

Impact of Social Media Trial and the Need of the Right to be Forgotten

Pratiksha A More,²⁸⁰ Aniruddha G. Bhagwat,²⁸¹ & Ishita R. Divate²⁸²

ABSTRACT

The growth of social media has created a platform where people discuss pending court cases. This "social media trial" can harm important legal rights such as presumption of innocence, the right of fair trial of the parties and a person's privacy and reputation. Once names, photos or accusations are shared online, they remain permanent on the online platforms. So, this, affects individuals who suffer social stigma, problems for rehabilitation etc.

This study looks at Right to be forgotten (RTBF) as a way to deal with the permanent nature of effects of online information. It explains how this right is well developed in Europe under the General Data Protection Regulation (GDPR) and analyses the current legal position of RTBF in India. This paper also discusses how RTBF can conflict with the free speech, the public's right to information and the role of media. It argues for a balanced approach that protects personal dignity without undermining freedom of speech and expression and democratic transparency.

Keywords: Social Media Trial, Privacy, Reputation.

INTRODUCTION

Social media is a strong instrument in today's digital age that can change people's minds and spread information quickly. While a case is still going on, Twitter, Instagram, and Facebook often become unofficial courts where people can remark, talk about, and even judge the case before the court makes a ruling. This idea, often called a "social media trial," makes people very worried about their right to privacy, their presumption of innocence, and the impartiality of the trial.

Once private details or accusations are made openly on the internet, they typically remain there at all times, even if an individual is found to be innocent or the case is closed. This permanent

²⁸⁰ 2nd year LLM student, ILS Law College, Pune.

²⁸¹ 2nd year LLM student, ILS Law College, Pune.

²⁸² 2nd year LLM student, ILS Law College, Pune.

digital trace could hurt a person's reputation, mental health, and possibilities for the future for a long time. In this case, the RTBF is particularly important. It helps individual to seek for the removal of personal data which is no more needed, correct, or beneficial. The RTBF is important because it protects a individual's dignity and it allows these individuals to remove past information from the online platform.

The GDPR²⁸³, establishes the RTBF as a recognized right within the European Union. However, India has yet to clearly define this right within its legal framework. The Digital Personal Data Protection Act of 2023 (DPDP Act)²⁸⁴ allows for the right to erasure in certain situations. However, it doesn't fully empower individuals to have harmful digital content removed from public platforms.

This research examines the consequences of social media trials on personal freedoms, highlighting the urgent necessity for stronger legal protections, specifically the express inclusion of a RTBF in Indian legislation. This study examines the intricate relationships between legal frameworks, technological advancements, and societal shifts, highlighting the crucial need to protect individual privacy and uphold justice within the dynamic digital environment of the present day.

THE CONCEPT OF SOCIAL MEDIA TRIAL.

Social Media Trial :-

In the past several years, social media has expanded quite swiftly. It reshaped how we communicate, share information, and even what we think. In India, there has been a digital revolution. A major result of this change is the rise of "social media trials." These are similar to traditional media trials, but they're conducted on digital platforms such as Twitter, Instagram, Facebook, and others.

Social media, much like traditional media, wields the power to shape public perception. "Social media trials" occur when individuals, often with firmly held beliefs, use these platforms to publicly assess ongoing court disputes, and significant controversies. The emergence of social media trials prompts significant inquiries about their influence on the justice system, accused's

²⁸³ Article 17 of General Data Protection Regulation, 2018.

²⁸⁴ The Digital Personal Data Protection Act, 2023.

rights, and the maintenance of essential legal tenets, like a presumption of innocence and a right of a fair trial.²⁸⁵

Understanding social media trial how it influences the public opinion:-

As mentioned before, a social media trial is just like a "media trial," but it takes place online. Historically, traditional media has played a vital role in shaping how the public views on criminal trials, with investigative journalism being pivotal in high-profile cases like the murder of ²⁸⁶ Arushi- Hemraj Talwar case²⁸⁷ and the 2012 Nirbhaya gang-rape case²⁸⁸. In Aarushi-talwar case²⁸⁹, media commented on a wide range of aspects, leaving no stone unturned to discuss issues like incest, underage sex, extra-marital affairs with family friends, and hotel rooms for swinger parties, wife-swapping, influence-mongering, while maligning the family.²⁹⁰ TV debates on the same left the family traumatized. Not only did they lose their family but also lost dignity and the opinions carried out on national television, at every stage of the trial, where every media person turned into an expert into the affairs of this family, remains the height of unethical reporting and media invasion into the process of justice. Invasive media presence in this particular case was in a practical sense to a problem as it ended up affecting evidence collection. This case shows how the media trial affect the legal proceedings.²⁹¹

On the other hand, social media likewise thrives on speed and engagement, but it often doesn't have any way to hold people accountable. Social media allows anyone to be an investigator, prosecutor, or judge, unlike established news, where entities that check their facts. This situation has caused a lot of false information, online harassment, and bias in criminal proceedings.²⁹²

Some cases of the Social Media Trial

1.) The Sushant Singh Rajput²⁹³ case in 2020 shows how social media could act like a parallel Court. "What first looked like a suicide soon turned into a murder investigation, fueled by

²⁸⁵ Mr. Saif Hussain, *Social Media Trials In India: A Comprehensive Analysis Of Legal Implications And Societal Impact*, 3 IJIRL, 2583-0538,(2023).

²⁸⁶ Id.

²⁸⁷ Nupur Talwar vs CBI and Anr 2013 (2) ALL LJ 295.

²⁸⁸ Mukesh & Anr. vs NCT state of Delhi & ors, (2017) 2 SCC (Cri) 673.

²⁸⁹ Supra 6.

²⁹⁰ DR. SHEFALI RAIZADA ET. AL., TRAIL BY MEDIA:- AN ETHICAL CONUNDRUM, 84 (2017).

²⁹¹ Id.

²⁹² P.A.Anusree & Dr. Shampa. I. Dev, *The Impact Of Social Media Trials On Freedom Of Speech And Fair Trial Rights*, 5 IJALR,1 4 (2025).

²⁹³ Rhea Chakraborty vs The State Of Bihar, AIR 2020 SC 3826.

hashtags like #JusticeForSSR and #ArrestRhea. On social media and some news channels, unverified information spread quickly, accusing Rhea Chakraborty and putting pressure on the police. Even without strong evidence, she was arrested, showing how online trials can affect investigations and ignore the principle of ‘innocent until proven guilty’.”²⁹⁴

In this context, the Bombay High Court in *Nilesh Navalakha v. Union of India*²⁹⁵ laid down important observations and directions for media houses regarding ongoing investigations. Under this case, Bombay High Court dealt with media trials in the *Sushant Singh Rajput*²⁹⁶ case. The Court said: “The duty of the press/media to have news items printed/telecast based on true and correct version relating to incidents worth reporting accurately and without any distortion/embellishment, as well as without taking sides, and cannot therefore be overemphasized.” It also observed that “Any report of the press / media, having the propensity of tilting the balance against fair and impartial ‘administration of justice’, could make a mockery of the justice delivery system rendering ‘truth’ a casualty.” The Court noted that many prominent media channels had conducted ‘media trials’ and ‘parallel investigation’ by airing debates, opinions, exposing witnesses, examining them, and chasing officials of the CBI. The Bench said that media houses had crossed the ‘Lakshman Rekha’.²⁹⁷

The Court directed that “No report/discussion/debate/interview should be presented by the press/media which could harm the interests of the accused being investigated or a witness in the case or any such person who may be relevant for any investigation, with a view to satiate the thirst of stealing a march over competitors in the field of reporting.” “The press/media must avoid/regulate reports or debates that: intrude on the privacy of the deceased, create prejudice against accused/victims, hold interviews with victims/witnesses/families, analyze witnesses’ versions, publish alleged confessions, print accused photographs, criticize investigation without research, pre-judge guilt or innocence, recreate crime scenes, predict investigation

²⁹⁴ P. A. Anushri, *Supra* note 11.

²⁹⁵ *Nilesh Navalakha v. Union of India*, 2021 SCC OnLine Bom 56.

²⁹⁶ *Supra* 12.

²⁹⁷ Bhumika Indulia, *Bombay HC on Media Reporting, Obligation of Investigators, Media Trial, Freedom of Press and the proverbial ‘Lakshman Rekha’ for Media Houses || Read this detailed report unravelling several significant aspects cropped in light of Sushant Singh Case*, SCCONLINE TIMES, (Jan 19 2021, 12 PM), <https://www.sconline.com/blog/post/2021/01/19/bombay-hc-on-media-reporting-obligation-of-investigators-media-trial-freedom-of-press-and-the-proverbial-lakshman-rekha-for-media-houses-read-this-detailed-report-unravelling-s/>.

steps, or leak confidential information. Media houses should also guide anchors and guest speakers to avoid comments that interfere with justice or attract contempt.”²⁹⁸

Other instances of social media trial are the case of Aryan Khan where he was arrested due to a drug case, who was addressed as guilty by the public, even before the courts have decided the case. The other example of the social media trial is the case of comedian Munawar Faruqui, Despite the lack of evidence, he was arrested for allegedly disrespecting Hindu deities. He was imprisoned for a long time as a result of the public outrage, which was increased by social media, until the Supreme Court interfered. This case demonstrates how people can be wrongly prosecuted by narratives that are predicated on speculation rather than true facts.²⁹⁹

And last case is of The RG Medical Rape Case that shows the problems of privacy violation on online platforms. According to a report by the Economic Times, “the Supreme Court of India ordered the removal of the victim’s name, photos, and videos from all social media platforms.” The Court said that sharing her identity was a clear violation of its earlier ruling in the Nipun Saxena³⁰⁰ case, which bans revealing the identity of sexual assault victims.³⁰¹

Social Media Trial Impact :-

Right Of fair trial:-

Justice Sikri stated that, “the social media has experienced a radical transition in the technical age. The media's presentation of the accused's prior misdeeds during a trial generates prejudices in the jury's minds and the general public. In addition, examining social and economic elements associated with the cases impedes the path to impartiality. Social media is a most powerful tool for shaping and influencing public viewpoint.”³⁰²

Sometimes, media publishes or circulates information that is inadmissible, or unverified, and it can unfairly influence both the judge and the general public. This weakens the principle of presumption of innocence, which is central to the right to a fair trial. Even if the accused is

²⁹⁸ Id.

²⁹⁹ P. A. Anushri, Supra 11.

³⁰⁰ Nipun Saxena v Union of India, AIR ONLINE 2018 SC 826.

³⁰¹ THE ECONOMIC TIMES, *Kolkata doc's rape-murder: SC orders removal of name, photos, videos of deceased*, <https://economictimes.indiatimes.com/news/politics-and-nation/kolkata-docs-rape-murder-sc-orders-removal-of-name-photos-videos-of-deceased/printarticle/112657539.cms>, last visited on Dec. 24, 2025.

³⁰² Dr. Vikas Poonia, *Social Media Trial: A Fate To Criminal Justice System And The Society*, 6, IJLMH, 1990 1993,(2023).

later acquitted due to lack of sufficient evidence, the damage to their reputation remains because social media has already branded them guilty. Such practices by the media compromise not only the fairness of trial proceedings but also the accused's right to live with dignity, which is protected under Article 21³⁰³ of the Constitution.

Further, sometimes media trial or media also goes to such an extent that it affects reputation of person in the public as it happened in the Parliament Attack case³⁰⁴, the attitude of media was objected and questioned where S.A.R Gellani the co-accused of the parliament attack case was portrayed by the media as a terrorist and due to media influence and in the lack of evidence he was convicted. But then in the revision petition before the Delhi High court he was acquitted on the ground that the prosecution case was absurd and tragic.³⁰⁵ This kind of media portrayal weakens the presumption of innocence and can interfere with the accused's right to a fair and impartial trial under Article 21³⁰⁶ of the Constitution.

This case though not of the social media trial but a case of media trial, it also shows why protections such as the Right to Be Forgotten become important, since those acquitted (like Geelani) continue to face stigma and reputational damage despite being cleared by the courts due to availability of reports, incidents and news on the online platforms. Especially in case of social media Trial the data is stored for a huge period of time and now a days the photos, name videos of the accused and victims are posted online by the media therefore right to be forgotten should be given to such person as those data stored permanently.

Right to privacy :-

In the social media trial, pictures, videos, names, and other information about the victims, accused, and witnesses are posted. This violates their right to privacy. Police now use social media sites like Facebook, Twitter, and Instagram to look into crimes by sharing news, CCTV footage, and updates on suspects or missing people. However, they can also hold social media trials, during which people decide if someone is guilty before a court does. People quickly learned about the crime and the suspect in the Ankita Bhandari case³⁰⁷ online. This made people

³⁰³ INDIA CONST. art. 21.

³⁰⁴ Mohd. Afzal Guru V State of NCT of Delhi, (2005) 11 SCC 600.

³⁰⁵ DR. SHEFALI RAIZADA, Supra note 9, pg 80.

³⁰⁶ Supra 22.

³⁰⁷ Pulkit Arya v. State of Uttarakhand, Transfer Petition (Criminal) No. 657 of 2024.

angry and changed their minds about guilt. They started using the hashtag #justiceforankita. This case did help the police collect evidence against the accused, though. But pictures and videos about the victims are all over the internet. This is bad for the Right to Be Forgotten because posts and news about them can stay online for all time, hurting their reputation. Social media can help catch criminals, but it also makes people worry about privacy, fairness, and the long-term effects of information online.

In RG Medical Case, shows the problems of privacy violation online. According to a report by the Economic Times, “the Supreme Court of India literally had to step-in and had ordered the removal of the victim’s name, photos, and videos from all social media platforms. The Court said that sharing her identity was a clear violation of its earlier ruling in the Nipun Saxena case, which bans revealing the identity of sexual assault victims”.³⁰⁸

In case of victims or accused is a minor :-

If the victims are minor, in Nipun Saxena v. Union of India³⁰⁹, the facts were that, the case emerged from a public interest litigation filed by Nipun Saxena, illustrating how victims of sexual offenses, like children, were having their identities disclosed by media, courts, and social media platforms. Such disclosures triggered further trauma, harassment, and social stigma. The petition sought more powerful safeguards to preserve victims’ privacy and dignity, contending that the current laws were not being effectively enforced. In reply, the Supreme Court examined the issue and gave directions to avoid the publication or online sharing of victims’ identities, pointing out the necessity for sealed court records and strict adherence to legal safeguards like Section 228A IPC³¹⁰ and the POCSO Act³¹¹.

In social media trials, when photos or details of a minor accused are posted online, they often stay permanently and spread widely, creating stigma and making rehabilitation very difficult. This infringes on the minor’s right to privacy and goes against the rehabilitative focus of the Section 79 of Juvenile Justice (Care and Protection of Children) Act, 2015³¹², which prohibits publishing any information that reveals a juvenile’s identity and also it talks about victim and witness. Despite of such laws and Judgement the minor victims and accused their photos,

³⁰⁸ Supra note 20.

³⁰⁹ Nipun Saxena v Union of India, AIR ONLINE 2018 SC 826.

³¹⁰ Indian Penal Code, 1860, S. 228 Act of Parliament, 1860 (India).

³¹¹ The Protection of Children from Sexual Offence, 2012, Act of Parliament, 2012(India).

³¹² **Juvenile Justice (Care and Protection of Children) Act, 2015, S.79, Act of Parliament, 2015(India).**

videos and other personal identities are still posted on social media. One of such example is the Guwahati Rape case³¹³, where identities of minor accused individuals were disclosed in social media. In this context, RTBF is essential, as it allows such content to be removed or delisted from public access, protecting the minor's privacy and helping them reintegrate into society.

Reputation:-

Under social Media Trial individuals make acquisitions of defamation where most of the individual make some false or defamatory statements about others online especially related to accused. Section 499 of IPC defines defamation as the act of harming someone's reputation by making or publishing false imputation against them³¹⁴. Social media platforms serve as a channel for dissemination of such defamatory content leading to legal action against and Section 500 of IPC provide for Punishment for Defamation³¹⁵. Similarly, now in BNS S.356³¹⁶ talks about the same.

Unlike traditional media, libelous content on social media travels quickly and stays there forever, which can ruin someone's reputation for good. For a long time, courts have said that freedom of the press does not include disseminating false information, as in *Arnold v. King Emperor* (1914).³¹⁷This idea can also be applied to internet platforms.³¹⁸

Even after such regulation regarding protection of the Individual at the terms of Social Media Trial but still the Identity of the Victims, Accused and witness are posted online. And thus, it often cause severe harm to an individual's reputation. Once allegations are circulated online, they tend to remain permanently accessible, regardless of the eventual outcome of the case. Even after a not-guilty verdict, a person's public image and social standing can be permanently damaged, mainly because digital records have a lasting impact on how society views them.

³² THE FRONTIER MANIPUR, [https://thefrontiermanipur.com/mcpcr-cries-foul-as-media-names-minor-accused-in-guwahati-rape-case/#:~:text=Manipur%20Commission%20for%20Protection%20of,a%20Threat%20to%20Ethnic%20Harmony,last visited on Dec. 25, 2025](https://thefrontiermanipur.com/mcpcr-cries-foul-as-media-names-minor-accused-in-guwahati-rape-case/#:~:text=Manipur%20Commission%20for%20Protection%20of,a%20Threat%20to%20Ethnic%20Harmony,last%20visited%20on%20Dec.%2025,%202025).

³¹⁴ Indian Penal Code,1860, S. 499, Act of Parliament,1860 (India).

³¹⁵ Indian Penal Code 1860,S.500, Act of Parliament,1860 (India)

³¹⁶ Bhartiya Nyaya Sanhita 2023, S. 356, Act of Parliament,2023 (India).

³¹⁷ *Arnold v. King Emperor*, (1914) 16 BOMLR 544.

³¹⁸ *Mr. Saif Hussain*, *Supra* note 4.

This stigma can significantly impact education, employment prospects, and social relationships, particularly in instances involving minors or those wrongfully accused, thereby resulting in enduring reputational damage. Furthermore, the consequences extend to mental health, with constant public scrutiny, online harassment, and character defamation potentially putting stress, depression, anxiety, and, in some cases, suicidal ideation.

The phenomenon of being judged and condemned by millions before a fair trial concludes strips individuals of dignity and creates a sense of helplessness. Courts have similarly acknowledged this issue in the Nipun Saxena case³¹⁹, the Supreme Court emphasized the necessity of protecting individual identities in sensitive contexts to mitigate the potential for further psychological harm. As a result, trials conducted on social media platforms pose a threat not only to the right to a fair trial but also to the right to live with dignity, as guaranteed by Article 21³²⁰, due to the psychological distress they cause and the damage they inflict on personal reputations.

Despite existing laws and repeated court decisions, the reality shows that photographs, personal information, and even private details of victims, accused individuals, and witnesses are still widely shared online. Once information is made public, it stays available forever. This can violate a person's right to privacy, dignity, and the chance for rehabilitation. This constant digital presence creates a lasting stigma, even if someone is found innocent or has finished their sentence.

Therefore, it's becoming important to recognize and enforce the "right to be forgotten" in India. This would prevent individuals from being permanently affected by online records of accusations, media coverage, or unverified information, long after the legal process is over.

RIGHT TO BE FORGOTTEN

Concept and origin (French “Right to Oblivion”)

The RTBF was first recognized in France as *droit à l'oubli* in 2010³²¹, also known as the right to oblivion. This maxim was used in the context of convicted criminal who has solved his or

³¹⁹ Nipun Saxena v Union of India, AIR ONLINE 2018 SC 826.

³²⁰ Supra 22.

³²¹ Supraja Seshadri, *The Right To Be Forgotten: Is It A Right Or Wrong?*, SSRN, 1,2(2025).

her time in imprisonment but the society denies such person any opportunity because of his or her past records as they were publicly available. This maxim was later applied in Germany too which says that convict must not be denied any opportunity because of his or her past records and they should be given opportunity to mix up with the society and live a normal life after his or her imprisonment.³²²

Later the concept of RTBF was first established in the Google Spain case³²³ (2014), a Spanish man, Mario Costeja González, found that whenever his name was searched on Google, it showed links to a newspaper notice from 1998 about a property auction related to his old social security debts. Although the debt issue was long resolved, the notice still appeared online and damaged his reputation. He asked the newspaper to remove the notice and requested Google to delete the search links. The Court of Justice of the EU held that “Google is responsible as a “data controller” and must remove such links if the information is outdated, irrelevant, or excessive, while still balancing this with public interest and freedom of expression”.

This case set the foundation of RTBF and later it was recognized under General Data Protection Regulation (GDPR) Which is European Convention data protection³²⁴.

Why Right to be forgotten ?:-

“We live in the “search society,” where almost everything lies in our searches, images, and online activities, which are stored as information or data. The information that once faded from memory is now preserved indefinitely through massive digital archives. This permanence challenges traditional ideas of forgetting and forgiveness, as even decades-old events can resurface instantly with a simple Google search. Thus, it poses serious threats to personal privacy, dignity, and the possibility of rehabilitation”.³²⁵ In social media trials, this problem is huge, as photographs of the accused, victims, or sensitive crime scenes often remain online permanently, continuing to affect reputations and personal lives. These situations highlight the importance of the RTBF, which allows people to ask for the removal of outdated or harmful information.

³²² Id.

³²³ Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González, ECLI:EU:C:2014:317.

³²⁴ Supra 1.

³²⁵ GEORGE BROCK, RIGHT TO BE FORGOTTEN: PRIVACY AND MEDIA IN THE DIGITAL AGE,1-17(I.B. Tauris,2016).

Right to be Forgotten under GDPR:

Article 17 of the General Data Protection Regulation (GDPR)³²⁶ establishes the "Right to be Forgotten," which empowers data subjects to compel data controllers to erase personal data without delay. This right is applicable when the data is no longer necessary, consent has been retracted, the processing is deemed unlawful, or erasure is mandated by law. However, this right is subject to specific exceptions; for instance, it does not apply when it conflicts with the freedom of expression and information, compliance with legal obligations, the performance of a task carried out in the public interest or the exercise of official authority, or the defense of legal claims³²⁷.

Legal Position in India:

Following the Justice K.S. Puttaswamy³²⁸ judgment, which recognized privacy as a fundamental right under Article 21 of the Indian Constitution³²⁹, the Government of India initiated the establishment of an expert committee to formulate a framework for Data Protection Laws within the country.

So, under the chairmanship of former Supreme Court Justice Shri B N Srikrishna a committee³³⁰ has released a white paper on Data Protection Framework for India on November 27, 2017. This Committee had talked about Right to Be forgotten and said that individuals should have Right to Be forgotten³³¹.

Further under Personal Data Protection Bill, 2019 (PDP bill),

Under the PDP Bill, the right to erasure and RTBF are treated as different rights, unlike the GDPR where both are combined under art. 17. Section 18 (1) (d) of the bill provides for erasure meaning the complete deletion of personal data that no longer necessary. In contrast, section 20 grants the RTBF, which allows the data principal to restrict or prevent the continuing disclosure of the personal data, where "restrict" means stopping the data fiduciary from further disclosing or making the data available³³². This right would be applied if the purpose is served

³²⁶ General Data Protection Regulation 2018, Art. 17, European Convention 2018(Europe).

³²⁷ Id.

³²⁸ Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India and Ors.,(2017) 10 SCC 1.

³²⁹ Supra 22.

³³⁰ Prashant Mali ,*Privacy Law: Right To Be Forgotten In India*, 7,NLIU LAW REVIEW,116,(2018).

³³¹ Id.

³³² DR. A.SHIVASTAV, DR. Y. SINGH, PERSONAL DATA PROTECTION RIGHTS, 110 (lexis Nexis, 2025).

or the information has lost relevancy, or consent has been withdrawn by data fiduciary, or processing is unlawful. This right can be exercised only through an order of an adjudicating officer appointed under the data protection authority. In contrast article 17 of the GDPR allows the data subject to directly require the data controller to erase the personal data without undue delay subject to certain exceptions, without requiring approval from the authority³³³. The PDP bill places the power with an adjudicating officer to balance RTBF against freedom of speech and right to information, considering factors such as the sensitivity of the data, scale of disclosure, public role of the individual, relevance of the data to the public, and the nature and source of disclosure.³³⁴

Digital personal Data Protection Act ,2023 (DPDP act)³³⁵:-

The Digital Personal data protection act, 2023³³⁶ does not make a difference between right to be forgotten and right to erasure instead it only provides a right to erasure under section 12³³⁷. A data principal may make a request, in a prescribed manner to the data fiduciary for erasure of her/his personal data and upon receipt of such request, the data fiduciary is required to erase the data unless its retention is necessary for the specified purpose or for the compliance with any law for the time being in force³³⁸. However, this act does not expressly lay down the mechanism for balancing of this right with freedom of speech and right to information therefore it can result in conflicts³³⁹.

Judicial responses to the right to be forgotten

1.) The Karnataka High Court heard a civil petition from the victim for removal or at least masking of her name in the pause list to ensure that her name does not feature in any search engine websites. Therefore the court held that the name of the victim especially in rape victim should not appear in the cause title of the order or in the body of the order of this court. In terms of sensitive cases involving women in general and highly sensitive cases involving Rape,

³³³ Supra 1.

³³⁴ DR. A.SHRIVASTAV, Supra 51.

³³⁵ Digital Personal Data Protection Act, 2023, Act of Parliament, 2023(India).

³³⁶ Id.

³³⁷ Digital Personal Data Protection, 2023, S.12, Act of Parliament, 2023(India).

³³⁸ Id

³³⁹ DR. A.SHRIVASTAV, Supra 51.

affecting the modesty or reputation of person, the court talked about right to be forgotten in this cases³⁴⁰.

2.) The High Court in case of Subhranshu Rout³⁴¹ also admitted the fact that under current circumstances the SPDI Fail to recognize right to be forgotten, therefore proper legislation should be there. In this case justice KS Panigrahi said that there is a lack of effort in recognition of right to be forgotten and right to get deleted which is linked with right be forgotten. It cannot be expected that every time a victim shall approach the court for getting its inaccurate date or information erased by the control of data controller³⁴².

3.)V. Vs. High Court of Karnataka³⁴³, “the Court in this case recognized RTBF. The case was filed in order to remove the name of the petitioner’s daughter from the cause title since it was easily accessible and thus it would defame her reputation. The court held that, the name of the petitioner’s daughter to be removed from the cause title and the orders. Further, court also held that the RTBF is adopted by western countries in specific cases like cyber crime against women, economic misconduct, heinous crime, rape, and acid attack, etc. The RTBF has now seen as a basic face of the right to privacy:”³⁴⁴

4.) In Jorower singh Mundy³⁴⁵ in this case too, the Court recognized the right to be forgotten is a part of right to privacy. In this case a person was pursuing his professional career in America, But he was tormented for an old case that happened in 2009 for which individual was acquitted by the court in 2013 with that case used to appear on the search engine of Google, Indian kanoon and other websites. “Justice Pratibha Singh dealing with case held that this case dealt with and integrate question of privacy right versus right to information and maintenance of transparency in judicial records. The right to be forgotten is a part of right to privacy and since the individual was acquitted of the crime in 2013 privacy triumphs over information right”³⁴⁶.

³⁴⁰ Sri Vasunathan Vs the Registrar, 2017 SCC OnLine Kar 424.

³⁴¹ Subhranshu Rout v. State of Odisha, 2020 SCC OnLine Ori 878.

³⁴² Id.

³⁴³ V. Vs. High Court of Karnataka, 2017 SCC Online Kar 424.

³⁴⁴ Priya Gupta, Dr. Abhay C.M. Visen, *Right to Be Forgotten with Special Reference to Indian Women: A Legal Study*, 13, IJHSSI, 13, 17 (2024).

³⁴⁵ Jorawer Singh Mundy V Union of India W.P. (C) 3918/ 2021 & C.M APPL 11767/2021.

³⁴⁶ DR. A.SHRIVASTAV, Supra note 51, 120.

5.)R.Rajagopal vs The state of Tamil Nadu³⁴⁷, “the Court held that in case of conflict between right to privacy and freedom of press which includes right to information, in case of any publication which is based on public records including court records. The right to privacy no longer subsists and it becomes legitimate subject for comment by press and media³⁴⁸. However, an exception must be there for this rule that is, in case of a female victim of sexual assault, kidnap, abduction or any other similar offense then in this case, the right of individual dignity and privacy will prevail in such sensitive matters”.³⁴⁹

BALANCING COMPETING RIGHTS.

Conflict between Right to be forgotten vs Freedom of speech and Expression and right to information.

RTBF possible conflict with the freedom of speech and expression protected by Article 19(1)(a) of the Indian Constitution³⁵⁰ is one of the most divisive topics surrounding it. “Erasing legally published personal information (eg. news) may undermine freedom of press, also it may restrict public access to historical documents, or impede judicial openness, particularly when public rulings include reference to personal information. Demands to remove criminal records or court rulings, even when they have repercussions for the public good, are a prime example. Such a removal may impact legal studies, skew public memory, and impair media responsibility. As a result, putting RTBF into practice requires striking a balance between people's right to privacy and the public's right to knowledge”.³⁵¹

Introduction of RTBF may lead to a digital dark age and thus it can act possibly as the censorship on free speech to an extent that it may put chilling effect on to the authors or media platforms. Since, right to be forgotten specifically was made for deindexing of the links from the search engine results or restricting of the personal data, this right may affect the newspaper agencies as it impacts on the circulation of newspaper especially in cases of digital news platform. Further, this right can also affect the right to information of the public, as press

³⁴⁷ R RajaGopal vs State of Tamil Nadu, 1994SCC(6) 632.

³⁴⁸ DR. A.SHRIVASTAV, Supra note 51,121.

³⁴⁹ Id.

³⁵⁰ INDIA CONST. art.19(1), cl.(a).

³⁵¹ Anjani Agarwal, Aman Singh, *The right to be forgotten under the digital personal data protection act, 2023: A missed opportunity in India's data privacy regime*, 11, Int. J. Law, 57, 60 (2025).

newspaper publishes the article to provide information to the public but since RTBF asks removing the information from the website thus it affects the right to information of the public.

In Europe³⁵² :-

The RTBF in Europe is based upon Article 8 of the European Convention on Human Rights (ECHR), which protects a person's private life and reputation³⁵³. RTBF is not a separate right under ECHR it is a way to protect people from serious harm to their reputation while also balancing freedom of expression under Article 10³⁵⁴. The European Court of Human Rights (ECtHR) examines each case carefully to make sure privacy is protected without stopping the public from getting important information. Courts consider factors like the type of information, how sensitive it is, how much time has passed, how it is affecting public interest, whether a individual is well-known, and harm caused.

In *Węgrzynowski and Smolczewski v. Poland* (2013)³⁵⁵, two lawyers wanted a defamatory article removed from a newspaper website. The article claimed that they had made money through questionable dealings. The court held that, lawyers could have used less strict measures, like adding references to earlier court judgments and this could adequately protect their reputation. Complete removal was not strictly necessary or proportionate, so court held that there was no violation of Article 8³⁵⁶.

Some cases involve alteration or anonymization. In *M.L. and W.W. v. Germany* (2018)³⁵⁷, convicted individuals requested that their full names be removed from online archives. The Court was agreed with domestic courts, which had considered public interest, the applicant's conduct after conviction, and limited accessibility of the information. This did not violate Article 8 and therefore their request that their names to be anonymized was rejected³⁵⁸.

In *Hurbain v. Belgium* (2023)³⁵⁹, a publisher had to anonymize an old article about a traffic accident. The Court found that anonymization was the best way to protect privacy because the

³⁵² European Court of Human Rights & European Union Agency for Fundamental Rights, last <https://share.google/ug7QkvMuf1PN7Iye5>, last visited on 27/09/2025.

³⁵³ Article 8 of European Convention on Human Rights (Europe).

³⁵⁴ Article 10 of European Convention on Human Rights (Europe).

³⁵⁵ *Węgrzynowski and Smolczewski v Poland* (No 33846/07, ECtHR, 16 July 2013).

³⁵⁶ *Supra* 72.

³⁵⁷ *M.L. and W.W. v Germany* (Nos 60798/10 and 65599/10, ECtHR, 28 June 2018).

³⁵⁸ *Supra* 72.

³⁵⁹ *Hurbain v Belgium* [GC] (No 57292/16, ECtHR, 4 July 2023).

article was old, not of public interest, and could harm the person's reputation. This did not violate Article 10³⁶⁰.

The Court of Justice of the European Union (CJEU) in *Google Spain v. AEPD*³⁶¹ (2014) clarified that search engines must remove links related to personal information if it is outdated, irrelevant, or excessive, while still considering public interest. Later cases, like *GC and Others v. CNIL*³⁶²(2019), "when search engines receives a request to remove links which involves sensitive personal information, then it must balance a person's right to privacy and data protection with the public's right to access information. If the links concern old or outdated criminal proceedings, the search engine operator must check whether keeping them in search results is really necessary and ensure that the results show the person's current legal status".³⁶³

Overall, Europe's approach to RTBF is case-by-case and flexible. The ECtHR ensures that privacy and reputation under Article 8³⁶⁴ are protected while not unnecessarily restricting freedom of expression under Article 10³⁶⁵. Remedies include removing information, anonymizing content, de-indexing search results, or prohibiting certain publications. The court provides guidance for search engines to balance privacy with public access to information. This approach protects individual rights while allowing the public to access the information, creating a fair and practical system for the RTBF.

In India: The Conflict Between Informational Privacy and Public Interest and problems in current DPDP act :-

The PDP Bill 2019, provided different provisions for RTBF and right of erasure. And under this bill an independent adjudicating officer was required to balance the individuals right to privacy with public's right to information and speech while granting RTBF to the data principal. The prime reason why the committee had given this power on an independent adjudicating authority was because of the fact that the RTBF, its application goes against the free speech and it puts restriction on the right to information. Further, the RTBF is more 'individual centric' and free speech and right to information is 'collective centric'. Therefore

³⁶⁰ Supra 73.

³⁶¹ *Google Spain v AEPD and Mario Costeja González* (C-131/12, 13 May 2014).

³⁶² *GC and Others v CNIL* (C-136/17, 24 September 2019).

³⁶³ Supra note 71.

³⁶⁴ Supra 72.

³⁶⁵ Supra 73.

Sri Krishna Committee found it appropriate that delicate balancing task should be done through an adjudicatory body. On page 85 of the report the committee also talks about the lack of capacity of the data fiduciary who is not bound by democratic accountability to exercise such adjudicatory function. Therefore, the committee found preferable that balancing function like this should be exercised via the adjudicatory officer. In short, committee felt that balancing privacy and free speech and right to information is a public function and thus it should be vested upon adjudicatory authority. However, this was not incorporated under 2023 Act. The current Act only provides for a right to erasure. Where, data principal can make a request as per the procedure to the data fiduciaries and then on receipt of an application, the data collecting companies then shall erase the personal data unless the retention of data is necessary for a specified purpose or for compliance with any law for the time being in force. Later, if any data principal is not satisfied with the decision of data fiduciary then it may approach the Data Protection Board of India under the Act.³⁶⁶

However, the section 12 which talks about right of erasure under the DPDP Act³⁶⁷, does not talk about the competing interests of free speech. It does not expressly provides for the balancing mechanism with freedom of speech and information. The GDPR too expressly provides for balancing the right to erasure and forgotten with the freedom of speech and expression but the current act do not expressly provides for the same. Thus, there is no normal value under section 12 which provides that free speech has to be balanced with erasure³⁶⁸. This will raise a concern about the protection of Article 19 (1) (a) of the constitution³⁶⁹. Further Section 12 (3)³⁷⁰ should be read along with section 44(3)³⁷¹, which amends section 8 (1) (j) of the right to information Act, 2005 by replacing it with the words ‘information which related to personal information³⁷².’ This change widens the scope of information that can be kept from public disclosure. Thus if both sections read together, it may appear that statutory framework does not clearly balance the personal data with that of free speech and public’s access to information.³⁷³

³⁶⁶ DR. A.SHRIVASTAV, Supra note 51,113.

³⁶⁷ Digital Personal Data Protection, 2023, S. 12, Act of Parliament 2023 (India).

³⁶⁸ Id.

³⁶⁹ Supra 69.

³⁷⁰ Right to Information Act, 2005, S.12 (3), Act of Parliament, 2005 (India).

³⁷¹ Right to Information Act, 2005, S.44(3), Act of Parliament, 2005 (India).

³⁷² Right to Information Act, 2005, S.8(1) (j), Act of Parliament, 2005 (India).

³⁷³ DR. A.SHRIVASTAV, Supra note 51,115.

Whereas, the PDP bill had provided for the balancing approach for adjudicating officer to decide when RTBF could be applied, a feature that is not there in the current DPDP Act. The adjudicating officer had to consider how widely the information was shared and how easily people could access it. Since RTBF focuses on individual privacy while freedom of speech and information protect the public, this setup was meant to balance the two.

The Bill also listed factors the officer should keep in mind while deciding;

1. How sensitive the personal data is,
2. How widely the information is shared or how accessible it is,
3. The person's public role, like whether they are famous or hold office,
4. How relevant the information is to the public, and whether that has changed over time,
5. The nature of the source, such as whether it is reliable or a matter of public record.

Therefore, these factors can be applied in case of social media trial while applying RTBF as it not only ensures the privacy of the accused, victims, witness etc. of the cases but also, at the same time these factors won't affect the public right to information and speech of the media platforms.

CONCLUSION

This research shows how social media trials in India are becoming a serious problem. They harm fundamental rights like the right to a fair trial, the presumption of innocence, and the right to privacy. Platforms such as Facebook and Twitter often act like "courts," spreading unverified information that misleads the public and influences the justice process. In high-profile cases, like the Sushant Singh Rajput investigation, such trials have shown how damaging this can be. Since everything posted online leaves a permanent trace photos, names, and allegations of the accused, victims, and even witnesses suffer long-lasting reputational and emotional harm, even if they are later acquitted. The Supreme Court's order in the 2024 in RJ medical rape-murder case, protecting the victim's identity, highlighted the need for safeguards against this digital stigma.

The RTBF, which began in Europe with the Google Spain case³⁷⁴ and the GDPR, is a vital legal tool to protect dignity and allow people to rebuild their lives. However, India's laws are still

³⁷⁴ Supra 42.

weak in this area. The earlier draft Personal Data Protection Bill, 2019, clearly separated RTBF from the Right to Erasure and suggested an independent officer to balance privacy with the public's right to know. But the final Digital Personal Data Protection Act, 2023³⁷⁵, removed these safeguards and left such decisions to private companies, which may not be fair or neutral. Even so, Indian courts have started to recognize RTBF as part of the fundamental right to privacy, especially in cases involving women, children, or acquitted persons, using remedies like de-indexing or redaction. This research concludes that India needs to strengthen its laws by formally including RTBF in the DPDP Act. For fairness, an independent body or tribunal who are already created under DPDP act, they should be provided with powers to carefully balance privacy rights with public interest while providing right to be forgotten. Only with such a system India can protect individuals from permanent digital harm caused by social media trials and ensure that no one's life is endlessly defined by online judgments.

SUGGESTIONS

1. Clear Recognition of RTBF:-

The DPDP act, 2023³⁷⁶ should be amended and RTBF should be recognised as separate right, different from the right to erasure. This would bring Indian law closer to the GDPR framework and judicial developments recognizing RTBF as part of the right to privacy under Article 21³⁷⁷. This will reduce ambiguity and provide stronger legal protection to individuals affected by social media trials.

2. Special protection for Minors and victims:-

In cases where minors are involved, whether as accused, victims, or witnesses, RTBF requests should be provided as special priority. If a minor accused is acquitted, or has completed the sentence after conviction, the continued online availability of their personal information should normally be restricted via de-indexing or anonymization to support rehabilitation of such person. Similarly, in the case of minor victims or witnesses, identifying information should be removed or masked to protect privacy, dignity, and long-term well-being, subject to a balance with public interest.

³⁷⁵ Supra 3.

³⁷⁶ Id.

³⁷⁷ Supra 22.

3. Public Interest Test:-

Every RTBF request should be decided by considering factors like public role of the person, sensitivity of the information, time passed, and public importance just like how the PDP bill had recommended criteria for the adjudicating officer while deciding RTBF cases. This will prevent misuse of RTBF to hide matters of genuine public concern.

4. Government should make guidelines:-

The government, should provide the ethical guidelines for online reporting and social media commentary on sub-judice matters or the sensitive cases which are ongoing in the court so that victims or accused their privacy and reputation is not infringed.

