



## "SOCIAL MEDIA AND RIGHT TO PRIVACY"

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**ABSTRACT**

No words can better describe the present scenario of technology than the following stated by cosmos (the villain in the movie "sneaker"). "The world is not run by weapons any more, or energy or money. It is run by ones and zeroes- little bits of data. It is all electrons. There is a war out - a world war. It is not about who has the most bullets. It is about who controls the information. What we see and hear, how we work, what we think. It is all about information." In the developed world, the present generation cannot imagine a life without computers. The new developments are posing challenges to the fundamental principles of law which worked well before their advent of this technology. Law has to cope with these new challenges & in the changing scenario, redefine the roles of individuals & groups, the relationships between the entities & intense rights & obligations. The Information Technology Act (hereinafter referred as "IT" Act) has given the Indian Penal Code, 1860, a contemporary dimension, by introducing various amendments. "Through these amendments, the code has been substituted with the words "electronic record & digital signature. This paper is an eye opener to the type of problems thrown by Information and Communication Revolution (ICR) and the nature of gaps in the existing laws and practices. The IT Act is just the beginning of a series of innovation laws which must replace the existing legal regime in a number of areas. Global standards on preventive action and remedial measures are yet to be evolved. Recently, some criminal elements of cyber society reminded the world of their existence by laying siege to several online IT corporations in the United States. Hacking into sensitive computer sites fraudulent manipulation of bank accounts and Credit Cards, peddling of pornographic material, unauthorized access to defense secrets and so on, are causing great concern today. India should take warning from the hunting hackers and put the legal system on guard.

**KEYWORDS** : Information Technology Act, Information and Communication Revolution, cyber society, data protection, privacy, hacking.

**INTRODUCTION:**

Data Protection Law affects us all. We are all data subjects and numerous organization and individuals are processing personal data relating to each and every one of us. Everyone is affected by data processing activities where personal information is involved and it is in all our interests that such activities are regulated. However, regulations cannot be too restrictive otherwise this can have consequences for the right of freedom of expression and would also impose heavy organizational and financial cost on those who process personal data. A balance has to be struck and this is one of the aims of data protection law to reconcile privacy and freedom of expression.

The Information and Communication Revolution (ICR), now under way throughout the world, is challenging established institutions and practices in a manner difficult even to comprehend for ordinary folks. The systems of socio-eco organization and political governance are undergoing unprecedented changes compelling governments to review the laws relating to management of knowledge in society.

The Information Revolution shall not be allowed to bypass India and in this respect the legal regime has to play its legitimate role. In this great endeavor, research paper will be significant step.

**DATA PROTECTION LAW IN INDIA:**

Data Protection law has its root in human rights law and the twin right of privacy and freedom of expression provided by the Human Right's Convention.

The Indian Supreme Court affirms the Fundamental Right to privacy. Current Data Protection laws in India are seen as too narrow and pressure has been applied to enact new legislation more consistent with global trends, including the right to be forgotten. New legislation could expand the extra-territorial jurisdiction and applicability of Indian data protection laws.

In today's world as everything is going to be connected through internet every time when data is provided to a service provider or a firm then there is great danger of misuse of the data. Today in India there is no specific law on the subject of data protection or on the

violation of the privacy of an individual. Although some sections of IT Act deal with the computer related offences and violation of privacy but those provisions are no way sufficient to deal with the present situations.

**WHY WE NEED DATA PROTECTION LAW:**

At 462.12 million, India has the second highest number of internet users in the world after China but lacks the legal framework to ensure data protection and privacy with current laws inadequate for the rapidly-evolving sector, say cyber security experts.

"India has the second highest number of internet users globally. However, India's Information Technology Act, 2000 and its amendments- 2008 and 2011- are not well suited to deal with social media and internet related cyber-crimes".

With the advancement in IT and BPO sectors, Indian companies handle and have access to almost all kind of sensitive details of individuals across the world. It includes credit card details, financial information and even medical history. These data are stored in electronic medium and vulnerable in the hands of their employees. There have been many instances where these data are stolen. These recent trends in the Indian IT sector have raised concerns about data privacy.

Some 3.24 million records were stolen, lost or exposed in India in 2017. This number has increased by a whopping 783% over the previous year. There were 29 major data breach incidents in the country in 2017. The common type of data breach is identity theft, accounting for 58% of all data breach incidents. The second most prevalent breach was access to government data.

But the main cybersecurity threat is from malicious outsiders who were responsible for 52% of all breach incidents. The primary targets for them were companies in the retail, government and financial services sectors.

Beyond the global impact of the biggest-ever data breaches and the social media behemoth Facebook, the scandal brought to the fore the shortcoming of India's laws to deal with ever advancing issues of online privacy and data theft in the country, India does not have a dedicated law on data protection and privacy.

We have entered an era of sustained digital attacks from radicals, criminal and cyber adventures, who will be difficult to control and to deal with at in the 21st century. Therefore, security cyber space is a complex and growing challenge.

A new generation of crime has developed with the advent of computers and internets.

In today's techno savvy environment, the world is becoming more and more digitally sophisticated and so are the crimes. Internet was initially developed as a research and information sharing tool and was in and unregulated manner. As the time passed by it became more transactional with the e-business, e-commerce, e-government and e-procurement, etc. all legal issues related to internet crime are deal with through cyber laws. As the number of internet users is on rise, the need for cyber law and their application has also gathered great momentum.

Starting from 25th May, 2018 the new European Union General Data Protection Regulation the GDPR will be enforceable not only to EU companies but also for companies of 3rd countries (including India). There is a high degree of uncertainty regarding applicability and enforceability of GDPR on Indian companies. Due to international reach the penalties provided, GDPR compliance is a major concern for MNC's in India.

Presently there is no specific legislation which is dealing with privacy and data protection.

#### **OVERVIEW OF DATA PROTECTION LAW:**

Personal information is a manifestation of an individual personality, the Indian Court including the Supreme Court of India, have recognized that the right to privacy is an integral part of the right to life & personal liberty which is a fundamental right guaranteed to every individual under the Constitution of India. As such the right to privacy has been given paramount importance by the Indian judiciary & can only be bettered with for compelling reasons such as, security of the state & public interest.

In India, the efforts at complying with the demands of adhering to privacy laws have originated mainly from the private sector rather than the government. In absence of a specific legislation, the Indian software & outsourcing industry has been taking initiative on the foreign clients & vendors.

#### **CURRENT DATA PRIVACY LAWS & ISSUES:**

In 2012, Justice K.S. Puttaswamy (Retired) filed a petition in the Supreme Court challenging the constitutionality of Aadhaar on the grounds that it violates the right to privacy.

The Government argued that there was no constitutional right of privacy in view of a unanimous decision of eight judges in *M.P. Sharma v. Satish Chandra* ([1954] SCR 1077) and a decision by a majority of four judges in *Kharak Singh v. State of Uttar Pradesh* ([1964] 1 SCR 332).

The case came before a three judge Bench of the Court which, on 11 August 2015, ordered that the matter should be referred to a larger Bench of the Court. On 18 July 2017, a five judge Constitution Bench ordered the matter to be heard by a nine judge Bench.

The problem for the Petitioners was that the Indian Constitution does not contain an explicit privacy right.

In an important section of the joint judgment headed "Essential Nature of Privacy" and in the next section of the judgment Chandrachud J considers "Informational Privacy". Concluding the judgment, it is held that privacy is a constitutionally protected right which emerges, primarily, from Article 21 of the Constitution. This is not an absolute right but an interference must meet the threefold requirement of (ii) Legality; (ii) the need for a legitimate aim and (iii) proportionality. It is also noted that, as informational privacy is a

facet of the right to privacy the Government will need to put in place a robust regime for data protection. When the IT Act, 2000 first came into force on October 17, 2008 it lacked provisions for protection & the procedure to be followed to ensure the safety & security of be followed to ensure the safety & security of sensitive personal information of an individual. This led to several other amendments. Aadhaar system is being currently challenged in India with the key dispute being whether the norms of compilation of the demographic biometric data by the government violate the right to privacy. Recently a bill was introduced in Parliament proposing to bring privacy under the ambit of legislation.

On July 27th, 2018 the Justice B. N. Srikrishna Committee, formed by the Indian government in August, 2017 with the goal of introducing a comprehensive data protection law in India issued a report & draft data protection Bill called the Personal Data Protection Bill, 2018. This bill has been submitted for consideration to the ministry of electronics & IT & is expected to be introduced in parliament at a later date.

Symmetric cryptosystem can be used for maintaining data confidentiality, integrity & authenticity. The data integrity is made possible through a mechanism called integrity check value. Where a recipient wants to be sure about the identity of the originator's or that the message has remained unaltered during transit, he can use integrity check value.

One of the most salient & contentions issues associated with the fast-developing online industry is the liability of service providers for transmitting context created by others. These services providers are gateways to the world of cyberspace. They provide online access to individuals, educational institutions, corporations & governmental agencies.

The ticklish issues of standards of liability of the service providers could not be resolved by the courts with one voice.

#### **CONCLUSION:**

"when men are pure, laws are useless; when men are corrupt, laws are broken". – Benjamin Disraeli (1804-1881).

The lack of a comprehensive legislation pertaining to privacy & data protection has been a matter of concern. This concern has been particularly expressed by foreign companies that are doing business in India & are transmitting confidential data into the country.

Even though the data protection laws are not specifically laid down in any statute as yet, the Indian industry as well as the have begun the process of sensitizing the government & the masses regarding the importance of privacy at large.

In *R. Rajagopal v. State of T. N* popularly known as 'Auto Shankar Case' the Supreme Court has expressly held the right to privacy or the right to be let alone is guaranteed by Article 21 of the Constitution.

There is a common misconception that right to privacy is merely a weapon to ensure confidentiality in human affairs.

Technology from the telephone to magnetic tape recorder, photography the personal computer, wireless telephone, electronic payment system, & the Internet has created new challenges to privacy & the laws ability to protect privacy.

Information technology (Reasonable Security Practices & Procedures & Sensitive Personal Data or Information) Rules, 2011 was user a new era of acknowledgement of need to protect personal data in India.

India needs time to have a mature law in tune with the social & technological progress. Efforts must be made to develop a

promotional legal framework, equipped to render guidance & direction to businesses, government & individuals vis-à-vis their data privacy & security related responsibilities, practices, rights etc. & penalize the entities that violated the data protection norms established by law.

#### The Act provides a very comprehensive definition of data.

"The law is the last interpretation of the law given by the last judge". The IT Act 2000, by introducing various amendments in the Banker's Books Evidence Act, 1891 has given its contemporary dimensions.

The Reserve Bank of India Act, 1934 shall be amended in the manner specified in the 4th schedule to the IT Act, 2000.

A paradigm shift has taken place in jurisprudence; i.e. tangible rights have given way to intangible rights. Thanks to technology, government is now referred to as e-governance commerce as e-commerce & signature as digital signature. A new society has emerged from nowhere & is growing exponentially. This society is an urgent need of a new set of laws of governance.

The computer has unique characteristic of storing data in a very small space. This affords to remove or derive information either through physical or virtual medium makes it much easier.

"The Internet is fast, whereas Criminal law system is slow & formal. The Internet offers anonymity, whereas Criminal law system require identification of perpetrators. The Internet is global whereas or law system are generally limited to a specific territory. Effective prosecution with national remedies is all but impossible in a global space".

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