



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN



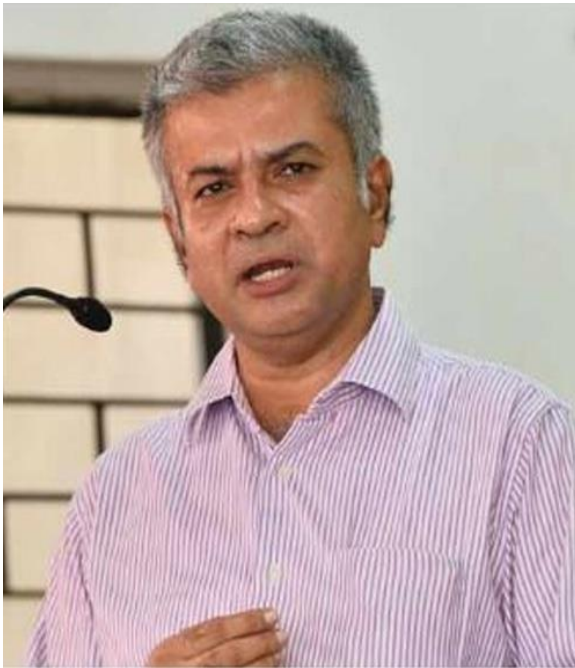
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

W H I T E B L A C K
L E G A L

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



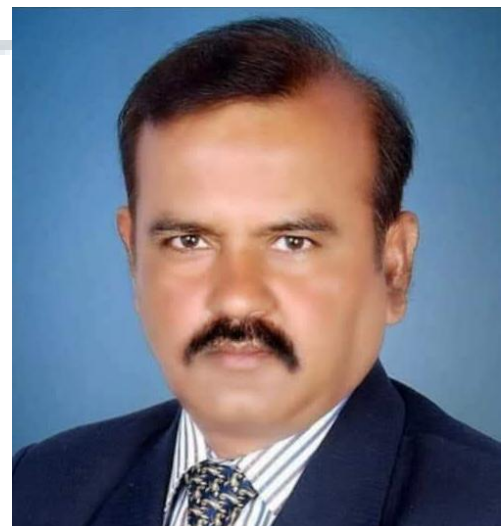
Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.

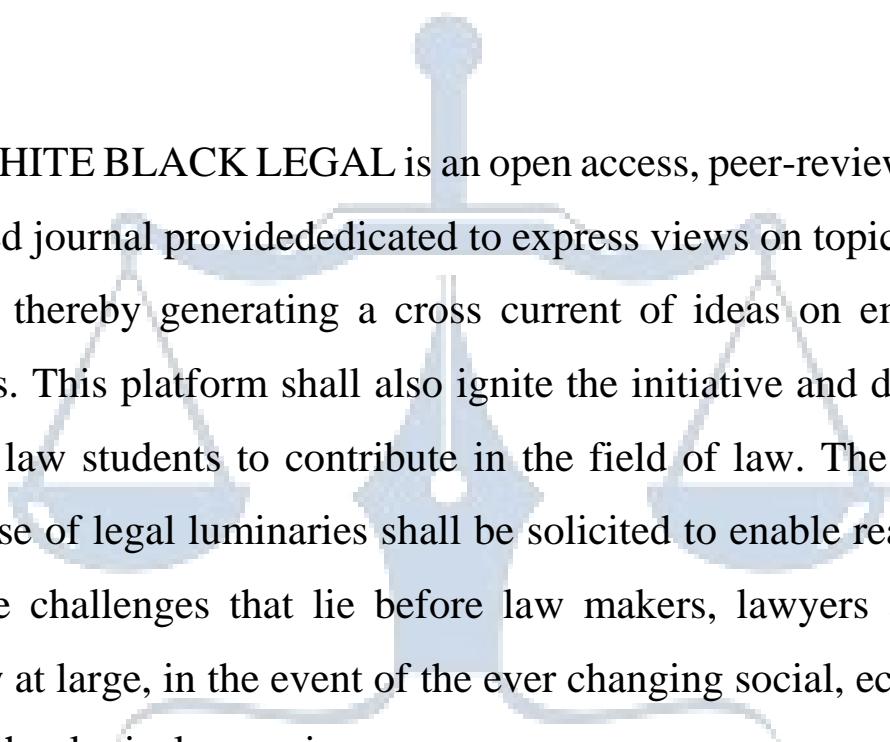


Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

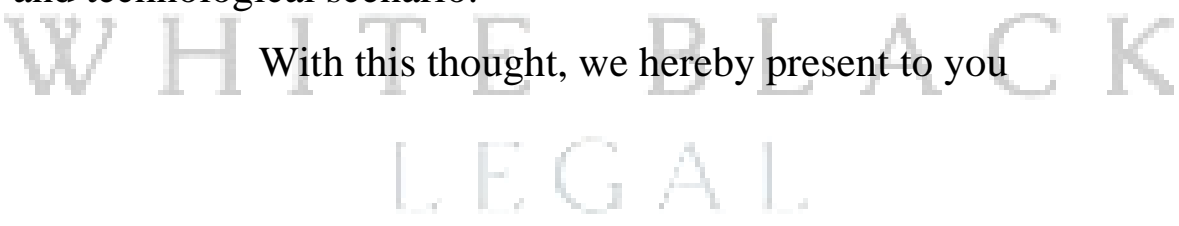
Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



RIGHT TO BE FORGOTTEN IN THE DIGITAL AGE: A LEGAL ANALYSIS

AUTHORED BY - MRS.S.MANO

Assistant Professor Of Law

Government Law College, Chengalpattu, Tamil Nadu

ABSTRACT:

Rapid and advanced digitalization increases the vulnerability of virtual world web users. Each and every action of the internet users are watched and there is no room for privacy rights in the digital world. Data theft is very common, even phone conversation related targeted advertising shocking the users as an advanced eavesdropping and in virtual world tapping is not the work of intelligence agencies of a government but it can be done by any data managers and service providers and another remarkable thing is that owner's consent is inconsiderate. European Union's General Data Protection Regulation (GDPR), Article 17 is about the Right to erasure or right to be forgotten as the essential right of data subject to obtain from the controller. Apart from this, the State of California in U.S has enacted DELETE Act, which allows the individuals to delete their details from service providers. In India, the landmark judgement delivered in Justice. K. Puttaswamy case, it has been ensured that the right to erase their personal information if no longer is relevant. Indian Digital Personal Data Protection Act, 2023 and Information technology Rules, 2021 are talking about the right to erasure but in legal application it needs sound attention. So, in order to have leverage over one's own personal information and to mitigate digital damage it is essential for an enhanced legal framework to govern this right to delete. India as a most populated and rapidly developing digital country with majority of public who are unaware about the consequences of data looting but we cannot say this unawareness will persist for long time. This paper focuses on the need of delete law in India by analysing legal provisions of different countries towards right to be forgotten.

KEY WORDS:

- 1. Data protection*
- 2. Personal Information*
- 3. Privacy Rights*

4. *Right to Erasure*
5. *Service Providers*

INTRODUCTION:

Right to be forgotten or erasure refers to the ability of individuals to limit, de-link, delete or correct the disclosure of personal information on the internet that is misleading, embarrassing, irrelevant or anachronistic.¹ The Western Countries have taken many measures to protect the data privacy and these countries researches are twenty to thirty years far ahead of our country. But in India, Privacy rights are ensured through authoritative precedents of Highest Court and not ensured by any law. Privacy right was taken as a significant matter when the AADHAAR Act was challenged in *Justice K.S.Puttaswamy (Retd) Vs Union Of India*² and the Right to Privacy is ensured as a Legal Right in India. The Privacy right includes data privacy which was rudimentary in India at that time except Section 43A of Information Technology Act, which deals with the pecuniary liability of body corporate in case for breach of security procedures while handling with personal data or information. The Sensitive Personal Data (SPD) Rules were issued under this Section. Nevertheless, to ensure Data Privacy there was no separate legal framework until the enactment of “The Digital Personal Data Protection Act, 2023”. Besides, this law is silent on the “Right to be forgotten”. This paper focusses on the importance Right to Erasure or right to be forgotten and global legal aspects of this Right is also analysed.

RIGHT TO ERASURE UNDER GDPR:

Right to erasure is discussed under Article 17³ of Chapter 3 of the European Union’s General Data Protection Regulation’s (GDPR) which elaborates the data subject’s right to erasure of personal data under the following six circumstances when the data which is no longer necessary for the purpose which is collected, if the data subject withdraws consent, if there is no legitimate grounds for processing the particular data, if the same data is processed unlawfully, in compliance with a legal obligation and the data is collected relating with the information society services. Under GDPR around 175 Recitals were given to add additional information to the text of the regulations, in that the Recital no. 65 is elaborating the Right of Rectification and Erasure and also allows the retention of the data if it is legally obligated, in

¹ https://www.researchgate.net/publication/315805912_The_right_to_be_forgotten/citation/download

Michael J.Kelly and David Satola, The Right to be forgotten, The University of Illinois Law Review

² W.P. No. 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

³ The Data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies;

the public interest, public health, research, statistical purposes or in the exercise of legal claims.

RIGHT TO RECTIFICATION AND ERASURE IN U.K:

The United Kingdom is far ahead than our country in enacting Data Protection Law. The Data Protection Act of UK was enacted four decades ago in the year of 1984. Section 24 of the Act is taking about the “Rectification and Erasure”. According to this Section if the data Subject gives the application to the court regarding the inaccuracy of the data by the data user the court can order to rectify or erasure and also compensation can be given for the suffered damage due to that disclosure. This Act was replaced by the Data Protection Act, 1998. In 2018, U.K adopted GDPR.

DELETE LAW OF U.S.A:

The State of California enacted the Delete Act, which is giving the consumers right to control over their personal data. It was enacted in addition to the California Consumer Privacy Act, (CCPA) and the California Privacy Rights Act (CPR). The delete law allows the consumers to demand their records including digital footprint which are collected for the purposes of targeting, profiling etc., from the data brokers. The special feature of this law is formation of “**Centralized Deletion Platform**” which allows consumers to give single deletion request and that will be apply to all registered brokers and the consumers need not to contact each brokers separately. This Act **widen the definition of the Data Brokers** by including the all the advertisers, resellers and Data Aggregators who are directly connected or not connected with the data subject. Thirdly **within 45 days of the request the data should be deleted** and additionally it mandates the Data Brokers not to use the deleted data in further for any purpose in any form. The Deletion Act ensures the **enhanced Transparency** in data collections.

Public Records, maintaining Accounts-like Internal Operations, in order to comply legal procedure and information collected for detecting fraud and security purposes are exempted from the application of this Law. Not only California residents this Law is applicable to all individuals who is present in the State may or may not be the resident of the State. Minors under the age of 16 are additionally given the right to **request for immediate deletion** of the datum. Datum like information revealing Identity, Commercial, demographic and derived can be deleted.

INDIAN DATA PROTECTION LAW:

In India there was no measure was taken to enact Data Protection Law until the constitution of Nine Member Committee under the Chairmanship of Justice B.N. SriKrishna by the Ministry

of Electronics and Information Technology. The Committee submitted its report ⁴in the name of “*A Free and Fair Digital Economy, Protecting Privacy and Empowering Indians*”. Based on the recommendation of this Committee “The Digital Personal Data Protection Act, 2023” was enacted with the aim to recognise the personal right to protect their data and as well as to regulate the process of using such data for lawful purpose. Totally this Act contains 44 Sections and a Schedule. Chapter 5 of the SriKrishna Committee recommendations on Right to be forgotten is analysed.

Another one speciality about this Law is the term used to define a person is “**She and its derivatives**”. Clause y of Section 2 delineates that “*“She” in relation to an individual includes the reference to such individual irrespective of gender.*”⁵ First time in Indian Legislative History the feminine gender and its derivatives are used in a law to address a person is an initiative towards women empowerment in legal language. Legal usage of Feminine Gender Specific terms in the place of traditional masculine gender specific terms against the recent voices of using gender neutral terms implies the protective discrimination to empower women by providing equity and justice.

Right to Erasure: Is a Right or a Request?

Under this Act, Section 12 is talking about the Right to correction and erasure of personal data.⁶ In that Sub Section 3 of Section 12 precises the right to erasure and it can be made as a request by the Data Principal to the Data Fiduciary to erase her personal data, then the Fiduciary shall erase the data unless the retention is required under any law for any specified purpose.

“This flows from the observation of the Srikrishna Committee that permanent deletion of personal data from storage should not be a part of the right to be forgotten. The Bill, therefore, can be said to be silent on the right of a data principal to be totally forgotten or erased. A complete absence of a right to erasure of the collected data by the data fiduciary might appear contradictory to the principles of control and transparency provided to the data principal

⁴ https://www.meity.gov.in/writereaddata/files/Data_Protection_Committee_Report.pdf

⁵ Section 2 (y) of the Digital Personal Data Protection Act, 2023

⁶ Section 12 (1) A Data Principal shall have the right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent, including consent as referred to in clause (a) of Section 7, in accordance with any requirement or procedure under any law for the time being in force, (2) A Data Fiduciary shall, upon receiving a request for correction, completion or updating from a Data Principal, (a) correct the inaccurate or misleading personal data;

(b) complete the incomplete personal data; and

(c) update the personal data.

(3) A Data Principal shall make a request in such manner as may be prescribed to the Data Fiduciary for erasure of her personal data, and upon receipt of such a request, the Data Fiduciary shall erase her personal data unless the retention of the same is necessary for the specified purpose or for compliance with any law for the time being in force.

which has been the basis of the Bill”⁷

Under Chapter 5: Data Principals Right of the Krishna Committee Report it was stated that Disclosure of Personal Information as Unwarranted Invasion of Privacy

In the case of *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Ors.*⁸ The Court held that the direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8 (1) (g) of the Right to Information Act and which was held by the Court to encompass, the right to live with dignity, reputation and privacy. Moreover, the case highlighted the conflicting interests of right to information and right to privacy.⁹

Duty of Service Provider while Intercepting Telephone Conversations:

In the *Amar Singh Vs Union of India*¹⁰ The Court gave liberty to the petitioner to seek appropriated legal remedy against the telecom service provider for unauthorised interception, and also directed the Central Government to frame guidelines regarding interception of phone conversation. While undertaking a public duty, and involving such a right, an organisation is duty bound to be responsible for its acts.¹¹

Right to be forgotten:

Article 8 (2) of the Charter Of Fundamental Rights of the European Union (2000) mandates:

“Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.”

Google Spain SL, Google Inc. v. Agencia Espanola de Protection de Datos (AEPD), Mario Costeja Gonzalez,¹²

One Spanish national requested Google and a Spanish Newspaper’s website to remove two links in the internet which is connected with an auction notice after his bankruptcy but they denied to remove the links. So, he complained before the Spanish data protection authority. “It was held that the data subject may, in the light of his fundamental right under Articles 7 and 8 of the Charter, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a

⁷ Apurv Sardeshmukh, Data Protection Law and Regulation, 47, Thomson Reuters, First Edition 2019

⁸ (2012) 13 SCC 61.

⁹ Saurabh Bindal, Evolution of Privacy- From Turbulence to Triumph, 119, OakBridge Publishing Pvt Ltd, 2022

¹⁰ (2011) 7 SCC 69

¹¹ Saurabh Bindal, Evolution of Privacy- From Turbulence to Triumph, 98-99, OakBridge Publishing Pvt Ltd, 2022

¹² Case C-131/12 decided on May 3, 2014

rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name"¹³

RIGHT TO BE FORGOTTEN OR ERASURE OR DEREFERENCING:

In the case of *Google Vs CNIL (Commission Nationale de l'informatique et des libertes)* .¹⁴ The CNIL (Commission nationale de l' informatique et des libertes) or National Commission on Informatics and Liberty is a French Regulatory Authority with powers to adjudicate on matters relating to data Privacy. But the notice served by CNIL was refused to comply by Google. Then the Commission imposed penalty on Google.

It was held that if the data subject requests to de-list any data pertaining to the data subject, then it should be removed from all the search engines like Google UK, Google India, Google TDL (Top Level Domain). It was decided as where a search engine operator grants a request for de-referencing then it mandates that operator is required to carry out that de-referencing on all versions of its search engine.

CONCLUSION:

It is a high time the request to erase data should be changed as a matter of right to erase the data. Like other countries a Centralised forum should be created to deal with the data deletion request and increased transparency should be maintained in collection and handling of the data. The advanced technologies frequently intervening with the privacy rights. So, it is important to protect privacy rights of the data subjects by ensuring the safe handling of personal data and right to remove the unwanted and unwarranted datum from the public domain.

¹³ Udayan Mukerji et.al, Jurisprudence of Privacy, 50-57, OakBridge Publishing Pvt Ltd, 2021

¹⁴ Udayan Mukerji et.al, Jurisprudence of Privacy, 51, OakBridge Publishing Pvt Ltd, 2021