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FREEDOM OF THE PRESS IN THE SHADOW OF PRIVACY: THE RIGHT TO BE FORGOTTEN IN INDIA, EU, AND USA

Jyothi Sharma[1]

I. ABSTRACT

"The Internet never forgets" — a characteristic that has evolved into a pressing legal problem when past information continues to shape reputations and public memory. This article offers a comparative doctrinal analysis of the so-called Right to Be Forgotten (RTBF) and its tensions with press freedom across three legal traditions: the European Union, India, and the United States. Drawing on leading judicial decisions, statutory texts (notably the GDPR and India's DPDP Act, 2023), and regulatory practice, the paper examines how each system defines erasure, scopes public-interest exceptions, places obligations on intermediaries, and handles temporal reach and cross-border enforcement. The EU model provides a robust delisting remedy codified in the GDPR, coupled with journalistic and public-interest exceptions applied through balancing tests. India's post-Puttaswamy jurisprudence recognizes privacy as constitutionally protected and the DPDP Act introduces limited erasure, but no settled RTBF doctrine; Indian courts are developing case-based remedies focused on anonymization and proportionality. The United States, guided by the First Amendment, resists a European-style RTBF and confines redress to narrow torts and sectoral statutes. The paper contributes to the literature by proposing a practicable hybrid model: a narrowly scoped statutory erasure right for private individuals, explicit public-interest carve-outs for journalism and archives, robust process safeguards (notice, independent review, proportional remedies), and limited temporal rules to preserve historical integrity. These recommendations aim to harmonize privacy and press freedom while minimizing risks of political or commercial abuse.

[1] LL.M (Pursuing), Lovely Professional University, Email: jyothisharma1329@gmail.com

II. KEYWORDS

Right to be Forgotten, Privacy, Freedom of the Press, GDPR, Puttaswamy, First Amendment.

III. INTRODUCTION

The "Right to Be Forgotten" (RTBF) allows individuals to have outdated, irrelevant or harmful personal information erased or de-indexed from the Internet. Enshrined in EU law by Google Spain (CJEU 2014) and GDPR Article 17, RTBF is a potent privacy tool. However, it can directly conflict with press freedom and the public's right to know. Courts and lawmakers globally wrestle with this tension. In the EU, RTBF was vigorously adopted with statutory delisting remedies (subject to narrow journalistic exceptions)[2]. In India, privacy was declared a fundamental right (K.S. Puttaswamy 2017), but no settled statutory RTBF exists; a new data law (DPDP Act 2023) includes a limited erasure right but omits an explicit "be forgotten" label. Indian courts have begun balancing privacy and free speech on a case-by-case basis[3]. In the United States, the First Amendment dominates: American courts flatly reject any general RTBF. For example, the Ninth Circuit in Garcia v. Google[4] held that a European-style "right to be forgotten… is not recognized in the United States" and the Second Circuit in Martin v. Hearst[5] refused to expunge an expunged arrest from the press, noting "the law… cannot undo historical facts". This comparative review draws on recent judicial decisions, statutes, and scholarships to map how each system balances RTBF against a free and robust press.

A. Research Objectives

1. To map the doctrinal contours of RTBF in the EU, India, and the USA.

[2] "The Right to Be Forgotten: Google Spain as a Benchmark for Free Speech versus Privacy? | Chicago Journal of International Law,"*available at*: https://cjil.uchicago.edu/print-archive/right-be-forgotten-google-spain-benchmark-free-speech-versus-privacy (last visited August 27, 2025).
[3] Anjani Agarwal and Aman Singh, "The right to be forgotten under the Digital Personal Data Protection Act, 2023: A missed opportunity in India's data privacy regime", (2025) 11 International Journal of Law 57.
[4] Garcia v. Google Inc., 766 F.3d 929 (9th Cir. 2014)
[5] Martin v. Hearst Corp., 777 F.3d 546 (2d Cir. 2015).

2. To analyze how courts and regulators balance RTBF claims against press freedom and the public's right to know.
3. To propose a harmonized, practicable framework that preserves both privacy and a robust press.

B. Research Questions

1. What legal bases and remedies exist for RTBF in the EU, India, and the USA?
2. How do courts weigh public interest and journalistic freedom against individual dignity and privacy?
3. What procedural and substantive safeguards can reduce abuse while preserving historical records and media freedom?

C. Research Methodology

This research uses a comparative doctrinal methodology. It examines primary sources (judgments, statutory texts, supervisory authority decisions) and secondary literature (scholarship and commentary). The study analyses leading cases (e.g. Google Spain, Google LLC v CNIL, Puttaswamy, Garcia v. Google, Martin v. Hearst) and relevant statutory frameworks (GDPR; DPDP Act, 2023), identifying patterns, tensions, and practical consequences for intermediaries and the press.

D. Literature Review

Literature on RTBF clusters around three themes: (a) doctrinal interpretation and human-rights tensions (privacy v. freedom of expression); (b) technical and intermediary responsibilities (search-engine delisting, geo-blocking, archival integrity); and (c) policy and comparative prescriptions (sunset clauses, oversight bodies, and procedural safeguards). Key commentators have debated whether Europe's regulatory model exports well to common-law jurisdictions, and whether a purely statutory erasure right risks historical distortion or political misuse. This paper builds on that literature by

offering a policy-oriented hybrid proposal tailored to India's constitutional context while drawing lessons from EU jurisprudence and American free-speech protections.

E. Research & Analysis

1. European Union Framework Analysis

The EU leads in RTBF protection. The CJEU's Google Spain decision (2014) interpreted the Data Protection Directive to grant individuals a limited RTBF via search-engine de-indexing. This was codified in the GDPR (effective 2018). GDPR Article 17 provides a broad right to erasure (the "right to be forgotten"): for example, a person can have controllers erase data if it is no longer needed, consent is withdrawn, processing is unlawful, or legal obligations mandate deletion.[6] Notably, Recital 65 and Article 17(3) carve out important exceptions for journalism and public-interest records: the erasure right does not apply where processing is necessary for exercising freedom of expression and information, archiving in the public interest, or compliance with legal obligations.[7] In practice, however, GDPR's text prioritizes privacy control; one commentator notes that the "text makes clear that protection of personal privacy outranks freedom of expression," shifting emphasis to the individual's control over personal data.

EU courts have refined RTBF limits. In Google LLC v. CNIL[8], the Court held that EU law does not require global de-indexing of search results – each Member State may order global removal "where appropriate," but it is not automatic. The CJEU also balanced RTBF against free speech in cases like GC v. CNIL[9], which dealt with deleting a person's past criminal conviction from a search result. The Court held that privacy must be weighed against public information rights by considering factors such as the seriousness

[6] "The Right to Be Forgotten: Google Spain as a Benchmark for Free Speech versus Privacy? | Chicago Journal of International Law,"*available at*: https://cjil.uchicago.edu/print-archive/right-be-forgotten-google-spain-benchmark-free-speech-versus-privacy (last visited August 27, 2025).
[7] David Erdos, "Special, Personal and Broad Expression: Exploring Freedom of Expression Norms under the General Data Protection Regulation," 40 *Yearbook of European Law* 398–430 (2022).
[8] Google LLC v Commission nationale de l'informatique et des libertés (CNIL) Case C-507/17 [2019] ECLI:EU:C:2019:772.
[9] GC and Others v Commission nationale de l'informatique et des libertés (CNIL) Case C-136/17 [2019] ECLI:EU:C:2019:773 (CJEU).

of the offense, the person's public role, and the public interest at the time of the request. Similarly, in TU, RE v. Google[10], the Court extended RTBF to image searches (thumbnails) and emphasized that if information is demonstrably inaccurate, the requester has a presumptive right to deletion.

European human-rights courts have also grappled with media archives. For instance, in Hurbain v. Belgium[11], the ECtHR upheld a Belgian court's order requiring a newspaper to **anonymize** a digital archive article about a deadly accident. The majority found that altering the archived copy (rather than deleting the entire article) did not violate the paper's rights. But Judge Darian Pavli dissented vehemently, warning that "digital press archives must be complete and historically accurate," and argued that delisting search results (rather than altering archives) is a more proportionate remedy. Pavli's dissent echoes press concerns that RTBF orders could distort the historical record. As one scholar observes, however, many EU national courts favor search-engine delisting and other targeted measures over wholesale censorship of news content.

In sum, the EU model features a robust statutory RTBF right for data subjects, tempered by explicit journalistic and public-interest exceptions. Supervisory authorities (DPAs) and courts apply a balancing test: privacy rights are strong, but lawful news and historical records may stay public if significant. The GDPR's system has generated extensive delisting requests (millions from Google alone) and raised concerns about press suppression, but it also includes codified safeguards for freedom of expression.

2. Indian Legal Development Analysis

India recognizes privacy as a constitutionally protected right K.S. Puttaswamy v. Union of India[12]. The Supreme Court in Puttaswamy explicitly found that citizens have the right to control their personal data, laying a foundation for RTBF analogues. However, India currently lacks a standalone RTBF statute. The recent Digital Personal Data Protection

[10] TU, RE v Google LLC Case C-460/20 [2022] ECLI:EU:C:2022:1009 (CJEU).
[11] Hurbain v Belgium App no 57292/16 (ECtHR, 22 June 2021).
[12] AIR 2017

(DPDP) Act, 2023 provides a right of correction and erasure (Section 12) requiring data fiduciaries to comply with deletion requests under certain conditions. Critically, the Act does not label a general "right to be forgotten," and enforcement mechanisms (a quasi-judicial Board, penalties) remain nascent[13]. In practice, RTBF-like relief has been pursued through courts under Article 21 (life/liberty) by invoking privacy and dignity.

Some Indian courts have begun to recognize RTBF principles in specific cases. For example, Karnataka High Court in Sri Vasunathan v. Registrar General[14] allowed the anonymization of a daughter's name from online judgments, emphasizing privacy and reputation in sensitive matters. In Jorawar Singh Mundy v. Union of India[15], a U.S. national sought removal of an acquittal judgment from an online database; the court directed the site to anonymize the record, observing that even after acquittal, a person's dignity may warrant some erasure. These cases called RTBF "unofficially" and applied it cautiously (e.g. by name suppression rather than full article deletion). Notably, in Dharmaraj B. Dave v. State of Gujarat[16], a petitioner acquitted of murder asked the court to delete news reports; the court denied relief in 2018, noting that no legal RTBF framework existed then. Thus, Indian judges are incrementally balancing private dignity against public records, but the scope of RTBF in India is still evolving.

Constitutional freedom of speech/press (Art. 19(1)(a)) intersects with these privacy claims. Unlike some countries, India's free-speech clause does not explicitly exempt privacy as a "reasonable restriction." Commentators note this omission and caution that RTBF demands (especially for criminal or court records) could conflict with the public interest in open justice and journalism. One analysis warns that erasing information on acquittals or convictions "may impact legal studies, skew public memory, and impair media responsibility". Implementing RTBF in India will thus require balancing privacy

[13] Anjani Agarwal and Aman Singh, "The right to be forgotten under the Digital Personal Data Protection Act, 2023: A missed opportunity in India's data privacy regime", (2025) 11 International Journal of Law 57.
[14] AIR 2017
[15] AIR 2019
[16] AIR 2018

against the "public's right to knowledge".[17] As India's data law and rules take effect, this balance will likely be struck on a case-by-case basis, and public-interest criteria remain under-defined.

3. United States Constitutional Analysis

In the United States, there is no general right to be forgotten in law. The First Amendment's strong free-speech and press protections make any broad erasure right highly unlikely. U.S. courts have repeatedly held that privacy and reputation do not override the public's right to truthful information once published. In Garcia v. Google[18], an actress whose name was in the title of an inflammatory film clip sued to have it removed; the Court flatly stated that "such a 'right to be forgotten,' although recently affirmed by the [CJEU], is not recognized in the United States"[19]. Likewise, in Martin v. Hearst Corp.[20], a convicted-but-expunged individual sued to delete old newspaper coverage of her arrest; the court noted that even if charges are nolled by law, the factual news report remains true and "cannot undo historical facts" by erasing a search result[21]. These decisions reflect a broader principle: American law generally views de-indexing as anathema to a free press. As CJIL commentators note, U.S. courts "have made it clear" that the EU-style RTBF "right… is not acknowledged under First Amendment law"[22].

The U.S. instead relies on narrow, sectoral laws. For instance, some states allow minors to petition for deletion of youthful digital records, and the Fair Credit Reporting Act lets consumers correct data, but there is no sweeping erasure power over the news media or search engines. Online platforms governed by Section 230 are immune from most liability

[17] Krzysztof Kornel Garstka and David Erdos, "Hiding in Plain Sight? The 'Right to Be Forgotten' and Search Engines in the Context of International Data Protection Frameworks" (2017) SSRN Journal https://www.ssrn.com/abstract=3043870
[18] 2d Cir. 2022
[19] W Gregory Voss, "The CCPA and the GDPR Are Not the Same: Why You Should Understand Both" (2021) SSRN https://papers.ssrn.com/abstract=3769825
[20] 2d Cir. 2022
[21] *Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos and Mario Costeja González*, Case C-131/12 [2014] ECR I-0000.
[22] Google Transparency Report, "Requests to Delist Content under European Privacy Law" https://transparencyreport.google.com/eu-privacy/overview?hl=en_GB

for hosting content, so only the original publisher (e.g. a newspaper) could potentially be forced to alter archives – and even that raises First Amendment issues. In practice, private companies or courts in the U.S. will remove online content only in rare circumstances (e.g. non-news sites complying with court orders on defamation or privacy torts).

Because the U.S. has no codified RTBF, press freedom concerns play out differently. Privacy torts (libel, intrusion, false light) regulate some speech, but they apply only if content is false or highly offensive. True, law-abiding journalism, even about distant past crimes or embarrassing personal history, is almost never forcibly removed once published. For example, U.S. defamation law (requiring falsity, actual malice for public figures) protects truthful reporting of fact. The Martin court explicitly stressed that expungement statutes "cannot… render once-true facts false" or erase them from history[23].

In sum, the United States takes the opposite approach of the EU. Judicial precedent suggests any broad RTBF would "be dead on arrival" in America[24]. The **freedom of the press** is viewed as paramount: while data privacy is valued (as in Carpenter v. United States for phone data), it does not furnish a right to purge public records or search results. U.S. media (print, broadcast, and online) operate without RTBF constraints; controversies over old news stories are resolved through libel suits or editorial decisions, not legal erasure orders.

IV. COMPARATIVE TENSIONS AND SHARED CHALLENGES

Across these jurisdictions, several common issues arise. **Public interest:** What counts as "public interest" or newsworthy can be undefined. In the EU, Member States set their own journalistic exemptions under GDPR Article 85, and courts weigh factors like the

[23] *Google LLC v. CNIL*, Case C-507/17, Judgment of the Court of Justice of the European Union, 24 September 2019, EUR-Lex CELEX No. 62017CJ0507.
[24] Reuters, "Italy to Pass 'Right to Be Forgotten' Law for Cancer Survivors" (13 June 2023) Reuters https://www.reuters.com/world/europe/italy-pass-right-be-forgotten-law-cancer-survivors-pm-2023-06-13/

subject's public role and the gravity of information[25]. In India, "public interest" is mentioned in Article 19(2) but not specifically tied to privacy, leaving ambiguity whether a news report about a political figure or crime should stay online. In the U.S., public interest is inherent in First Amendment values, so the presumption strongly favors access. Commentators warn that the vagueness of "public interest" invites inconsistent outcomes and potential abuse (e.g. powerful figures demanding deletion of embarrassing but truthful history).

A. Intermediary Obligations:

Only the EU explicitly imposes duties on search engines to delist links under RTBF requests. In India and the U.S., no comparable framework holds intermediaries liable for personal data removal – Indian law does not yet regulate search engines on RTBF, and U.S. Section 230 shields platforms from content mandates. Thus, if an Indian court orders removal of a link (as in Mundy), it typically applies to the database or website (like Indian Kanoon) rather than global Google indexes. Cross-border enforcement becomes contentious: an EU country could order Google to de-index globally "where appropriate"[26], but India or the U.S. have no mechanism to compel removal of data located elsewhere. In practice, intermediaries may voluntarily geo-filter content, but global eradication is technically difficult.

B. Temporal Scope:

Another concern is how far back RTBF extends. The GDPR has no fixed "statute of limitations" for data erasure, so theoretically a 20-year-old news story might still be delisted if privacy outweighs current public interest. In India and the U.S., there is similarly no bright-line cutoff. This raises worries that even settled history could be clouded: if every citizen could remove all references to past misdeeds (even resolved

[25] Newsroom, "The Reason Why Europe's 'Right To Be Forgotten' Hasn't Made It To The United States" *Modern Diplomacy* (10 March 2023) https://moderndiplomacy.eu/2023/03/10/the-reason-why-europes-rightto-be-forgotten-hasnt-made-it-to-the-united-states/

[26] *E.R. v. Sirco-Enquête et protection*, 2012 QCCAI 407, paras 29–30; *N.L. v. Fédération des caisses Desjardins du Québec*, 2014 QCCAI 168, paras 64–66; *X v. Anapharm Inc.*, no. 06 08 16

crimes), the historical record would become patchy. Some countries (like Italy) have experimented with "sunset" rules (e.g. older convictions removed after the sentence), but these are exceptional. Policymakers caution that RTBF must not be a blanket rewriting of history, and courts often inquire whether the event remains newsworthy.[27]

C. Press and Political Abuse:

A final shared tension is the risk that RTBF could be weaponized. A free press can be stifled if politicians or victims of scrutiny demand deletion of unfavorable but lawful coverage. For instance, critics in both Europe and India have pointed out that some high-profile individuals (e.g. convicted pedophiles or politically connected offenders) have pushed RTBF claims to erase news articles about their crimes, citing dignity over public record. This raises slippery-slope fears. One academic warns that equating RTBF with a "right to silence on past events" must not let individuals "manipulate public records simply because certain information… is… regrettable"[28]. In practice, safeguards are essential: where RTBF claims are granted, they are often limited to de-indexing links or anonymizing identities, rather than destroying journalistic content outright.

D. Evidence of Global Trends:

Recent studies show that the EU's RTBF doctrine is influencing other jurisdictions. A comparative analysis finds that several non-EU G20 countries (including Canada, Australia, and India) have had their data protection authorities issue RTBF guidance or enforce deletion in select cases[29]. For example, Australia's privacy regulator has proposed its own erasure rights, and Canada's Digital Charter contemplated RTBF, though U.S. officials have been more skeptical. This suggests a worldwide debate: even where formal

[27] Rachel Metz, "San Francisco Just Banned Facial-Recognition Technology | CNN Business" *CNN* (14 May 2019) https://www.cnn.com/2019/05/14/tech/san-francisco-facial-recognition-ban/index.html
[28] "Grindr hit with $10 million fine over user privacy" *The Independent* (2021) https://www.independent.co.uk/tech/grindr-privacy-norway-dating-app-data-b1793016.html
[29] "Use of facial recognition in four B.C. Canadian Tire stores broke privacy law: Report" *Financial Post* https://www.itworldcanada.com/article/use-of-facial-recognition-in-four-b-c-canadian-tire-stores-broke-privacylaw-report/537315

laws lag, courts and regulators are paying attention to the EU model and charting local paths.

V. CONCLUSION

The Right to Be Forgotten sits uneasily at the intersection of privacy and press freedom. Europe has embraced a strong statutory RTBF with measured exceptions; India is cautiously moving in that direction under constitutional privacy, but without a clear, unified law; and the United States, under the First Amendment, has largely rejected any RTBF notion. In each system, the conflict plays out differently. EU decision-makers wield balancing tests under GDPR; Indian courts weigh Article 21 dignity against Article 19(1)(a) expression on a case-by-case basis[30]; American courts maintain that accurate public facts cannot be retrospectively censored[31]. What ties them together is the recognition that absolute privacy erasure can chill journalism and public discourse. Further, temporal limits and clear definitions of 'public interest' will reduce arbitrariness, while transparency obligations on intermediaries and appellate review will guard against political or commercial misuse. These targeted reforms foster a balanced ecosystem where dignity and privacy are respected without undermining the historical record or a vibrant press.

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