

The Right to Be Forgotten: Balancing Privacy, Memory, and Free Expression

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Abstract: *This paper examines the legal, philosophical, and practical dimensions of the "right to be forgotten" (RTBF) in the digital age. The RTBF captures individuals' claims to limit access to personal information online that is inaccurate, obsolete, or no longer relevant. The paper traces the origin and development of the right, analyzes major legal frameworks and jurisprudence (particularly in the European Union, the United States, and India), and discusses tensions between privacy, free expression, and public interest. It identifies technical and policy challenges in operationalizing the right and proposes a set of normative and pragmatic recommendations for legislators, platforms, and regulators.*

Keywords: right to be forgotten; right to privacy; data protection; GDPR; free speech; delisting; digital memory; algorithmic search; public interest

I. INTRODUCTION

The growth of searchable, persistent digital records has fundamentally transformed how reputations are formed and how an individual's past continues to shape their present opportunities. While data permanence offers benefits for accountability and historical research, it also means that old mistakes, trivial incidents, or stale personal information can unduly constrain individuals' social and economic lives.

The "right to be forgotten" (RTBF) attempts to provide individuals with a legal mechanism to request the removal, delisting, or de-indexing of personal information from search engines and other data controllers. The implementation of the RTBF raises thorny questions regarding who decides what is "irrelevant" or "outdated," and how to balance individual rehabilitation against collective rights to information and historical memory. This paper addresses these questions through a comparative legal lens.

II. CONCEPTUAL FOUNDATIONS

2.1 Conceptual Foundations

The RTBF is fundamentally situated at the intersection of two key normative values:

Autonomy and Dignity: This value posits that individuals should maintain reasonable control over information pertaining to themselves, which is crucial for protecting personal dignity and the ability to move on from past events.

Societal Interest in Information: This value highlights the fact that democratic self-government, journalism, and historical scholarship are reliant on access to past facts and records.

Therefore, the RTBF is best understood not as an absolute entitlement, but as a context-sensitive balancing test.

2.2 Origins and International Developments

The contemporary jurisprudence of the RTBF was catalyzed in Europe. The European Court of Justice (ECJ), in the landmark case of *Google Spain v. AEPD and Mario Costeja González*, recognized that search engine operators could be compelled to remove links to webpages containing personal data that was deemed irrelevant or excessive relative to the purposes for which it was processed, under limited circumstances. This decision led directly to statutory reforms, most notably the codification of a right to erasure or "right to be forgotten" under Article 17 of the European Union's General Data Protection Regulation (GDPR). The GDPR, however, also embeds several exceptions based on considerations of freedom of expression and public interest.



Literature Review:

Scholars consider RTBF an extension of dignity, autonomy, and informational self-determination. It allows individuals to redefine their digital identities and secure a second chance in life. Many researchers argue that RTBF promotes fairness and prevents perpetual punishment for past mistakes.

On the other hand, critics argue that RTBF threatens transparency and freedom of speech. They claim that excessive application of RTBF could lead to censorship and manipulation of public records. Comparative studies show that the European Union adopts a privacy-centric approach while the United States prioritizes freedom of speech under the First Amendment. India follows a judicial balancing method with evolving standards.

III. OBJECTIVES

The primary objectives of this research paper are:

1. To trace the legal and philosophical underpinnings of the Right to Be Forgotten.
2. To analyze and compare the major statutory and jurisprudential frameworks for the RTBF in the European Union, the United States, and India.
3. To discuss the key legal and operational tensions arising from the implementation of the RTBF, particularly the conflict between privacy, free expression, and the public interest.
4. To propose practical, balanced, and context-aware solutions for legislation, platforms, and regulator to operationalize the right effectively.

IV. RESULT: COMPARATIVE JURISPRUDENCE AND TENSIONS

4.1 Comparative Statutory Frameworks

Jurisdiction	Foundational Approach	Key Legal Precedent/Statute	Key Feature/ Distinction
European Union	Protectionist of personal data	GDPR Article 17, Google Spain v. AEPD.	Grant data subjects considerable removal/ erasure rights, but includes exceptions for freedom of expression and public interest
United States	Strong presumption in favour of speech and publication	First Amendment principles, state tort law State privacy statutes (e.g. California).	U.S. courts are reluctant to impose broad delisting obligations, remedies are fragmented and centralized free-speech protection is strong.
India	Constitutional right to privacy under Article 21.	K.S. Puttaswamy v. Union of India.	Recognition of privacy laid the groundwork, but an identical statutory RTBF model has not yet been adopted, courts weigh requests on a case-by-case basis.

4.2 Key Legal Tensions

The implementation of the RTBF is complicated by several inherent tensions:

Freedom of Expression vs. Privacy: The RTBF often clashes with free-speech values, especially when the information concerns public figures or matters of public interest.

Global Reach and Jurisdiction: Search engines operate globally, yet data-protection laws are jurisdictional. This raises questions about the cross-border scope of delisting and the possibility of "forum shopping".

Technical Feasibility: Delisting a search result is not the same as deleting the source information. Even when links are removed, information can persist through copies, screenshots, or alternative storage.



Standards of Relevance and Time-Limits: Determining what constitutes "outdated" or "irrelevant" is context-specific, making it difficult to establish bright-line rules that are neither over- nor under-inclusive.

V. CONCLUSION

The Right to Be Forgotten is a legitimate and necessary instrument for protecting individual dignity and autonomy in the highly networked digital world. However, it cannot be implemented as an unqualified or absolute right. The varying approaches in the EU (protectionist and centralized), the U.S. (fragmented and speech-protective), and India (constitutional grounding with evolving, case-by-case application) illustrate the challenge of achieving a single, universal model.

A successful legal regime must:

Balance Competing Values: It must be carefully calibrated to balance individual privacy against freedom of expression and the public interest.

Ensure Due Process: It must offer transparent procedures, clear assessment frameworks, and independent review of contested decisions.

Employ Hybrid Remedies: Preferring delisting from indexing over deletion at the source is a practical solution that protects individual dignity without necessarily sanitizing the public or historical record.

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