NEED FOR IMPLEMENTING THE 'RIGHT TO BE FORGOTTEN' IN INDIA

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Abstract

The manifestation of the expression 'right to be forgotten' is absorbed in the domains of human rights in present times. It has evolved parallel and solely in different regions of the world during the 21st Century. The concept calls for entitlement of an individual to control the events of the past, floating on the internet, which may no longer need any virtual presence. The right to forget or right of data erasure does assure privacy and safeguards the reputation thereby assuring dignified life and liberty. Its conceptual inconsistency with right of information is so miniscule, that data protection laws and GDPR, like legislative controls come forward to assure regulation of content in the virtual space. The privacy of a person is that important a quotient, that it may be equated to a newer form of fundamental right, which must be expressly provided by the Constitution. Thus, the paper conceptualizes the idea of 'Right to be forgotten' and also emphasize on the need of strengthening and enacting data protection laws.

I Introduction

ALICE, OPENED the window to the topsy-turvy land and suddenly felt so insignificant, in the vast land of magnificence. Similar, is the feeling when you enter the celestial world of digital networks through Mac OS and Windows. Every click on a new tab unveils a trait of your personality and emotion(s) thereby assessing your interest, information and choices to define precisely 'who you are'. You may take a few minutes to assemble your own information that defines you, but Google 'knows it all' with a click. The digital age today, not only is 'informed' about an 'individual', but is also intrusive in diverse sense. As per the writings of Viktor Mayer Schonberger, the idea of forgetting is an essential component to one's existence as a 'human being'.[1] Forgetting must be ceaseless and is quintessential for thoughts and literature, or may be for simply being human. Proactive deletion of information or the concept of forgetting is in itself a trigger for the protection of liberty.

The fear of having an immutable memory, which is recorded in any form of technology may at a given point of time have a devastating impact on the very existence of a person. This can be understood by certain messages that have been received by various organizations at various occasions, for instance, David Bartolo of the Australian

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1 Mathew L. Smith, "Victor Mayer Schonberger, Delete: The Virtue of Forgetting in the Digital Age" (2010), *available at*: https://link.springer.com/article/10.1007%2Fs12394-010-0039-x(last visited on Dec. 26, 2022).

Vocational College System, TAFE, received a message stating, "Dear Mr. Bartolo, would you please be kind enough to remove my profile and class related activity from your 2009 Wikispaces group… it is a negative representation of my profile as a productive student, and will reflect poorly in future academic selections".[2] The above stated message reflects how the technological trail preserving human memory has recorded the traces of misspent youth, thereby leaving an impression about him, which calls for an open judgment. The internet remembered what the student might have wanted to forget.

The latest example from India, comes in, when a former contestant of Big Boss TV Show, Madhurima, appealed to the colors channel, to stop reposting an act involving her, where she is seen hitting a co-contestant with a pan, on their channel for TRP. She urged that repetitive viewing of the content is damaging her psychologically and disturbing her family. Through her video she indirectly pleads for the 'Right to forget'.[3] Similar, is the case of Ashutosh Kaushik, who approached High Court of Delhi for removal of all post, videos *etc.*, which refers to a drunken driving case and a reference to an altercation at a Mumbai Café, concerning him. He has claimed the 'Right to be forgotten' which forms an essential component to the Right of Privacy.[4]

These messages, post, videos *etc.*, display the vastness of information which is imbibed in the technological web. The design of this structural web, not only resist forgetting but rather prevents it. Users will soon face trauma and horrors of being haunted by 'excessive' information.

II Evolution of a movement: Right to be forgotten (or right to erasure)

It is pertinent to briefly explain the concept of the 'Right to be Forgotten' which is envisaged in the General Data Protection Regulation [(EU) 2016/679, also referred to as GDPR] before we understand its germination process. In simple terms, the 'Right to be Forgotten' is an individual's right to have personal information removed from the publicly available sources, such as the internet, search engines, databases, websites *etc.,* once the information is no longer necessary or relevant, as it contravenes with the concept of privacy.[5] *The New York Times* has launched a project named "The Privacy Project" which endeavors to unveil the centrifugal conceptions of individual's privacy

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2 Binoy Kampark, "To Find or be Forgotten: Global Tensions on the Right to Erasure and Internet Governance" (2015), *available at:* https://www.jstor.org/stable/10.13169/jglobfaul.2.2.0001#metadata_info_tab_contents (last visited on Dec. 26, 2022).

3 *Available at:* https://www.hindustantimes.com/entertainment/tv/madhurima-tuli-requests-colors-not-to-recreate-frying-pan-incident-with-vishal-aditya-singh-you-are-hurting-me-my-family-101626750579749.html (last visited on Dec. 26, 2021).

4 *Available at:* https://www.barandbench.com/news/litigation/roadies-big-boss-winner-ashutosh-kaushik-delhi-high-court-right-to-be-forgotten (last visited on Sep. 30, 2022).

5 *Available at*:https://gdpr-info.eu (last visited on Nov. 20, 2022).

when it comes to technology.[6] The analysis of provisions and cases mirrors the right to be forgotten as a growing creeper that clings onto the strength of the right to privacy. Louis Brandeis and Samuel Warren, American jurists, in their writings published in *Harvard Law Review* outlined the domains of right to privacy which were to be conceived as 'Right to be Let Alone'.[7]

In 2010, Mario Costeja Gonzalez, a Spanish national, lodged a complaint with Agencia Espanola de Proteccion de Datos (APED), which is a Spanish data protection authority against the newspaper *La Vanguardia* published in 1998 and against Google Spain and Google Inc. referring to an attachment proceeding for the recovery of certain debts. Mario contended that an auction notice of his repossessed home on Google's search results infringed his right to privacy, as his legal matter has fully been resolved. He thus, demanded that his personal data may either be deleted or altered by the newspaper and, Google Spain or Google Inc. so that it doesn't appear in the search results anymore, because of its irrelevancy in the present times. The ruling in the present case is based on article 12 of the 1995 *Data Protection Directive* which already encompasses the principle of 'Right to be Forgotten'. It states that, "A person can ask for personal data to be deleted, once that data is no longer necessary."

The Spanish court referred the case *Spain SL, Google Inc.* v. *Agencia Espanola de Proteccion de Datos, Mario Costeja Gonzalez* (2014) to the Court of Justice of the European Union referring to three aspects that required clarity and attention, for instance, applicability of EU'S Data Protection Directive (1995) to search engines, jurisdictional conflict if server of Google Spain is located in United States, and lastly but importantly, in regard to existence of 'Right to be forgotten'. The European Union Court answered these ambiguities in its ruling given in 2014 stating that, European Union rules will apply to search engines, if they have a branch or a subsidiary in a member State, thereby indicating that the European Union rules will thus apply to search engines in matters relating to personal data and search engines like Google, who cannot shirk away from their responsibilities and duty. Lastly, Individuals do have the right, though not absolute, to remove links with personal information about them, if the information is inaccurate, inadequate, irrelevant or excessive for the purpose of processing.

Moreover, the European Court also made certain observations: *firstly,* interference with a person's right to data protection could not be justified because of the economic interests of the search engine. *Secondly,* the right to be forgotten will always be required to strike the balance against other fundamental rights, such as freedom of expression and freedom of press. *Thirdly,* a case-by-case assessment is required considering certain

6 *Available at*:https://www.nytimes.com/series/new-york-times-privacy-project (last visited on Dec. 22, 2022).

7 Samuel D. Warren and Louis D. Brandeis, "Right to Privacy" *Harvard Law Review,* 193-220 (1890), *available at*: https://www.jstor.org/stable/i256795 (last visited on Dec. 22, 20221).

factors such as, sensitivity in regard to individual's private life, public interest in having an access to such information or the reason for deletion may also become relevant sometimes. Other than this, the court has set an example of balancing, when it ordered Google to delete access to the information deemed irrelevant by the Spanish citizen, and on the contrary emphasized that the content of the underlying newspaper archive should not be changed under the garb of data protection.[8]

Process for deletion of personal data may include some steps for instance, the affected person may leave a request to a search engine, specifically asking for deletion of some information concerning him. Which basically means, asking for deletion or removal of links, which display his personal information, once a search is made with his name. The search engine for example Google, will then assess the request made on a case-by-case basis and deal with the applicability issues in consonance with the relevant legislation. The criteria for assessing the complaint may be inclusive of factors *viz.*, accuracy, adequacy, relevance, time lapsed and proportionality of the links in relation to objective behind data processing or analyzing. These requests can be turned down by the search engines if they can justify by putting forward the rational arguments and applicable limitations.[9]

The removal or alteration by these search engines is not much of a trouble as they already have a system in place to handle deletion requests in matters pertaining, removal of national identification numbers, social security numbers, bank account or credit card numbers and images of signatures rather it also has a parallel system that deals with the 'take down request' for copyright violations. According to google transparency report the company has been asked to delist more than 3.9 million websites in Europe since 2014 and has agreed to approximately 47% of those requests.[10]

In 2015, when CNIL ordered Google to remove search result listings to pages containing damaging or false information about a person and demanded that it should be done globally. The Google came out with a technical solution by way of introducing a *Geoblocking* feature which prevented European users from being able to see delisted links. However, users elsewhere were bestowed complete accessibility rights. Although, the solution was put in place but it very much violated the terms of General Data Protection Regulation of EU.[11]

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8 *Available at:* https://globalfreedomofexpression.columbia.edu/cases/google-spain-sl-v-agencia-espanola-de-proteccion-de-datos-aepd/ (last visited on Dec. 28, 2022).

9 *Available at:* https://dataprivacymanager.net/gdpr-compliant-personal-data-removal/ (last visited on Dec. 28, 2022).

10 *Available at:* https://transparencyreport.google.com/eu-privacy/overview (last visited on Dec. 28, 2022).

11 *Available at:* https://jolt.law.harvard.edu/digest/google-refuses-to-expand-the-right-to-be-forgotten (last visited on Dec. 28, 2022).

III India and 'Right to be Forgotten'- Legislative framework and judicial trend

India, at present does not have any legislative framework that discusses or ensures the Right to be forgotten. There are no provisions in the *Information Technology Act*, 2000 or its amended version of 2008 which bestows this right on an individual. Although, Rule 2(i) of the *Information Technology (Reasonable Security Practices and Procedures and Sensitive personal Data or Information) Rules,* 2011 (Privacy Rules) define personal information as any information that relates to a natural person which, either directly or indirectly, in combination with other available or likely available information, may identify that person. The privacy rules also define the sensitive personal data or information processing which relates to a person's passwords, financial information, sexual orientation *etc.,* rule 3 of these privacy rules excludes information that is freely available, accessible in the public domain or under the right to information law from the definition of sensitive personal data.[12]

The foremost effort to imbibe this principle into the Indian legal jurisprudence was made by a proposed legislation, that is, *Personal Data Protection Bill*, 2019 (The PDP Bill), which is still under consideration. The draft was introduced by BN Srikrishna Committee J., in 2018 which deduced the concept of right to be forgotten in black and white, by referring to the ability of an individual to limit, delink, delete or correct the disclosure of personal information on the internet that is misleading, embarrassing or irrelevant.

Section 18 of the *Personal Data Protection Bill*, 2019 provides the following rights of correction and erasure *viz.,* (i) get corrected, inaccurate or misleading personal data, (ii) get completed, any incomplete personal data (iii) get updated, personal data that is out-of-date, and (iv) get erased, personal data which is no longer necessary for the purpose for which it was processed. After erasing personal data on a data principal's request, the data fiduciary has to take all measures to notify such erasure to all relevant entities or individuals to whom such data has been disclosed wherein it could impact the data principal's right in any manner. Section 18 of the Bill does not provide the data principal the right to appeal against decision of data fiduciary. However, section 53 of the Bill gives a general right to file a complaint with Data Protection Authority of India.

The right to erasure provided for in section 18 of the Bill must be distinguished from the right to be forgotten provided under section 20 of the *Personal Data Protection Bill*, 2019. Section 20 states that, 'every data principal shall have the right to restrict or prevent continuing disclosure of personal data (relating to such data principal) by any data fiduciary if such disclosure meets any of the following three conditions: (i) has

12 *Available at:* https://www.prsindia.org/sites/default/files/bill_files/IT_Rules_2011.pdf (last visited on Dec. 28, 2022).

served the purpose for which it was collected or is no longer necessary (ii) was made on the basis of data principal's consent and such consent has since been withdrawn; or (iii) was made contrary to the provisions of the personal data protection law or any other law in force'. In my opinion one factor may also be added to the already given set of factors, *i.e.,* to see whether the person seeking the Right to be forgotten has been sufficiently rehabilitated.

Another important aspect of the *Personal Data Protection Bill*, 2019 is section 9, which provides restriction on the retention of personal data. This section refrains data fiduciaries from retaining any personal data beyond the necessary time period, to fructify the purpose for which it is processed and to further delete such personal data or information at the termination of processing, the only exception to this scenario is the consent given by data principal in this regard.

The Personal Data Protection Bill, 2019 under section 58 also provides that if the data fiduciary fails to comply with a request for erasure put forth by the data principal, without providing any reasonable explanation or justification, the data fiduciary shall be liable for a penalty of up to Rs 5,000/- for each day during which such default continues, subject to a maximum of Rs 10,00,000 in case of significant data fiduciaries and Rs 5,00,000 in other cases.[13] The harsher penalty provided in the draft bill indicates a sharp balance in the penal policy by practicing deterrence and retribution on one hand, thus balancing it with restoration and reformation aspect by upholding the right of privacy and right to be forgotten on the other.

Though, the law has not yet been enacted, the courts have come forward to safeguard and protect the liberties of an individual by way of "Right to be Forgotten", which is convergent in various judgments. The courts have also stated that, even though there are no current legislations on this subject, either the victim or the prosecution may seek recourse for the removal of their data from the public domain under other legal provisions such as defamation, indecency and obscenity, intellectual property law violations *etc.* till *Personal Data Protection Bill*, 2019 comes into effect. The observations of some of the courts in this regard are mentioned below:

In the case of *Dharmaraj Bhanushankar Dave* v. *State of Gujrat*,[14] the concept of 'Right to be forgotten' came into forefront, though the court did not *per se* recognize 'the right to be forgotten'. The petitioner in this case had asked for the removal of a published judgment in which he had been acquitted. The court didn't grant relief as petitioner failed to point out specific provisions of law that had been violated.

13 *Available at* https://prsindia.org/billtrack/the-personal-data-protection-bill-2019 (last visited on July 28, 2021).

14 [SCA No. 1854 of 2015].

Also, in the case of *(Name Redacted)* v. *The Registrar, Karnataka High Court* (2016),[15] the court redacted the name of petitioner's daughter from the cause title and the body of the order, as the petitioner argued that, retaining her name, 'would have repercussions even affecting the relationship with her husband and her reputation that she has in the society. The court made references to the trends in the 'western countries' where they follow the right to be forgotten.

In the case of *K. S. Puttaswamy* v. *Union of India*,[16] the Supreme Court emphasized on the 'Right to be Let Alone' as an essential part of the autonomy and privacy of an individual. The court pointed at the synchronous relation between right to life under article 21 of the Constitution and the right to privacy. While emphasizing the importance of the right to be forgotten, the court stated that, "it would only mean that an individual who is no longer desirous of his personal data to be processed or stored, should be able to remove it from the system where the personal data/information is no longer necessary, relevant or is incorrect and serves no legitimate interest." The Supreme Court in this case listed certain limitations on the 'Right to be Forgotten'concerning situations where the information in question was necessary for 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.

The High Court of Orissa for the first time discussed the provisions of the*Personal Data ProtectionBill,* 2019 during proceedings, in the case of *Subhranshu Rout @ Gugul* v. *State of Odisha* (2020). As noted by the high court, *the Personal Data Protection Bill*, 2019 recognizes the right to be forgotten and allows citizens to restrict or prevent the continuing disclosure of their personal data under conditions such as, *firstly*, when the purpose for which it was collected, has been served and it is no more relevant, *secondly*, it was made by way of consent of that individual, whose consent was then withdrawn or,the disclosure so made is inconsistent or contrary to provisions of the *Personal Data Protection Bill*, 2019 or any law in force.

The court noted that "information in the public domain is like toothpaste, once it is out of the tube one can't get it back in and once the information is in public domain it will never go away".It is important to mention that even though the *Personal Data Protection Bill*, 2019 provides for the right to be forgotten, yet it is not an absolute right and can only be granted after the approval by the adjudicatory authority as per *Personal Data Protection Bill*, 2019.

15 Writ Petition No.62038 Of 2016.

16 (2017) 10 SCC 1.

The High Court of Madras gave an observation that, "*an accused person who is acquitted of all charges is entitled to have his name redacted from all court orders in relation to the offence he was accused of in order to uphold his fundamental right to privacy*". The court also referred to the *Personal Data Protection Bill*, 2019 and its ability to safeguard the data and privacy rights of a person[17].

The High Court of Delhi Case of *Jorawar Singh Mundy* v. *Union of India*[18] made an interim order protecting the rights of an American citizen. The court directed Google and India Kanoon to remove access to a judgment from their portals which relates to acquittal of the petitioner in a NDPS case. The court thus recognized the 'Right to be Forgotten' which must be balanced with the right of the public to access the court's records.

After reading and analyzing various provisions of the proposed legislation and cases pertaining to this theorem and philosophy of 'Right to be Forgotten', one can easily identify the similarity or the common thread that runs through its structural, operational and functional perspective. Nothing is free in this world, liberties too come with some shared responsibilities.

In India, the right to be forgotten conflicts with the right to reputation, a sensational issue which is triggered promptly, when it comes to protecting the wealthy and the powerful. In recent years, defamation laws have been put to test by the industrialist and politicians against the media outlets. For instance, in 2017 Jay Shah, son of Amit Shah, filed a defamation case against the online news publication *The Wire* which depicted, in an investigative story the escalation of assets and professional fortunes of Jay Shah, that had increased after his father's party took over.[19] Similar, are the scars of reputation, of industrialist Mukesh Ambani and Adani, who filed the defamation cases against the newspaper and online publications for damaging their reputation and lowering their esteem in the society.[20] The concern relating this above stated scenario propels certain issues such as, who gets to decide what content may be removed and what content may be retained by categorizing it as a matter of 'public interest'. Also, if the legislation on hold provides for an adjudicating authority to be appointed by the government, will the government be in a position to exert pressure in matters concerning them or otherwise. Moreover, what do we mean by 'Public Interest', who defines it and where is it defined. Lastly, who takes the responsibility of such posted content,

17 *Available at:* https://www.barandbench.com/news/litigation/right-to-be-forgotten-accused-name-redacted-judgment-acquitted-madras-high-court (last visited on Dec. 28, 2022).

18 W.P.(C) 3918/2021 & CM APPL. 11767/2021.

19 *Available at:* https://thewire.in/media/the-wire-withdraws-its-sc-petitions-will-see-jay-amit-shah-in-trial-court-now (last visited on Dec. 28, 2022).

20 *Available at:* https://indianexpress.com/article/cities/ahmedabad/criminal-defamation-case-adani-power-opposes-thakurta-plea-on-transfer-of-case-from-mundra-to-ahmedabad-court-7243976/ (last visited on Dec. 28, 2022).

now do we shift to the big giants or stumble on the rules regulating duties of the intermediaries.

Another conflict zone is the conjecture about the right to be forgotten and the right to information. Whether the data online has to be retained (right to information) or erased (right to be forgotten) from the internet, is a decision required to be taken by a competent authority. This situation leads to unresolved queries that may gather attention of many: The unruly demarcation between the two, may put the freedom of press into a dungeon of uncertainty and perplexity, as a journalist will have to await the decision of the authority, also, a citizen seeking access to such information will be confused, whether to approach the Central information Commission or Data protection Authority when aggrieved. Another point that raises eyebrows is the situation where the State retains the power to collect and process data without consent citing a reasonable restriction or a limitation.

IV 'Right to be Forgotten' in some other jurisdictions

Belgium

In Belgium, the Act of 1992 on the protection of privacy with regard to the processing of personal data (the 'Privacy Act') guarantees the protection of personal data. The Belgian Privacy Act has implemented the European Data Protection Directive of 1995. The Privacy Act neither expressly mentions about the right to be forgotten nor cites the circumstances under which an individual can apply for request to be forgotten. The Act does under section 12 make a mention about the rectification, erasure or alteration possibility. In Belgium, one doesn't come across many case laws relating to removal of data or interpretation of Google Spain case. Only one case can be found on this subject, which went onto the Supreme Court in 2016. The case was pertaining an article providing full personal details about a doctor accused of drunk driving who caused a car accident. He requested the newspaper to remove his details to which the newspaper refused. The court ruled in favor of the plaintiff and listedcriteria which had to be fulfilled in order to give priority to the right to privacy over freedom of press.[21]

United Kingdom

Similar to the European Union, United Kingdom also by way of UK General Data Protection Regulation (GDPR) introduced a right to have personal data erased. This right is enshrined in article 17 of the UK GDPR, under which the individuals do have the right to have personal data erased.[22] This right of erasure is understood in synonymous sense as the right to be forgotten.

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21 *Available at:* https://www.legislationline.org/download/id/2638/file/Belgium_Protection_Privacy_Processing_Data_Act_1992upd2008.pdf (last visited on Dec. 28, 2022).

22 *Available at*:https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/ (last visited on Dec. 29, 2022).

In *Mosley* v. *Google Inc.*, the plaintiff sought to have Google Inc. break the link between certain searches and the search results which lead to damaging images of him and a prostitute caught in a newspaper sting operation. The judgment applied Google Spain to rule Mosley too, Google was the controller of Data for the Data Protection Directive in the present case.[23]

France

In France, the National Data Protection Agency (CNIL) held that the right to delisting could only be effective when carried out on all extensions of the search engine, not only local or EU extensions or .com for that matter. The CNIL was of the opinion that removal should extend to any possible extension, even though Google already ensured that when it removed certain information that was accessible on a local extension, it was no longer visible from any device located in the EU or .com. In 2019, Google won the case against stringent rules of data protection. The court ordered in favor of Google stating that, it doesn't have to remove links to sensitive personal data worldwide. The case is rather a test for extra territoriality and applicability of EU laws.[24]

United States

The nation doesn't have any GDPR or laws that validate the right to be forgotten. The reason for such a restrain is over importance and preference to the fundamental freedoms of the First Amendment. But recently, there is an inclination and consensus among the majority population to own this 'right to be forgotten'. Pursuant to such willingness, the New York State Assembly has proposed a legislation A05323 Bill, titled "An act to amend the civil rights law and the civil practice law and rules, in relation to creating the right to be forgotten".[25]

Manila

The Manila Principles, a set of notice-and takedown rules are endorsed by not only many nations but also by civil liberty groups and defenders of human rights. These rules[26] require claimants to include adequate information in removal requests, provide notice to the user whose content is alleged to violate the claimant's rights, Give the accused user the opportunity to contest the accusation, provide public transparency about removals, *etc.*

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23 [2015] EWHC 59 (QB)

24 *Google* v. *CNIL*, Case C-507/17.

25 *Available at:* https://thedailyguardian.com/right-to-be-forgotten-a-critical-and-comparative-analysis/ (July 29, 2021).

26 *Available at:* https://manilaprinciples.org/index.html (last visited on July 29, 2021).

V Conclusion

To conclude, we need to make space for change in our lives. It is the change and erasure of the past that leads to reformation, upliftment and evolution of an individual. Thus, there is a need to streamline the general principles relating to the 'Right to be Forgotten', which requires both upgradation and clarification in the digital age. The importance of having a Data Protection Law can be understood in terms of strengthening the legal contentions and improvising the legal certainties. There are certain propositions that must be considered while making a law on this subject, such as,the right to be forgotten will not stand straight unless there is a Data Protection Law and supplementary rules which will apply to non-national entities, especially the search engines, even if they are not based within the territorial limits of the Nation. The law must be made applicable, if services of non-national entities have an impact on the individuals of a nation. The burden of proof must be on the commercial entities or search engines and not the individuals to prove that data cannot be deleted because it is still relevant or required.An officer or controller must ensure erasure of the data of an individual, if the court or the regulatory authority has passed an absolute or final order for deletion of data concerned. The national legislation must make an effort by adding a specific clause to reconcile data protection with the right to freedom of expression, including the processing of data for journalistic purposes. 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. An alternative remedy suggested by various researchers include the use of End-to-End Encryption, to provide a greater level of privacy, which would leave less option for unauthorized grabbing of data and uploading of such data out into open. But this alternative remedy has its own challenges for instance, the investigative agencies will not be able to trace the trail left in unlawful activities and software like Pegasus leaves no free space or confidentiality when involved in surveillance. An amendment to Section 8(1)(j) of the Right to Information Act may be made. The proposed amendment may provide that the personal data may need not be disclosed under the RTI Act if such disclosure is likely to cause 'harm' to a data principal, where such 'harm' outweighs the public interest in accessing information having due regard to the common good of promoting transparency and accountability in the functioning of the public authority. The General Data Protection Regulation in EU doesn't specify what a valid request to erasure entails, but it states that the request can be made both in written and verbal form. To streamline the process, EU has introduced a template i.e. Right to Erasure Request Form, which can be modified as per the needs of the organization. India, can also attempt to bring legal certainty and uniformity by introducing such form, which will seek all the required information and validation concerning removal of content from concerned or affected individual.

A two-step test may be applied to site and service blocking

(i) Step 1: The limitation must be defined in an expressive, precise and clear manner by a formal legislation or a policy.

(ii) Step 2: The initiative is to achieve a compelling objective keeping in mind the ideals of free democratic society.

Lastly, the legislation must expressly deal with the liability of Intermediaries and the Companies managing search engines because the expression posted by the users on Online Service providers is a form of data which differs from the back-end files, logs or profiles managed and regulated by Data Protection Law. There must not be overlapping of roles of search engines and service providers as both deal with different forms of data affecting different fundamental freedoms.