IOSR Journal of Business and Management (IOSR-JBM)
e-ISSN:2278-487X, p-ISSN: 2319-7668. Volume 26, Issue 4. Ser. 3 (April. 2024), PP 40-49
www.iosrjournals.org

The Right To Be Forgotten In The Digital Society

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Abstract
New technologies and digital innovation profoundly shape today's digital society, arising from the evolution of an informational society linked to the advent of computers and data processing. This society is characterized by the intricate blend of virtual and physical realms, the facile manipulation of technologies, and extensive online interactivity. Despite the unprecedented conveniences offered by digital developments, there is a discernible diminishing perception of the significance of privacy and intimate life. Nevertheless, these technological strides are subordinate to constitutional norms and principles, underscoring the need for guarantees such as the right to be forgotten and the protection of digital data. This paper aims to discuss and emphasize privacy as an inherent and fundamental right within the digital society, advocating for its preservation even amid technological advancements. The deductive method, rooted in literature review and legislative analysis, is employed to achieve this goal.

Keywords: *Personal Data, Data Protection, Privacy, Digital Society, Human Rights.*

Date of Submission: 25-03-2024 Date of Acceptance: 05-04-2024

I. Introduction

New technologies are shaping new social formats, affecting without exception all areas of knowledge. This new social format is not something recent; however, in the face of technological innovations that occur almost daily, it is possible to assert that current society is in a continuous process of transformation.

The current process of technological advancement is unprecedented, and among these new technologies, digital innovations stand out for affecting social relationships and consequently the legal relationships in which these social relations are embedded. This complex interweaving tends to intensify at the same speed at which the digital surpasses the physical.

In past societies, social changes occurred more slowly, promoting adjustments and legal adaptations in a timely manner, without causing major social disruptions. However, in a digital society, transformations occur more rapidly, implying a society that demands responses and adaptations at the same pace as the digital innovation process develops. These adaptations require a legal response that, given the speed of changes, always arrives belatedly and out of sync with social needs.

From this perspective, it becomes possible to identify the extent to which the digital society interferes with social relations, as in this society, where daily actions are redrawn, everything is transformed into data – binary information about consumption habits, behavioral trends on social networks, and many other pieces of information, some public and others private, that constitute part of digital databases. Thus, information and impressions about an individual are formed without them knowing what is known or what is thought about them.

Therefore, the proposed theme in this work unfolds – the right to privacy, or the right to be forgotten – is it possible in a digital society where connectivity and information exchange are commodities? Can privacy be considered a human right even in a digital society? Lastly, have the benefits brought by technology reduced the perception and legal value of intimacy as a fundamental right?

This work aims to bring forth this discussion, emphasizing privacy as a fundamental right and the need to preserve it even in a digital society, ensuring individuals the prerogative of forgetting if they so desire. For this to happen, it is necessary for the law to become increasingly humane, assimilating technological development and its social and economic benefits, while not neglecting to guarantee individuals not only the codified right but also incorporating the new habits and customs developed by this digital society.

Through the deductive method, grounded in literature review and legislative analysis, this work specifically reflects on the right to privacy as a fundamental right and its possibility and necessity when embedded in a digital society.

Human Rights and Digital Society

The analytical capacity of the world and the comparative study of social evolution processes are of fundamental importance for understanding the directions of society. That digital innovation processes shape a more connected and robotic society every day is undeniable, but what is the impact of this on social and legal relationships?

In a brief analysis, it is possible to highlight that technology has brought with it social and economic development, even though some argue that development eliminates jobs. It is noted that this process has occurred over centuries, becoming more evident since the industrial revolution. Furthermore, while technology affects the job market by reducing positions or causing certain professions to cease to exist, it is noteworthy that technology itself, through the process of improvement and innovation, is responsible for creating new professions and consequently new positions that did not exist until recently.

It can also be emphasized that the creation of increasingly intuitive social networks affects the way social and commercial relationships occur. Social networks, for example, have become a tool of fundamental importance to give a voice to the excluded, serving as an instrument for demanding the realization of constitutionally guaranteed rights.

Although these are not the themes to be discussed in this present work, as they could be the subject of discussion at another time, from an analysis from the perspective of technology and human rights, they serve at this moment to exemplify the impact of digital innovation on society and its legal relationships.

In this sense, understanding other processes of social development helps in attempting to identify the directions of this society and anticipate situations that will require the application of legal protection by the State. This constantly moving society can be defined as:

The community has a cultural/historical character. It is cultural due to its shared values, practices, customs, norms, and common beliefs; it is historical because of the transformations and trials it has undergone over time. According to the expression of Otto Bauer, it is a community of destiny (Morrin, 2003, p. 67).

Historically, it is observed that the pinnacle of the evolution of the human rights system in the Brazilian legal framework occurred through the 1988 Federal Constitution, which established the dignity of the individual as the foundation of the existence of the Brazilian nation. Concurrently, the entire process of technological development must align with this text, preserving the intention of the constitutional legislator in all legal

relationships.

However, what is evident in practice, and what this study aims to provoke, is that the process of technological development, due to its inherently innovative nature, does not strictly adhere to legal principles, no matter how important they may be. Consequently, state intervention is required to regulate matters that exceed principled or legislative boundaries.

As an example, one can point to the prohibitive regulation in some American cities regarding the use of biometric identification technology through facial recognition. The argument behind this regulation is that such technology poses a threat to civil rights and liberties. This stance is exemplified by the city of San Francisco, which, in regulating the subject, prohibits within its jurisdiction the utilization or development of facial recognition technology.[1]

Thus, not only in Brazilian law but also in other countries, there is a growing concern about the preservation of individual rights and guarantees in the face of technologies that infringe upon the privacy of their citizens.

In what is intended to be developed throughout this study, the dignity of the human person is taken as the guiding principle of human rights. By categorizing this institute as one of the pillars of the Democratic Rule of Law, the constitutional legislator established the qualitative essence of any legal private right development (MULHOLLAND, 2018, p. 169).

In this sense, technology must be in harmony not only with current legislation but also with the societal desire for balance in social and economic development, as well as to ensure individual rights. In other words, the way technology and law are conceived needs to change, and they cannot be considered separately but rather in conjunction. Edgar Morin (2003, p. 89) emphasizes the need to change the way of thinking to act in this manner:

One must replace a thought that isolates and separates with a thought that distinguishes and unites. It is necessary to replace a disjunctive and reductive thought with a complex thought, in the original sense of the term complexus: that which is woven together.

[1] Section 1. General Findings. (…) The propensity for facial recognition technology to endanger civil rights and civil liberties substantially outweighs its purported benefits, and the technology will exacerbate racial injustice and threaten our ability to live free of continuous government monitoring. (CITY AND COUNTY OF SAN FRANCISCO. BOARD OF SUPERVISORS, 2019).

The purpose of individual rights is intrinsically linked to the concept of governance by the people, represented by leaders appointed by society itself through the democratic process. This power is not only associated with the idea of limiting state power to ensure fundamental rights but also to demand proactive actions from the state, exercising the maintenance of these rights in private law relationships. In this sense, it is understood that:

Indeed, in the study of the evolutionary course of the Rule of Law, starting from the so-called Liberal State, it is possible to perceive a shift in the initial conception of fundamental rights, which was negative and subjective, intending only to limit the state's actions to ensure individual freedom. Absorbing influences from the process of democratization and the advent of the Social State, fundamental rights cease to be mere negative limits on the exercise of political power to direct and condition the positive actions of the state, even extending their impact to relations between private individuals (CANOTILHO, 2013, p. 828).

Based on this premise, there is no question of state impossibility to interfere, whether in social or legal relations, in order to ensure the dignity of the human person through the preservation of fundamental rights in technological innovation processes.

Processes of technological innovation will always be relevant in every period of history in which they occur, as they determine the extent to which each society has been or will be affected and transformed by a certain degree of innovation.

The digital society emerges from this innovation process, coexisting with the refinement of law and new technologies that unfold in a complex environment, reflecting social transformation and its cultural, economic, and political differences. Technology does not determine society, nor does society define the course of technology, as it depends on other factors such as creativity, entrepreneurship, and scientific exploration (CASTELLS, 1999, p. 44).

What is important to emphasize in this first topic is that society and technology complement each other in a digital society, where one does not determine but influences the course of the other. In other words:

Actually, the dilemma of technological determinism is likely an unfounded problem, considering that technology is society, and society cannot be understood or represented without its technological tools (CASTELLS, 1999, p.44).

The Right to Be Forgotten as a Fundamental Right

When addressing the right to be forgotten in digital society, it becomes necessary to examine the process of technological innovation and its impact on society. The need for the protection of personal data, for instance,

is a characteristic requirement of contemporary societies, where information and the digital realm gain political, economic, and social significance (GEDIEL; CORRÊA; 2008, p. 142).

Before delving into the analysis of the right to be forgotten, it is important to scrutinize the principle of privacy, explicitly carved into the constitutional text as part of fundamental rights.

The right to be forgotten finds its place precisely in the constitutional guarantee of intimacy and private life, as well as in one's honor and image[2]. In addition to the Federal Constitution, the Universal Declaration of Human Rights, in its Article 12, establishes the guarantee of privacy and intimacy.[3]

When addressing the subject, the constitutional text employs the terminologies "intimacy" and "private life"; however, we understand that there are no legal divergences in the analysis of these terms. Although doctrinal perspectives may differ, we prefer to use both terms to characterize the right to privacy from a constitutional perspective, thereby considering all potential transgressions of these rights. In the teachings of José Afonso da Silva (2001, p. 209), it is stated that:

Indeed, the terminology is not precise. Therefore, we prefer to use the expression "right to privacy" in a generic and broad sense, in order to encompass all these manifestations of the intimate, private, and personality spheres that the constitutional text has consecrated.

Being, therefore, privacy a constitutionally guaranteed institution, it becomes necessary to delineate or expand this right within the scope proposed in this study, since with the popularization of information technologies and more recently big data, concerns arise regarding the protection of privacy.

[2]Article 5. All persons are equal before the law, without distinction of any nature, ensuring to Brazilians and to foreigners residing in the country the inviolability of the right to life, liberty, equality, security, and property, as follows: (EC no 45/2004) [...] X – the intimacy, private life, honor, and image of individuals are inviolable, with the right to compensation for material or moral damage resulting from their violation; (BRAZIL, 1988).

[3]Article XII "No one shall be subjected to interference with their privacy, family, home, or correspondence, nor to attacks on their honor and reputation. Every human being is entitled to protection of the law against such interference or attacks." (UNITED NATIONS, 1948).

In a digital society, increasingly composed and surrounded by digital or digitizable information, the risk of privacy and intimacy violation grows exponentially for its individuals, requiring State support in maintenance or, in case of violation, in the stipulation of reparative measures. Alexandre de Moraes (2017, p. 66), when addressing the topic as a fundamental right, determines the following:

In this way, the defense of privacy should protect individuals against: (a) interference in their private, family, and domestic life; (b) intrusion into their physical or mental integrity, or their intellectual and moral freedom; (c) attacks on their honor and reputation; (d) placing them in a false light; (e) the communication of relevant and embarrassing facts concerning their intimacy; (f) the use of their name, identity, and likeness; (g) espionage and surveillance; (h) intervention in correspondence; (i) the misuse of written and oral information; (j) the transmission of information given or received due to professional secrecy.

Under the aegis of the 1988 Federal Constitution, the right to intimacy and privacy was subordinated as a specific attribute of an individual nature. Thus, in the face of Article 5, X of the constitutional text, it becomes possible to frame privacy and intimacy within the data protection arising from the digital society.

In this way, it is not only possible to recognize intimacy and privacy as individual guarantees but also to extend such understanding to the individual's right to be forgotten, as a means of preserving their honor and image. Thus, whether in the virtual or physical realm, the interpretation of the constitutional text or subsidiary norms will be required to ensure the individual's interests in the preservation of their private life.

It is noteworthy that neither the constitutional text nor the Civil Code has established an exhaustive list of principles binding the individual's privacy but rather an illustrative list adjusted to the discussion arising from the right to privacy (CALHEIROS; TAKADA; 2015, p. 124).

Admitting the right to be forgotten as a fundamental right, it is emphasized that the extended protection to the individual pertains not only to protection against the State but also in private law relationships, considering every possibility of privacy violation that may occur in a digital society.

Both the right to intimacy and private life, admitted here under congeneric conditions and as fundamental rights, unfold into other rights, including data protection, a symbol of a digital society (CARVALHO, 1998, p. 54).

The right to be forgotten is not something recent; throughout history, each society, considering cultural, economic, and technological aspects, has dealt with the issue in a specific way. In other words, these conditions influence individuals who, based on this set of values, react in a certain way regarding the prospects of their private life and what they wish to be made public (DE GREGORI; HUNDERTMARCH; 2013, p. 753).

Given the debated topic and in a comparative analysis, it is possible to highlight the renowned text "The right to privacy"4. (The right to privacy, in free translation) and its legal relevance in this era. Faced with an increasingly compromised privacy, through technologies that invade not only homes but also workplaces, public

transportation, malls, and government offices, having privacy enshrined in law makes it possible to demand from the State the right to be forgotten whenever someone's intimate life is threatened through information systems.

Privacy, therefore, should be seen above all as the exercise of an individual's freedom, a human necessity. This entails adopting a perspective on privacy that is internal to the individual, intrinsic to their identity, shaping them as a human being (CANCELIER, 2017, p. 220).

At the time when "The Right to Privacy" was written, society was far from experiencing the level of computerization witnessed in today's society; however, the same risks of privacy violation in that context raised concerns that led to the development of such an important material.

The need for privacy, protection of intimate life, the right to be alone, and ultimately the right to be forgotten are becoming increasingly crucial in a digital society, as these aspects seem obsolete through data collection. The right to be forgotten, the need for distance, and the refuge of private life give rise to the concept of privacy, validating it as a constitutional precept and a fundamental legal rule (GOMES; SPAREMBERGER; BRUM; 2015, p. 7).

[4]Written in 1890 by Samuel D. Warren and Louis D. Brandeis, the article "The Right to Privacy" addressed, in the context of technological innovations of that time, privacy and intimacy as fundamental rights. The text deliberates on the famous expression of the American jurist and Chief Justice of the Michigan Supreme Court, Thomas McIntyre Cooley, "The Right to be Alone." (CANCELIER, 2017, p. 217).

The social changes driven by the process of technological and digital innovation and the impacts on legal relationships, especially in ensuring fundamental and individual rights, present the major challenge that the law will need to overcome in this time.

The informational process promoted by digital innovations over the last four decades brings to reality the scenario imagined in George Orwell's literary work "1984" (1949), which depicted "BIG BROTHER IS WATCHING YOU."

Therefore, in the face of a digital society, the significant challenge to privacy lies in how much information technology companies, whether in the public or corporate sector, have about a particular citizen, which of these pieces of information exclusively belong to these organizations, which belong to the user, and which should be destroyed after use.

Given that all information about an individual or a specific group has high financial value, meaning that information has become a commodity, we find in this process of maintaining privacy or the right to be forgotten the significant barrier to be overcome by the law.

The right to be forgotten in a digital society can only occur if there is a regulation governing the protection of personal data, as handling this information will require adherence to specific rules, as well as the consent of the data subject, allowing what can and cannot be done with such information.

It is evident, therefore, that even without directly addressing the issue, the constitutional text serves as a foundation for the preservation of these rights. In this regard, Caitlin Mulholland (2018, p. 171) takes a position:

A preliminary analysis of the constitutional structure of Fundamental Rights leads to the recognition that the protection of personal data, even if not expressly provided for in the constitution, can be derived from both the protection of privacy (Article 5, X) and the right to information (Article 5, XIV), as well as the right to the confidentiality of communications and data (Article 5, XII). Additionally, it can be inferred from the individual guarantee of knowledge and correction of information about oneself through habeas data (Article 5, LXXII).

Thus, it is important to acknowledge that the digital society presents a new challenge to the law: ensuring individuals the protection of their privacy through the right to be forgotten. Following this line of reasoning, it can be asserted that the safeguarding of personal data in an informational society stems from the right to privacy and the individual's right to a private life, necessitating the imperative need for such legal protection (GOLDSCHMIDT; REIS; 2018, p. 179).

In the digital society, characterized by the innovation and digitization of data processes, individuals lose complete control over those who possess digital information about them. This negative aspect is offset by constitutional provisions guaranteeing the right to privacy and private life as fundamental rights, as well as by the General Data Protection Law, which regulates the protection of personal and sensitive personal data.

Consequently, individuals gain the prerogative to monitor the use of data that defines their characteristics, thought processes, and opinions. Thus, control over the handling of such information has been made possible (GEDIEL; CORRÊA; 2008, p. 143).

This work does not aim to specifically discuss the protection of data promoted and regulated by the LGPD. However, it emphasizes that the right to be forgotten, as a fundamental right, derives from the right to privacy and intimacy within a digital society. In other words, this right remains personal, and only the individual has access and control over this information, determining what can be done with it, whether on social media, in a governmental database, or in the records of a financial institution. It is to say that:

In its classical sense, intimacy can be understood as the prerogative that an individual holds against others, including the State, to be kept in peace within their own space. It is, essentially, the mechanism for the

defense of human personality against unwanted and illegitimate intrusions (MONTEIRO, 2007, p. 31).

Considering the possibility of the right to be forgotten in a digital society, it becomes important to analyze digital repositories and the digitization of private life. This occurs when society as a whole is scrutinized through data collected from an individual and the entire collective.

Digital Repositories and Society – The Digitization of Private Life

From the digital society, the relationship between the virtual and the physical commences, altering the perception of space, time, and emotional ties, giving rise to an interconnected world linked by networks, bringing cultures, peoples, and businesses closer together, turning the internet into a vast global village.

The internet is not the digital society per se, but it intertwines in its formation, as from this platform, digital repositories, known as databases, are conceived, accumulating data transformed into knowledge, aptitude analysis, customs, preferences, and everything one may wish to know about an individual, specific groups, or an entire society.

Digital repositories emerge as electronic forms of data storage, with the following definition deserving attention:

The creation of a "digital repository" as a new and specific "institution" for handling information in digital format could be criticized as sophistically originating from the premise that information in digital form, due to its medium, constitutes a distinct entity. Consequently, the repository is deemed necessary to be qualified with the adjective "digital." However, the object remains the same, namely, information, regardless of whether the medium is clay, parchment, printed paper, electronic recording, etc. As evident in the evolutionary progression of technology replacement or aggregation, information has consistently been "stored" by archives and libraries. It is not the medium but rather the manner of production and utilization that determines the treatment to be accorded, whether by archives or libraries (MASSON, 2008, p. 139).

As stated at the beginning of this topic, the digital society brings about the intertwining of the virtual and the physical. Digital repositories store information resulting from this relationship, encompassing data produced exclusively in the virtual realm as well as content originating in the physical world that has been digitized. Currently, it is inconceivable to envision the digital society without access to digital repositories.

They are part of small businesses to large corporations, from small municipalities to the highest levels of a nation; all depend on databases and the information contained within them, the end of which may have been previously determined but could serve many other functions in the future.

Starting from personal computers connected to the internet and later with tablets and smartphones, it became possible to capture data from the users of these devices through their own interactivity. At the same time, various sectors of the economy became interested in such information, whether for their own use or for commercialization. Collecting and storing data became an important business (RUARO; RODRIGUEZ; FINGER; 2011, p. 49).

Therefore, the information contained in a particular digital repository directly involves the issue of privacy, protection of intimate life, and the right to be forgotten regarding a fact that is not true or for which the individual has already been held accountable. Similarly, authoritarian governments may use information present in digital repositories to persecute a particular political class or to manipulate information in a way that suits them.

In this regard, the United Nations expresses its position as follows:

Recognizing that an open, secure, stable, accessible, and peaceful environment in cyberspace is extremely important for the realization of the right to privacy in the digital age, 1. Affirms the right to privacy, according to which no one should be subjected to arbitrary or unlawful interference with their privacy, family, home, or correspondence, and the right to protection of the law against such interferences, established in Article 12 of the Universal Declaration of Human Rights1 and Article 17 of the International Covenant on Civil and Political Rights (UNITED NATIONS, 2016, p. 5).

When it comes to digital repositories, they are of fundamental importance in shaping the databases that power search engines. Timely information today may become untimely or even offensive after a year or two, for example. In this sense, the right to be forgotten gains even more strength, as exercising this right can help prevent violations of fundamental rights.

Therefore, it is worth highlighting the decision issued by the European Court of Justice in a case involving Google, which determined the removal of links to websites and other public information by third parties containing personal data related to an individual, as a result of searches related to their name:

In this way, once the legal requirements are met, the search engine operator is obligated to remove links to web pages and other information published by third parties containing personal data related to an individual, resulting from searches linked to their name. It is possible for the data to be removed even in cases where the publication itself is lawful and accurate because, over time, the information may become inappropriate, irrelevant, or excessive in relation to the purposes for which it was processed and, therefore, incompatible with the Directive

(SUPREME FEDERAL COURT, 2018, p. 6).

The decision above points out solely that the right to privacy, as manifested in the given example through the right to be forgotten, is of utmost importance for the maintenance of individual rights and guarantees. Meanwhile, the same issue is observed in repositories used to form social media databases, highlighting the growing need to extend the right to be forgotten to their users.

It's important to note that among the key innovations affecting relationships in the digital society are social networks. Through these networks, people can connect based on affinity, interests, or simply to reconnect with old friends or make new ones.

In 2019, Facebook stated that its entire family of applications had over 2.7 billion monthly users (FACEBOOK..., 2019). In addition to Facebook itself, the platform includes Facebook Messenger, WhatsApp, and Instagram in its family of applications.

Similar to Facebook, other social networks also have millions of users in their databases. Through interaction with the platform and other users, these individuals generate content that becomes part of digital repositories. These repositories act as a permanent memory of everything users do, indexing links and information from third parties or users themselves in searches related to a specific name or topic.

In this sense, social networks provide an easier path for users to share information, preferences, moments, and skills, with the risk of personal data leakage when agreeing to the platform's terms of use. Thus, social networks amplify risks against fundamental rights through the simplicity of data propagation in such environments (DE GREGORI; HUNDERTMARCH; 2013, p. 757).

It's important to emphasize that data inserted into digital repositories used by social networks enjoy legal protection, as determined by Article 5, item X of the Federal Constitution, leaving no doubt about constitutional protection for such information. In this context, the right to be forgotten takes on a new dynamic through social networks, requiring the management of third-party use and the destination of personal information as a means of protecting privacy and private life (MONTEIRO, 2007, p. 33).

Thus, there must be a balance in the use of information contained in digital repositories to prevent the leakage of personal data, which could lead to the violation of the privacy of users on a particular platform.

On the other hand, it should be highlighted that through the analysis of these repositories using algorithms, artificial intelligence processes enable the condensation of information that facilitates economic development, solutions for urban transport, health, education, and the reduction of social inequality.

At this point, state regulation becomes of fundamental importance to ensure and promote social and economic development for the nation, while also safeguarding the use of digital repositories to prevent their misuse, always preserving the right to privacy, including as a form of freedom of expression in the digital society.

Right to be Forgotten as an Exercise of Freedom of Expression in the Digital Society

The importance of freedom of expression extends well beyond the protection provided by the constitutional text. While the emphasis on this provision in the Federal Constitution is warranted, the concept itself holds fundamental significance within the modern democratic state. Individuals deserve protection to express themselves and engage in debates without facing punishment for their opinions. Constitutionally, freedom of expression is addressed in Article 220, with paragraph 2 explicitly prohibiting all forms of censorship, whether political, ideological, or artistic.

In the context of the debate presented in this study, it is conceivable to regard certain concepts, such as the right to privacy, the right to solitude, or even the right to be forgotten, as expressions of freedom of expression in the digital society. However, the right in question lacks adequate state support for its full exercise, underscoring the rationale behind its existence as a legal principle in the pursuit of a just society (ALVES, 2003, p. 286).

In this context, the right to information free from flaws, assured to the individual—be it through a social network, the content available on a search site, or even on a governmental platform—should be considered a fundamental rule, guaranteeing respect for the private life of citizens (ALVES, 2003, p. 286). Professor Maria Helena Diniz (2017, p. 20) emphasizes that the violation of the right to be forgotten impacts personality rights and, consequently, human dignity, defining the theme in the following manner:

The right to be forgotten is the right to have one's historical privacy not scrutinized by third parties at any time. A person's past cannot be exposed to be the subject of public amusement or the curiosity of others. It is the individual's right to informational self-determination, meaning the control of their personal data, deciding whether past facts related to their life can or cannot once again be the target of news, comments, or recordings that may affect their present or future life.

The right to be forgotten, encompassed by the constitutional guarantee of the right to privacy, can be observed through two aspects. The first is to prevent third parties from encroaching upon the private life of a specific citizen, while in the second scenario, the citizen seeks protection from the dissemination of private information that is either legally protected or no longer relevant for publication at that moment (CRESTE; TEBAR; 2017, p. 3).

Information is gaining increasing strength and economic power, reflecting a society driven by data acquisition, which becomes even more valuable when processed (GIOVANNINI JUNIOR, 2019, p. 168). Therefore, in the face of this scenario, the need for the right to be forgotten gains prominence, allowing individuals to express their right to forget or retain specific information. This right is not about erasing the past but about preserving one's image and honor against the undue exploitation of past events, which, over time, may no longer warrant further exploration or disclosure (DINIZ, 2017, p. 20).

While some may argue that the right to privacy has lost its relevance in the digital society's social and economic development, this perspective is not supported by the present work.

The digital society necessitates judicial intervention in private law relations among individuals to preserve the principled content related to fundamental rights outlined in the constitutional text. In this sense, judicial activism sometimes proves to be an important action in maintaining the rights observed here, given the speed at which relations unfold in the digital society, which does not allow for the time needed for free judicial conviction. In this context, an important definition emerges:

It is precisely here that the figure of judicial activism arises, which reveals itself as a postmodern phenomenon characterized by the strong involvement of the Judiciary in social relations, regulating public policies and intervening in aspects of individuals' private lives. (CARMO; MESSIAS; 2017, p. 196).

It becomes necessary for the right to be forgotten to be recognized as an instrument of freedom of expression, allowing individuals to choose exactly what they want to make public about themselves. This is not a means of erasing the past, but rather ensuring that information out of context or beyond necessary public utility is not published.

In this way, regulation of the matter must take place, guided jointly by the preventive actions of the state, as the development resulting from the digital society occurs at a faster pace than that promoted by public regulation. As an example, the harmful effects of fake news in various areas, including personal ones when directed against a specific individual, need to be analyzed. Therefore, not only should the disappearance of false news be enforced through legal means, but also measures should be taken to prevent its recurrence. The freedom of expression and guarantee of fundamental rights take on new contours defined by a digital society.

As a means of expressing freedom of speech, it should be emphasized that any violation, whether active or passive, against privacy and intimate life should be restrained using the tools provided by legal systems in all possible spheres (ALVES, 2003, p. 288). In this regard, an important stance is highlighted regarding the prohibition of publishing information protected by the right to be forgotten:

To obtain restrictions on the publication or circulation of information that contains facts that should be forgotten due to the passage of time and lack of public interest, the inhibitory protection would be appropriate, and even more accurately, the provisional emergency protection. (DINIZ, 2017, p. 30).

At the end, it is important to recall that the right to be forgotten is an insurmountable characteristic of human dignity, and its violation directly affects fundamental rights and guarantees. This reality in the digital society has an impact on the way information is made available on search tools. In this sense, an example is the decision of the Court of Cassation of Belgium5 the understanding is that a newspaper may not provide online information regarding a criminal record for which the defendant has already been held accountable.

In this context, we can highlight that there are no variables for the exercise of the right to be forgotten, even when embedded in a digital society with a vast volume of available information.

Regarding technological innovations, it can be observed that technology does not determine the fate of society, as society would continue to exist even without technology. However, the innovation process that defines the digital society will continue to challenge legal norms, especially those related to personal life and privacy. It is the responsibility of the State to uphold these rights in the ongoing process of social evolution.

Given this context, this study sought to test three hypotheses. The first hypothesis (H1) is that Blacks are less likely to access justice than Whites. The second hypothesis (H2) is that the racial differential in access to justice is partially explained by the unequal structural conditions experienced by Blacks compared to Whites. The third hypothesis (H3) is that the racial differential in access to justice and thus its components differ between regions of the Brazilian territory.

[5]The Court of Cassation of Belgium upheld the determination imposed on the newspaper. The Court recalled that Article 10 of the European Convention on Human Rights (ECHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which protect freedom of expression, grant print media the right to digitize their archives for public availability. In the same vein, it added that society has the right to access information. However, these rights are not absolute and may be limited by other fundamental rights. According to the Court, it is undisputed that the respect for private life, as provided in Article 8 of the ECHR and Article 17 of the ICCPR, encompasses the right to be forgotten, allowing an individual convicted of a crime to object, under certain circumstances, to their past being recalled to the public in a new disclosure of the facts. This would justify interference with the right to freedom of expression and the press (SUPREME COURT OF BELGIUM, 2018, p. 10).

II. Final Considerations

A. It is up to the law to become increasingly humane, not simply confined to what is codified. Technology should be disruptive and compel the law to confront this process without infringing on the Democratic Rule of Law, but rather proposing changes that correspond to those necessary for this time. Technology cannot be stifled by the state through a legislative process that impacts creativity, entrepreneurship, and scientific research. However, it must not exceed the limits of individual rights, posing a risk to rights that have been achieved through centuries of maturation processes, debates, and struggles.

B. In the face of the digital society, it is the responsibility of the law to become closer to current social reality and understand its needs. Unlike other periods, the current society is characterized by rapid technological development leaps that oppose different generations, whereas in other periods, such as the industrial revolution, this speed occurred more slowly.

C. With technological innovations of just the last twenty years, communication has become easier, as well as shopping, accessing any type of information, education, or entertainment, among many other innovations. Thus, it is impossible to think of current life without today's technology. However, it is precisely this ease that creates the false perception that technology is more important than privacy and intimacy.

D. Therefore, it is up to the law to approach society and understand its needs. The digital society is not only composed of communication apps, online stores, or social networks. The digital society is moving towards unprecedented innovations that use artificial intelligence processes, smart cities, and smart contracts, in other words, a reality for which the law should already be prepared, as these novelties directly impact the privacy and intimate life of each citizen.

In this regard, some other points deserve attention:

E. The digital society is characterized by a strong process of innovation and technological development, which sometimes clashes with fundamental rights, including the right to privacy and intimate life.

F. The right to be forgotten and the right to be alone are encompassed by the constitutional principle of the right to privacy and are characterized as a form of expression and freedom of speech since it is up to the individual to determine which information about themselves should or should not be public or publishable.

G. Human rights have significant regulatory importance, preventing abuses in the process of development and formation of the digital society. Thus, faced with the obligation to maintain privacy, even in a society that generates a large amount of data daily, there is legal certainty of maintaining fundamental rights and guarantees.

H. Finally, considering that in a digital society the virtual and the physical are blurred, it is necessary for digital repositories, especially those used as a source of data for social networks, to be aligned with their policies in preserving the right to privacy and protecting intimate life. All content published on a social network belongs exclusively to the user, and such information is of a personal nature, being protected in terms of privacy and intimacy.

References

[1] Alves, Daniela Ferro Affonso Rodrigues. Direito À Privacidade E Liberdade De Expressão. Revista Da Emerj, Rio De Janeiro, V. 6, N. 24, P. 285-291, 2003. Disponível Em: Https://Www.Emerj.Tjrj.Jus.Br/Revistaemerj_Online/Edicoes/Revista24/Revista24_285.Pdf. Acesso Em: 19 Set. 2023.

[2] Brasil. [Constituição (1988)]. Constituição Da República Federativa Do Brasil: Promulgada Em 5 De Outubro De 1988. Disponível Em: Http://Www.Planalto.Gov.Br/Ccivil_03/Constituicao/Constituicao.Htm. Acesso Em: 19 Set. 2023.

[3] Calheiros, Tânia Da Costa; Takada, Thalles Alexandre. Reflexões Sobre A Privacidade Na Sociedade Da Informação. Inf. Prof., Londrina, V. 4, N. 1, P. 120-134, Jan./Jun. 2015. Doi 10.5433/2317-4390.2015v4n1p120. Disponível Em: Http://Www.Uel.Br/Revistas/Uel/Index.Php/Infoprof/Article/View/22564/17209. Acesso Em: 19 Set. 2023.

[4] Cancelier, Mikhail Vieira De Lorenzi. O Direito À Privacidade Hoje: Perspectiva Histórica E O Cenário Brasileiro. Sequência, Florianópolis, N. 76, P. 213-240, Ago. 2017. Doi Http://Dx.Doi.Org/10.5007/2177-7055.2017v38n76p213. Disponível Em: Http://Www.Scielo.Br/Pdf/Seq/N76/2177-7055-Seq-76-00213.Pdf. Acesso Em: 19 Set. 2023.

[5] Canotilho, J. J. Gomes Et Al. Comentários À Constituição Do Brasil. São Paulo: Saraiva / Almedina, 2013. E-Book.

[6] Carvalho, Luis Gustavo Grandinetti De. Direito À Privacidade. Revista Da Emerj, Rio De Janeiro, V. 1, N. 2, 1998. Disponível Em: Https://Www.Emerj.Tjrj.Jus.Br/Revistaemerj_Online/Edicoes/Revista02/Revista02_51.Pdf. Acesso Em: 19 Set. 2023.

[7] Carmo, Valter Moura Do; Messias, Ewerton Ricardo. Pós-Modernidade E Principiologia Jurídica: O Ativismo Judicial E Sua Validade No Âmbito Do Estado Democrático De Direito. Revista Brasileira De Direito, Passo Fundo, V. 13, N. 3, P. 189-205, Dez. 2017. Issn 2238-0604. Disponível Em: Https://Seer.Imed.Edu.Br/Index.Php/Revistadedireito/Article/View/2163. Acesso Em: 01 Set. 2023.

[8] Castells, Manuel. A Sociedade Em Rede. São Paulo: Paz E Terra, 1999. E-Book.

[9] City And County Of San Francisco. Board Of Supervisors. File No. 190110 Nº Ordinance 103-19, De 14 De Maio De 2019. Administrative Code - Acquisition Of Surveillance Technology, San Francisco, 31 Maio 2019. Disponível Em: Https://Sfbos.Org/Sites/Default/Files/O0103-19.Pdf. Acesso Em: 19 Set. 2023.

[10] Creste, Maria Victória Antunes; Tebar, Wilton Boigues Corbalan. A Tutela Do Direito À Intimidade E À Privacidade Perante O Avanço Das Redes Sociais. Etic 2017 – Encontro De Iniciação Científica. Presidente Prudente, V. 3, N. 13, 2017 Issn 21-76-8498, Disponível Em: Http://Intertemas.Toledoprudente.Edu.Br/Index.Php/Etic/Article/View/6162. Acesso Em: 10 Set. 2023.

[11] De Gregori, Isabel Christine; Hundertmarch, Bruna. A Fragilidade Da Proteção Do Direito À Privacidade Perante As Facilidades

Da Internet. Anais Do 2º Congresso Internacional De Direito E Contemporaneidade: Mídias E Direitos Da Sociedade Em Rede, Santa Maria, 2013. Disponível Em: Https://Www.Ufsm.Br/App/Uploads/Sites/563/2019/09/6-1.Pdf. Acesso Em: 19 Set. 2023.

[12] Dos Santos Silva, Natália; De Oliveira, Magno. Balancing Constitutional Principles: An Analysis Of Freedom Of Expression In Light Of Balancing Theory In The Context Of Cybercrime And Digital Cancellation.

[13] Diniz, Maria Helena. Efetividade Do Direito A Ser Esquecido. Revista Argumentum. Marília, V. 18, N. 1, P. 17-41, Jan./Abr. 2017. Eissn 2359-6889. Disponível Em: Http://Ojs.Unimar.Br/Index.Php/Revistaargumentum/Article/View/339/89. Acesso Em: 5 Set. 2023.

[14] Facebook Completa 15 Anos Com 2,3 Bilhões De Usuários. G1, 04 Fev. 2019. Economia, Tecnologia. Disponível Em: Https://G1.Globo.Com/Economia/Tecnologia/Noticia/2019/02/04/Facebook-Completa-15-Anos-Com-23-Bilhoes-De-Usuarios.Ghtml. Acesso Em: 02 Set. 2023.

[15] Gediel, José Antônio Peres; Corrêa, Adriana Espíndola. Proteção Jurídica De Dados Pessoais: A Intimidade Sitiada Entre O Estado E O Mercado. Revista Da Faculdade De Direito - Ufpr, Curitiba, N. 47, P. 141-153, 2008. Doi Http://Dx.Doi.Org/10.5380/Rfdufpr.V47i0.15738. Disponível Em: Https://Revistas.Ufpr.Br/Direito/Article/View/15738/10444. Acesso Em: 6 Set. 2023.

[16] Giovannini Junior, Josmar Lenine. Fase 4: Governança De Dados Pessoais. In: Maldonado, Viviane Nóbrega (Coord.). Lgpd: Lei Geral De Proteção De Dados Pessoais: Manual De Implementação. São Paulo: Thomson Reuters Brasil, 2019. (Capítulo 4) P. 167-188.

[17] Goldschmidt, Rodrigo; Reis, Beatriz De Felippe. A Proteção Dos Dados Pessoais E Sensíveis Do Empregado No Ordenamento Jurídico Brasileiro Frente À Sociedade Da Informação: Uma Abordagem Sob A Teoria Da Eficácia Horizontal Dos Direitos Fundamentais. In: Wolkmer, Antonio Carlos; Vieira, Reginaldo De Souza (Org.). Direitos Humanos E Sociedade. Vol. 1. Santa Cruz Do Sul: Essere Nel Mondo, 2018. E-Book. (Parte 2) P. 170-184

[18] Gomes, Márcia Letícia; Sparemberger, Raquel Fabiana; Brum, Amanda Netto. Pelo Direito De Estar Só: O Direito À Intimidade Na Era Da Internet. Anais Do 3º Congresso Internacional De Direito E Contemporaneidade: Mídias E Direitos Da Sociedade Em Rede, Santa Maria, 2015. Disponível Em: Https://Egov.Ufsc.Br/Portal/Conteudo/Pelo-Direito-De-Estar-S%C3%B3-O-Direito-%C3%A0-Intimidade-Na-Era-Da-Internet. Acesso Em: 19 Set. 2023.

[19] Monteiro, Carina Villela De Andrade. Direito À Privacidade Versus Direito À Informação. Considerações Sobre A Possibilidade De Órgãos Públicos Fornecerem A Terceiros Informações Pessoais De Agentes Públicos. Revista De Informação Legislativa, Brasília, A. 44, N. 173, P. 27-40, Jan/Mar 2007. Disponível Em: Https://Www2.Senado.Leg.Br/Bdsf/Bitstream/Handle/Id/141145/R173-02.Pdf. Acesso Em: 1 Set. 2023.

[20] Moraes, Alexandre De. Direito Constitucional. 33. Ed. Rev. E Atual. São Paulo: Atlas, 2017.

[21] Masson, Sílvia Mendes. Os Repositórios Digitais No Âmbito Da Sociedade Informacional. Prisma.Com, N. 7, P. 105-152, 2008. Issn: 1646-3153. Disponível Em: Https://Brapci.Inf.Br/Index.Php/Res/V/62295. Acesso Em: 2 Set. 2023.

[22] Morrin, Edgar. A Cabeça Bem Feita: Rio De Janeiro: Bertrand Brasil, 2003.

[23] Mulholland, Caitlin Sampaio. Dados Pessoais Sensíveis E A Tutela De Direitos Fundamentais: Uma Análise À Luz Da Lei Geral De Proteção De Dados (Lei 13.709/18). Estado De Direito E Tecnologia (Edição Temática), Vitória, Ano 2018, V. 19, N. 3, P. 159-180, Set./Dez. 2018. Disponível Em: Https://Www.Researchgate.Net/Publication/330000896_Dados_Pessoais_Sensiveis_E_A_Tutela_De_Direitos_Fundamentais_Uma_Analise_A_Luz_Da_Lei_Geral_De_Protecao_De_Dados_Lei_1370918. Acesso Em: 19 Set. 2023.

[24] Nações Unidas Em Paris. Declaração Universal Dos Direitos Humanos. Adotada E Proclamada Pela Assembleia Geral Das Nações Unidas Na Sua Resolução 217a (Iii) De 10 De Dezembro De 1948. Disponível Em: Https://Nacoesunidas.Org/Wpcontent/Uploads/2018/10/Dudh.Pdf. Acesso Em: 10 Set. 2023.

[25] Nações Unidas. El Derecho A La Privacidad Em La Era Digital. Septuagésimo Primer Período De Sesiones. Tercera Comisión, Tema 68 B)) Del Programa, Promoción Y Protección De Los Derechos Humanos, 31 Out. 2016. Disponível Em: Https://Www.Acnur.Org/Fileadmin/Documentos/Bdl/2017/10904.Pdf. Acesso Em: 10 Set. 2023.

[26] Orwell, Geroge. 1984. São Paulo: Companhia Das Letras, 2009.

[27] Ruaro, Regina Linden; Rodriguez, Daniel Piñeiro; Finger, Brunize. O Direito À Proteção De Dados Pessoais E A Privacidade. Revista Da Faculdade De Direito – Ufpr, Curitiba, N. 53, P. 45-66, 2011. Disponível Em: Https://Revistas.Ufpr.Br/Direito/Article/View/30768. Acesso Em: 7 Set. 2023.

[28] Silva, José Afonso Da. Curso De Direito Constitucional Positivo. São Paulo: Malheiros, 2001.

[29] Supremo Tribunal Federal. Boletim De Jurisprudência Internacional. Direito Ao Esquecimento. 5 Ed., Dez. 2018. Disponível Em: Http://Www.Stf.Jus.Br/Arquivo/Cms/Jurisprudenciainternacional/Anexo/Bji5direitoaoesquecimento.Pdf. Acesso Em: 8 Set. 2023.

[30] Warren, Samuel D.; Brandeis, Louis D.; The Right To Privacy. Harvard Law Review. V. 4, N. 5, P. 193-220, 15 Dez. 1890. Disponível Em: Https://Groups.Csail.Mit.Edu/Mac/Classes/6.805/Articles/Privacy/Privacy_Brand_Warr2.Html. Acesso Em: 15 Set. 2023.