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The Comparison between Indian Personnel and PRC New Civil Code, Cyber Laws, and Privacy

Anjali Tiwari^a

^aChandigarh University, Punjab, India

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This article talks about the rules and rights which have been added by the Civil Code which include contracts, marriage and tort liability, privacy, and the protection of personal information rights. It also talks about the difference between the Indian Personal and PRC New Civil Code and Cyber Laws and Privacy. We all know how cybercrime is increasing, especially after the pandemic when we all started doing our work virtually. This article also talks about the rules and regulations which have been made for the protection of cyber data. The Information Technology Act, which was passed in 2000, governs Indian cyber law and the purpose of the Act is to give e-commerce more legal protection by making it easy to register records with the government.

Keywords: *civil code, cybersecurity, companies act, personal data protection, privacy.*

INTRODUCTION

China's top legislature, the National People's Congress, has ratified the Civil Code of the People's Republic of China which will take effect on January 1, 2021.¹ It covers a wide range of rights which include contracts, marriage and tort liability, etc. Apart from existing data

¹ 'Civil Code of the People's Republic of China' (*The National People's Congress of the People's Republic of China*, 2020) <<http://www.npc.gov.cn/englishnpc/c23934/202012/f627aa3a4651475db936899d69419d1e/files/47c16489e186437eab3244495cb47d66.pdf>> accessed 10 January 2022

privacy and cyber security rules in legislation such as the PRC CyberSecurity Law, the Civil Code contains more generally applicable restrictions while also establishing protection standards on personal information. The Civil Code has added new rules on the right to privacy and the protection of personal information.

GENERAL PROVISIONS

Article 110²: *The right to privacy in general:* The right to life, reputation, honor, privacy, and the freedom to marry are all rights that a person has. A legal person or an organization has the right to a well-known and respected business name.

Article 111³: *Right to personal information protection:* The personal information of a person is legally protected. Any individual requiring access to another person's private information must do so in a legal manner; they cannot illegally use or transmit such information or publish it.

Articles 994-1000: *Various broad rights to bring liability claims for infringement of privacy and personal information*

Article 994⁴: If the deceased's name, reputation, or other rights are harmed, the deceased's spouse, children, and parents have the legal right to seek civil liability from the actor. If the deceased person does not have a family member, other close relatives of the deceased have the legal right to seek civil liability from the actor.

Article 995⁵: Under the provisions of this Code, a person who has had his or her personality rights violated has the right to hold the perpetrator civilly accountable. When the mentioned person exercises his right to ask the actor to remove the annoyance or extend apologies, the limited period requirements do not apply.

² Civil Code of the People's Republic of China, 2021, art. 110

³ Civil Code of the People's Republic of China, 2021, art. 111

⁴ Civil Code of the People's Republic of China, 2021, art. 994

⁵ Civil Code of the People's Republic of China, 2021, art. 995

Article 996⁶: Where a party's personality rights are harmed by the other party's the party suffers severe emotional distress then the party who is injured has the right to seek compensation for suffering.

Article 997⁷: When a person has proof that someone is committing an illegal act that infringes on his character rights that result in irretrievable harm to his lawful rights, the person has the right to go to the court and ask for help, and let that person stop from doing such illegal act.

Article 998⁸: Factors such as the act's purposes and consequences must all be considered when determining the civil liability for infringing on another's personality rights other than the right to life.

Article 999⁹: The name and personal information of a civil law person may be plausibly used for public interests by those who are engaged in reporting news provided if it is used unjustly it can harm someone's personality right.

Article 1000¹⁰: Civil liability must be commensurate with the exact method in which the act is performed and its impact when an actor is expected to put up with civil obligation, such as restoring reputation or offering apologies for infringing on the personality rights of others. If an actor refuses to accept civil liability, the court may take steps such as publishing the final verdict, or similar actions through media such as newspapers and the actor is responsible for any costs incurred as a result.

SPECIFIC PROVISIONS

Chapter 6: Personal Data Protection and the Right to Privacy

Article 1032¹¹: Privacy rights and privacy are defined.

⁶ Civil Code of the People's Republic of China, 2021, art. 996

⁷ Civil Code of the People's Republic of China, 2021, art. 997

⁸ Civil Code of the People's Republic of China, 2021, art. 998

⁹ Civil Code of the People's Republic of China, 2021, art. 999

¹⁰ Civil Code of the People's Republic of China, 2021, art. 1000

¹¹ Civil Code of the People's Republic of China, 2021, art. 1032

By invading, exposing, or publicizing another's private matters, no organization or individual may violate that person's right to privacy. Privacy refers to a person's undisturbed private life, including his own personal space and also the information that the person specifically doesn't want other people to know.

Article 1033¹²: Conduct that will result in a violation of a person's right to privacy

Unless consent is given by the right holder, neither organization nor individual shall conduct the following acts:

- Invading another person's personal space through phone calls, text messages, emails, and other similar methods;
- Photographing, or disclosing another person's private actions;
- Entering, photographing, or peeping into other people's private places, such as another person's home or hotel room;
- Taking pictures of or peering into another person's private areas;
- Giving out another person's personal data and infringing on their privacy in other ways.

Article 1034¹³: Personal data protection concepts and definitions in general: Personal information is legally protected. This information can be used to identify a person with information, such as his name, date of birth, telephone number, etc. The laws on the right to privacy apply to private personal information.

Article 1035¹⁴: Dealing out of personal data terms and conditions: Personal information must be handled in accordance with the justification, and limitation, and not in excess; in the meantime, the following conditions must be met:

Unless laws or administrative regulations require differently, consent should be taken from the person or his guardian.

¹² Civil Code of the People's Republic of China, 2021, art. 1033

¹³ Civil Code of the People's Republic of China, 2021, art. 1034

¹⁴ Civil Code of the People's Republic of China, 2021, art. 1035

- The rules for processing information have been made public;
- The goal of information processing are all clearly stated; and
- It does not violate any laws or governmental policy, nor does it go against either party's agreement.

Article 1036¹⁵: Liability Exemption Reasons: When processing personal data in any of the following scenarios, an actor is not held civilly liable:

- To the degree that the person consents or his guardian consent, the actor performs the act in a reasonable manner.
- The performer processes the information which is disclosed by the person that has previously been legally disclosed in a reasonable manner unless the person expressly rejects or the processing of the information infringes on the person's significant interest.
- The actor acts in the public interest or to protect the person's legal rights and interests.

Articles 1037-1039¹⁶: The rights of data subjects and the responsibility of data processors.

Article 1037: In accordance with the legislation, a person may make copies of his or her information from information processors. When a person discovers that an information processor has broken the law or an agreement between the two parties, he has the right to request that the information processor erase it as quickly as feasible.

Article 1038: An information processor doesn't illegally disclose private information to others without consent unless the data can no longer be used to identify a particular person. To ensure the security of personal information and also to prevent it from being leaked information processors must take technical steps. If a person's personal information has been leaked or lost, he must take immediate corrective action and report to the appropriate competent authorities.

¹⁵ Civil Code of the People's Republic of China, 2021, art. 1036

¹⁶ Civil Code of the People's Republic of China, 2021, art. 1037, and art. 1039

Article 1039: While performing their responsibilities, state organs, and their staff must keep the privacy and personal information of a person confidential, and must not divulge or unlawfully provide it to anyone.

PROVISIONS THAT ARE INDUSTRY-SPECIFIC

Article 1030¹⁷: Information handled by credit agencies: Civil law individuals' connections with credit information processors such as credit reporting agencies are governed by the rules of this Book on personal information protection.

Article 1226¹⁸: Provisions governing medical facilities and their medical personnel's protection of patients' privacy rights and personal information. Medical facilities and employees are expected to keep private information about their patients private and secret. Without the patient's agreement, anyone who reveals a patient's private or personal information or medical data is liable in tort.

INDIAN LAWS FOR CYBERSPACE

Information Technology Act, 2000

The Information Technology Act, which was passed in 2000, governs Indian cyber law. The fundamental purpose of this Act is to give e-commerce more legal protection by making it easy to register records with the government.¹⁹ A variety of improvements were made as cyber attackers became more cunning, as well as the human inclination to misuse technology. The Indian Parliament passed the ITA, which emphasizes sanctions and punishments to protect the e-banking and e-commerce industries. ITA's reach has been expanded to accommodate all modern communication devices.

The most notable is the Information Technology Act, which directs all Indian legislation to tightly restrict cybercrime:

¹⁷ Civil Code of the People's Republic of China, 2021, art. 1030

¹⁸ Civil Code of the People's Republic of China, 2021, art. 1226

¹⁹ Harshit Agarwal, 'All You Need To Know About Cybersecurity Laws in India' (*App Knox*, 15 July 2020) <<https://www.appknox.com/blog/cybersecurity-laws-in-india>> accessed 08 March 2022

Section 43²⁰ - Those people who destroy computer systems without the permission of the owner are subject to this law. The owner is allowed to recompense for the total harm in such instances.

Section 66²¹ - Applies if a person is judged to have acted dishonestly or fraudulently in any of the activities enumerated in section 43. The penalty in such circumstances might range from three years in prison and also to a fine up to Rs. 5 lakh.

Section 66B²²- The sanctions for receiving stolen communication devices or computers fraudulently are included, and a maximum three-year prison sentence is confirmed. Depending on the severity, this term may be followed by a fine of Rs. 1 lakh.²³

Section 66C²⁴ - Identity thefts involving impostor digital signatures, hacked passwords, or other identifying elements are investigated in this area. If proven guilty, you might face a three-year prison sentence and a fine of Rs.1 lakh.

Section 66 D²⁵ - This section was added to punish cheaters who mimic others using computer resources.

Indian Penal Code (IPC) 1980

Section 464²⁶- Forgery

Making a fraudulent document in the name of a fictional person and meaning for it to be believed that it was made by a real person, or in the name of a deceased person and intending for it to be thought that the document was made during the person's lifetime, could be considered forging.

²⁰ Information Technology Act, 2000, s 43

²¹ Information Technology Act, 2000, s 66

²² Information Technology Act, 2000, s 66B

²³ Vinit Verma, 'Importance of Cyber Law In India' (*Legal Services India*)

<<https://www.legalserviceindia.com/legal/article-1019-importance-of-cyber-law-in-india.html#:~:text=Cyber%20Laws%20In%20India,electronic%20records%20with%20the%20Government>> accessed 15 March 2022

²⁴ Information Technology Act, 2000, s 66C

²⁵ Information Technology Act, 2000, s 66D

²⁶ Indian Penal Code, 1980, s 464

Section 465²⁷ - False documentation: Whoever produces, signs, seals, or executes a document or part of a document dishonestly or fraudulently, or who makes papers referred to do not make out a case of making a false document shall be punished.

Section 468²⁸ - Forgery pre-planned for cheating: Whoever commits forgery with the intent to injure the reputation of any party, or knowing that the document or electronic record fabricated will be used for that purpose, must be punished by imprisonment of either description for a time that may extend to three years, as well as a fine.

Section 469²⁹ - Reputation damage: Whoever commits forgery with the intent to injure the reputation of any party, or knowing that the document or electronic record will be used for that purpose, must be punished with imprisonment of either description for a time that may extend to three years, as well as a fine.

Section 471³⁰ - Presenting a forged document as original: A person who "deceitfully or fraudulently uses as real any document which he knows or has caused to believe to be a forged document" is punished under this section.

The Companies Act of 2013

Companies Act of 2013 is a legal need for improving the daily operations of stakeholders. This Act's directions integrate all required technological-legal compliances, putting organizations that are less amenable in a dilemma. The SFIO (Serious Frauds Investigation Office) has the authority to file criminal charges against Indian firms and their directors. Furthermore, SFIOs have been even more diligent and strict in this area since the 2014 Companies Inspection and Inquiry Rules were established. The Act covers cyber forensics and cyber security diligence. The Companies (Management and Administration) Rules, 2014 put rigorous obligations and responsibilities on business leaders in terms of cyber security liabilities.

²⁷ Indian Penal Code, 1980, s 465

²⁸ Indian Penal Code, 1980, s 468

²⁹ Indian Penal Code, 1980, s 469

³⁰ Indian Penal Code, 1980, s 471

NIST COMPLIANCE

As the most reputable global certification organization, the National Institute of Standards and Technology (NIST)-accredited Cyber Security Framework provides a unified approach to cyber security. All of the regulations and best practices needed to properly manage the risk related to cyber are contained in the NIST Cybersecurity Framework.

ARTICLE 21 - RIGHT TO PRIVACY

The right to privacy is a basic or a fundamental right

Article 21³¹ of the Constitution states that no one's life or liberty may be taken away unless legal procedures are followed. After reading Article 21, it is evident that the term "life" refers to all parts of one's existence that contribute to one's life being complete and valuable.³²

*K.S. Puttaswamy v Union of India*³³

The right to privacy was not included in the Indian Constitution as a basic right. The right to privacy is a basic right guaranteed by Part III of the Indian Constitution, according to the Supreme Court judgment in Puttaswamy v Union of India.

The following are the decision's main points:

The Right to Privacy is a Fundamental Right

The Supreme Court determined that the right to privacy is a basic right that does not require explicit reference and may be inferred from Indian Constitution Articles 14, 19, and 21. The Supreme Court pointed out that the fundamental right to privacy is not absolute, and there are reasonable restrictions. The state can restrict it in order to protect legitimate state objectives, but only if:

³¹ Constitution of India, 1950, art. 21

³² Hinalliyas, 'Right to Privacy under Article 21 and the Related Conflicts' (*Legal Service India*) <<http://www.legalservicesindia.com/article/1630/Right-To-Privacy-Under-Article-21-and-the-Related-Conflicts.html>> accessed 15 March 2022

³³ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1

- The existence of a legal frame that supports a privacy invasion.
- A genuine state purpose that assures that this law is reasonable and prevents arbitrary government action.
- The government's tools are comparative to the goals that the law is aiming to meet.

Personal Data Protection Bill (PDPB)

The previous governing legislation, the IT Act, of 2000 was unable to keep up with substantial technical changes so PDPB was introduced.³⁴In India, Cybercriminals have been continually discovering new ways to acquire personal information, which has newly seen a major surge in cyber intrusions. The pandemic has advanced the digital platform and also virtual work has increased because of it cybercrime has also increased.

For the use of personal data prior consent requirements:

- There are limitations on the sorts of data to collect only the information necessary to provide a service.
- Organizations must hire data protection officers in order to meet data localization obligations. To protect the use of citizens' private data, the Data Protection Authority of India (DPA), would be established. The suggestion, which was approved in 2019, is currently being considered by a joint parliamentary committee after various parties raised concerns about a handful of its provisions, including social media corporations, experts, and even ministers.

OPINION

Despite having specific cyber security legislation, such as the People's Republic of China Cybersecurity Law, the People's Republic of China Consumer Rights Protection Law, Personal Information Security Specification, China, in my opinion, has developed more specific legislation for the privacy and protection of its citizens' personal information. New personal

³⁴ Angelina Talukdar, 'Key Features of the Personal Data Protection Bill, 2019 - Privacy' (*Mondaq*, 16 March 2020) <<https://www.mondaq.com/india/data-protection/904330/key-features-of-the-personal-data-protection-bill-2019>> accessed 14 February 2022

information protection obligations, as well as more generally applicable rules, are included in the PRC Civil Code. As a result of the epidemic, the globe has changed from an offline mode to a virtual model of work. With the world's growing reliance on the online world and also the private information of an individual being stored on different websites or social media as well as rapid technological advancements, it appears that specific provisions dealing with privacy and personal information protection issues are urgently needed. India, on the other hand, has cyber security and protection legislation, but it was drafted more than two decades ago when technology was not as evolved as it is now. I've personally witnessed several cyber frauds around me, involving the hacking of accounts and also a breach of personal information and privacy. New legislation governing cyber attacks and crimes is urgently needed in India.

CONCLUSION

The information technology legislation of 2000 was unable to keep up with recent technical breakthroughs, resulting in complex cyberattacks that were unimaginable 20 years ago. In light of contemporary technology breakthroughs, new cyber laws are required. In terms of privacy rights, India's constitution only contains Article 21, entitled "Right to Life and Liberty," which might be regarded as a private right but is insufficient. As a result, India lacks a particular right to privacy for personal data protection as it also lacks making laws for it. Privacy rights and personal information protection rules, or a separate regulation, are urgently required. The addition of privacy rules and personal information protection safeguards in the People's Republic of China's new civil law code is a fantastic accomplishment that is desperately required in these digital times.