INDIAN JOURNAL OF LEGAL AFFAIRS AND RESEARCH

VOLUME 3 ISSUE 1

Peer-reviewed, open-access, refereed journal

IJLAR

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www.ijlar.com

Volume 3 Issue 4 / April 2026 *ISSN: 3049-043X*

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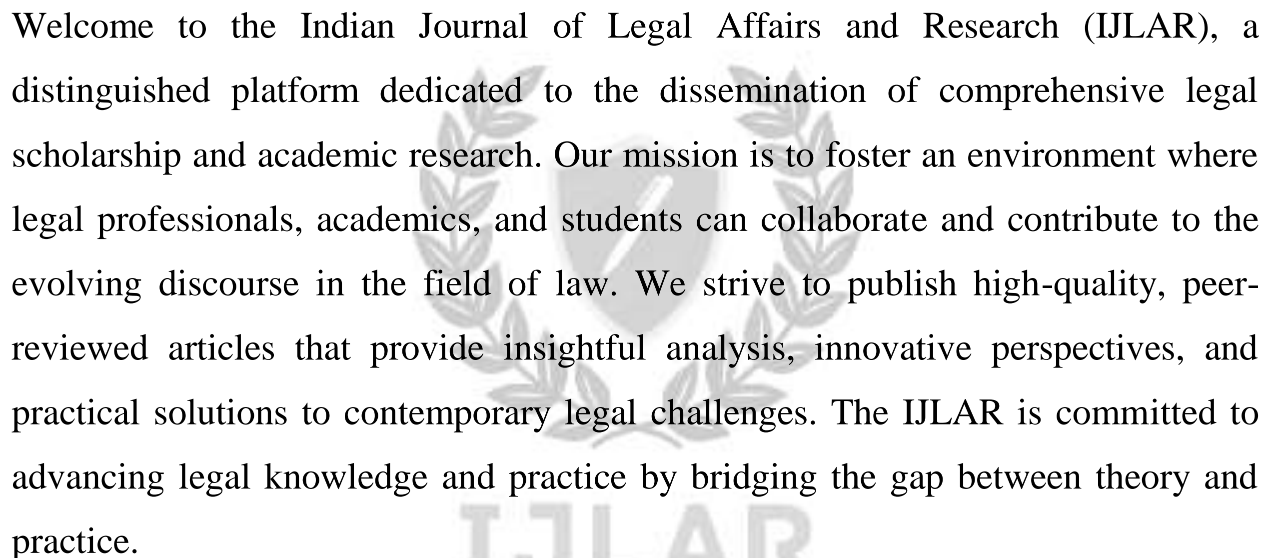
Introduction



Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJLAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

ISSN: 3049-043X

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

RIGHT TO BE FORGOTTEN UNDER THE DIGITAL PERSONAL DATA PROTECTION ACT 2023 — A CRITICAL GAP ANALYSIS

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ABSTRACT

Every day in India people struggle with personal data that refuses to disappear. A job application fails because of a decade old news article. A relationship breaks because of an old social media post. The information is wrong, outdated and harmful but it stays online because the law provides no clear remedy. The Right to be Forgotten was created to solve exactly this problem. India tried to address it through Section 12 of the Digital Personal Data Protection Act 2023.[1] However when we take a deeper look at Section 12[2] we can understand that what Section 12 provides is not a real right to be forgotten in any meaningful sense. It is silent on search engine delisting, limits erasure only to consent based processing, prescribes no timeline and has no third party notification obligation. This paper examines what Section 12 actually says, compares it with Article 17 of the GDPR[3] and identifies the critical gaps that need urgent attention.

Keywords: Right to be Forgotten, Right to Erasure, DPDP Act 2023, Section 12, GDPR, Data Principal, Data Fiduciary

[1]The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).
[2]Section 12, The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).
[3]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of such Data (General Data Protection Regulation) OJ L 119 (European Union, 2016).

I. INTRODUCTION

In the present digital environment a simple Google search can destroy a person's reputation in seconds. Old court cases, outdated news reports and embarrassing social media posts from years ago appear at the top of search results long after they have lost any relevance. The person has moved on. The internet has not. This affects their employment, their relationships and their mental well being in ways that no amount of personal effort can fix without the support of the law.

A Spanish man named Mario Costeja González filed a complaint in 2010 because two announcements published in the Spanish newspaper La Vanguardia in 1998 regarding the forced sale of his property to recover social security debts kept appearing in Google searches even though the proceedings had been concluded years earlier. The Court of Justice of the European Union ruled in his favour[4] and said that search engines must remove links to outdated or irrelevant information when a person asks them to. This is how the Right to be Forgotten entered modern law. The European Union then specifically included this right in Article 17 of the General Data Protection Regulation 2016.[5]

India enacted the Digital Personal Data Protection Act 2023[6] as its first comprehensive data protection legislation. Section 12 of the Act deals with the right to correction and erasure of personal data. However when we take a deeper look at Section 12 we can understand that it falls far short of what a genuine right to be forgotten requires. In my opinion the gaps in Section 12 need urgent legislative attention. This paper examines what Section 12 says, identifies the gaps and recommends specific reforms.

II. RIGHT TO BE FORGOTTEN — CONCEPT AND EU FRAMEWORK

The Right to be Forgotten starts from a very simple idea. People change. Their past should not define them forever. When information about a person is outdated, inaccurate or no longer serves any legitimate purpose that person should have the right to ask for it to be removed. The right

[4]Google Spain SL, Google Inc. v. Agencia Espanola de Proteccion de Datos (AEPD) and Mario Costeja Gonzalez, Case C-131/12, ECLI:EU:C:2014:317 (Court of Justice of the European Union, Grand Chamber, May 13, 2014). The court held that search engine operators must consider requests to remove links to pages containing information that appears inadequate, irrelevant or no longer relevant in light of the time elapsed.

[5]Article 17, Regulation (EU) 2016/679 (General Data Protection Regulation) OJ L 119 (2016). Article 17 is titled Right to erasure (right to be forgotten) and was codified following the Google Spain judgment of 2014.

[6]The Digital Personal Data Protection Act, 2023 (Act 22 of 2023). The Act was passed by Parliament on August 7, 2023 and received Presidential assent on August 11, 2023.

protects individual dignity and puts individuals in genuine control of how they appear in the digital world.

When we take a deeper look at what the European Union actually did we can understand that Article 17 of the GDPR is far more comprehensive than anything India has done so far. A person in Europe can ask for their data to be erased in six different situations and each situation is clearly defined.[7] These are when the data is no longer necessary for the purpose it was collected, when the person withdraws consent, when the person objects to processing and there are no overriding grounds, when the data has been unlawfully processed, when erasure is required by law and when the data was collected from a child in relation to information society services. Article 17 also requires data controllers who have made data public to inform other controllers about the erasure request.[8] This third party notification obligation is what makes the right to be forgotten actually work in practice because it extends the erasure beyond a single platform.

The EU framework also balances this right against freedom of expression, freedom of information and the public interest. This balance ensures that the right to be forgotten does not become a tool for suppressing legitimate information while still giving individuals real control over their personal data.

III. RIGHT TO BE FORGOTTEN UNDER THE DPDP ACT 2023

India did not use the phrase right to be forgotten anywhere in the Digital Personal Data Protection Act 2023. Instead Section 12[9] is quietly titled Right to Correction and Erasure of Personal Data. The name change matters because it signals how limited the right actually is. Section 12(1) says a Data Principal has the right to correction, completion, updating and erasure of personal data for the processing of which she has previously given consent including consent under clause (a) of

[7]Article 17(1), Regulation (EU) 2016/679 (General Data Protection Regulation) OJ L 119 (2016). The six grounds are: (a) data no longer necessary for the purpose collected; (b) withdrawal of consent under Article 6(1)(a) or Article 9(2)(a); (c) objection under Article 21(1) with no overriding legitimate grounds, or objection under Article 21(2); (d) unlawful processing; (e) legal obligation requiring erasure; and (f) data collected in relation to information society services offered to a child under Article 8.

[8]Article 17(2), Regulation (EU) 2016/679 (General Data Protection Regulation) OJ L 119 (2016): Where the controller has made the personal data public it shall take reasonable steps to inform other controllers which are processing the personal data that the data subject has requested erasure of any links to, or copy or replication of, those personal data.

[9]Section 12(1), The Digital Personal Data Protection Act, 2023 (Act 22 of 2023): 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.

Section 7. Section 12(3)[10] says a Data Principal may make a request to the Data Fiduciary for erasure and the Data Fiduciary shall erase the data unless retention is necessary for the specified purpose or for compliance with any law.

From the above discussion it is clear that Section 12 has five serious gaps that need urgent attention.

3.1 Limited to Consent Based Processing and State Exemption

Section 12 remains silent on personal data processed under legitimate uses other than consent. The right to erasure under Section 12(1) applies only to data processed on the basis of consent including deemed consent under clause (a) of Section 7. This means personal data processed under other legitimate uses under Section 7 falls outside the erasure right. What makes this gap even more serious is Section 17(4) of the Act[11] which specifically provides that in respect of processing by the State or any instrumentality of the State the right to erasure under Section 12(3) shall not apply at all. A large amount of personal data in India is processed by government agencies and this data is completely beyond the reach of any erasure request. This silence in the law creates a serious gap in the framework.

3.2 No Explicit Recognition of Right to be Forgotten

Section 12 does not say anything about the obligation to inform third parties or search engines of an erasure request.[12] In practice personal data is rarely held by just one entity. The same data may be held by the original platform, cached by search engines, shared with data brokers and reproduced on third party websites. Erasure from one Data Fiduciary while the data continues to circulate freely everywhere else makes the right largely meaningless. This silence in the law creates a serious gap.

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[10]Section 12(3), The Digital Personal Data Protection Act, 2023 (Act 22 of 2023): 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 retention of the same is necessary for the specified purpose or for compliance with any law for the time being in force.

[11]Section 7 and Section 17(4), The Digital Personal Data Protection Act, 2023 (Act 22 of 2023). Section 17(4) specifically provides that in respect of processing by the State or any instrumentality of the State, the provisions of sub-section (3) of Section 12 shall not apply, meaning that government processing is completely exempt from the individual erasure right.

[12]Article 17(2), Regulation (EU) 2016/679 (General Data Protection Regulation) OJ L 119 (2016). Controllers who have made personal data public must take reasonable steps to inform other controllers of erasure requests.

3.3 No Time Frame for Compliance

Section 12 does not say anything about how long a Data Fiduciary has to respond to an erasure request.[13] The absence of any timeline means Data Principals have no legal basis to demand a response within any specific period. Data Fiduciaries can delay indefinitely without any legal consequence. This gap needs urgent attention.

3.4 No Right Against Search Engines

The DPDP Act 2023 remains completely silent on the right to request delisting from search engines. This is one of the most important aspects of the right to be forgotten. The Google Spain case in 2014[14] was specifically about search engine delisting. A person in India who wants harmful or outdated information removed from search results has no clear legal remedy under the DPDP Act 2023. This silence in the law creates a serious problem.

3.5 Vague Exceptions

Section 12(3) allows Data Fiduciaries to refuse erasure requests when retention is necessary for the specified purpose or for compliance with any law.[15] These exceptions are very broadly worded. There is no requirement to explain the refusal to the Data Principal, no obligation to give reasons and no prescribed appeal mechanism within the Act itself. This vagueness gives Data Fiduciaries too much power to refuse legitimate erasure requests.

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IV. COMPARISON WITH GDPR

From the above discussion it is clear that what India has given its citizens through Section 12 and what Europe has given its citizens through Article 17 of the GDPR[16]are two very different things.

[13]Section 12, The Digital Personal Data Protection Act, 2023 (Act 22 of 2023). Neither the Act nor the Digital Personal Data Protection Rules, 2025 prescribe any specific timeline within which a Data Fiduciary must respond to or comply with an individual erasure request under Section 12.

[14]Google Spain SL, Google Inc. v. Agencia Espanola de Proteccion de Datos, Case C-131/12, ECLI:EU:C:2014:317 (CJEU, 2014). The court specifically held that the operator of a search engine must remove links to web pages from the list of results where those links appear to be inadequate, irrelevant or no longer relevant or excessive in the light of the time that has elapsed.

[15]Section 12(3), The Digital Personal Data Protection Act, 2023 (Act 22 of 2023). The provision allows retention when necessary for the specified purpose or for compliance with any law, without requiring the Data Fiduciary to explain the basis for retention to the Data Principal or prescribing any appeal mechanism.

[16] Article 17(1), Regulation (EU) 2016/679 (General Data Protection Regulation) OJ L 119 (2016). The GDPR provides six grounds for erasure while the DPDP Act 2023 essentially provides only one and completely exempts State processing under Section 17(4) of the Act.

Europe gives six grounds for erasure. India gives one. Europe covers all lawful bases of processing. India covers only consent. Europe gives a thirty day deadline. India gives no deadline at all. Europe specifically covers search engines. India does not say anything about search engines. Most importantly Europe does not exempt State processing from the erasure right. India under Section 17(4) completely exempts all State processing from Section 12(3).

India has made a positive development by including Section 12 in the DPDP Act 2023. But when we take a deeper look at what Section 12 actually provides we can understand that this first step is not enough. The gap between what Section 12 promises and what individuals actually need is too large to ignore.

V. RECOMMENDATIONS AND CONCLUSION

From the above discussion it is clear that Section 12 as it stands today is not enough. India needs to go back and fix what is missing. The following changes are specifically recommended.

First Section 12 should be amended to extend the right to erasure to cover all lawful bases of processing including legitimate uses under Section 7. Section 17(4)[17] which completely exempts State processing from the erasure right must be reconsidered. Government agencies process enormous amounts of personal data and citizens should have some meaningful recourse for requesting erasure of that data.

Second when a Data Fiduciary has shared or made personal data public it must be required to inform every other entity that received that data about the erasure request. Without this obligation erasure from one platform means nothing when the same data keeps moving across different platforms.

Third the DPDP Rules 2025[18] should prescribe a specific timeline within which Data Fiduciaries must respond to erasure requests. A period of thirty days in line with the GDPR standard would be appropriate. Without a clear timeline organisations can ignore requests indefinitely.

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[17] Section 7 and Section 17(4), The Digital Personal Data Protection Act, 2023 (Act 22 of 2023). Section 17(4) completely exempts State processing from Section 12(3) erasure right.

[18] The Digital Personal Data Protection Rules, 2025 were notified by the Ministry of Electronics and Information Technology on November 13, 2025 and published in the Gazette of India on November 14, 2025. The Rules do not prescribe any specific timeline for individual erasure requests under Section 12.

Fourth search engines should be specifically recognised as Data Fiduciaries for the purpose of processing search results about individuals. A clear mechanism for submitting search engine delisting requests should be prescribed in the Rules.

Fifth the grounds for refusing erasure requests should be clearly and narrowly defined. Data Fiduciaries should be required to provide written reasons for any refusal and a clear appeal mechanism to the Data Protection Board of India should be prescribed.

In my opinion the Right to be Forgotten is not just a data protection right. It is an expression of human dignity in the digital age. As the Supreme Court of India recognised in Justice K.S. Puttaswamy v. Union of India 2017[19] the right to privacy is a fundamental right under Article 21 of the Constitution.[20] The right to be forgotten is deeply rooted in this constitutional protection. The DPDP Act 2023 has made a beginning with Section 12[21] but Parliament must go much further to make this right genuinely effective and to give every Indian real control over their own digital identity.

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4. Constitution of India, Article 21

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[19]Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. A nine-judge constitutional bench of the Supreme Court of India unanimously held that the right to privacy is a fundamental right protected under Article 21 of the Constitution of India as an intrinsic part of the right to life and personal liberty.

[20]Article 21, Constitution of India: No person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court in Puttaswamy held that privacy is a natural and inalienable right that inheres in every individual.

[21]Section 12, The Digital Personal Data Protection Act, 2023 (Act 22 of 2023).

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