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Need for Data Protection Laws in India

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Consumer privacy, data protection, and privacy laws for India are the major topics discussed in this paper. At first, The purpose of data protection legislation is discussed in a way how this legislation can provide safety to the people in their daily life. Secondly, the data protection legislation followed in other countries is briefly stated. Then, why there is a major concern for data protection and privacy is discussed with examples and the difference between data privacy and data security is discussed. And then, Legislations that currently pacifying the absence of single statute legislation for data protection and privacy and, how the organizations shall avoid turbulence and keep providing their service is discussed and concluded.

Keywords: *data protection, privacy, legislation.*

INTRODUCTION

“Privacy” can be referred to as the word of the year. Headlines and breaking news’ are revolving around privacy a lot lately. In this pandemic, the world chose to move online and kickstarted the economy back. The days when most of the people thought ‘working from home won’t be suitable for Indian culture were gone, People are looking at any electronic screen for at least eight hours nowadays. While people using gadgets connected online increase, the information collected online increases. Because when a service is provided by any

organisation, they need information about the person who is utilizing their service to enhance the service provided. This is where the huge problem arises, information means facts about someone or something. So, information can be misused and in some instances, it can lead to death. Data protection has become the need of the day now.

PURPOSE OF DATA PROTECTION LAW

Though in India, we have multiple legislations which have a vague set of rules for the protection of data, they are not enough to govern the current world problems. The Growth of technology exposes us to the loopholes established in the set of laws. “Privacy is a fundamental right specifically recognized under Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights (ICCPR)”.¹ In today’s world, data transfers have become inevitable between countries, and data centers are the new targets for exploiting the nation’s integrity. India’s consumer digital economy is expected to become an \$800 billion market by 2030, according to the reports released by consulting firm RedSeer at its flagship event Ground Zero 5.0.² Eventually, Data collected from individuals will be large and lack of legislation can be a major drawback. When a data breach happens, it may lead to serious problems. And more likely, India’s population can be utilized as an advantage by establishing data centers within the territory of India which will generate employment and also adds to data protection. But still, A single statute legislation is needed for regulating the processing of data.

DATA PROTECTION AND PRIVACY LEGISLATION WORLDWIDE

On 25th May 2018, European Union (EU) implemented General Data Protection Regulation (GDPR) in order to regulate the personal data transferred outside the European Union and European Economic Areas. It aims to provide the EU citizens more control over personal data.

¹ Akanksha Prakash, ‘What is the purpose of Data Protection law in India?’ (*Business Today* 9 July 2021) <<https://www.businesstoday.in/opinion/columns/story/what-is-the-purpose-of-data-protection-law-in-india-300925-2021-07-09>> accessed 13 August 2021

² Neha Alawadhi, ‘India’s consumer digital economy to grow 10x to \$800 bn by 2030: Redseer’ (*Business Standard*, 1 July 2021) <https://www.business-standard.com/article/current-affairs/india-s-consumer-digital-economy-to-grow-10x-to-800-bn-by-2030-redseer-121063001783_1.html> accessed 13 August 2021

On 28th June 2018, California Consumer Privacy Act (CCPA) is a state-wide data privacy law that enhances the privacy rights and consumer protection for the residents of California. On November 4, 2020, The California Privacy Rights Act (CPRA) was passed by the Californian voters which revise the industry standards, consumer privacy rights, and enforcement mechanisms of the California Consumer Privacy Act. The CPRA will come into effect from January 1, 2023, and will replace the CCPA.

In Singapore, Personal Data Protection Act (PDPA) was enacted in 2012 which governs the collection, use and disclose of personal data for purposes that a reasonable person would consider appropriate in the circumstances. In Canada, Personal Information Protection and Electronic Documents Act (PIPEDA) regulates the collection, use, and disclosure of personal information by any organisation across Canada.

DATA PROTECTION AND PRIVACY - A MAJOR CONCERN

In recent years, Information about individuals stored online has become more vulnerable to cyber-attacks. Personal information is vital because a nation's integrity can be destroyed using this information. Credit card information being sold on the dark web is a serious issue in which the buyer may use the credit card for illegal purposes and the actual owner of the credit card may end up caught while the wrong-doer escapes with an unknown identity. The cyber environment has become risky for people to use as there is a fear that people are being monitored and the information that they provide about themselves is at stake, in other words, Zero-day attacks are seeing a rise after the pandemic as the world now works online. Countries around the world are trying to keep the situation calm by regulating the online presence with new legislation.

On August 11, 2021, Accenture, a multinational company that provides professional and consulting services, reported that it was hit by a ransomware attack. The hacker group using the LockBit ransomware threatening to release the company's data and sell insider information. LockBit, according to New Zealand-based cybersecurity company Emsisoft, is a

strain of ransomware that prevents users from accessing infected systems until a ransom payment is made.³

Prior to the implementation of GDPR, UK fined Facebook for giving Cambridge Analytica access to user data without user consent, violating their privacy. Here, there was no data breach or a malicious hacker involved but the organisation was not respecting the privacy of the users and the data was then used to manipulate elections potentially.⁴ This has become the major concern of the nations as these incidents remind them about the manipulative nature that information has, which can decide the fate of the nations. So, Legislation is the only way to regulate this kind of issue in society.

DIFFERENCE BETWEEN DATA PRIVACY AND DATA SECURITY

Data privacy is related to the handling of data like how the service provider collects, uses the data, and maintaining compliance. Data security is related to securing the data from unauthorised users through different forms of encryption and authentication like multi-factor verification and identity management.⁵ Both have to be balanced to run a business now. Data privacy has become a big deal. The users never want their personal information to be sold on the dark web for some dollars which can help a robber, hacker, etc., With much legislation governing data protection and privacy worldwide, one can run a technological business only when the organisation has an application which is compliant to the legislation with respect to the jurisdiction like EU has GDPR and California has CCPA as discussed above.

INDIA'S CURRENT STATUS

In the Data Protection Committee Report headed by Justice B. N. Srikrishna, it is mentioned, "The right to privacy has been recognized as a fundamental right emerging primarily from

³ Joseph F Kovar, 'Accenture hit by Ransomware Attack, Latest Victim of 'Cyber-Pandemic' (CRN, 11 August 2021) <<https://www.crn.com/news/security/accenture-confirms-ransomware-attack-says-no-impact-on-operations>> accessed 12 August 2021

⁴ Adam Nunn, 'Data Privacy vs Data Security: Why Your Business Needs Both' (Auth 0, 26 June 2020) <<https://auth0.com/blog/data-privacy-vs-data-security-why-your-business-needs-both/>> accessed 12 August 2021

⁵ 'What's the Difference Between Data Security and Data Privacy?' (Managed Solution, 14 July 2020) <<https://www.managedsolution.com/data-security-vs-data-privacy-why-it-matters/>> accessed 12 August 2021

Article 21 of the Constitution, in *Justice K.S. Puttaswamy (Retd) v. Union of India*. To make this right meaningful, it is the duty of the state to put in place a data protection framework which, while protecting citizens from dangers to informational privacy originating from state and non-state actors, serves the common good.”⁶ On December 11, 2019, The Minister of Electronics and Information Technology, Mr. Ravi Shankar Prasad, introduced the Personal Data Protection Bill, 2019 on Lok Sabha. The main role of the Bill is to provide protection of personal data of individuals and establish a Data Protection Authority for the same. The Bill has not yet been passed by Parliament.

Some legislations in India can compensate for the lack of single statute legislation. Information Technology Act and Telegraph Act provide some amount of surveillance over the issues concerned with data protection and privacy but as mentioned above, they are not sufficient for the current scenarios. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 was passed by the parliament on 25th February 2021, to enhance the security standards and privacy concerns on the online platforms by appointing a Chief Compliance Officer and Grievance Compliance Officer. These rules replaced the Information Technology (Reasonable security practices and sensitive personal data or information) Rules, 2011. Recently, when people started using drones a lot, Guidelines were issued under Drone Rules, 2021, where drones were segregated according to their weights and the pilot shall get approval from the Directorate General of Civil Aviation (DGCA) to fly a drone. With reference to the report available on United Nations Conference on Trade and Development website, India has no specific consumer protection laws.⁷

WHY INDIA HAS TO MAKE THE MOVE IMMEDIATELY?

Recently, when the Pegasus project issue came up, people started worrying about their personal data protection and privacy a lot. Also, most of the students, employees and employers are tied up with smartphones or any other gadget which is connected online to do

⁶ *KS Puttaswamy v Union of India* [2017] SCC 1

⁷ 'Cyberlaw Tracker: Country Detail' (UNCTAD) <<https://unctad.org/page/cyberlaw-tracker-country-detail?country=in>> accessed 15 August 2021

their respective works. When a student is attending classes online, there is a need for sharing his/her information with the service-providing organisation to avail the service and access the content. When a company's meeting is held, there is a chance for confidential matters to be discussed in the meeting. And there may be a need for recording the meeting held online. The service provider has an End User License Agreement, Terms of Use, and Privacy Policies but the nation shall ensure whether all these regulations are fair with the help of the legislation to make sure that the information of the citizens is safe.

Technological start-ups have seen a rise in recent years. Start-ups like Ola, Dunzo, Razorpay, PharmEasy and Digit Insurance have become very big companies now. The thing to notice is all these start-ups are related to the technology and service sector, and they collect information from their customers about themselves like name, date of birth, home address, GPS Coordinates, and sometimes bank account details to process the data in order to provide services. The problem arises here concerning the data being stored safely and there shall not be a misuse of any information provided by the individuals.

THE ORGANISATIONS THAT CAN BE STEP UP

The organisations providing services within the territory of India can step forward to protect the data and privacy of the people accessing their service. The service providers shall collect only the most necessary data from their customers and be transparent about how they store them and their security mechanisms to their customers. The customer's consent shall be requested before accessing their service. A privacy notice or privacy policy can be notified to the users before accessing the service to make sure that why they have to provide their personal information. The customers shall be given a choice to delete or modify the information provided if they find it unnecessary. These practices can generate confidence and trust in the users until legislation is implemented.

CONCLUSION

India's technology sector is growing every day, so it has become inevitable that we need technology legislation to regulate the environment and to secure people from any kind of

harm. Most of the population have access to the internet which is a good development, like every action has a reaction, technology has its advantages and disadvantages. Convenience is the new drug, people receive the things they want to their doorsteps or where they are. While most developments enhancing the lives of people, small human errors which eventually happen can be rectified in the course of the post-release developments. Indian Legislations also have seen a lot of amendments with respect to the situation and time. Now, India is in need of legislation that focuses on data protection, consumer privacy, and rights desperately because of the growing technology sector.