EDITORIAL: SECOND CHANCES AND DIGITAL ERASURE: DO FORMER CONVICTS HAVE THE RIGHT TO BE "FORGOTTEN" IN INDIA?

SONSIE KHATRI[1] AND TASNEEM FATMA[2]

The Right to be Forgotten gained traction in India's mainstream privacy discourse following the landmark judgement in K.S. Puttaswamy v. Union of India, which recognized it as an aspect of the Right to Privacy under Article 21 of the Indian Constitution. Earlier, the Court of Justice of the European Union had affirmed this right in the Google Spain case, thereby establishing its legitimacy in the EU. In India, the persistent issue with the Right to be Forgotten has been the lack of a developed criteria for its application. Until the introduction of the Digital Personal Data Protection Act, 2023, there was no specific law remotely addressing this right. This legislative vacuum led to several attempts by the judiciary to account for it, albeit unsuccessfully. Reform in criminal cases lags even further behind, as it has been left entirely contingent on developments in the constitutional arena.

TABLE OF CONTENTS

* Cite it as: Khatri & Fatma, Editorial, *Second Chances and Digital Erasure: Do Former Convicts have the Right to be "Forgotten" in India?*, 8(2) COMP. CONST. L. & ADMIN. L. J. vii (2024).

[1] Sonsie Khatri is the Deputy Managing Editor of Comparative Constitutional Law and Administrative Law Journal (ISSN: 2582-9807). The author may be reached at <sonsie.khatri@nlujodhpur.ac.in>.

[2] Tasneem Fatma is a Senior Content Editor in the editorial team of Comparative Constitutional Law and Administrative Law Journal (ISSN: 2582-9807). The author may be reached at <tasneem.fatma@nlujodhpur.ac.in>.

EDITORIAL: SECOND CHANCES AND DIGITAL ERASURE: DO FORMER CONVICTS HAVE THE RIGHT TO BE "FORGOTTEN" IN INDIA?

INTRODUCTION

The Right to be Forgotten (**"RTBF"**), refers to the notion that personal information, which is irrelevant, outdated or inaccurate should not be readily accessible to the public.[3] It is a highly contested legal concept which continues to raise not only moral and political issues, but technical and institutional problems as well.[4]

Currently, the Digital Personal Data Protection Act ("**DPDP**") incorporates the right in a limited sense, by relegating it to Section 12 of the Act.[5] Section 12 includes the right of the '*Data Principal*'[6] to correct, complete, update or crucially, erase personal data which they may have earlier consented to be collected for the purpose of further processing in accordance with any law.[7] However, this right of erasure is limited as it is subject to the condition that the erasure of data will not be possible in cases where the data is necessary for compliance with a specific law.[8]

---

[3] Eli Edwards, *Libraries and the Right to be Forgotten: A Conflict in the Making?*, 2 J. INTELL. FREEDOM & PRIV. 13, (2017).

[4] Kieron O'Hara, Nigel Shadbolt & Wendy Hall, *A pragmatic approach to the right to be forgotten*, 26 GLOBAL COMMISSION ON INTERNET GOVERNANCE (2016).

[5] The Digital Personal Data Protection Act, 2023, The Gazette of India, pt. II sec. 2 (Aug. 11, 2023).

[6] A data principal is primarily considered to be the natural person or individual to whom the data relates i.e., the person whose data is being processed (collected, stored, shared, etc.).

[7] The Digital Personal Data Protection Act, 2023, § 12, The Gazette of India, pt. II sec. 2 (Aug. 11, 2023).

[8] The 2018 and 2019 versions of the bill adopted a more expansive and all-encompassing framework toward data protection. Many rights and obligations have been either diluted or discarded including the right to be forgotten which has been recast to a simpler right to "erasure".

This is the case with the EU's General Data Protection Rules (**"GDPR"**) as well.[9] The concepts of "*right to erasure*" and "*right to be forgotten*" within the GDPR encompass different ideas. The former empowers individuals to limit the illegal use of their personal information, whereas the latter grants individuals the ability to manage how their personal data is used, including the option to revoke their consent.[10]

However, the question remains – What is the current scope of RTBF? Does this concept of control over one's personal data refer to an absolute right to remove personal data, or is it still limited by other factors?

This question becomes especially relevant when distinguishing between data collected under specific laws, such as the DPDP Act, which emphasises on data to be collected with the data principal's consent, and data related to a crime, which may be collected and be made public without the accused's consent. This paper aims to address the application of RTBF in this regard in the criminal justice system in India.

Some scholars argue that RTBF is a misnomer as "information cannot be deliberately forgotten". RTBF, by this line of reasoning, can never be considered as a guarantee for the complete erasure of personal data. Initially, RTBF was envisioned as a broader right, broad enough to include the remedies of erasure, delisting/deindexing, de-ranking, flagging, correction and updating information[11], but now there are concerns as to whether such a right even exists in the first place.[12] While a person may have the right to have certain private information removed from public databases, that cannot be translated into an absolute right to manipulate public records to one's liking i.e., selected removal of information. In this sense, the current conception of the right to be forgotten is distinct from

---

[9] Cecile de Terwangne, *The Right to be Forgotten and Informational Autonomy in a Digital Environment,* in ALESSIA GHEZZI, ÂNGELA GUIMARÃES PEREIRA & LUCIA VESNIĆ-ALUJEVIĆ (eds.), THE ETHICS OF MEMORY IN A DIGITAL AGE 82 (Palgrave Macmillan, 1st ed., 2014).

[10] Vini Singh, *Striking the Right (to be forgotten) Balance: Reconciling Freedom of Speech and Privacy – Dignity – Autonomy*, 8(1) NLUJ L. REV. 1 (2021).

[11] *Id.* at 13.

[12] Christiana Markou, *"The Right to Be Forgotten": Ten Reasons why it should be Forgotten*, in SERGE GUTWIRTH, RONALD LEENES, PAUL DE HERT (eds.), REFORMING EUROPEAN DATA PROTECTION LAW, 211-226 (Springer Nature, 1st ed., 2014).

an absolute right of erasure. A narrower and more realistic approach to the issue is required.

"De-indexing," also known as delinking, involves the removal of Uniform Resource Locators (URLs) from search engine results.[13] De-indexing does not eliminate information; it merely reduces its retrievability. This practice is often associated with the RTBF as it diminishes the accessibility of certain information. While the information remains available online, the connection between a person's name and the relevant information is effectively severed, making it harder to locate via search engines. Other remedies include '*de-ranking*' which only makes a search result less prominent[14], '*flagging*' which marks a search result as unreliable or incorrect as the case may be, and remedies of rectification/correction of incorrect[15] or outdated data.[16]

This distinction between the remedy of de-indexing and an absolute right to erasure is crucial, as it explains why the Indian courts have been inconsistent in their application of RTBF. A complete erasure of data would mean deliberately cutting access to court documents necessary to maintain transparency in the 'open court system' which has now become foundational to our justice system.

In this paper, we delve into the jurisprudence surrounding the application of RTBF in India to specifically address the scope of the right for former convicts. Our analysis focuses on the practical implications of RTBF, including issues like rehabilitation, privacy concerns, and the tension between individual rights and public interest. Additionally, we dissect the current landscape of RTBF in India, identifying legislative gaps and judicial responses. By comparing these findings with international practices, we analyse challenges surrounding the rehabilitation of former convicts and look at other alternate public remedies.

---

[13] *Questions on the right to delisting*, COMMISSION NATIONALE DE L'INFORMATIQUE ET DES LIBERTÉS (Oct. 8, 2021) https://www.cnil.fr/fr/node/84400.
[14] Edward Lee, *The Right to be Forgotten v. Free Speech*, 12 J. L. & POLY. 85, 105 (2015).
[15] EU General Data Protection Regulation (GDPR): Regulation (EU) 2016/679, art. 16.
[16] *Id.*

THE GOOGLE SPAIN CASE & INTERMEDIARY LIABILITY

When information is in the public domain, do data intermediaries like Google have the obligation to take it down if the court orders so? And if yes, does Google even have the power to remove data in such a manner?

The observations in the landmark *Google Spain SL, Google Inc v. Agencia Española de Protección de Datos (AEPD), and Mario Costeja González* [*Google Spain*] judgement[17] on this matter are helpful here.

First, the Court of Justice of the European Union (**"CJEU"**) considered the contention by Google and Google Spain that there is a distinction between search engines and other third parties which may operate as data controllers. It was pointed out that even if the activities of Google may be classified as 'data processing', the operator of a search engine should not be regarded as a 'controller' in respect of that processing since it has no knowledge of that data and does not exercise control over the data.[18] The Court in response, admitted that the activity of search engines can be distinguished from that of the original publisher's website, which must have primary liability in RTBF matters.[19]

Second, it was contended that search engines like Google lack the power to erase information in the public domain. In this regard, the court noted that search engines play an important privacy-related function by collating search results on a single web page.[20] Furthermore, the court held that the processing of personal data by search engines is distinct and "additional" to the actions of website publishers, who upload the data on an internet page.[21] This draws a clear distinction between the function of search engines and other data controllers. However, by using the term "additional(ly)", the Court seems to have emphasised that search engines can exacerbate infringements on fundamental rights. While their role may

[17] Case C-131/12, Google Spain SL, Google Inc v. Agencia Española de Protección de Datos, Mario Costeja González, [2014] Q.B. 1022 (*Google Spain Case*).
[18] *Id.* at 22-24.
[19] *Id.* at 25-28.
[20] *Id.* at 28.
[21] *Id.* at 35.

be distinct from other data controllers, it can have an even greater impact on individual privacy.

As a result, the CJEU presented a solution-based approach to this conundrum. The court followed the approach of "*practical obscurity*" which the US Supreme Court had upheld earlier, in that requests made by individuals to access law enforcement data with respect to another citizen could not be considered as a part of their right to their Freedom of Information (akin to RTI in India).[22] The information would continue to be available to them due to its public nature but only as long as the one making the request is not interested in seeking information with respect to a particular person(s).[23]

The critics of RTBF often rely on this line of argumentation, which is now referred to as the "library argument", where an attempt is made to liken a search engine like Google to a library's catalogue of books.[24] Since the internet now appears to operate like a shared library, the removal of information from the internet is like making a book disappear from the library for eternity. The analogy serves as a potent narrative tool, aimed at evoking a collective and understandable apprehension towards censorship and loss of information.[25]

---

[22] U.S. Dep't of Justice. v. Reporters Comm. for Freedom of the Press, 489 U.S. 749, 780 (1989); *see also* BLACK'S LAW DICTIONARY, 1419 (Thomson West, 11th ed., 2019).

[23] The case held that computerised accessibility of previously hard-to-access information that "would otherwise have surely been forgotten" has threatened to undermine the privacy interest in maintaining the practical obscurity of the information.

[24] *See, e.g.*, Eloise Gratton, *Forget about bringing the 'right to be forgotten' to Canada*, FINANCIAL POST (May 9, 2016), http://business.financialpost.com/fpcomment/forget-about-bringing-the-right-to-be-forgotten-to-canada; David Drummond, *We need to talk about the right to be forgotten*, THE GUARDIAN (Jul. 10, 2014), http://www.theguardian.com/commentisfree/2014/jul/10/right-to-be-forgotten-european-ruling-google-debate; *On being forgotten*, THE ECONOMIST (May 17, 2014), http://www.economist.com/news/ leaders/21602219-right-be-forgotten-sounds-attractive-it-creates-more-problems-it solves-being.

[25] Chris Prince, Micheal Vonn and Lex Gill, *The Aleph Bet: Debating Metaphors for Information, Data Handling and the Right to be Forgotten*, 16 CAN. J.L. & TECH. 171, (2018).

The CJEU's approach to the matter seems like a middle-way approach, which aligns with the idea that while a shared library exists, simply making a book harder to find would not hinder someone's right to access it and there is no true "information loss" since the book will continue to be in its place.

The 'library argument' also has its critics.[26] They suggest that there is suspicion that the advocates of freedom of expression paint a bleaker picture than reality warrants. Their scepticism revolves around two main points. *First*, they argue that search engine results are not akin to a traditional library catalogue; rather, they are highly customised based on factors such as past site visits, search history, and individual browsing habits.[27] Therefore, there is no singular 'default' Google library or universally standardised search system. *Second*, the library analogy implies a centralised repository for all digital information, which is not the case. Instead, digital information is dispersed across numerous regional indices, with indexing and search efforts decentralised across tens of thousands of servers globally.[28]

The metaphor and imagery employed for the act of forgetting information and its subsequent digital recall are highly relevant as they give a clear idea as to the ideological underpinnings of RTBF and its criticism. The library argument has become outdated due to the reasons pointed out above, but it continues to be comfortingly familiar to courts and legislators, and that is precisely why it misleads. On the other hand, RTBF's endorsement as a value or an ethical need for erasure also requires reconsideration as its foundation remains murky.

THE RTBF SPECTRUM: THREE LEVELS OF PROCESSING

---

[26] *Id.* at 176.

[27] *Personalized Search for Everyone*, GOOGLE BLOG (Dec. 4, 2009), https://googleblog.blogspot.ca/2009/12/personalized-search-for-everyone.html; ELI PARISER, THE FILTER BUBBLE: WHAT THE INTERNET IS HIDING FROM YOU (Penguin Books, 1st ed., 2011).

[28] *See* Google Transparency Report, *European privacy requests for search removals* (May, 2016), https://www.google.com/transparencyreport/removals/europeprivacy/; *See also*, Google, "FAQ", https://www.google.com/transparencyreport/removals/europeprivacy/faq/?hl=en.

Essentially, any request for erasure of data can be processed at three levels.[29] The *first level* involves the delisting, or de-indexing, of an individual's name from search results. This means that when someone searches for the person's name, it no longer appears in the displayed results. This approach seems to be effective, as it is expected to reduce issues related to reputation and employability. Consequently, individuals facing these concerns should no longer experience them to the same extent, as a simple search by the average person no longer directly links to their name.

Interestingly, the Argentinian Supreme Court, in a recent decision pointed out issues with de-indexing as well, and how the same could possibly have a *cascading effect* and impact the overall accessibility of information for the common man.[30] This raises questions about delisting being accepted worldwide as a proportional solution to most RTBF requests.

The *second* level is where the person might claim the removal of their name by digital reporters other than the official court websites themselves. These include reporters such as *SCC*, *Manupatra*, *LiveLaw* and *IndianKanoon*. Most of these reporters have been involved in such cases due to their refusal to accept a request for removal.[31] They claim that since the State publishes court documents *via* its websites, it gives reporters an adjacent right to report on these documents for public accessibility.[32] This scenario is more complicated as it brings in the public versus private interest debate since the reporters' defence relies on public accessibility raising questions of public interest before the State is even involved.

---

[29] V Sreedharan, *Transparency, Good Governance and the Right to be Forgotten*, NLSIU BLOG LEGAL LITERACY AND LEGAL AWARENESS (Apr. 5, 2022), https://ceerapub.nls.ac.in/transparency-good-governance-and-the-right-to-be-forgotten/#_ftnref6. The levels of processing are a hypothetical construct solely used for the representation of ideas and don't present a factual statement about RTBF claims.

[30] Case N° 50016/2016, Denegri and Natalia Ruth v Google Inc. (Aug 11, 2020) (Arg.).

[31] R. Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632; Zulfiqar Ahman Khan v. Quintillion Businessman Media Pvt. Ltd & Ors (2019) SCC OnLine Del 8494; Virginia Shylu v. Union of India WP(C) 6687/2017, Ker HC.

[32] Devdutta Mukhopadhyay, *Indian Kanoon defends the right to provide access to court records*, INTERNET FREEDOM FOUNDATION, (Jan. 5, 2021), https://internetfreedom.in/indian-kanoon-kerala-hc-right-to-be-forgotten/.

The *third* level refers to a case where the person is requesting either complete anonymisation or removal of official court documents from the public domain altogether. While complete anonymisation has been granted to victims in the past, specifically in cases of rape,[33] most requests at this level are denied, because they gravely impact public interest by limiting accessibility and hampering the right to information.[34]

REHABILITATION AND INSTITUTIONALISED FORGIVENESS UNDER RTBF

In order to address the scope of the application RTBF in criminal cases in India, it is crucial to understand whether there exists a connection between the rehabilitation of a past convict and their RTBF, with respect to the crime they had committed in the past.

It is argued by some that rehabilitation cannot be associated with being forgotten, as one's actions can be forgiven over time but not wiped from public memory.[35] Attempts at institutionalising forgiveness often fail as the implementation of RTBF usually depends on a case-to-case analysis of facts and circumstances which prevents the underlying value of forgiveness from translating permanently into the justice system.[36] Despite this, it must be acknowledged that the Internet has significantly intensified the social effects of not forgetting, which leaves little to no space for forgiveness, and as a result, for the rehabilitation of the individual.[37]

There is also merit in acknowledging that forgetting in the psychological sense is morally neutral, as opposed to RTBF, which is a morally charged guarantee.[38] While RTBF is not a natural right and has no historical precedent before the age of the internet, the practice of maintaining

[33] Subhranshu Rout v. State of Odisha (2020) SCC OnLine Ori 878.
[34] Dharamraj Bhanushankar Dave v. State of Gujarat (2017) SCC OnLine Guj 2019; Sri Vasunathan v. The Registrar General (2017) SCC OnLine Kar 424.
[35] PAUL RICOEUR, MEMORY, HISTORY, FORGETTING, (University of Chicago Press, 1st ed., 2004).
[36] Kieron O'Hara, Nigel Shadbolt & Wendy Hall, *A pragmatic approach to the right to be forgotten*, 26 GLOBAL COMMISSION ON INTERNET GOVERNANCE 3-4, (2016).
[37] V. MAYER-SCHÖNBERGER, DELETE: THE VIRTUE OF FORGETTING IN THE DIGITAL AGE, (Princeton University Press, 1st ed., 2009).
[38] O'HARA ET AL., s*upra* note 36, at 2.

complete records in a bureaucracy is also far from natural.[39] Initially, records were kept to manage the complexities of increasing data but with the advent of the internet, this permanence in record-keeping can cause irreparable damage to a person's reputation in society long after they have served their punishment or faced public humiliation on the internet. In such cases, the internet essentially dictates when a person's "sentence" ends.

The institutionalisation of forgiveness, specifically for those who have already served their sentence, has gained traction in the past years. Apart from major criminal offences, most countries allow the removal of names or information in favour of those with spent convictions.[40] This helps the reintegration of the individual back into society.

However, the scope for rehabilitation through RTBF is still narrow and the protection for the spent convict or past accused is quite limited. Such requests to be left alone may not be entertained at all depending on the facts and circumstances. There are no fixed criteria yet. There is an immediate need to decouple the intensifying social impact of mass information storage on individuals.

JUDICIARY'S ROLE IN DEFINING THE SCOPE OF RTBF

The lack of an explicit regulatory framework dealing with RTBF makes it crucial to analyse the judicial evolution of the right. While the CJEU acknowledges RTBF as a part of the fundamental right to data protection, India, bases its protection on the lines of dignity, autonomy and honour as outlined in *Puttaswamy*. At the core of this issue lies the tension between two fundamental rights enshrined in the Constitution: the right to dignified rehabilitation and reintegration into society, derived from Article 21 and

---

[39] *See* JAMES B. RULE, PRIVATE LIVES AND PUBLIC SURVEILLANCE: SOCIAL CONTROL IN THE COMPUTER AGE, 300 (Oxford University Press, 1st ed., 1974).

[40] *See* CAL. PENAL CODE (1872), § 1203.4; Tex. CODE CRIM. PROC. ANN. (1965), art. 55.01 – 55.06; X (formerly known as Mary Bell) & Y v. News Group Newspapers Ltd. & Ors., [2003] EWHC 1101 (QB); AUSTRALIAN HUM. RTS. COMM'N, DISCRIMINATION IN EMPLOYMENT ON THE BASIS OF CRIMINAL RECORD, Article C, (2004); Rehabilitation of Offenders Act 1974, c.53 (eng.).

often exercised through RTBF and the public's right to access court documents, stemming from the right to information under Article 19.

The issue of RTBF was first addressed by the Gujarat HC in 2017, in a case wherein the request for removal of content was not allowed and the petitioner had been accused of culpable homicide amounting to murder.[41] The offence was grave and despite the petitioner's contention that the decision was "unreportable", his petition was dismissed.[42] The decision was attributed to a lack of any legitimate right to data protection under Article 21 and further, that publication by third party websites is not a violation of the right to privacy as court judgements are public documents.[43]

In 2017, the Karnataka HC tried to make references to the expansion of RTBF in 'Western Countries'[44], specifically to benefit women in sensitive cases[45], based on the protection of their modesty and reputation but no concrete principle was developed.

In 2017, in Puttaswamy, contrary to popular belief, the Court didn't actually justify the use of the term RTBF. It instead used the phrase '*right to be left alone*' and connected it to the autonomy and dignity of the individual.[46] It's unclear whether the '*right to be left alone*' is similar or identical to RTBF, but by recognizing the role of the GDPR and its exceptions the Court does indirectly acknowledge the importance of the EU's version of RTBF. However, this offers no clarity on the current status of RTBF in India.[47]

In 2019, in contrast, the Delhi HC recognised RTBF as an 'inherent right' under the Right to Privacy under Article 21.[48] The court ruled in favour of the petitioner, who requested the removal of online articles addressing sexual harassment allegations during the #MeToo Campaign. No concrete reasoning was offered as to how a reasonable balance of rights has been maintained or as to why RTBF is applicable in the matter, apart from the

[41] Dharmaraj Bhanushankar Dave v. State of Gujarat (2017) SCC OnLine Guj 2019.
[42] *Id.* ¶ 4.
[43] *Id.* ¶ 7.
[44] Sri Vasunathan v. The Registrar General (2017) SCC OnLine Kar 424.
[45] *Id.* ¶ 9.
[46] Justice K.S. Puttaswamy (Retd.) v. Union of India (Privacy), (2017) 10 SCC 1 ¶ 176.
[47] *Id.* ¶ 69.
[48] Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd (2019) SCC OnLine Del 8494.

recognition that the petitioner's future would be 'tarnished' if these articles continue to exist on the internet.

In 2021, the Delhi High Court reaffirmed the RTBF by ruling in favour of a plaintiff who requested the removal of a judgement related to his case from sources such as Indian Kanoon and Google, citing employment disadvantages.[49] The Court acknowledged the need to balance 'the right to privacy of an individual,' 'the right to information of the general public,' and 'the maintenance of transparency in the judicial system.'[50] However, the decision to grant relief was primarily motivated by the desire to protect the plaintiff's social life and career prospects and to prevent irreparable harm.[51] This ruling indicates a shift towards prioritising individual dignity, though it did not establish concrete principles for future cases.

CONFLICT BETWEEN THE PRINCIPLES OF OPEN COURT VERSUS THE ACCUSED'S RTBF

In the debate surrounding the nature of the third level RTBF requests (those dealing with the removal of public records), the major concern is the conflict between the accused's RTBF and the idea of maintaining an open court system which is deemed integral to the functioning of a democracy. This is precisely why RTBF cannot be exercised against court documents.

In 2021, the Madras HC considered whether a person who has been on trial and later acquitted can exercise RTBF.[52] Specifically, it considered the scope of the application of the right to limit the accessibility to court documents.[53]

In its interim order, the Court for the first time articulated the need to balance "*the right to privacy of the petitioner*" with "*the right to information of the*

[49] Jorawer Singh Mundy v. Union of India, 2021 SCC OnLine Del 2306.
[50] *Id.* ¶ 8.
[51] *Id.* ¶ 11.
[52] Karthick Theodre v. Registrar General, (2021) SCC OnLine Mad 2755.
[53] *Id.* ¶ 17.

public and the maintenance of transparency in judicial records."[54] This marked a pivotal moment, as it was the first instance where the court analysed these conflicting interests extensively, which are central to this debate. The court upheld the petitioner's RTBF and granted interim relief to prevent further "irreparable prejudice" to his social life and career prospects. In its final decision, however, the Court reversed its interim order, recognizing that a broad application of RTBF for accused persons would contradict public policy.

Relying on the Apex Court's ruling in *Dilip Kumar Sharma And Ors. v. State of Madhya Pradesh,* the HC noted that an order of acquittal passed on merits gives the accused a right of '*automatic expungement*' of all records, especially those in public domain.[55] Crucially, the court drew distinctions between India's criminal justice system and a system like the one the US has, where automatic expungement is the norm due to an extensive criminal records system. It admitted that in India, during acquittal the court strikes off the accused's name from the final order to indicate acquittal from all proceedings. While in the US, owing to the rights in the US constitution, the acquitted person has a "*right to clean slate*" and can fill "nil" while filling out the space for criminal records in public documents like job application forms.[56]

However, the HC also emphasised caution in the US approach and noted that simply removing an acquitted person's name from final judgments or orders is insufficient. This is because other publicly available materials from the beginning of the criminal proceedings could still tarnish the person's reputation, further leaving them unable to prove their acquittal due to the redaction. [57] Hence, granting the RTBF in isolation would be in most cases counterproductive, as it wouldn't address the broader issue of reputational damage from other sources. To deal with this, it was finally noted that more comprehensive reform is required.[58] While ruling specifically on the question of the existence of an independent RTBF against court

[54] Karthick Theodre v. Registrar General, (2021) SCC OnLine Mad 2755. (Interim Order).
[55] Karthick Theodre v. Registrar General, (2021) SCC OnLine Mad 2755 ¶ 12.
[56] *Id.* ¶ 10-12.
[57] *Id.* ¶ 11.
[58] *Id.* ¶ 31.

documents, no answer was provided. It considered the finer details to be beyond its powers to adjudicate.

The court's conclusion underscores the delicate balancing act. While recognizing the importance of the right to be forgotten (RTBF) for accused persons, they caution against establishing a broad principle that could inundate the courts with similar cases.[59] This highlights the necessity for carefully crafted safeguards and procedures to ensure that the implementation of RTBF respects both privacy concerns and the public's right to information.

In the meantime, the HC clarified the scope of its own powers. Under Article 226, during the trial, the court can take all kinds of measures to maintain the privacy of the individual by ensuring non-disclosure of identity, especially if there is "substantial and real" risk to the same.[60] Further, it can defer disclosure of identity by issuing "postponement orders", for a fixed period of time. These powers are restricted to the trial itself and cannot be exercised by the court after it's over.[61]

In *R. Rajagopal vs. State of Tamil Nadu*, a judgement extensively discussed in the *Puttaswamy* case, the SC while recognising the right to privacy is implicit in Article 21, as early as 1994, simultaneously held that no right to privacy exists for matters on public record.[62] A version of this argument also presents itself in *IndianKanoon*'s counter affidavit filed before the Kerala HC, cautioning against the creation of RTBF through judicial intervention, as it could undermine access to court documents.[63]

However, the principles enshrined in *Rajagopal* require reconsideration in light of modern technological developments. Back then, legal information wasn't as accessible as it is today. Sources like *IndianKanoon* have advanced legal literacy. Previously, accessing specific records required the technical expertise to navigate court websites. Now, court documents are easily

[59] *Id.* ¶ 9.
[60] *Id.* ¶ 23.
[61] *Id.* ¶ 28.
[62] R. Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632.
[63] MUKHOPADHYAY, *supra* note 32.

searchable, making legal information more accessible to the public.[64] Therefore, while public records might be crucial for judicial transparency, it can no longer be argued that the publication of court documents by reporters in such huge numbers in the public domain does not hamper privacy.

The demand for a comprehensive review as put forth in the 2021 Madras HC judgement, needs to be answered better, with a solution which does not prejudice the rights of the acquitted person and other parties involved in the case.

COMPARATIVE REVIEW OF REMEDIES WITH OTHER JURISDICTIONS

A. THE REMEDY FOR DE-INDEXING

In Argentina, even first-level requests are processed with care. Any decision to cut access to digital information is to be preceded by an examination of the content to determine its legality.[65] A limited liability rule operates for data intermediaries on the principle of "*effective knowledge*". They are not held liable unless they have been notified of the harm caused and have failed to act upon it.[66]

Reliance was placed in the Argentinian decision on the *Report of the Special Rapporteur* to argue that blocking content altogether is an extreme measure and the presumption of protection for protected forms of speech must be rebutted to control its accessibility in any form.[67] For instance, if the content is clearly illegitimate, then private parties can be asked to remove the content immediately and be held liable in a time-bound manner. However, if an individual is simply requesting the removal of information

[64] Robert Richards, *Indian Kanoon: Sushant Sinha on Innovation and Free Law in India*, SLAW (Jun. 1, 2011) https://www.slaw.ca/2011/06/01/indian-kanoon-sushant-sinha-on-innovation-and-free-law-in-india/.

[65] Case 99.613/06, Rodriguez, María Belen v. Google Inc., National Supreme Court of Justice, Oct. 28, 2014 (Arg.); *See* Pablo Palazzi and Marco Rizzo Jura do, *Search engine liability for third party infringement: a keenly awaited ruling*, 10(4), J. INTELL. PROP. L. & PRAC 244 2015.

[66] *Id.* 13.

[67] UN General Assembly, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression*, U.N. Doc. A/HRC/17/27/Add.1, 20.

from the past that they now find embarrassing, such a right cannot be exercised without due process. The legitimacy of such requests is determined through judicial adjudication.

Earlier, de-indexation used to be limited to the removal of URLs from search results linking a person's name to certain information but now it has extended beyond the same.[68]

For instance, in India, in the case of *Jorawer Singh Mundy v Union of India*, the Delhi High Court, in its interim order, directed Google and Google LLC to remove the judgement from their search results.[69] Additionally, the court instructed *IndianKanoon* to restrict access to the judgement through their search engine.[70] Thus, the court attempted to provide relief through a combination of level one and level two processing requests, involving both de-indexing and removal of content by secondary sources that report public records. This approach leads to confusion, as no rationale was provided for this combination of relief, nor was the proportionality of the measures discussed.

This has now become a common trend which raises several concerns with respect to the balancing act between public interest and an individual's right to privacy across most jurisdictions. This balancing act is ideally supposed to follow the "*proportionality review standard*" set out in *Puttaswamy* and has been discussed in multiple other contexts as well. Even, the *European Court of Human Rights* [ECtHR] and the *Inter-American Court of Human Rights* [IACtHR] have helped develop a three-part proportionality test in international human rights law for the protection of freedom of speech.[71]

The common elements across jurisdictions seem to be elements of proximity and proportionality which require that both the right to be

---

[68] *Does Our Past Have a Right to Be Forgotten by the Internet*, *in* SPECIAL COLLECTION OF THE CASE LAW ON FREEDOM OF EXPRESSION 6, 28 (Ramiro Álvarez Ugarte ed., 2022).
[69] Jorawer Singh Mundy v. Union of India, 2021 SCC OnLine Del 2306.
[70] *Id.* ¶ 12.
[71] ECtHR, Fressoz and Roire v. France, HUDOC. App. No. 29183/95 (Jan. 21, 1999) (Fr.); IACtHR, Eduardo Kimel vs. Argentina, ser. C 177 (May 2, 2008) (Arg.); IACtHR, La Colegiación Obligatoria De Periodistas, ser. A 5/85 (Nov. 13, 1985) (Costa Rica).

forgotten and the exceptions to safeguard speech and expression are tailored narrowly to effectively safeguard the underlying rights. However, the application of such a balancing mechanism seems to be absent in the Indian jurisprudence surrounding RTBF.

The application of de-indexing to RTBF requests is widely considered as the most suitable option, both in academic discourse and in practical terms, as it's perceived as the least intrusive measure available. However, since de-indexing does not find place in a clearly defined legislation, it has now transformed into the use of a combination of remedies that do not take into account the public interest being jeopardised at multiple stages. This is solely a result of the uncritical application of the remedy of de-indexing.

The use of the remedy in such a manner marginally impacts the freedom of expression and the freedom of the press. Removal of search results can have a *cascading impact* on journalistic efficiency in presenting the complete picture since the RTBF request removes only a portion of the story from the public domain.[72] Further, a de-indexing request can also lead to unintended liability for a data intermediary[73] and no involvement of the original publisher whose information is at risk of deletion.[74]

In India, courts have ordered intermediaries to remove content where the consent of the individual has been retracted at a later point in time by means of an RTBF request. However majority of such cases have involved content blatantly violating the privacy of a victim of sexual violence[75], and

---

[72] Andrea Gonsalves & Justim Safayeni, *Privacy Commissioner's Draft Report on a "Right to be de-indexed" is Cause for Concern*, CENT. FOR FREE EXPRESSION, (Mar. 26, 2018), https://cfe.torontomu.ca/blog/2018/03/privacy-commissioners-draft-report-right-be-de-indexed-cause-concern.

[73] Peter Fleischer, *The Right to Be Forgotten, or How to Edit Your History, Privacy . . .* ? (Jan. 29, 2012), BLOGSPOT, http://peterfleischer.blogspot.com/2012/01/right-to-be-forgotten-or-how-to-edit.html; Vinod Sreeharsha, *Google and Yahoo Win Appeal in Argentine Case*, N.Y. TIMES, (Aug. 20, 2010), https://www.nytimes.com/2010/08/20/technology/internet/20google.html.

[74] Biancardi v. Italy, 77419/16,; *See* Jacob van de Kerkhof, *Biancardi v. Italy: A Broader Right to Be Forgotten,* STRASBOURG OBSERVERS, https://strasbourgobservers.com/2022/01/07/biancardi-v-italy-a-broader-right-to-be-forgotten/ for other cases with similar rulings.

[75] Subhranshu Rout v. State of Odisha (2020) SCC OnLine Ori 878; X v. Y, (2021) SCC OnLine Del 4193. In X v. Y, while recognising RTBF and the plaintiff's entitlement "to protection from invasion of her privacy by strangers and anonymous callers" (¶ 22) the

as a result, the courts have been quick to affirm the need for legislative action as well. Despite this, there is a clear pattern of hesitancy in India in recognizing a right due to the lack of statutory backing.

B. THE PRIVACY VERSUS FREE EXPRESSION DEBATE

While considering the issue of public interest, while evaluating RTBF requests, the Supreme Court of Spain created a standard for itself. Where the contents of a publication continue to be relevant for the general public, they cannot be removed unilaterally if the interest in them is recurrent and the information is not obsolete.

#MeToo Movement

In *D. Segundo v. Google*, the court declined to order the removal of past complaints against a realtor.[76] The allegations were deemed 'protected speech' and considered relevant for future consumers assessing the quality of his services. In similar cases, other considerations have included the legality of the alleged practices[77], the time elapsed since the allegations were made[78], and the acquittal status.

If one were to extend this logic to the common plea requesting the removal of past sexual harassment allegations, the illegality of such actions and the prevailing public interest in the possible involvement of a person in such an activity in the past would most definitely mean that publications of such allegations should not be taken down. However, this is not the case. In multiple cases across numerous jurisdictions, allegations of sexual assault or harassment, are taken down due to the possibility of 'tarnishing' one's societal reputation.[79] Then how is public interest to be determined here? If despite acquittal, professional complaints and fraudulent activities continue

Court again chose to pass only a simple order of "removal/pull down" of the videos (¶ 32), based on the facts of the case.

[76] Case STS 2873/2020, Don Segundo v. Google LLC, (Sep. 17, 2020) (Spain).

[77] Case STS 2918/2020, Don Dionisio v. Google, (Sep. 17 2020) (Spain).

[78] Case 1 BvR 276/17, The Case of Mrs. B, (Nov. 6, 2019) (Ger.).

[79] Subodh Gupta v. Herdsceneand (2019) SCC OnLine Del 11209.

to demand public attention, then on what principle are allegations of sexual misconduct to be differentiated?

In India, the Delhi HC on the subject matter has ordered the removal of 'defamatory articles', and ordered not only for de-indexing of search results but also a permanent injunction for taking down the original publications.[80] This is another case where the remedy of de-indexation was expanded to the point where any other publisher was preemptively disallowed from publishing articles on the subject.

In contrast, in Chile, the Court of Appeal refused to acknowledge RTBF and plea for de-indexation of search results for allegations of sexual assault and power abuse raised by multiple actresses[81]. The court refused to recognize the liability of search engines for content created independently. It was also noted that no challenges were made as to the truth of the information.

Spent Convictions and Past Acquittals

With respect to spent convictions or acquittals which took place a long time back, the standard again seems to be "*continuing public interest*". The Supreme Court of Italy received a plea against the publication of an article about a man who had murdered his wife and served his time a long time ago.[82] The court held that if no "*existing*" public interest continues in the matter, then the right to privacy of the individual prevails. Further, if the identity of the person no longer has a role in the maintenance of such interest, then names should be mandatorily anonymized.

On the other hand, the Constitutional Court of Spain ruled anonymization as a "disproportionate remedy" but supported de-indexation as a sufficient measure.[83] The matter herein involved complaints made by locals who had

---

[80] Zulfiqar Ahman Khan v. Quintillion Business Media Pvt. Ltd. (2019) SCC OnLine Del 8494.

[81] Abreu v. Google, No. 135.543-2020 (Braz. 2020).

[82] S.G. v. Unione Sarda S.p.A., No. 19681/2019 (It. 2023); *See* Maria Romana Allegri, *The Right to Be Forgotten in the Digital Age,* in FRANCESCA COMUNELLO ET AL. (EDS.), WHAT PEOPLE LEAVE BEHIND 248 (Springer, 1st ed., 2022).

[83] A&B v. Ediciones El País, 2096-2016, (2018).; Hugh Tomlinson, *Case Law, Spain: A and B v Ediciones El Pais, Newspaper archive to be hidden from internet searches but no "re-writing of history",* INFORRM'S BLOG, (Nov., 19, 2015), https://inforrm.org/2015/11/19/case-law-

been convicted of drug-related offences years back to challenge the re-publishing of news articles regarding the same. The Supreme Court of Chile also gave significant weight to time as a factor which weakens the right to freedom of expression in its conflict with the right to an individual's social reintegration and rehabilitation in society.[84] The Supreme Court of Italy also stressed the importance of "private and sensitive personal information" to be not made available to the public indefinitely without good cause.[85]

In China's first RTBF case, the court held that information in the past that continued to be distinctly relevant to a person's current occupation was not allowed to be de-indexed.[86] But, false and un-updated information was easily struck down if a person had been acquitted of the crime in the past. For instance, in the case of a series of old news pieces about a Turkish citizen's drug conviction, subsequently included in an online archive were considered outdated and no longer a correct representation of the person's current image.[87] In this case, since these articles served no public interest, they were de-indexed on order by the Turkish Constitutional Court.

In Belgium, when a newspaper proceeded to create an online news archive accessible in the public domain, the practice of archiving according to court amounted to a new publication of those news stories, and aggregate data in this format could in their opinion cause disproportionate harm to

spain-a-and-b-v-ediciones-el-pais-newspaper-archive-to-be-hidden-from-internet-searches-but-no-re-writing-of-history-hugh-tomlinson-qc/.

[84] Case 22243-2015, Graziani v. El Mercurio, (Jan. 21, 2016), COLUM. UNIV. GLOB. FREEDOM OF EXPRESSION (2023) (Chile).

[85] Case 6919/2018, Venditti v. Rai, Colum., (6919/2018) COLUM. UNIV. GLOB. FREEDOM OF EXPRESSION (2023), https://globalfreedomofexpression.columbia.edu/cases/venditti-v-rai/ (Italy).

[86] Case 09558, Ren Jiayu v. Beijing Baidu Netcom Technology Co., Ltd., COLUM. UNIV. GLOB. FREEDOM OF EXPRESSION (2023), https://globalfreedomofexpression.columbia.edu/cases/ren-jiayu-v-baidu/ (China).

[87] Case 7559, P.M.F. c. RCS Mediagroup, C. Cass. (27 Mar. 2020) (Spain).

someone's reputation.[88] As a result, anonymization was considered a necessary remedy in such a case.[89]

The Supreme Court of Japan, in a matter concerning the removal of online articles about a man who had past charges related to payment for child prostitution, denied RTBF, emphasising that the public interest in such matters does not diminish over time.[90] This decision underscores the court's stance that certain information, especially concerning serious criminal conduct, remains of enduring public interest regardless of the passage of time.

Hence, there are crimes for which the concern of rehabilitation cannot be adequately addressed through the remedy of RTBF. The judgements reveal that RTBF cannot be simplistically equated with a past convict or accused's right to be rehabilitated. As soon as the public's interest is involved, the right to social reintegration seems to have been exercised only where the circumstances justify RTBF as an appropriate and proportional remedy. It cannot triumph over the public's right to know in such situations.

OTHER REMEDIES FOCUSED ON REHABILITATION

Rehabilitation for past convicts across the world has also been facilitated by strategically reducing access to information about their convictions once the sentence has been served.

For instance, the UK Rehabilitation of Offenders Act, 1974, provides a framework that allows individuals who have not reoffended and for whom a specified period of time has elapsed since their conviction, to present a clean record when applying for jobs or during civil proceedings.[91] The approach here is aimed at facilitating their reintegration into society by

---

[88] Hurbain v. Belgium, App. No. 57292/16, Eur. Ct. H.R. (2021). Hugh Tomlinson & Aidan Wills, *Case Law, Strasbourg: Hurbain v. Belgium, Order to Anonymise Newspaper Archive Did Not Violate Article 10*, INFORMM, (Jul. 7, 2021), https://inforrm.org/2021/07/07/case-law-strasbourg-hurbain-v-belgium-order-to-anonymise-newspaper-archive-did-not-violate-article-10-hugh-tomlinson-qc-and-aidan-wills/.

[89] Christopher Docksey, *Journalism on Trial and the Right to Be Forgotten*, VERFASSUNGSBLOG, (Mar. 9, 2022), https://verfassungsblog.de/journalism-rtbf/.

[90] *See* 2016 (*Kyo*), Minshu Vol. 71, No.1, (Jan. 31, 2017) (Jap.).

[91] Rehabilitation of Offenders Act 1974, c.53 (UK).

legally permitting them to withhold information about past convictions in certain contexts.

Certain countries have developed criteria to balance the privacy interests of the past convicts and the general public's freedom of expression and right to know. In Germany, the interests of the offender typically prevail when a sufficient amount of time has passed, the offender is due to be released from prison, and they have not generated new news coverage themselves.[92] Other remedies include anonymisation of names once a sentence is served[93] and removal of selective elements that may hinder a fair trial.[94]

The UK Act also creates a distinction between major and minor offences.[95] Disclosure of convictions of major offences (punishment of 4 years or more) is seen as a justifiable invasion of an individual's privacy for reasons of public safety. This is considered the most suitable criterion for distinguishing between crimes currently across most jurisdictions. Another criterion that may determine the degree to which one is required to expose one's past record is also dependent primarily on one's occupation or job profile.[96]

In the EU, judgements in criminal cases are not made available to the public. An individual needs to show a "legitimate interest" in the matter to access it. For instance, in Spain, the judgement is only served to the parties if it's a matter of public interest.[97] Further, higher courts can bring these to light after anonymizing personal information via the intervention of the *Centre of Judicial Documentation (CENDOJ)* which is responsible for

[92] Siry, L., Schmitz, S., '*A Right to Be Forgotten? - How Recent Developments in Germany May Affect the Internet Publishers in the US*', 3(1) EUR. J. L. AND TECH.., 2012.
[93] Hurbain v. Belgium, App. No. 57292/16, Eur. Ct. H.R. (2021), COLUM. UNIV. GLOB. FREEDOM OF EXPRESSION (2023); P.H. v. O.G., COLUM. UNIV. GLOB. FREEDOM OF EXPRESSION (2023).
[94] LAW COMM'N, Consultation Paper No. 209, Contempt of Court (2012). (UK).
[95] Rehabilitation of Offenders Act 1974, c.53 (UK).
[96] 2016 (*Kyo*), Minshu Vol. 71, No.1, (Jan. 31, 2017) (Jap.).
[97] James B. Jacobs and Elena Larrauri, *European Criminal Records & Ex-Offender Employment*, (New York University School of Law, Public Law & legal Theory, Working Paper No. 15-41, 2015).

anonymizing the personal data of all the parties involved.[98] Data relating to criminal convictions in the EU is not recorded in the form of individual criminal records traceable to one's name in accordance with the *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*.[99] As a result, no commercial entity in the EU is able to sell personalised criminal conviction databases.[100]

While some see the combination of such remedies as forming a legislative foundation for the exercise of RTBF, others are of the opinion that such protections are too weak to be characterised as such.

CONCLUSION

The purpose of this paper is to inquire whether the Right to be Forgotten can be guaranteed to former convicts in India. The inquiry began by clarifying the terminology surrounding RTBF, which is partially confusing due to distinct versions of the right – such as the "right to be forgotten", the "right to erasure" and the "right to be left alone"– each representing different values.

This confusion can be largely attributed to difficulties in reaching a consensus on the social function of 'forgetting'. For years, the operation of human memory has helped balance the ability to learn from one's past while simultaneously moving on from it. However, the advent of the internet and bureaucratic record-keeping has complicated the management of personal information. It has led to severe power imbalances between data subjects, information service providers and the state which create conflicts of interest that are only capable of being resolved through the creation of clear legal principles. In the discussion surrounding RTBF, this involves the main balancing act between individual privacy and freedom of expression, both having their own justifications and limitations.

---

[98] *Id.* at 6.

[99] Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, (adopted on Jan. 28, 1981, entered into force Oct. 1, 1985), ETS No. 108, 20 I.L.M. 317 (1981) available at http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm.

[100] James B. Jacobs and Elena Larrauri, *Are criminal convictions a public matter? The USA and Spain.* 14(1) PUNISHMENT AND SOCIETY, 3, 2012.

The question of rehabilitation forms a crucial intersection of this research since it dictates the application of this balancing act. The research indicates that, in the case of former convictions, the emergence of specific principles is inevitable. Each of these principles contributes to answering questions regarding the public's legitimate and illegitimate right to access information. Currently, due to the lack of proper jurisprudence and statutory recognition, there is a dearth of these principles leading to ambiguity about what the right entails.

While different jurisdictions may reach different conclusions as to how to balance these two rights, any attempt at justifying any version of RTBF requires serious judicial review. This has not been achieved yet. India has attempted to follow the European courts in order to protect the values of dignity and autonomy under Article 21. However, the landmark *Google Spain* case exposes an attempt by the courts to simultaneously pursue a distinct bureaucratic version of the right, specifically in connection with data privacy. This uncertainty surrounding the objective of RTBF is undesirable, especially for leading any reform rooted in restorative justice. As a result, there is no guaranteed RTBF for former convicts in India. Every case up till now has dealt with the framing of competing issues and underlying principles, and the individual is open to applying for such a right but must eventually be confronted by the imminent possibility of its rejection.

IN THIS ISSUE

The fields of constitutional law, and administrative law and their comparative aspects demand academic rigour from both the authors and the editors. Together, we are in a position to deliver something meaningful to the academic discourse. As the Editors-in-Chief of the Comparative Constitutional Law and Administrative Law Journal (**"CALJ"**) under the Centre for Comparative Constitutional Law and Administrative Law (**"CCAL"**), it gives us immense pleasure to introduce Issue II of Volume VIII of our journal to the readers.

In ***Role of Contextualism in Constitutional Interpretation: The Expanding Circles from AK Gopalan to in re Article 370,*** Ishwara Bhat

delves into assessing the value of context, in all its aspects – factual, linguistic, textual, historical, structural, political and social – while interpreting the Constitution. While it supplements and gathers support from other rules of interpretation, it cannot supplant them. It is realistic and comprehensive. While the context varies from case to case, enduring constitutional values guide the pursuit of justice. Despite criticisms for lacking an independent theory, the ability to integrate socio-legal values has bolstered its strength and credibility. However, during crises and emergencies, contextualism is prone to yielding to authoritarianism unless grounded in human rights values. Constitutionalism should counteract the types of extra-constitutional authoritarianism witnessed during the emergency period.

Seema Kazi in ***Muslim Women in India: History, Minority and Difference*** explores the issue of minority differences within contemporary nation-states, focusing on Indian Muslims, particularly Muslim women. By employing a cross-comparative historical perspective, it draws parallels between minority exclusion in Europe and post-colonial India, underscoring the limitations of legal equality as adequate protection for minorities. The lasting impact of Partition on the marginalisation of Indian Muslims in modern India is highlighted, along with the neglect of Muslim women's histories of struggle and achievement during the colonial era. The article concludes by suggesting that India's diverse and varied history could potentially serve as the foundation for a new national vision, where constitutional equality coexists with the right to maintain historically inherited differences.

Esha Aggarwal in ***Analysis of India's Internet Censorship Measures in light of American Constitutionalism***, scrutinises the lacunae in the new IT Rules. It highlights the significance of free speech within the American constitutional framework and how foreign judgments and doctrines can fill gaps in Indian judicial thinking. The paper focuses on India's new Intermediary Guidelines and their implications for free speech, emphasising the importance of judicial scrutiny. It underscores the need to protect public debate forums, particularly the internet, which is widely accessible and used daily while addressing issues like fake news, slander, and privacy invasion. The author analyses the IT Rules, advocating for their revision based on democratic principles. The article explores the potential

impact of ambiguous rules and increased self-regulation and censorship by intermediaries on freedom of speech.

In ***Delimiting the Doctrine: An Argument against Basic Structure Review of Ordinary Laws,*** Govind Asawa and Parthiv Joshi address the crisis the basic structure is in due to the challenges it faces against its application to ordinary legislations. This paper provides a thorough analysis of all significant developments related to the scope and extent of the doctrine, aiming to harmonise them systematically. It has been noted that courts have sometimes readily extended the doctrine when assessing the validity of ordinary legislation, interpreting the basic structure as a result of a multi-provisional reading of the Constitution. This approach fails to recognize the 'identity of the doctrine' and 'method of identifying basic features' as separate concepts. Invoking the doctrine is not necessary for testing ordinary legislation based on 'principles' derived from a multi-provisional interpretation of the Constitution. The integrity of the doctrine's identity is rooted in its application to constitutional amendments alone, and this must be maintained.

Harshit Pathak and Vasujit Dubey, in ***Upholding Dignity: A Case for the Right of Civil Union in India***, discuss the parameters laid down by the apex court while giving its verdict on marriage equality. The analysis explores the jurisprudence of dignity as derived from Article 21 of the Indian Constitution, arguing that the right to civil union is a logical extension of this constitutional principle. They examine the transformative ethos of the Indian Constitution, asserting that non-heterosexual couples are entitled to civil rights. Following this, they address the majority's argument regarding the separation of powers. The article thoroughly reviews transnational jurisprudence on civil union rights and highlights its relevance. Additionally, it discusses the potential for establishing a parallel legal framework to support the LGBTQIA+ community. In conclusion, the authors argue that the right to civil union is inherent, stemming from the constitutional principles enshrined in Article 21 of the Indian Constitution.

Finally, Muskan Suhag in ***Revisiting the Basic Structure Doctrine and Constitutional Morality: The Implications of Granting Parliamentary Privilege to Bribery,*** talks about the recent *Sita Soren v. Union of India*, in light of parliamentary privileges and its relationship with the basic structure doctrine and constitutional morality. It examines the relationship of these privileges with the basic structure doctrine and constitutional morality, analysing how the inclusion of bribery affects principles like the rule of law, democracy, free and fair elections, justice, and equality. It proceeds to review how other jurisdictions, including England, Australia, and the USA, have excluded corrupt practices from the scope of parliamentary privileges to consider the feasibility of adopting a similar approach in India. Finally, the paper concludes by asserting that granting immunity to bribery would violate the basic structure doctrine and constitutional morality, and therefore, should not be allowed.

CCAL ACTIVITIES

Over the last five months, CCAL has undertaken several activities aimed at fostering interest and development in the fields of constitutional law and administrative law. The endeavour of the Centre to encourage discourse on the subject matter of constitutional and administrative law is furthered by the bi-annual publication of CALJ, guest lecture events, *Writ[e] & Talk* podcast and the regular publication of articles on topics of contemporary relevance on our blog "*Pith and Substance: The CCAL Blog*".

With the help of the *Writ[e] & Talk* podcast, the Centre aims to bring clarity and build discussion when it comes to writing on Constitutional Law and Administrative Law. This initiative is an attempt to increase dialogue, discussion and engagement with legal writing.

In pursuance of the same, this semester, we had the pleasure of hosting Prof. Rowena Robinson, in the podcast, to discuss her article *'Private Acts' and Structural Inequality: Law and Housing Discrimination*. Prof. Robinson talked about an examination of structural housing discrimination against Muslims in urban areas, employing a sociological lens. She argued that housing segregation not only contributed to discrimination, targeted violence, economic inequality, and social exclusion but is also a product of these factors. Furthermore, she delves into the concept of

'Demosprudence' and emphasises the significance of public activism in fostering improved legislation and curtailing social discrimination.

Second, we hosted Mr. Yash Sinha, who provided insight into his research paper, "*Constitutional Ecdysis: How and Why the Indian Constitution May Test Its Original Provisions*" published in *NUJS Law Review*. He is currently a judicial law clerk and research associate at the Supreme Court of India. The paper explores the dynamic nature of constitutional provisions and the evolution of the basic structure doctrine in the Indian Constitution, tracing through prominent judgements. The author makes the case for the extension of the Basic Structure doctrine in checking the validity of Ordinary Laws and further discusses new developments through the NJAC case and separation of powers.

The last guest during this academic semester was Mr. Devansh Shrivastava who, in a conversation with Ms. Sinchan Chatterjee, gave an insight into his research paper, *Socio-spatial Consequences of Disturbed Areas Act 1991 on Urbanizing Spaces in Gujarat*.

In the episode, Mr. Shrivastava guided us to explore the impact of Gujarat's Disturbed Areas Act 1991 on ghettoisation in Ahmedabad city against the background of mass violence and the dynamics of spatial segregation in cities of Gujarat around residential and commercial property disputes. The author discusses the methodology of his research, discusses the case laws used in the research and suggests policy changes for urban governance to tackle religious and ethnic segregation by the community.

Our podcast is available on Spotify, Google Podcasts and YouTube. Transcripts of the episodes and links to relevant reading material can be found on our blog, *Pith & Substance: The CCAL Blog*.

The centre also had the pleasure of hosting Dr. Prashant Narang who gave a lecture on the "*Rhythms Under the Rule of Law: The Symphony of Regulating Live Performances*". In this lecture, Dr. Narang navigated the legal landscape of Bengaluru, focusing on the intriguing dynamics between musicians, venue regulations, and the broader implications for urban cultural life. He

elucidated how, despite musicians not requiring a licence to perform, the regulatory environment for venues shapes where and how live music can be experienced in the city. The session delved into the complexities of legal regulations that indirectly influence live performances in Bengaluru, shedding light on the challenges bars and restaurants face in offering live music.

The centre aims to encourage dialogue and make academia accessible, by simplifying ideas and constitutional theory, for students and people from a non-legal background to understand the same.

ACKNOWLEDGMENT

The editorial board of CALJ ("**Board**") worked on the issue over the last five months with utmost dedication and determination. The process was a learning experience for us and provided us with the opportunity to bond with the entire team.

The publication of this issue would not have been possible without the guidance of our Patron, Hon'ble Vice-Chancellor of the National Law University, Jodhpur, Prof. (Dr.) Harpreet Kaur and our Internal Advisor Prof. (Dr.) IP Massey. At this juncture, we would also take the opportunity to thank our Chief Editor – Ms. Sayantani Bagchi & Managing Editor – Ms. Rudra Chandran for their constant support, mentorship and engagement with every initiative we undertake. The Registrar of National Law University, Jodhpur has also ensured smooth functioning at every stage, and we are thankful for it.

We would also like to thank every member of the Board for working on the issue and ensuring that the standards of our journal improve constantly. Members of the Board — Sinchan Chatterjee, Sourabh Manhar, Sonsie Khatri, Krishangee Parikh, Anjali Sunil, Bharati Meena, Tasneem Fatma, Aarushi Gupta, Dhruv Singhal, Kovida Bhardwaj, Mohak Dua, Mudit Mangalam Pandey, Palash Singhal, Rishi Dev, Aadisha Dhaliwal, Aashirya Malik, Amita Kaka, Anand Shankar, Gurmehar Singh Bedi, Manishka Baweja, Mayank Sinha, Prabhav Chaturvedi, Suhana Gandhi — have been assets to our team.

EDITORIAL: SECOND CHANCES AND DIGITAL ERASURE: DO FORMER CONVICTS HAVE THE RIGHT TO BE "FORGOTTEN" IN INDIA?

We would like to express our gratitude to Mr. Gyan Bissa and the University's IT department for maintaining our website and providing us with sufficient resources. The Board also recognises the vital part performed in processing each application and ensuring the efficiency of the process by the University's Students Section.

On behalf of the Board, we must also thank our authors for taking the time to contribute to this issue. The topics covered in this issue are of contemporary relevance to Indian Constitutional Law as well as comparative constitutional law. We are grateful to the writers for their persistence and cooperation throughout the editing process, which made the timely and smooth release of this issue possible.

The Board hopes that readers will find this issue to be a useful resource and that it will encourage informed discussion on the topics of administrative law and constitutional law. Should our readers have any queries, suggestions or feedback for us, write to us at:

editorcalq[at]gmail[dot]com.

Falguni Sharma and Himanshi Yadav

Editors-in-Chief