of a person or the famous *Obliviate* or the memory charm from the Harry Potter franchise. Otherwise stated the concept means that an individual requests others to forget an information about him. Having said that the notion of right to be forgotten encompass a very beguiling conjecture that is: it is an arduous task for any individual to escape his past on the internet as every picture, tweet or status lives incessantly in space. Even the mortals cannot escape this reality as their social media details continue to outlive them in this digital age. The memory of not only an individual is under the scanner but the memories of the entire nation or the memory of the entire world is receiving enormous scrutiny. It has become strenuous for any human being—living or dead—to outrun his past deeds as information about any individuals is stored permanently in digital form. Howbeit the process of forgetting information is not the only trammel in the way of this right as this right is at loggerheads with several other fundamental rights such as freedom of free speech and expression, freedom of press and right to information. This debate was further polarized and jilted by the *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González*, 2014 [10] decision in the year 2014 whereby right to be forgotten was accepted by the European Court of Justice. This case came as a blow to Google who had expected to win the case as well as a surprise to the world as very few people knew or understood the nuances of this right.
Free speech and right to be forgotten are colliding for quite some time now and it cannot be denied that it is an onerous task to appease the rights which confront each other for a long time rather it is easier to restore a balance between the two on the basis of the facts of a case. This debate is boggling the minds of scientists as well as law-makers for quite some time now and has opened a window for developing principles which are to be applied to the virtual world. The issue is not only about free speech, right to be forgotten but has within its ambit incorporated sundry dimensions of the integrity of public record, historical memory, codes of a software and eventually the laws which needs to be framed for

a new public sphere. This chapter brings into light these unresolved issues of a legal system by highlighting the significance of right to be forgotten in a modern democracy.

II. Right to Privacy: Triumph of a Constitutional Democracy

The road towards right to privacy being recognized as a fundamental right has been built over a period of forty years whereby it negotiated its way through several judgments in the light of Article 19, Article 20 and Article 21. The basic ground-work on the right to privacy was laid down in the trilogy of *M. P. Sharma v. Satish Chandra*, 1954 [1] *Kharak Singh v. The State of U. P.*, 1963 [2] and *Gobind v. State of Madhya Pradesh*, 1975 [3]. Subsequently each new case brought with itself new dimensions and challenges which were to be addressed by the judiciary ergo this trilogy was further enhanced by several cases such as *R. Rajagopal v. State of T.N.*, 1994 [4], *People's Union of Civil Liberties v. Union of India*, 1997 [5] *Distt. Registrar & Collector v. Canara Bank*, 1997 [6] *Petronet Lng Ltd v. Indian Petro Group And Another*, 2009 [14], *Selvi v. State of Karnataka*, 2010 [7], *National Legal Service Authority v. Union Of India*, 2014 [8] *Unique Identification Authority of India v. Central Bureau of Information*, 2014 [15] and the finally by *Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017 [9]. The judgment delivered by Justice Kaul explored the concept of right to be forgotten whereby he elaborated that an individual has an inherent right to control dispersal of his personal information ergo there may be an information which the individual might not want to circulate hence every individual has a right to restrict any unwanted access to that information. Undoubtedly, it can't be denied that knowledge is power and knowledge about a person means power over that person therefore knowledge about the personal information of any person influences the decision making process about that person. Hence there is a need to regulate the time for which information can be stored. Additionally it was laid down that privacy includes a right to control information. The judgment further elaborates that even if information is true about a person it can still infringe his right to privacy thus may not be required to be known to the public always. Such a right need not be absolute withal there are certain mistakes—small or big—whereby it isn't justified to command that he should be profiled for all to know and suffer in perpetuity. There are mistakes which are made but are expected to be forgotten over a period of time. The court stated that:

"Recognized thus, from the right to privacy in this modern age emanate certain other rights such as the right of individuals to exclusively commercially exploit their identity and personal information, to control the information that is available about them on the 'world wide web' and to disseminate certain personal information for limited purposes alone."

III. From "Remembering" to "Forgetting": Evolution of the Right to be Forgotten

In this epoch of technology, information is power and the controller of that power is the ultimate master. Algorithms have become the tool for governance and lying at crossroad of data and communication is the unending debate between right to privacy and right to be freedom of expression which has culled out in the form of right to be forgotten. This concept is not a new-age phenomena but was prevalent in varied forms since time immemorial and was recognized by the European Union as well as France, Italy, Germany and Spain in the 20th century.

3.1 Development in European Union

Data protection law was embedded in the European Convention on Human Rights (ECHR) [16]—which was adopted by the European Union in 1950 and came into force in 1953—and later was incorporated in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data in the year 1981. The concept of data protection evolved in European nations separately from the concept of right to privacy. It was considered to be a right of every person that if any information is collected which relates to that individual then that information must be processed and regulated in a fair manner and in this context the Data Protection Directive (Directive 95/46/EC) was formed on Oct. 24, 1995 with an objective to provide protection to individuals with regard to the processing of personal data and on the free movement of such data.

The notion right to 'delete' finds its roots in the French concept of *droit a` l'oubli* (right of oblivion). This idea is based on a universal belief that every person has a fundamental demand of power in determining the developments in his life. He must not be eternally branded or condemned for an act which was committed by him in his past and have no correspondence with the events in the present. In the year 1978 the French Government passed the Law 78-17/1978 which gave the right to the citizens to request the deletion of the data which was no longer necessary under Article 40. This Act further created a data protection authority called *Commission Nationale de l'Informatique et des Libertés* (CNIL). This law benefitted convicted but rehabilitated prisoners as well as by people who wanted to delete their information in the banking sector after a reasonable period of time. [17] In Nov., 2009 the French government adopted two codes of good practices to promote data protection and right to be forgotten by educating internet users as well as sensitizing professionals viz-a-viz *Charte sur la publicité ciblée et la protection des internautes* (Code of Good Practice on Targeted Advertising and the Protection of Internet Users) and *Charte du Droit à l'oubli dans les sites collaboratifs et les moteurs de recherche* (Code of Good Practice on the Right to Be Forgotten on Social Networks and Search Engines). [18] Similarly in Italy the principle of right to be forgotten was recognized as *diritto all'oblio* and by several decisions of The Italian *Corte di Cassazione* (Supreme Court). The country also has a data protection agency called *Gerante per la protezione dei dati personali*. The concept of right to be forgotten holds special significance in Germany as several citizens were involved in the World War-II. They were convicted of multiple crimes during the war but after the completion of their sentence they required to be assimilated in the society. The German Supreme Court (The Federal Constitution Court) has played a key role in determining the right to be forgotten or right to data protection from several personal freedoms. By late 1960's a need for enacting provisions for protecting personal information was strongly felt in Germany. The German state of Hessen passed a law governing the protection of personal data in 1970 and this was followed by Rhineland-Palatinate in 1974. Eventually the Federal Data Protection Act was passed in the year 1977. Changes were also introduced in the Telemedia Act, the Criminal Code, the Telecommunications Act and the Civil Code. [19] Right to be forgotten was recognized in Spain as *el derecho al olvido*

and the Spanish Data Protection agency is called *Agencia Española de Protección de Datos* (AEPD). This agency played a major role in re-igniting the debate surrounding the right to be forgotten as it was given substance by the celebrated judgment in the case of Google Spain SL & Google Inc. v Agencia Espan˜ola de Proteccion de Datos (AEPD) & Mario Costeja Gonzalez, 2014 [10].[1] There were three major issues which came into light during this noteworthy judgment ergo; the matter was referred by AEPD to the Court of Justice of the European Union (CJEU). On the issue of territorial application of The Data Protection Directive (1995/46/EC) and The European Union Charter of Fundamental Rights; the CJEU affirmed that the laws are considered to be made applicable even outside the European Union (EU) when the rights of the citizen of EU is involved. While considering the liability of search engines as the provider of data in the light of Article 2 (Definitions-personal data, processing of personal data, recipient and the data subject's consent), Article 12 and Article 14; the CJEU observed that the service provider is liable for removing the data which is published by a third party. Furthermore while elaborating on this issue it discussed the significance of the overriding affects of the rights of the subject over the interests of the internet users. A balance must be created while bearing the fact about the interest of the public in having access to the information, nature of the information as well as its impact on the data subject's private life which is kaleidoscopic depending on the role played by the data subject in public life. This decision recognized Google as a data controller as it not only collects the data but also processes it. The third and the most prominent issue that was raised in this case were on right to be forgotten. It held that subject to the exceptions such as the prevailing interest of the general public and the importance of the role which the subject plays in the life of the general public interference with an individual's right to be forgotten is unjustified if the information in question is prejudicial—even if published lawfully and accurate—and no longer serves any purpose for which it was organized in the light of the time that has elapsed since the time the information first came into the domain of the general public. This judgment came as a relief to several European citizens who were fighting for their right to have a fresh start after they had undergone their punishment but at the same time it was a shock to many service providers in the internet industry. After this decision the EU formulated the General Data Protection Regulation 2016/679 which specifically deals with the right to be forgotten under Article 17. Since this judgment Google has received 2.4 million requests to delete the data out of which Google has accepted 43% of the cases. [20] A web portal was established by Google whereby an individual can submit a request to delete information about him provided the said information is outdated and not in the interest of the general public. If the information pertains to any criminal conviction, conduct (public) of government officials, malpractice or financial frauds then Google has the right to decline the request. [21] Even though the *Google Spain*, 2014 [10] judgment was applicable to the nationals of European Union but still Google addresses the complaints of citizens of non-European countries. If Google decided to remove the data it sends a notice via an e-mail to the webmaster. The notice e-mail itself contains a link for the webmaster to state the reasons due to which they want to decline the decision of Google. [22]

On May 21, 2015 the President of CNIL, France passed a judgment saying that Google must remove the data entirely from all the domain names extensions of its search engine. Google did not comply by this order and its process of removal of data remained confined to the removal of data from any search that is made through the domain name which is corresponding to the versions of its search engines that are present in the members of the European nation. It further pressed geo-blocking but it wasn't accepted and termed as insufficient by the CNIL. Hereafter CNIL on March 10, 2016 imposed a fine of EUR 100,000 against Google which was challenged by Google in the *Conseil d'État* (Council of State, France). The *Conseil d'État* stayed the proceeding and referred the matter to the European Court of Justice. While deciding the case in favour of Google on September 24, 2019 the court held that Google needs to remove the data only from the domain names of Google that are present in Europe and not globally:

"…where a search engine operator grants a request for de-referencing pursuant to those provisions, that operator is not required to carry out that de-referencing on all versions of its search engine, but on the versions of that search engine corresponding to all the Member States…" [23]

3.2 Development in United States of America

The concept of right to be forgotten is not new to the Unites States of America and this can be illustrated by the case of a 1931 judgment of *Melvin v. Reid*, 1931 [24] in which a film 'The Red Kimono' described the life of a prostitute who was convicted for a murder. The woman had undergone punishment for her acts and was having a fresh start in life when the film was released. The court accepted the arguments of the woman and elaborated the right to pursue and obtain happiness and held that:

"…by its very nature includes the right to live free from the unwarranted attack of others upon one's liberty, property, and reputation. Any person living a life of rectitude has that right to happiness which includes a freedom from unnecessary attacks on his character, social standing, or reputation."

However in the case of a child prodigy who was no longer in the business the court refused to recognize the right to be forgotten in case of people who were a 'public figure' as the course of their life is of a considerable interest to the general public. This decision noted that right to be forgotten is a limited right and cannot operate in vacuum. This right needs to operate while balancing the rights of the public at large (*Sidis v. F-R Publishing Corporation*, 1940) [25]. In spite of the fact that certain instances of the life of an individual are embarrassing for that person; they hold immense significance for the general public ergo the press is allowed to publish them (Warner v. Times-Mirror Co., 1961). [26]

---

[1] The fact of this case are that in 2010 Mr Gonzalez filed a complaint to the Spanish Data Protection Authority (AEPD) for removal of two web-pages which gave the information about an auction of his property due to his failure to pay the social security debt. The AEPD ordered in favour of the complainant and against this order a case was filed by Google Spain and Google Inc in the National High Court of Spain from where it was referred to the Court of Justice of the European Union (CJEU).

Even if a considerable amount of time has passed since the happening of the event but still if it is a necessary part of public importance the information cannot be erased (Diaz v. Oakland Tribune, Inc., 1983). [27] The First Amendment of the American Constitution along with several other cases (C*ox Broadcasting v. Cohn*, 1975 [28]; *Smith v. Daily Mail*, 1979 [29]; *Florida Star v. BJF*, 1989 [30]; *Bartnicki v. Vopper*, 2001[31]) have elaborated the concept that public disclosure of personal information is a tort and if any truthful information is published then it can rarely impose a civil or criminal liability. In the famous case of *New York Times Co. v. Sullivan and its progeny*, 1964 [32] the court denied giving any harsh punishment even if the information wasn't truthful. Moreover The Communications Decency Act, 1996 protects the intermediaries and search engine who have published the information that was generated by others as well as guard them against any claim that can link them to such tortuous material.[33] However, the last decade has some changes in the law regarding right to be forgotten in the United States of America as there have been some small steps towards this restricted right. The Children's Online Privacy Protection Act, 1998 (COPPA) or 'online eraser law' in California is one such step which allows minors to force websites to remove information that was once uploaded by the minor himself. [34] The Fair Credit Reporting Act and the Bankruptcy law or 'the Bankruptcy Code' are some of the examples wherein an individual is given 'fresh start' in life as it aims at protecting the reputation of individuals (*Treadway v. Gateway Chevrolet Oldsmobile Inc.*, 2004 [35]; *In re Grand Jury Subpoena to Credit Bureau of Greater Harrisbur*g, 1984 [36]). After the famous *Google* Spain, 2014 [10] judgment, two State legislators from New York proposed a bill on similar lines as that of the judgment. New York Assembly Bill 5323 was introduced by David Weprin and Senator Tony Avella introduced Senate Bill 4561 [37]. However, the country is yet to see some major changes in its law towards right to be forgotten. The outlook of the legislature is more towards disclosure; in the interest of national security rather than privacy as this is impeccably manifested by the laws which are focused on the market based strategies rather than focusing on the needs of an individual.[38] However, it cannot be denied that though right to be forgotten is not completely present in the American legal system but its 'sketchy' presence in a fragmented form cannot be easily overlooked.

3.3 Development in India

At present the law that governs the use of personal data of Indian citizens is governed by the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, under Section 43A of the Information Technology Act, 2000. In the year 2017 a committee of experts under the chairmanship of Justice B. N. Srikrishna was established. The committee highlighted on several key points such as: to determine several issues that are peculiar to India regarding data protection, how these issues can be resolved and lastly suggest a draft bill for protection of data. [39] The committee presented the Personal Data Protection Bill, 2018 [40] which gives an individual a right to be forgotten in the form that a person has the power to restrict or prevent continuing disclosure of personal data by a data fiduciary [41]. However, it is pertinent to note that one must not confuse between right to be forgotten and a limitation on data storage as right to be forgotten is an issue of the data that is present in a public domain but restriction on data storage is an issue which manifests the private domain. [42] Hence, it will not be incorrect to say that at present India does not have a specific law that deals with right to be forgotten. In spite of this the journey of right to be forgotten in India has started from the case of Vasunathan v. Registrar General, High Court of Karnataka, 2017 [11] whereby the court while highlighting the significance of right to be forgotten accepted the plea of the father of a woman for removal of her name from the orders that were publicly available. In yet another case the Kerala High Court has also accepted the plea of a rape victim for removal of her name and personal information from the site "indiankanoon.org". [43] While rejecting the plea of right to be forgotten; the Gujarat High Court in the case of Dharmaraj Bhanushankar Dave. v. State of Gujarat & Ors., 2017 [12] held that a mere publication of a non-reportable judgment on search engines will not violate the right to privacy since there is no legal basis to claim for the enforcement of such right. Recently the Delhi high court is hearing a petition filed by an NRI on right to be forgotten. It will be interesting to study how the court decides this matter (*Laksh Vir Yadav v. Union of India*, 2016) [44].

IV. Rights of a "Prying" Society v. Right to be Forgotten: Understanding the Paradox of Human Memory

The principle of right to be forgotten holds a special importance for a democratic country like India which has recognized several rights such as Freedom of speech and expression, right to information, right to free press and recently right to privacy as a fundamental right. These rights have seen their fair share of struggle which can be manifested by several decisions such as *R. Rajagopal v. State of T.N.*, 1994 [4], *Tata Press v. MTNL*, 1995 [45], *UOI v. Motion Pictures Asson.*, 1999 [46], *Secretary, Ministry of I & B v. Cricket Association, Bengal*, 1995 [47], *People's Union For Civil Liberties (PUCL) And Another v. Union of India and Another*, 2003 [48], *Dinesh Trivedi, M.P. and Others v. Union of India and Others*, 1997 [49], *Bennett Coleman & co. v. Union of India*, 1973 [50], I*ndian Express Newspapers v. Union of India*, 1985 [51] etc. The significance of these rights lies in the fact that not only they help the decision-making ability of an individual, provide a balance between social change and stability but also help the citizens to discover truth and attain self-fulfillment (Romesh Thapar v. State of Maharashtra, 1950) [52] On the other hand right to be forgotten controls the extent of access to information about an individual. It prevents an individual from unwanted intrusion into his personal space and shields his personal information from others. It is needless to say that there exist a tussle between right to be forgotten on one hand and access to information or freedom of press or freedom of speech and expression on the other.

In the landmark judgment of Justice K.S. Puttaswamy v. Union of India, 2017 [9] this debate was addressed by Justice Kaul wherein he advised caution before we apply the right to be forgotten in India. He stated that we must ensure that this right to remove any personal information from the virtual world must not be a root cause of total eraser of history itself. This right must be balanced with fundamentals of a democratic society such as freedom to access information, freedom of speech, freedom of expression and freedom of media/press. Consequently such a right cannot be exercised if the information is relevant in the interest of general public, research, historical or scientific data, public health, drawing statistical analysis, for the purpose of tax and for compliance with any legal obligation. Furthermore he discerned that

all the cases of breach of data will be justified if they are a result of a situation where the balance shifts towards legitimate national interest or public interest or fundamental right to information and freedom of speech and expression and not towards right to be forgotten. To provide an individual with a right to be forgotten it must be established that the information no longer serve any legitimate interest, necessary or relevant in the present time.

The committee of experts under the chairmanship of Justice Srikrishna was of the opinion that right to be forgotten should be made a part of the data protection laws. On the conflict with other fundamental rights the committee remarked that a balance can be achieved by applying a test which has five aspects namely: the sensitivity of the data, the degree of accessibility which will get restricted, public roles which are performed by the data principle, the relevancy of the data and lastly the nature of disclosure. The committee further observed that the prime focus of deleting the data should be on restricting the accessibility. [39]

This conflict was addressed in the *Google Spain*, 2014 [10] decision itself wherein the court had stated that right to be forgotten cannot exist in vacuum and it has to function while balancing other rights. An information—even if it is true and published legally—can be removed if the individual's right to be forgotten outweighs the right of the general public to gain information. Another point of argument lies between the freedom of access of information for research and journalistic purpose. To this argument the court had said that if an individual has a legalized right to get the data eliminated then such a right over-rides "the interest of the general public in finding that information upon a search relating to the [individual's] name." However, the court agrees that if information related to a political figure and still holds value to the general public then it cannot be removed.

While addressing this conflict Shaniqua Singleton (2015) [53] discussed various ways by which this tussle can be resolved. She said that one way is by using the 'Directive-based Method' ie. by introducing restrictions through a statute but she is quick to add that this provision has created ambiguity as was reflected through many cases. Another way as discussed by her is by utilizing the 'balance test' between the right to be forgotten and the freedom of free speech and expression. As compared to the Directive-based Method, she considers the 'balance test' a better approach as the courts will adopt the policies that will reflect the considerations of a particular country however this will also prove to be difficult as different counties have different approach towards what can be deleted and what cannot. Furthermore she has discussed that the purpose such as journalistic purpose for which personal information cannot be removed from the system should be defined while taking a cue from the term 'public interest' or a test which is a combination of both can be used. She has suggested that a uniform standard must be developed to recognize when information becomes irrelevant, unnecessary and inadequate that it can be removed from the system.

V. Traversing the Road towards Right to "Eraser": Cutting the Gordian Knot

Montaigne said that nothing fixes a thing so intensely in memory as the wish to forget it and rightly so as there exists several issues with the implementation of right to be forgotten. When one speaks about the artificial intelligence memory, one has to understand that it is not same as the human memory. [54] As pointed by Eduard Fosch Villaronga, law generally treats human memory and artificial intelligence memory alike which is not the case. [55] Psychiatrists have determined that it is very difficult to comprehend the functioning of a human brain [56] but on the other hand—apart from a few controversies regarding "mind" and "memory"—the computer scientists can fairly determine how artificial intelligence works. As compared to neuroscientists they can better comprehend the nuances of the decision making ability of an artificial intelligence in the context of input, storage and deletion. [55] Understanding the fine distinctions of artificial intelligence can help a legal system in drafting better laws for governing the right to be forgotten. When a person requests deletion of some personal data from a system then metaphorically it means that the data needs to be deleted from the memory of other human beings ergo, this notion can be applied only to human memory and not to artificial intelligence as artificial intelligence do not forget the data in the same manner as human beings do. [57] When a request for deletion of data is made, the data is not actually completely deleted rather is removed from the search index as every data is not generally stored at a specific point in the file system but is stored at various points in and across the databases and log-files as well as back-ups. When a request for right to be forgotten is made then data must be identified and over-written by some other random data. Hence, it becomes necessary for any legal system to determine if the data needs to be merely removed from the search index or it needs to be completely removed from all the internal databases as well as log-files and back-ups. [55]

To remove these difficulties India can take help from the way data is protected by other nations. Minimization of collection of data such as personal information can be one way of reducing the data that is stored on a server thus reducing the possibilities of cases requesting deletion of data. Several companies have also started following the practice of covering the personal information when data is scanned. [58] According to a guidance issued by Dutch data regulator the data controller has to hide the photograph and the BSN (unique personal Dutch number) before data is collected. [59] Another way for solving this is by developing innovative technologies through which data is collected and stored in siloes. This will restrain an easy re-combination of the data thus preventing re-identification. [55] Various software programs such as Jeeves created by Professor Jean Yang [60] and Harvard's Berkman Klein Centre's work on legal, policy, computationnel and statistical tools are some of the examples of technologies that are being built to regulate privacy issues online.

In India we have had a long struggle in recognizing several rights as fundamental rights such as freedom of speech and expression, right to information, freedom of press as well as right to privacy. Where on one hand right to privacy has travelled a thorny path through *MP Sharma*, 1954 [1] and *Kharak Singh*, 1963 [2] to *Justice Puttaswamy*, 2017 [9] on the other hand freedom of speech and expression as well as right to information has also traversed a road full of obstacles from *R. Rajagopal*, 1994 [4], *Bennett Coleman & co.*, 1973 [50] and *Indian Express Newspapers*, 1985 [51]. In a diverse country like India, amidst all these fundamental rights, right to be forgotten has its own value and significance. It is the need of the hour that right to be forgotten should be given a trial which is long overdue.

Indeed the norm in the present time is "remembering" rather than "forgetting" but we need to 'delete' certain segments from our memory where it is incumbent. It is impossible to shut one's eyes in this rapidly developing age of information to the need of right to be forgotten. Hence, the legislature must strive towards developing a legal system which is capable of balancing right to be forgotten with other fundamental rights.

REFERENCES

1. M. P. Sharma v. Satish Chandra, A.I.R. 1954 S.C. 300 (India)
2. Kharak Singh v. The State of U. P., A.I.R. 1963 S.C. 1295 (India)
3. Gobind v. State of Madhya Pradesh, A.I.R. 1975 S.C. 1378 (India)
4. R. Rajagopal v. State of T. N., (1994) 6 S.C.C. 632 (India)
5. People's Union of Civil Liberties v. Union of India, (1997) 1 S.C.C. 301 (India)
6. Distt. Registrar & Collector v. Canara Bank, (1997) 4 A.L.T. 118 (India)
7. Selvi v. State of Karnataka, (2010) 7 S.C.C. 263 (India)
8. National Legal Service Authority v. Union Of India, A.I.R. 2014 S.C. 1863 (India)
9. Justice K. S. Puttaswamy (Retd.) v. Union of India, A.I.R. 2017 S.C. 4161 (India)
10.Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12
11. Vasunathan v. The Registrar General, High Court of Karnataka, (2017) S.C.C. Kar. 424 (India)
12. Dharamraj Bhanushankar Dave v. State of Gujarat, MANU/GJ/0029/2017
13. Massiah, A. (2019). Woman in Swimsuit Photo-Shamed by Potential Employer. *BBC*. https://www.bbc.com/news/blogs-trending-49931273
14. Petronet Lng Ltd v. Indian Petro Group And Another, (2009) 95 S.C.L. 207 (Delhi)
15. Unique Identification Authority of India v. Central Bureau of Information, MANU/SCOR/10580/2014
16. European Court of Human Rights. (2019) *Guide on Article 8 of the Convention*. Retrieved from https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf
17. Cunha, M. (2013). *Market Integration through Data Protection* (1st ed). Netherlands:Springer
18. Kurth, H. (2010, October 21). French Government Secures "Right to be Forgotten" on the internet. Retrieved from https://www.huntonprivacyblog.com/2010/10/21/french-government-secures-right-to-be-forgotten-on-the-internet/
19. Freude, A. & Freude, T. (2016). *Echoes of History: Understanding German Data Protection*. Retrieved from https://www.bfna.org/research/echos-of-history-understanding-german-data-protection/
20. Ram, A. (2018). Google Receives 2.4 m Requests to Delete Search Results. *The Irish Times*. https://www.irishtimes.com/business/technology/google-receives-2-4m-requests-to-delete-search-results-1.3407979
21. Google. (2020). *Removing Content from Google.* Retrieved from https://support.google.com/legal/contact/lr_eudpa?product=websearch
22. Vassall-Adams, G. & Goldstein, J. (2016). *Google Spain and the Right to Be Forgotten Two Years Later*. Retrieved from http://www.medialaw.org/component/k2/item/3538-google-spain-andthe-right-to-be-forgotten-two-years-later
23. Google LLC, successor in law to Google Inc. v. Commission Nationale de I'informatique et des libertés (CNIL), C-507/17
24. Melvin v. Reid, 297 Cal. App. 91 (1931)
25. Sidis v. F-R Publishing Corporation, 113 F.2d 806 (2d Cir. 1940)
26. Warner v. Times-Mirror Co., 14 Cal. Rptr. 208 (1961)
27. Diaz v. Oakland Tribune, Inc., 139 Cal. App. 3d 119
28. Cox Broadcasting v. Cohn, 420 U.S. 469 (1975)
29. Smith v. Daily Mail, 443 U.S. 97 (1979)
30. Florida Star v. BJF, 491 U.S. 524 (1989)
31. Bartnicki v. Vopper, 532 U.S. 514 (2001)
32. New York Times Co. v. Sullivan and its progeny, 376 U.S. 254 (1964)
33. Communication Decency Act, 47 U.S.C. §230 (1996)
34. The Children's Online Privacy Protection Act, 15 U.S.C. 6501-6505 (1998)
35. Treadway v. Gateway Chevrolet Oldsmobile Inc. Cir. 7th 971 978 (2004)
36. *In re* Grand Jury Subpoena to Credit Bureau of Greater Harrisburg 594 F.Supp. 229 (M.D. Pa.) (1984)
37. Vaas, L. (2017) *New York's 'Unconstitutional' Right to be Forgotten Bill Sparks Concern*. Retrieved from https://nakedsecurity.sophos.com/2017/03/22/new-yorks-unconstitutional-right-to-be-forgotten-bill-sparks-concern/
38. Reidenberg, J. (1999-2000). Resolving Conflicting International Data Privacy Rules in Cyberspace. *Stan. L. Rev.,* 52, 1316. Retrieved from https://ir.lawnet.fordham.edu/faculty_scholarship/41/
39. Srikrishna, B.N. (2018). *A Free and fair Digital Economy Protecting Privacy Empowering Indians*. Retrieved from https://meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf
40. Ministry: Electronics and Information Technology, PRS India. (2018). Draft Personal Data Protection Bill, 2018. Retrieved from https://www.prsindia.org/billtrack/draft-personal-data-protection-bill-2018
41. Vignesh, J. & Variyar, M. (2018). Right to be Forgotten Clause in Srikrishna Panel's Draft Bill Tricky to Implement, say Expert. *The Economics Times*. https://economictimes.indiatimes.com/news/politics-and-nation/right-to-be-forgotten-clause-in-srikrishna-panels-draft-bill-tricky-to-implement-say-experts/articleshow/65172054.cms
42. Bajaj, K. (2018). Why Right to be Forgotten should have no place in the proposed Data Protection legislation?. *The Economics Times*. https://tech.economictimes.indiatimes.com/news/internet/why-right-to-be-forgotten-should-have-no-place-in-the-proposed-data-protection-legislation/62658909
43. W.P. (C) 9478 of 2016
44. Laksh Vir Yadav v. Union of India, W.P. (C) 1021/2016
45. Tata Press v. MTNL, (1995) 5 S.C.C. 139 (India)
46. UOI v. Motion Pictures Asson., A.I.R. 1999 S.C. 2334 (India)
47. Secretary, Ministry of I & B v. Cricket Association, Bengal, A.I.R. 1995 S.C. 1236 (India)
48. People's Union For Civil Liberties (PUCL) And Another v. Union of India and Another, A.I.R. 2003 S.C. 2363 (India)
49. Dinesh Trivedi, M.P. and Others v. Union of India and Others, (1997) 4 S.C.C. 0306 (India)
50. Bennett Coleman & co. v. Union of India, A.I.R. 1973 S.C. 106 (India)
51. Indian Express Newspapers v. Union of India, (1985) 2 S.C.C. 434 (India)
52. Romesh Thapar v. State of Maharashtra, A.I.R. 1950 S.C. 124 (India)
53. Singleton, S. (2015). Balancing a Right to be Forgotten with a Right to Freedom of Expression in the wake of Google Spain v. AEPD. *Ga. J. Int'L & Comp. L.*, 44, 165. Retrieved from https://digitalcommons.law.uga.edu/gjicl/vol44/iss1/6
54. Freitas, J. (2012). *Why is Memory so Good and so Bad?*. Retrieved from https://www.scientificamerican.com/article/why-memory-so-good-bad/
55. Villaronga, E., Kieseberg, P. & Li, T. (2018). Humans Forget, Machines Remember: Artificial Intellegence and the Right to be Forgotten. *CLSR*, 34, 307. Retrieved from http://tiffanyli.com/wp-content/uploads/2018/08/Humans-Forget-Machines-Remember_Final-PDF.pdf
56. Vogel, E. & Drew, T. (2008). *Why do we Forget things*. Retrieved from *https://www.scientificamerican.com/article/why-do-we-forget-things/*

57. Whitworth, B. & Ryu, H. (2008). A Comparison of Human and Computer Information Processing. In (2d ed.), *Margherita Pagani, Encyclopedia of Multimedia of Technology and Networking*. Retrieved from https://www.t-mobile.com/privacy-center/our-practices/privacy-policy
59. Jocnckheer, T. (2012, July 6). Copying ID Documents-Dutch Data Regulator Issues Guidance. *POPL*. Retrieved from http:// www.privacyandcybersecuritylaw.com/copying-id-documents-dutch-data-regulator-issues-guidance