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Intrusion to an individual's privacy gives one the Right to Erasure in
the digitalized world.

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Abstract

The researcher in this paper has analyzed the issues relating to privacy in the current scenario and the new emerging concept of Right to Erasure. Right to Erasure /delete is a recent development which has gained significance after right to privacy got recognition as a fundamental right. In this research paper case laws have been discussed which gave jurisprudential support in recognizing this new age right. The monumental case law which paved way for this new right is Spain SL v. Agencia Española de Protección de Datos, wherein for the first time it was asserted that, right to erasure needs to be legally implemented and gave the right to delete the name of the aggrieved from the search history. Researcher has also highlighted the popularity and importance of this concept in the Indian scenario, where hitherto there is no statutory provision backing the right. But still recently courts have employed their wide-ranging judicial powers in securing providing recognition of such privacy rights for individuals against any potential infringement of their privacy rights. The researcher has devoted the method of survey with a sample size of 101 responses to gauge awareness about the issue amongst people of different age groups, sex, profession, educational backgrounds in order to develop a more intersectional approach in the study. The survey done by the researcher has helped to reach on the conclusion that its time that we should come up with a proper law for the implementation of Right to Erasure and take the Right to Privacy right very seriously because in the coming years it will play a very important role.

Key Words: Right to Erasure, Jurisprudential Support, Privacy Rights, Right to Erasure

1. Introduction

“Privacy is not something that I am entitled to it's an absolute prerequisite” –
Marlon Brando Privacy can be understood as a personal space in which no one

wants to get intruded by any third person and the right to have this private space is available to each and every person. But when circumstances arise which leads to such intrusion than a logical analysis of the situation is required to conclude that whether there is a breach or not and how far it is justified for the welfare of the country. Breach of privacy is not justified but, in some circumstances, it is needed, so it needs to be understood that when such a breach is justified and when not.

While using the word 'privacy' the researcher intends to point out at the rightful claim of any individual to determine the extent to which he/she wishes to share information about him/her with others and his/her control over the time, place, and circumstances to communicate with others. It means his/her right to withdraw or to give information about himself/herself as he/she deems fit. It also means the individual's right to control the dissemination of information about himself/herself; it is his/her own personal possession.

The concept which has seen the dawn of the day due to the emerging trends in technology around the world is termed as the right of an individual to Erasure. This right gives an individual the autonomy to get his/her information available on the internet to be erased, if it is no longer required. The issue around this right came to light when a dispute related to this concept surfaced in 2014 before the European Court of Justice for the first time in the case of *Google Spain SL v. Agencia Española de Protección de Datos*.

Spain SL v. Agencia Española de Protección de Datos

In this case, a man named Costeja González, requested *La Vanguardia* (Newspaper) of Spain to remove his information from the two articles published by the newspaper in 1998. Even after the request, in 2009 it was found that the information was accessible when his name was searched on Google. An Assertion was made that the information available was related to the legal proceedings in which there was no notable claim against him, but his request was denied by the newspaper on the ground that legal action was published pursuant to an order by Spain's Ministry of Labour and Social Affairs.

González approached Google Spain in 2010, with a request that his name should not be an allusion for the Newspaper's publication as he enjoy's such rights under Article 7 & 8 of The Charter of Fundamental Rights of the European Union. The act of demurring by Google in respect to the request, forced González to bring a complaint before Spain's Data Protection Agency against the newspaper, Google Spain, and Google Inc. The complaint against the

newspaper was dismissed by The Data Protection Authority as the information published was legally advertised for a legitimate purpose.

Though, complaint made against Google was upheld, when it was found that Internet search engines are also subject to data protection laws and necessary steps should be taken to protect such personal information.

Further an appeal was made to the National High Court of Spain and it was held

that in order to guarantee the right to privacy and the protection of personal data, operators of search engines can be required to remove personal information published by third party websites. This ruling should be handled with utmost care as such an individual right must be balanced against the larger interest of masses to access personal information of anti-social elements over the web in order to insulate the society against any unfavorable consequence.

Finally it was decided by the European Court of Justice that Google does not have to apply the right to Erasure globally i.e. the links shall be removed by the company from its search result only when the Court deems it fit and makes such a request.

2. The Relevance of Right to Erasure in Indian Scenario

Right to Erasure or right to erasure got momentum from the case of **Spain SL v. Agencia Española de Protección de Datos**. It literally means lawful removal of information available on request by such person subject to the condition that it is no longer necessary. In India, there is no particular statute that clearly provides this right, but Art 27 of Personal Data Protection Bill, 2019 gives this right a recognition in a narrow sense, but not in entirety because right to erasure is not a part of it.

Though there have been several instances where right of a person to Erasure has been accessed by an individual. Karnataka High Court has granted Right to Erasure in sensitive matters involving women in cases of rape, sexual harassment etc. Delhi High Court also ordered Facebook, Google, and Instagram to remove posts, search results, and content containing 'defamatory' content related to sexual harassment allegations against Indian artist Subodh Gupta in the case of **Subodh Gupta v. Herdsceneand & Ors**.

Principle of Right to Erasure does not directly exist in our country but whenever its need is felt individual requests on case-to-case basis, for ensuring such a principle is taken into consideration by the Judiciary.

Recently Orrisa High Court has recognized the concept of right to Erasure in the case of **Subhranshu Rout @ Gugul v. State of Odhisa**, wherein petition was made to direct deletion of the videos and pictures of rape victims from social media platforms in an irreversible

manner. The court said that if the Right to Erasure is not recognized in such matters, any accused will surreptitiously outrage the modesty of the woman and misuse the same on the cyber space without any hindrance.

Potential objections on the implementation of such right may be raised with respect to its constitutionality, as it could be argued that such a right will put restrictions on the freedoms guaranteed under Article 19(1)(a) of the Indian Constitution. Right to Erasure may provide individual right to protect personal information of one person but it will take away to freedom to raise voice of the other person.

So, it is necessary that before implementation of any such evolved jurisprudence

on the right to Erasure on case laws by the judiciary, case to case analysis should be done by employing the principles of some restrictions such as public interest, sovereignty and integrity of the nation before any further action is taken with regard to removal of any such personal information. Such restrictions are required so that an individual does not exercise unlimited power of his right to de-list himself. Therefore, it is necessary that while implementing such rights both aspects should be considered so that appropriate balance is maintained between both the aspects and public interest is given utmost importance.

3. The Right to Privacy agin The Right to Erasure:

The Right to Erasure and The Right to privacy may appear to be the same or may overlap each other but there is a slight difference between them. In right to Erasure an individual requests the search engine to remove the information that is already available, and which he/she believes is of no use. On the other hand, right to privacy restricts the dissemination of personal information.

The best example to understand this concept is what was recently being taken into consideration by the Orrisa High Court where the court ruled that allowing objectionable photos and videos of rape victim to remain on a social media platform is a violation of their right to privacy.

While interpreting Right to Erasure, the fundamental rights of an individuals should not Erasure. Right to know about a particular organization or person is also one right and it should not be denied in the name of right to Erasure or erasure.

There should be certain tests or requirements that should be taken into consideration by the authorities before granting the right to de-list.

3.1 *These tests can be in regard to:*

Information which is private in nature i.e., information related to their bank details, health, sex life, private contact etc.

Any information which was of such a category for which prior consent was taken and it was ensured that it won't be shared with anyone.

- Information which deals with the domain of public interest cannot completely take the advantage of right to Erasure and before implementing it a balance needs to be maintained between public interest and private interest.
- Public Figures do not enjoy the benefits of right to Erasure in the manner as enjoyed by other individuals because being on such a platform, they are answerable to public but this does not mean that their privacy rights are waived off but are restricted to the acts done by them in private which are not affecting public interest.
- Information available under public record such as government information, journalists, artistic or academic materials where names of the individuals concerning public interest are mentioned cannot exercise the right to Erasure.
- Any availability of information which might lead to substantial harm to any person could be entitled to exercise his right to erasure but such harm should not be restricted to just discomfort or embarrassment.

- Time also plays an important role in exercising this right. An authority who is analysing the issue of whether this right should be granted or not they should take into consideration that since how many years this information was available, its relevance in today's time and how easily it is searchable. All these aspects play an important role.

4. Research Methodology

The researcher has conducted a survey on a sample size of 101 people by using a simple random sampling method upon people of different age groups, professions and living at different place to know about the awareness and their views in regard to this right.

The first figure reflects the awareness of the public about this issue and after surveying it can be seen that majority of them were unaware about this issue. This reflects that most of the people don't even think once about their privacy and the right which they possess.

Did you have any prior knowledge on this topic?
101 responses

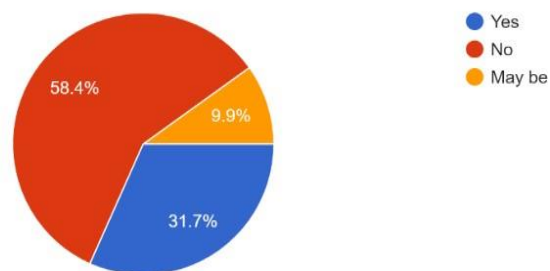
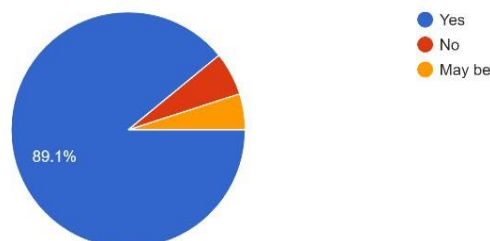


Figure 1

Do you agree with this Concept and wish to remove your personal information available on the internet to be removed if it is no more required and which is infringing your privacy and dignity?
101 responses



But in the second figure researcher has analysed that once the public is aware most of them wants to avail this right and get their information erased which is no more required.

Figure 2

In the third figure researcher has concluded that after realizing the need of right to privacy as well as right to erasure people have felt the need to get a statute enacted in this regard.

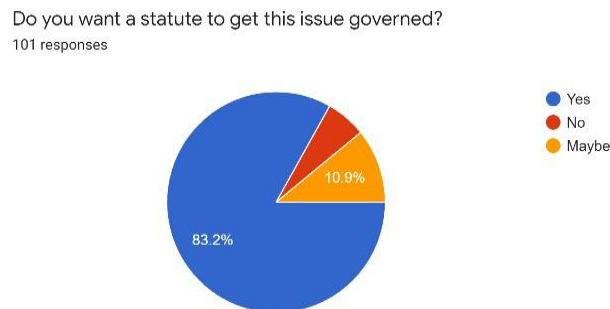


Figure 3

In figure 4 Researcher has tried to know the opinion of the people after making them think that whether any information that is available about them online is against their will or infringing their privacy in any manner. Majority of the people are of the opinion that such information that is available without their permission on such social platforms are infringing their privacy. Best example to understand would be of the people who were accused or convicted of some crime but now they are acquitted and no more comes under that category. But the whole information is available about them which is defaming them in the eyes of the society which is wrong.

Do you believe that your personal information available on public domain is infringing your privacy?
?

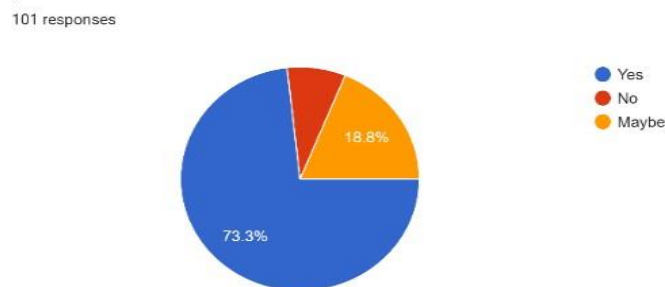


Figure 4

In figure 5 researcher is thinking from the perspective of the criminals and how they could make a use of it for themselves by requesting to remove the information available about them. Because such information helps to track the past deeds of the criminal so while drafting a law such aspects should also be kept in mind about the misuse of right to Erasure. After surveying majority (42.6%) believe that it will provide an escape to the criminals but 35.6% are still dicey about the fact and unable to support it or reject it.

Do you believe that right to be forgotten will provide an easy escape to criminals if their past records are not available on online platforms?

101 responses

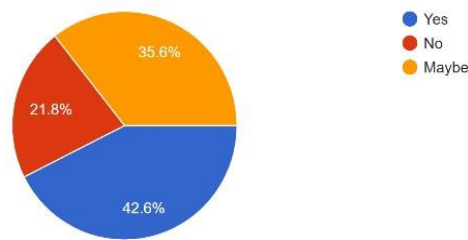


Figure 5

In figure 6 researcher is seeking an opinion that if an opportunity is given to an individual to clear their data from the public platform which is no more required and which was not uploaded by them. This will give individual a chance to clear their past uploads whether that were done by them or by anyone else.

Do you believe that right to be forgotten will give an opportunity to an individual to clear his/her past deeds which they did intentionally/unintentionally?

101 responses

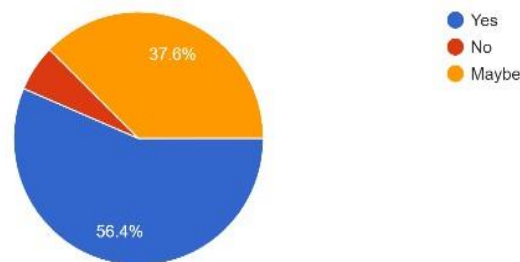


Figure 6

5. Conclusion

Privacy and Right to Erasure goes hand in hand. The researcher here has attempted to analyse the consequences of the digitalized world on the personal life of an individual. Though digitalization is the need of the hour as it has connected the whole world in one thread and ensures availability of all the relevant information required by people. Still the contesting question remains that, whether all the information made available through the medium of digitalization is relevant or not and in what way it is affecting the personal lives of individuals. The researcher has analysed the new emerging concept of right to Erasure. It is the result of the intrusion by the new concepts, application used through the medium of technology. This concept will prevent the use of personal information by the companies for commercial purposes and making such information available to the general public on large scale.

The easiest medium to disseminate such information is by way of Internet or

Online surfing done by maximum population all over the world. The basic aim of providing the information was to ease the work of the public but with the passing of time such information has gets misused and is made available to people at large over the same platform without obtaining the consent of that individual. For example, if we talk about applications such as Facebook, twitter, WhatsApp etc., they have access to such information stored with them.

India is trying to regularize such intrusion by means of sanctions being provided by statutes which are still under the developmental phase but has tried to highlight to issue of Right to Erasure in a piecemeal form under the much-awaited Personal Data Protection Bill, 2019.

This research has taken up the issues regarding privacy and its breach and what measures are required to prevent such breach, also the regulations required for understanding the scope and extent of Right to Erasure by also considering in mind the policies made in other countries.

To know the general view of the public in regard to this right, a survey was done and its result is pretty much clear. Majority of the people who were part of the survey were of the view that it is an essential right and should be given statutory recognition. This article also apprised people about such right, because 58.4% of the people were not aware about right to Erasure. This assessment helped them to realize about their rights and how important it is for them. With this survey researcher concluded that 83.2% supported that Right to Erasure should be legally recognized.

Right to Erasure is transpiring into the general public through courts via case laws concerning different circumstances. These case laws helped in recognizing the need of Right to Erasure/ Erasure and guidelines for enforcing such rights in a statute.

So after analysing the survey and case laws, researcher is of the view that it is high time to recognize Right to Erasure in a statute. Such recognition will provide proper guidelines that will be implemented on case-to-case basis.

Right to Erasure in consonance with Right to Privacy in the current scenario is the most important right because of the development in the technological area. In the present era most of the crimes are done by means of technology so it is important to make stringent laws in regard to these crimes.

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