

# Privacy of Right in Forgetfulness Principle Under Social Media

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## Abstract

Social Media means offers creative free services in general, where the activists are able to record whatever data and information they want and exchange the same with other participants. The data, information and content published might take the commercial data form or the personal data form, which are strictly close to the interactive person. These data and information have legal and spiritual value for its owner in specific period of time; otherwise it shall be useless and could cause tangible and intangible damage to such owner.

Therefore, the right in forgetfulness principle emerges out as a personal right tightly linked with individuals, which should be adopted by the Jordanian legislator, so individuals are permitted to demand removal, deleting or amending the posted information, data or content which became incorrect, expired or time passed, provided that this right in forgetfulness shall not contradict with the public interest.

**Keywords:** Social media, Privacy, personal information, Right to forget.

*Article Received: 18 October 2020, Revised: 3 November 2020, Accepted: 24 December 2020*

## I. Introduction

The emergence of modern technology was coincided with establishing data banks which constitute data base benefiting specific subject and for the service of a specific objective. However, and in spite of the privacy of such data, it is processed by computers so that it shall be produced in the form of information for the benefit of different users in various objectives inclusive personal information on individual as well as data which are strictly linked to individual personal life making such individual a prisoner of the information gathered and collected by this technology during his life time.

This issue constitutes a violation of the individual privacy in the forgetfulness right, where each individual has the right to maintain and keep his personal life confidentiality and not to make it a subject of people mouth words, subject of post from time to time or circulating among the social media and Google search engine users. The right in forgetfulness privacy appears in removal of posted personal rights which became incorrect, expired or time passed out where such right has the priority on

the commercial interests of such information and on the right of information access freedom, unless this contradicts with the public interest.

The individual private life requires provision of great protection especially due to the violations touching the privacy right in forgetfulness, which is considered a part of the rights and freedoms which anybody should enjoy. The establishing of this right does not contradict with the right of freedom and free expression, if is legally controlled. The right in forgetfulness is expressed out in the individual's right that the official should not continue processing his personal data for purpose or objective other than the original purpose or objective.

## A. Study Significance

The study significance emerges out from the significance of the intangible impact on the individual privacy protection and control of circulation of the related personal data and information and in particular because of the existence of conflicting interests in this regard through protecting the individual personal data and

digital economy development, which ultimately has effects in violating the individual privacy right in forgetting the personal data and information posted through time which might affect his personal right and causing him tangible and intangible damages.

### B. Study Problematic

The human being has the right to make his life under forgetfulness and when this is made, it should not be lifted out without his permission. These data, information and fact related to him are subject to time limitation when there is no action made on its impacts during such period. The privacy right in forgetfulness protects the facts connected to both of private and public life when have been forgetting.

However, there is no legal or technical mechanism authorizing the individual to control his digital identity and monitor his personal data posted on social media through allowing him to interfere in the virtual world and to correct, amend, erase or final delete such data out of the memory as well as there is no legal provision concerning the right in forgetfulness on the light of social media in spite there are scattered legal provisions establishing the privacy principle of the right in forgetfulness in general.

### C. Study Methodology

The researchers followed the descriptive methodology through demonstrating what is meant by the privacy principle of the right in forgetfulness and the impact of social media on the penetration of the same along with determination of the legal nature of such right, the extent of its legal acknowledgment and the borderline between it and expression and opinion freedom.

## II. Determination of the Right in Forgetfulness Identity on Social Media

The ways of privacy violation on social media varies starting from the behavior of the user himself to the policy followed by the social media

operators which ultimately depend on making profit as the basis for the business of information and data exchanged through network users. This issue contradicts with the right of privacy and affects the private life, where the user's life becomes extending among the electronic networks participants interactions without any type of restriction or control on the posted content which constitutes an infringement of the right in forgetfulness and living peacefully and quietly.

### A. Actual Prospect for the Right in Forgetfulness Privacy Protection on Social Media

The policies applied for protecting the social media industry aim at securing its flourish and financial interest far away from protecting the privacy of its individual users and participants, where such policies permitted social media operator to organize themselves and setting out their own terms and conditions without the users' approval.

### 1. Legal Concept of Social Media

Social media became matter of significance for data mining as a result of technical development which allows gathering of data belonging to natural and incorporate bodies; therefore, there is a challenge to select between achieving the confidentiality and privacy of the information generated by social media and the benefits resulting from analyzing such information and presenting it to the activities from time to time. (Derieux :2013)

Some people see that social media sites, which are owned by incorporate entities, are a map for linking and connecting social relations among group of individuals and corporations through internet, where usually such individuals are linked with each other by joint interests and various activities (Al-Qahwaji: 2002) and are defined by other people as companies specialized in digital and interactive media working on merging texts, images and voice by using various computer applications in production and presentation processes in interactive manner. (Sadiq:2011)

Social media might offer new challenges because of its impact on the user personal freedom since it has provided him with broad ways to express out his opinion and reaching the broadest class of people and at the same time such social media made the user subject to privacy violation and infringement on a protected right which is the right in forgetfulness through the interaction of others into his own content or the interaction of the media itself continuously which might constitute express infringement on the user's right.

Therefore, the modern social media is considered the most dangerous modern technology mechanism threatening the human life in its most specific affairs and the most linked to him, which makes him unprotected from all such risks. Moreover, what is called "information bank" has emerged out with the appearance of social media and intended to form a data base on the interactive individual including data which were interacted under specific conditions and its significance expired on the interaction time which constitutes restriction and lowered the individual's initiatives, innovation and participation in public life affairs. This is because the individual became a hub for interactive operations with time passage of such content which was posted and interacted with. (Fadel:2007)

## **2. Nature of the Privacy of the Right in Forgetfulness on SocialMedia**

The forgetfulness and memory are considered two vital functions of the psychological life of each human being, where the memory is a combination of remembrance and forgetfulness. However, forgetfulness which could be considered a negative phenomenon when causing dispersion of human memories and disruption of his life course, it is considered – from the other side – positive phenomenon, where it gives the human being the chance for adaptation and get harmony with the local community, especially when he goes through hard and painful events through his life, where if such events remain alive in his memory, it should

make his life miserable; and here forgetfulness appears to close out the past and live the present.

Human being has the right to maintain and go on in his personal life and not to make it a subject of other people mouth words or a subject matter of publications, where he has the right to be left alone and living quite life. The concept of privacy right is linked to the human being entity through which he seeks to protect his feelings, thoughts and private secrets as embodying of his human entity.

The individual shall have the right to determine what detailed or minor information he wants to share and to whom, whether through interaction with others, recall and activate such information at any time he desires to repost and reminding other thereof, or just keeping it in the forgetfulness world. The privacy is connected to protecting information related to the individual, not to disclose out the personal data belonging to others, not to make others viewing it and identifying him in a specific position and to recall it after time passage as a response for achieving the right in forgetfulness. (Sahrawi:2005)

For the purpose of effecting and activation of this issue, a group of people concerned in information filed, in 2010 have signed two main charters: Right of Digital Forgetfulness Charter, which is related to the targeted advertisements and Right of Forgetfulness Charter related to social media and research operations, where the international incorporations, including Microsoft, Viadeo, Sky Rock and Blue Pages, have signed such charters while the two giants Google and Facebook have not signed any of it.

The researchers sees that the right of forgetfulness in the internet and IT era, became one of the most significant human rights due to the technical potentials active in recording and storing events and images, to repost the same by the research engine, re-reacting on or repost the content via social media when achieving the date of the first post. This contradicts with the personal life

and causes tangible or intangible damage to the content owner.

Finally, the right of forgetfulness could be defined by: the right of each person associated with a general event, even if he is the core of such event, to demand the right of forgetfulness for such event and to contest remembering a stage of his life.(Derieux :2013) The right of forgetfulness is realized by removal of his personal information which he circulated through social media and which became non-sound, incorrect or time passed it. This right could be described within the personal rights which have the priority on the commercial interests as well as on the information access freedom, provided that this shall not conflict with the public interest.

### **3. Legal Nature of the Right of Forgetfulness under the shadow of Social Media Means**

Part of the jurisdiction sees that the right of forgetfulness is established on the fact that human being is the owner of his personal life; and so it is not permitted to commit infringements on his privacy by any means since the privacy right is deemed an ownership right and the right of forgetfulness is considered a type of privacy right. Therefore, the right of forgetfulness is one of the ownership right types.(Qayed :1994)However, this trend was criticized based on the fact that human being does not have ownership right on himself as well as the right of forgetfulness characteristics contradict with the ownership right characteristics.

Other part of the jurisdiction sees that the right of forgetfulness falls within the rights tightly linked to personality by considering the right to enter into forgetfulness as one of the private life elements <sup>(8)</sup>. (Sayed:2005) However, the last concept gets wide to cover all personal elements even if are general data taking into consideration that a general place of data have been previously posted shall be within the personal life in the future.

The preponderant opinion which is supported by the two researchers, that the right of

forgetfulness is a right independent of the right of ownership and the right of personal life is the same as other personal rights, where it is not permitted to depend on facts on which period of time has been passed and have been forgotten. (Sahrawi:2005)

### **B. Privacy of the Forgetfulness Right through Control Social Media Setups**

The current policy of the social media means impose working on the individual organization through allowing the user to demand deleting any content he finds contradict with his personal life and that the processor should positively respond to such demand especially that the self organization of social media sites actively shares in disclosing of the users' personal information and presenting the same to the public.

#### **1. Mechanism of Control of Social Media Settings**

Privacy settings that prevent the re-publication of previously published content either by third parties, controller or the concerned processor could be controlled on social media, but sometimes it is difficult to control the publisher's or user's use of the means concerning the information previously published on social media, which may contradict with the right of privacy to forgetfulness of such information, images or content in general. (Castets :2012)

In fact, the privacy settings are applied to the future and not to any images or tweets previously published by the user. Users who have previously shared content before modifying their privacy settings have to take advantage of this content and re-share it with third parties or social media can re-share it again and to remind the user of it whether the content is a source of joy, desire or sadness and whether he wishes to remember or not.(Spinelli:2010)

It seems that the users of social media do not improve the privacy settings controls and do

not care about the start, learn and apply it because they believe that what they publish is not important and does not constitute a risk to them or for their desire to disseminate content to the public and to the largest number of subscribers on his page or because they believe that the publisher fulfills the wishes of any moment of publication, which as time passes, its effects are lost, without verifying the desire to retrieve its participation by others or by the service provider.

Therefore, the private space on the social media such as "Facebook", is no longer meaningful because of the nature the function principle of this means, where each user can resend the content or information he receives, without existence of any effective way to control the deployment settings, which establishes the processor's responsibility for those data and information and content publishing in general and setting a time period for their actual age and erasing or encrypting them for not re-interacting with it or opening a domain to the user by wiping it out from the control indicator to protect the right to forgetfulness privacy.

## **2 . Determination of the Processor Responsibility in Management of Social Media Means**

Social media means is legally described as an intermediary and not as a publisher. It is similar to that of a data host and is therefore subject to the same legal rules as those applicable to user-uploaded content. As a result of the difference between modern and traditional social media means and the Internet, a number of European countries, as well as the United States of America, have issued special laws to protect online intermediaries from liability with the exclusion of the application of visual media legislation to social media means, social media can be characterized as a data host and so enforcement of relevant laws. (Fauchoux :2012)

The social media means are responsible for the content that is uploaded and republished by:

determining the difference between the publisher and the mediator, determining the extent of social media control over the content posted by users, and making comparison the responsibility of the social media with that of the data host. The responsibility of the social media company of the organization the owner of the website does not come only from the information you publish by yourself, but also from information published by users. The organization may rely on information published by the users by placing a link leading to the user's own page, or by copying and recovering the user-generated content. (Williams:2014)

Thus, the responsibility of the social media company varies according to the nature of the website and the relation to its control. There are websites produced by the operator or the owner of the site himself, a site where the content is uploaded by other people, and a site that its functions limited to host content that is fully controlled by the users. (Dempsey:2011)

## **III. The extent of the legal response to protect the privacy of the right to forgetfulness on the social media means**

The vastness of personal information resulting from social media or that is indexed by the search engine caused the birth of many legal problems highlighted about its protection, treatment and privacy, where the most important new issues that are problematic source is the right to forgetfulness related to the user right to delete the information he sees forming a violation to his privacy or causing him tangible and intangible material damages.

### **A. The legal basis for the principle of privacy of the right to forgetfulness in light of the social media means**

Personal data, information and published content constitute the necessary primary material in the service of digital economy development. Therefore, companies concerned in giving value to



such data and information have emerged out wheresuch value shall not have a meaning but through data circulation and interaction with external or internal systems. This can be done without the user's consent, the data owner, which constitutes an explicit infringement on private life and the right to forgetfulness.

The link between the right to forgetfulness and the right to freedom of opinion and expression appear out through the opinions and comments that might be made by users on others in the exercise of their right to express, which may affect the privacy of others or affect their reputation or social position.

### **1. The legal position of the principle of privacy of the right to forgetfulness**

The Universal Declaration of Human Rights established the right to privacy in general and guaranteed the right to forgetfulness, where Article (12) of the Universal Declaration of Human Rights states that "Nobody should be subjected to illegal interference in his private life, family, home or correspondences related affairs, nor should be subjected to attacks affecting his honor and reputation, where everyone has the right to be protected by law from such interference or attacks"<sup>1</sup> Dempsey In this context, article (8) of the European Convention on Human Rights of 1950 provided that "everyone has the right to respect his or her private and family life, home and correspondences; the right to exercise this right should not be prevented but in accordance with the law provision"<sup>2</sup> The Arab Summit in Tunis 2004 adopted the updated version of the Arab Charter on Human Rights, where the provision of Article (21) thereof came identical to the provision of Article (12) of the above said Universal Declaration of Human Rights.

In terms of the principle of the right to forgetfulness, article 12 of the European Guidelines for 1995 affirmed the necessity of ensuring the right of every person to request deleting his or her personal data. The official in charge for processing must carry out this request according to the legal requirements. The French National Information Commission has developed a list of several criteria required to implement the response to personal data removal requests or any content previously published, circulated or republished in order to avoid any damage to the user. (Jabber:2018)

Thus, the new European Regulation No. 697/2016 dated 27/4/2016, which shall be applicable by 25/5/2018 provided for the right to forgetfulness, through giving everyone the right to erase his old personal data, which is no longer necessary in view of the processing objectives, or in the case of withdrawal of his consent to such treatment or object to the illegal treatment within certain legal restrictions.

Therefore, the principle of the right to forgetfulness in France is one of the rights closely associated with the human personality and is intended to protect the private life of the individual. Articles (38) and (40) of the French Personal Data Protection Act grant the user the right to object to the processing of his personal data and the right to request its correction or deletion as well as Article (6) of the same Act allows the retention of personal data for a period not exceeding that necessary to achieve the processing objectives for which the data were collected and processed.

### **2. Relationship between the principle of privacy of the right to forgetfulness and the right to express opinion**

People may exercise their rights to express and promote their views and to disseminate sports, political, social and personal contents, or to publish various images through social media. However, legal issues may arise regarding content published,

(<sup>1</sup>) Universal Declaration of Human Rights, Paris, 10 /Dec./1948

(<sup>2</sup>) European Convention on Human Rights of 1950, and applied on 3/Sep/1953/Dec./1948

its extent of conflict with laws and regulations or with the rights of others, such as the right to forgetfulness.

In this regard, article (19) of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without annoyance and to seek, receive and transfer information and ideas to others by any means, regardless of borders. This text came identical to article (18) of the Covenant on Civil and Political Rights of 1966. Thus, above mentioned Article (19) and Article (18) were drafted in a manner to cover developments in technology through which opinions could be expressed and idea could be exchanged.

It can be said that the principle of freedom of expression on the Internet is applied in the virtual world as in the real world, so the user of the social media means is restricted to legal principles when expressing his own opinion and circulating data and information, and non-abuse of this right to violate the rights of others.

The right to be forgotten may contradict other person right of expression freedom, and therefore it is difficult to apply such right on the ground. The withdrawal of the personal information of someone by himself is easy, but forcing others to do so is more difficult given the principle of freedom of expression and information exchange. On the other hand, the information, data, images or news may relate to a person who is not involved in the social media, and as a result may not be aware of this content and does not have the effective means to request the deletion of the same on this social media means. (Netter :2015)

The two researchers see that it is necessary to maintain the individual freedom on social media means, but must be restricted by respecting the rights of others, society and the state, where the freedom of the individual ends at the freedom of others. The social media means has to manage the content in the event that it constitutes breach of the customs or is inconsistent with the rights of others,

where positively responding to the request to delete the content is realization of the right to forgetfulness principal.

Despite this, the principle of the right to forgetfulness is still relatively modern, where it has faced widespread criticism against its defenders because it is incompatible with the right to get access to information, the right to express opinion, and thus leads to imbalances in human rights.

## **B. The rules of retention data and personal information, which are under processing, within Social Media Means**

The issue of retention of information and data constitutes a real problem for some individuals in their lives futures at different levels. This problem is represented in a relatively recent concept and is a human right, namely, the right to forgetfulness, through erasing information, data and personal post that have been indexed by the search engine or social media companies, especially if such information, data or posts are old or not anymore achieving the purpose for which they were found in the past.

### **1. Determination of retention time period for posted content, personal data and information**

The information is directly affected by the intended purpose of the processing process, where information and personal data cannot be retained for an indefinite period of time. So, the person in charge of processing should determine such period of time based on the nature of information and the purpose of processing, so that it shall be erased, encrypted or archived when realized.

The retention of personal data for a period of time does not exceed such period necessary to achieve the objectives of processing for which the data was collected and processed. This right to forgetfulness goes in the direction of respecting privacy and securing the convenience of each user of the means of social media, where it is necessary that each person shall control his own personal

data. However, the right of some incorporate bodies to process to achieve its objectives should be taken into consideration. In this regard, it is possible for securing effective solutions, to rely on international conventions or establishing international standards adopted by states in their national legislations or through social media self-regulation by codes of conduct or best practices.

However, application of this right raises problems in cyberspace, which is governed by various laws, most of which do not provide for such right. But, in the other side, determination of maximum time period for retention of personal data and the right to request amendment, is the main basis of the right of erasure, which in turn paves the way for the recognition of the right to forgetfulness by erasing personal data.

The right to forgetfulness has witnessed new development post to the European Court of Justice ruling to compel Google erasing links related to old personal data and the court has concluded to a legal principle provides that any individual who does not wish to retain his old, or lost-value data or posts, or which causing violation of his private life shall be allowed to request deleting such data or posts, and the person in charge of processing must positively respond accordingly. (Mamhoud:2018)

It is noted that there is no awareness of this right in Jordan, where we live in a legal non-coverage in this regard and moreover the electronic legislation system in Jordan does not have any legislation addressing the legal protection of personal data. This is in contrast to some Arab legislations, such as Tunisian legislation<sup>(20)</sup><sup>3</sup>, which stipulates in article 45 of the Personal Data Act that personal information which is directly linked to the expiry of the time period specified for retention or which the purpose of posting and realization has been ended, should be deleted.

## **2. Limits of protection which Personal Data Laws provide to the right to forgetfulness on Social Media means**

The regulations of social media means operation allowed its operators to organize themselves and set their own conditions without regard to the principle of individual privacy where social media means can resort to amend the general conditions without informing the users of such amendment and the consequent exchange of information and data, which contradicts with the principle of privacy in the right to forgetfulness and infringement on private life. (Fauchoux :2013)

It is worth to say that personal data related laws do not secure the right of privacy on social media means, where the personal information on the user which he shares with other users is legal restrictions free, especially that these laws were originally found to protect individuals against the risks of data processing by governments and corporations, and not to reduce communications between individuals and to collect and interaction of the information at any time without considering privacy of the right to forgetfulness and its legal consequences. (Internet :2016)

Therefore, the main objective of activating the role of protection is that the user has the right to know what has been doing with everything related to his private life, data and information, which is difficult to achieve because of the size of data and information that are interacted on the official pages of social media means or on the search engine Google. As a result of this difficulty, the privacy of the individual data and information posted could be realized through the control of the circulation of data by the processor and setting a certain threshold to activate and erase the same after a passage of certain period of time or giving the user the right to self-monitoring of his data and to activate or delete any of it as he wishes.

(<sup>3</sup>) Law No. 63 of 2004 on the protection of personal prostitutes



In fact, most constitutions and international human rights conventions do not, in detail or expressly, recognize the rights to privacy, especially the right to be forgotten. The right to privacy remains one of the most controversial issues in jurisprudence and law.

#### IV. Conclusion:

The human enjoys a set of rights without which he cannot live, where the human right to forgetfulness under the means of social media is one of the most significant of such rights necessary of the individuals' life. The human being cannot continue to live without many of his actions, statements or any content posted in his name should be forgotten, where the right to forgetfulness is closely linked to his freedom and the consequent safeguarding of his dignity and respect for his humanity and so nobody should intrude in what he wishes to forget or keeps for himself.

#### The most important results are:

1. The right to be forgetfulness through social media means is one of the most closely related rights of human being, is a set of rights that are relatively modern and are still in the formation process.
2. The individual is entitled to keep and maintain his past surrounded by a fence of secrecy, and that such past should not emerge out to the public after a period of time.
3. The right to forgetfulness is linked to two main elements, namely, a time element relating to the duration of the retention of personal data and an objective element related to its nature.
4. The Jordanian legislator did not regulate the protection of personal data in an independent legislation, and only recognized the right of every citizen to be provided by the state with information and data in transparency within the legal controls.

5. The Jordanian legislator did not provide for the protection of the right to be forgotten explicitly or implicitly in the provisions of the Civil Law, but provided a general provision protecting personal rights in general.
6. The right to forgetfulness has received international attention, which has been recognized by the international agreements and the United Nations called for the respect the right to forgetfulness and to consider it as a right to privacy.

#### Recommendations:

1. We recommend the Jordanian legislator to seriously consider the right to forgetfulness in its general concept and within the social media means concept in special through reconsidering the legislative provisions.
2. We wish that the Jordanian legislator shall treat the personal data protection in a special legal legislations providing for the border separating the individuals' private life from his right to forgetfulness and expression and opinion freedom.
3. We appeal to the Jordanian legislator to reconsider the Civil Law and to provide for the right to forgetfulness privacy as a right adherent to the individual life.
4. we appeal to the concerned bodies concerned in technology field to impose control on the individuals' data, making the social media means allowing the individuals to control their personal data settings and asking the governmental or private bodies to delete or amend such data or setting time limitation periods for such data, information and content which shall be automatically deleted when the time period is realized.
5. Working on conducting educational courses and workshops which shall contribute to raising the social media users level in terms of how to manage the

personal data and showing the significance of the individuals' personal information and data which are prohibited to post between the technology users.

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