Right to be Forgotten

Mains: *GS II – Polity*

Why in News?

Recently, The Delhi High Court, in its recent ruling, has laid down the principles governing the right to be forgotten.

What is the 'Right to be Forgotten' (RTBF)?

- **The Right to be Forgotten (RTBF)** – It is the right of an individual to request that certain personal information about them be removed, erased, or de-indexed from public access when its continued availability is no longer necessary, relevant, or justified.
- **Purpose** – It is intended to protect:
  - **Privacy and dignity** of individuals.
  - **Reputation**, especially after acquittal or completion of legal proceedings.
- The ability to move on from past mistakes without permanent digital stigma.
- **Exception** – RTBF does not amount to a complete right to erase history.
- It usually involves balancing privacy against the public's right to know.

How has the idea of the Right to be Forgotten evolved in Indian law?

- **Puttaswamy Judgment (2017) –** In Justice K.S. Puttaswamy (Retd.) v. Union of India, the Supreme Court declared **privacy as a Fundamental Right under Article 21**.
- The Court observed that informational privacy includes an individual's ability to control personal data, and some judges acknowledged that this may include aspects of a right to be forgotten.
- **High Court Decisions –** Several High Courts including those of Delhi, Karnataka, Kerala and Orissa, have entertained RTBF claims in cases involving, Acquittals, Matrimonial disputes, Sexual offences and Personal data published online.
- Their decisions have generally required balancing, Privacy, Freedom of speech, Open justice and Public interest.
- **Digital Personal Data Protection Act, 2023 –** India's Digital Personal Data Protection Act, 2023 (DPDP Act) does not expressly create a "Right to be Forgotten."
- Instead, it grants Right to correction, Right to updating and Right to erasure of personal data held by data fiduciaries when the purpose of processing ends or consent is withdrawn.

What did the Delhi High Court decide?

- The Delhi High Court recently emphasized that, the Right to be Forgotten is *not an absolute right.*
- Every request must be examined case by case.
- Courts must balance, Individual privacy, freedom of speech (Article 19(1) (a)), public interest, open justice and judicial transparency.
- The Court clarified that, judicial records ordinarily remain part of the public record.
- However, in appropriate cases, search engine de-indexing or masking of personal identifiers may be ordered instead of deleting the judicial record itself.
- Thus, the Court favoured a balanced approach rather than complete erasure.

How does the Right to be Forgotten interact with constitutional values?

- **Article 21 –** Right to life and privacy support, privacy, dignity, reputation and personal autonomy.
- **Article 19(1)(a) –** Freedom of speech and expression protects, freedom of the press, public access to information, academic research, and judicial transparency
- **Open Justice Principle –** Courts function publicly to ensure, Accountability, Transparency, Public confidence in the judiciary.
- Removing judgments entirely may undermine these objectives.
- Hence, RTBF requires balancing, individual dignity, public interest, freedom of expression and judicial transparency.

What are the practical challenges?

- **Lack of clear legal framework –** No comprehensive statutory RTBF mechanism currently exists.
- **Internet replication –** Information spreads across multiple websites, archives and social media platforms, making complete erasure difficult.
- **Jurisdictional issues –** Foreign websites may not comply with Indian orders.
- **Technology challenges –** Search engines, AI systems, Archived databases, Cached webpages may continue storing or reproducing information even after removal.
- **Inconsistent judicial decisions –** Different High Courts have adopted varying standards, creating uncertainty.

What is the relationship between the Right to be Forgotten and the DPDP Act?

- The DPDP Act and RTBF overlap but are not identical.

Right to be Forgotten	DPDP Act, 2023
Concerned with limiting public access to information	Concerned with regulating processing of personal data
May involve de-indexing search results	Allows correction and erasure of personal data held by data fiduciaries
Developed mainly through constitutional jurisprudence	Statutory right under legislation

Requires balancing with free speech	Focuses on lawful processing, consent and purpose limitation

- Thus, the DPDP Act partially advances the objectives of RTBF but does not fully recognise it as an independent legal right.

Who should decide requests for erasure or de-indexing?

- **Scholars' suggestion** – Most legal scholars favour a structured, multi-layered approach rather than leaving decisions solely to private companies.
- **Balanced mechanism** – It could involve, Data fiduciaries deciding routine deletion requests under the DPDP Act.
- Search engines implementing de-indexing orders where appropriate.
- Courts or an independent adjudicatory authority deciding complex cases involving, freedom of speech, judicial records, public interest and historical archives.
- The Data Protection Board of India may play a role in enforcing obligations under the DPDP Act, though it is not currently empowered to decide all RTBF disputes.
- This approach helps ensure that decisions are guided by constitutional principles rather than solely by private platforms.
- Strengthen coordination between courts, the Data Protection Board, and digital platforms to ensure consistent and constitutionally balanced outcomes.

Reference

The Hindu| Right to be Forgotten

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