
RIGHT TO BE FORGOTTEN IN THE DIGITAL AGE: EXAMINING THE ROLE OF ARTIFICIAL INTELLIGENCE IN INDIA'S PRIVACY LANDSCAPE

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ABSTRACT

The digital age has ushered in a profound transformation in the way personal information is processed, shared, and retained, raising pressing concerns about individual privacy. Within this evolving landscape, the Right to Be Forgotten (RTBF) has emerged as a pivotal concept, offering individuals the agency to control their digital identities. This research paper delves into the intricate interplay between the RTBF, Artificial Intelligence (AI), and privacy within the context of India.

The problem is established by recognising the rapid proliferation of AI technologies, which excel in data processing, profiling, and decision-making, and the consequent privacy challenges they pose. The significance of the study lies in its exploration of how India's legal framework and ethical considerations converge to address these challenges. This paper provides a comprehensive analysis of the RTBF's evolution in India, the implications of AI on privacy, and the future directions that can harmonize technological advancement with individual rights.

How the increasing influence of AI challenges the Right to Be Forgotten in the digital landscape of India is the pivotal issue, the paper adopts a mixed approach with analytical and descriptive notions by combining legal analysis, case studies and ethical considerations towards the possible solutions. The chronology of the main text sequentially follows the abstract, unravelling the complex dimensions of the RTBF, AI, and privacy in India's digital age.

This research contributes to the growing discourse on privacy in the digital era, offering insights into the practical challenges, ethical dilemmas, and legal nuances surrounding RTBF and AI. As India navigates the intricate web of technological advancement and individual privacy, this paper serves as a valuable resource for policymakers, scholars, and stakeholders aiming to strike

a harmonious balance between innovation and the protection of fundamental rights.

Keywords: right to be forgotten, artificial intelligence, digital identities, individual rights, right to privacy

Introduction

The dawn of the digital age has fundamentally transformed the landscape of information, communication, and individual privacy. The ubiquitous presence of the internet and the proliferation of digital platforms have led to an unprecedented accumulation of personal data. In this era of constant connectivity, individuals leave behind digital footprints with each online interaction, raising profound questions about the permanence and accessibility of this data. As Westin (1967) noted, "Privacy is the claim of individuals to determine for themselves when, how, and to what extent information about them is communicated to others." "The Right to Be Forgotten" (RTBF), a concept that has gained prominence in recent years, emerges as a pivotal mechanism to empower individuals to assert control over their digital identities.

However, this newfound right, enshrined in the "landmark decision of the European Court of Justice in the Google Spain case¹ (ECJ, 2014)", has ignited a contentious debate. Similarly, the landmark Judgement in the Puttaswamy case² have established privacy as a fundamental right in India . The RTBF intersects with the fundamental principle of freedom of expression and poses intricate legal and ethical dilemmas. It calls into question the delicate balance between an individual's right to privacy and society's right to access information. These tensions underscore the need for a nuanced examination of the RTBF, particularly in the context of India, a nation marked by its rich cultural diversity and complex legal framework.³

The Right to be forgotten

¹ Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (2014) C-131/12

² Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India [2017] 10 SCC 1

³ Humerick, M. Taking AI personally: how the EU must learn to balance the interests of personal data privacy & artificial intelligence. *Santa Clara High Tech* [2017] *LJ*, 34, 393

The "right to be forgotten" refers to an individual's capacity to decide how much of their private information is made available online. According to the Srikrishna Committee (2018)⁴, the right to be forgotten is a notion that aims to place memory restrictions on an otherwise limitless digital universe. Although it was emphasised by the Committee, this right may need to be weighed against other rights and interests. The exercise of this right could be in conflict with the right to knowledge and freedom of expression of another individual. Its applicability may be influenced by factors such as the sensitive nature of the restricted personal data, the value of the data to the public, and the visibility of the data principal.

Evolution of the Right to Be Forgotten

The concept of the Right to Be Forgotten (RTBF) has undergone a significant evolution since its inception. It originated in the European Union and found its roots in the landmark case of Google Spain⁵, where the European Court of Justice (ECJ) recognized an individual's right to request the removal of search engine links that display outdated or irrelevant information. This decision marked a watershed moment in the field of privacy and data protection law, establishing the foundations of the RTBF.

The ECJ's ruling was grounded in the belief that individuals should have a degree of control over their digital identities and the information associated with them. It acknowledged the potential harm that persistent and outdated online information could inflict on an individual's privacy and reputation. Crucially, the court emphasized the responsibility of search engines, like Google, as data controllers, thereby obliging them to consider and, if necessary, act on requests for delisting.⁶

However, it is vital to note that the RTBF, as articulated in the Google Spain case, is not an absolute right but one that is subject to a careful balance between an individual's right to privacy and society's right to access information. The ECJ underscored that such requests should be assessed on a case-by-case basis, considering factors like the public interest in the information,

⁴ Justice B.N. Srikrishna Committee, "Report on Data Protection" 2018

⁵ Google Spain SL, Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (2014) C-131/12

⁶ Dwivedi, Y. K., Hughes, D. L., Coombs, C., Constantiou, I., Duan, Y., Edwards, J. S., ... & Upadhyay, N. [2020]

the role of the individual in public life, and the passage of time since the information's publication (ECJ, 2014).

Since the Google Spain case, the RTBF has garnered global attention and spurred legal discussions beyond the European Union. It has been incorporated into the General Data Protection Regulation (GDPR)⁷, further extending its reach and influence on data protection regulations worldwide (European Commission, 2018). Additionally, various jurisdictions, including Canada and Japan, have considered or implemented their versions of the RTBF, adapting its principles to their legal frameworks (McGarr, 2018; Ministry of Internal Affairs and Communications Japan, 2017).

This evolution of the RTBF reflects a growing recognition of the need to address the challenges posed by the digital age and the persistence of personal information online. It underscores the importance of balancing the right to privacy with the principles of free expression and access to information in a rapidly changing information landscape.

Right to be forgotten in India

In India this Right is evolving however we have certain bill and act as follows which discuss about RTBF.

Present Law

“According to Section 43A of the Information Technology Act of 2000, organizations that possess sensitive personal data and fail to maintain appropriate security to safeguard such data, resulting in wrongful loss or wrongful gain to anybody, may be obligated to pay damages to the affected person”. The 'Right to be forgotten' is not specifically included in the Government of India's notification of the “Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021”. It does, however, provide procedures for filing complaints with the designated Grievance Officer in order to have content that exposes personal information about the complainant removed from the internet without the complainant's agreement.

⁷ General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)

I. The Digital Personal Data Protection Bill, 2023

The Bill will be applicable to the handling of digital personal data processed in India, whether the data is obtained online or offline and then converted to digital form. If the processing is being done to offer products or services in India, it will also apply to processing done outside of India.

The Bill does not expressly provide for the right to data portability and the right to be forgotten. The 2018 Draft Bill and the 2019 Bill introduced in Parliament provided for these rights. “Section – 20 of the 2019 bill expressly mentioned the provisions for the RTBF”. “The Joint Parliamentary Committee, examining the 2019 Bill, recommended retaining these rights⁸. GDPR also recognises these rights⁹. The Srikrishna Committee (2018) observed that a strong set of rights of data principals is an essential component of a data protection law.¹⁰ These rights are based on principles of autonomy, transparency, and accountability to give individuals control over their data.”

“Digital Personal Data Protection Bill”, 2023, Section-12(1) “A Data Principal shall have the right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent, including consent as referred to in clause (a) of section 7, in accordance with any requirement or procedure under any law for the time being in force.”

(2) “A Data Fiduciary shall, upon receiving a request for correction, completion or updating from a Data Principal,—

- (a) correct the inaccurate or misleading personal data;
- (b) complete the incomplete personal data; and
- (c) update the personal data.”

⁸ Report of the Joint Committee on the Personal Data Protection Bill 2019

⁹ General Data Protection Regulation 2016 (Regulation (EU) 2016/679)

¹⁰ Justice B.N. Srikrishna Committee, "Report on Data Protection" 2018

These rights have given the rights for the erasure, updation but when view with the interference of AI where the tracing of the owner can also be a major task makes the issue of forgotten relevant in the AI age.

Right To Be Forgotten and Artificial Intelligence

“Artificial intelligence (AI), is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings”. “Intelligence can be defined as the capacity for abstraction, logic, understanding, self-awareness, learning, emotional knowledge, reasoning, planning, creativity, thinking and problem-solving”. It is necessary to delve into an overview of the concepts of human memory, AI memory and forgetting. Human memory mainly has short-term memory and long-term memory. Forgetting short-term memory is a process in which the human mind after forgetting the memory is difficult to recall it. Once forgotten there is no way to recollect from the human memory. Artificial intelligence works on the algorithms created by the developer. The algorithm of artificial intelligence in itself contains the intelligence which can be learned and unlearned on its own. Deleting data from one server can make that data unavailable for the normal user but artificial intelligence software can indeed access the data as the owner of the network usually never permanently deletes the data. Even tech giants like Google are struggling to find solutions for the permanency deletion of the data. Artificial intelligence does not work like a human memory and stores the data in different packets of signals. Deletion by one network cannot guarantee deletion from other packets. So, AI poses a difficult task to be work on and legislate on.

RTBF in Different Jurisdictions

The Right to Be Forgotten (RTBF), originally rooted in European Union jurisprudence, has transcended its geographical origins and inspired discussions and adaptations in various jurisdictions around the world. This section explores how different countries and regions have grappled with the concept of the RTBF and adapted it to their legal frameworks.

European Union (EU)

The European Union has been at the forefront of RTBF developments since the Google Spain

case (ECJ, 2014). The General Data Protection Regulation (GDPR), which came into effect in 2018, expanded and codified the RTBF, solidifying its place in EU law (European Commission, 2018). Under the GDPR, individuals have the right to request the removal of personal data that is inaccurate, outdated, or no longer relevant. This extension of the RTBF's principles to a broader context emphasizes the EU's commitment to data protection and privacy rights.

United States

The United States, with its distinct legal framework, has approached the RTBF concept with caution due to its potential clash with First Amendment principles. While there is no explicit RTBF law at the federal level, individual states have taken steps to enhance data privacy. “The California Consumer Privacy Act¹¹ (CCPA)”, which came into effect in 2020, grants Californian residents the right to request the deletion of their personal information held by businesses (California Attorney General, n.d.). Discussions at the federal level regarding comprehensive privacy legislation have been ongoing, reflecting the increasing recognition of the importance of privacy rights in the digital age (Nissenbaum & Barocas, 2019).

Canada

Canada, another jurisdiction with a privacy-conscious approach, has seen discussions about implementing an RTBF-like framework. The Office of the Privacy Commissioner of Canada (OPC) released a draft policy statement in 2018 proposing the right to de-indexing, which would allow individuals to request the removal of search engine links to certain content “Office of the Privacy Commissioner of Canada, 2018”. While this policy is not yet law, it exemplifies Canada's efforts to align its privacy protections with contemporary challenges.

Japan

In Japan, the Ministry of Internal Affairs and Communications introduced guidelines in 2017 encouraging search engine operators to consider requests for delisting personal information (Ministry of Internal Affairs and Communications Japan, 2017). These guidelines were a

¹¹ California Consumer Privacy Act 2020

response to the global discussions surrounding the RTBF, reflecting Japan's awareness of privacy concerns in the digital age. The principal data protection legislation is the primary Act on the Protection of Personal Information (Act No. 57 of 2003; the “APPI”). Although there used to be separate data protection legislation applicable to government bodies prior to 1 April 2022, the APPI is now uniformly applied to both private and public sectors.

Case Study

Justice K.S. Puttaswamy (Retd.) and Anr. vs Union of India¹² (2017)

The Right to Privacy shall be incorporated into the Right to Life guaranteed by Article 21 of the Constitution, according to the Supreme Court's ruling. According to the Supreme Court, a person's ability to exercise control over his personal information and lead a self-determined life includes the ability to do so with regard to his online presence.

Jorawer Singh Mundy v. Union of India and Ors.¹³ (2021)

The High Court of Delhi ordered Google to erase the man's acquittal in the drug case verdict because it was detrimental to his employment chances.

Zulfiqar Ahman Khan v. M/S Quintillion Business Media Pvt. Ltd. And others (2018)¹⁴

Zulfiqar Ahman Khan ordered that articles critical of him be taken down from the news website The Quint. According to the Delhi High Court, a person's existence is inextricably linked to their right to be forgotten and their right to solitude.

Dharmaraj Banu Shankar Dave v. State of Gujarat¹⁵ (2015)

Pandit Dharmaraj Banu Shankar After being found not guilty in a kidnapping and murder case, Dave sought that the verdicts in his case not be made public. The Gujarat High Court denied The

¹² Justice K.S. Puttaswamy (Retd.) and Anr. vs. Union of India [2017] 10 SCC 1

¹³ Jorawer Singh Mundy v. Union of India and Ors [2021] SCC OnLine Del 2306

¹⁴ Zulfiqar Ahman Khan v. M/S Quintillion Business Media Pvt. Ltd. And others CS (OS) 642/2018

¹⁵ Dharamraj Bhanushankar Dave v. State of Gujarat [2015] SCC OnLine Guj 2019

Right to Be Forgotten's request.

Subranshu Raot v. State of Odisha¹⁶ (2020)

The Right to be Forgotten was taken into consideration by the Odisha High Court as a remedy for persons who have been harassed by sexually explicit videos or photos often disseminated on social media.

The Role of Artificial Intelligence In India's Privacy Landscape

Artificial Intelligence (AI) is playing a transformative role in shaping India's privacy landscape. As the country undergoes rapid digitization and embraces emerging technologies, AI's influence on data processing, privacy infringement, and the enforcement of privacy rights is becoming increasingly significant.¹⁷

AI-Powered Data Processing

AI's ability to process vast amounts of data and extract insights has implications for data privacy. In India, where a burgeoning digital population generates enormous data streams, AI-driven analytics enable businesses and governments to derive valuable insights. However, this capability also raises concerns about data protection and individual privacy.

AI algorithms can analyze user behavior, preferences, and interactions with online services, leading to the creation of detailed user profiles. This data-driven profiling can be used for targeted advertising, content recommendation, and personalized services. While this enhances user experiences, it raises privacy questions, particularly when users are unaware of the extent of data collection and its implications (Dencik & Cable, 2020).

Privacy Infringement and AI

AI's potential to process and analyze data can inadvertently lead to privacy infringements.

¹⁶ Subranshu Raot v. State of Odisha [2020] BLAPL No. 4592

¹⁷ Keeley, B., & Little, C. The State of the Worlds Children 2017: Children in a Digital World. UNICEF. 3 United Nations Plaza, New York [2017] NY 10017

Machine learning models, for instance, may use sensitive attributes to make predictions or decisions, such as determining creditworthiness, job suitability, or criminal risk (Diakopoulos, 2016). These decisions, when based on biased or inaccurate data, can perpetuate discrimination and undermine individual privacy.

Moreover, AI-powered surveillance technologies, including facial recognition, have gained traction in India's security and law enforcement sectors. While these technologies offer advantages in public safety, they also raise concerns about mass surveillance, tracking, and the potential for misuse (Hildebrandt, 2013).¹⁸

Transparency and Accountability

The opacity of AI decision-making processes poses challenges to transparency and accountability. Individuals may find it difficult to understand how AI systems arrive at certain decisions or recommendations. This lack of transparency hinders individuals' ability to challenge or correct erroneous decisions, impacting their privacy and rights (Pasquale, 2015).

Ethical Dilemmas Associated with RTBF and AI

Freedom of Expression vs. Privacy

Ethical dilemma: Juggling the freedom of expression and the public's right to access information with the individual's right to have their personal information removed from search engine results.

AI Implication: AI algorithms decide what content has to be deleted, which could result in excessive censorship or the suppression of important information.

Algorithmic Bias and Fairness

Ethical conundrum: Ensuring that the AI algorithms employed for RTBF judgements are impartial and fair, treating every person equally.

¹⁸ Mohamed, S., Png, M. T., & Isaac, W. . Decolonial AI: Decolonial theory as sociotechnical foresight in artificial intelligence. *Philosophy & Technology* [2020] 33, 659-684

AI Implication: AI algorithms may unintentionally reinforce biases, having a disproportionately negative effect on marginalised communities.

Transparency and Accountability

Maintaining accountability and transparency in the RTBF process, including how and by whom decisions are made, is the ethical conundrum.

AI Implication: Because AI algorithms frequently function as "black boxes," it can be difficult to understand or hold them responsible for judgements.

Data Retention vs. Deletion

Ethical dilemma: Choosing when it is morally appropriate to keep data for legal reasons (such as the public interest) rather than when it should be erased in accordance with RTBF requests.

AI Implication: AI systems might find it difficult to understand these subtleties, which could result in disputes over data preservation.

Impact on Historical Records

Ethical dilemma: Juggling RTBF requests from individuals with the right to historical truth and record preservation.

AI Implication: AI systems may unintentionally clean up old documents, possibly wiping out important details or context.

Scope of RTBF

Setting the parameters of RTBF, including what kinds of data are subject to deletion, presents an ethical dilemma.

AI Implication: Given the volume and variety of internet content, establishing clear parameters for AI algorithms can be difficult.

Global vs. Regional Jurisdiction

Ethical conundrum: Handling the international scope of the internet and diverse RTBF legal interpretations in various jurisdictions.

AI Implication: Due to different legal norms around the world, RTBF implementation is difficult.

Security and Data Protection

Ethical dilemma: Juggling the demands of RTBF implementation with those of data security and protection.

AI Implication: To prevent breaches, it's essential to manage and store RTBF requests and data securely.

Ethical Use of AI in Decision-Making

Making sure that AI systems used in RTBF decision-making are created and applied responsibly is an ethical dilemma.

AI Implication: When developing and utilising AI, developers and organisations must make moral decisions.

Navigating these ethical dilemmas requires careful consideration, continuous evaluation, and collaboration between policymakers, technology companies, ethicists, and legal experts. Striking the right balance between individual privacy and freedom of expression in the age of AI is an ongoing challenge that requires ethical guidelines, oversight, and robust public discourse.

Future Directions

The evolving landscape of the Right to Be Forgotten (RTBF) in the digital age, intersecting with Artificial Intelligence (AI) and privacy considerations in India, carries profound implications and offers insights into future directions for policy, technology, and society.

Privacy Protections in the Digital Age

The growing influence of AI necessitates a reevaluation and reinforcement of privacy protections in India. As AI technologies become more integrated into everyday life, including sectors like healthcare, finance, and law enforcement, policymakers must strive to strike a balance between innovation and safeguarding individual privacy. Future directions should include the development of comprehensive and adaptive data protection regulations that consider AI's impact, ethical guidelines for AI applications, and mechanisms for transparent and accountable AI decision-making.

Legal Clarity

A critical future direction is to provide legal clarity and define the contours of the RTBF in India. While Indian courts have acknowledged the right to privacy as a fundamental right, specific legislation or judicial pronouncements addressing the RTBF remained scarce till legislation of The Digital Personal Data Protection Act, 2023. Future legal developments should define the RTBF within the Indian context, establish clear criteria for data erasure requests, and outline the responsibilities of data controllers and processors with respect to the involvement and role of artificial intelligence. Legal clarity is essential to avoid ambiguity and ensure the effective enforcement of privacy rights.¹⁹

AI Ethics and Responsible Innovation

The ethical dimension of AI in the context of the RTBF demands attention. Future directions should focus on responsible AI innovation that incorporates ethical considerations. This includes developing AI algorithms and systems that prioritize fairness, transparency, and accountability. AI developers and organizations should adopt ethical AI principles, adhere to best practices, and regularly audit AI systems for biases and privacy risks. An ethical framework for AI can help mitigate potential privacy infringements and ensure AI technologies benefit society while upholding individual rights.

¹⁹ Chatterjee, S., Ghosh, S. K., Chaudhuri, R., & Chaudhuri, S. Adoption of AI-integrated CRM system by Indian industry: from security and privacy perspective. *Information & Computer Security* [2021] 29(1), 1-24

Public Awareness and Digital Literacy

Future directions must prioritize public awareness and digital literacy initiatives. Many individuals in India may not fully comprehend the extent of data collection and AI-driven profiling. Educating the public about privacy risks, data protection measures, and their rights is crucial. Digital literacy programs should be expanded to include awareness of privacy settings, consent mechanisms, and the implications of sharing personal information online. A well-informed public can make more conscious choices about their digital interactions and advocate for stronger privacy protections.

Conclusion

In conclusion, the Right to Be Forgotten (RTBF) in the digital age, with the growing influence of Artificial Intelligence (AI), presents a complex and evolving landscape for privacy rights in India. The intersection of RTBF and AI underscores the need for a delicate balance between individual privacy and the freedom of expression and information. As India grapples with the development of data protection laws and regulations, ethical considerations and policy decisions become increasingly critical.

AI algorithms play a significant role in facilitating the implementation of RTBF requests, but they also introduce challenges related to transparency, fairness, accountability, and bias. These challenges necessitate robust frameworks and oversight mechanisms to ensure that AI technologies do not infringe upon the fundamental rights of individuals.

Furthermore, as India navigates the delicate path towards data protection and privacy legislation, it faces the task of harmonizing its approach with global standards while considering its unique cultural, social, and legal context. The development of effective legislation and guidelines for RTBF and AI usage demands careful deliberation and extensive public engagement.

Ultimately, the evolution of the Right to Be Forgotten in the digital age, guided by the responsible and ethical application of AI, will significantly influence the future of privacy rights in India. It is a journey marked by continuous adaptation, ethical reflection, and the pursuit of a balance that respects individual privacy while upholding the principles of a free and open society. The

challenges are substantial, but the potential benefits for privacy, freedom, and digital rights make the endeavour both essential and promising.

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