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## Why India needs to Focus on its Data Protection Laws?

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*The 20<sup>th</sup> century is called the Digital Age or Information Age due to the great advancements made in the field of information and Technology. For instance, due to their enormous potential, computers changed the working of the world in a short time. The invention of the World Wide Web has made it easier to share and collect information, statistics, etc. and thus connecting the world. As a result, vast volumes of data have been generated which must be managed and kept to be used effectively. Countries need to be equipped with laws to prevent the misuse of data by people or organizations. However, many countries including India do not possess the adequate measures that need to be taken to avoid such activities. This ultimately leads to an unprecedented amount of cyber-attacks that compromise, breach and hack large amounts of data. This article sheds light on how India needs to focus on its Data Protection laws to properly oversee the movement and storage of data to prepare itself for the ever-changing paradigm of the world.*

**Keywords:** *data, information age, protection laws, digital age, technology.*

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## INTRODUCTION

Data has begun to amass to the point that something new and exceptional is taking place, half a century after computers entered society.<sup>1</sup> Not only the globe is immersed in more information than it has ever been but is also growing at a quicker rate.<sup>2</sup> A shift in scale has led to a shift in state.<sup>3</sup> The most recent version of this new era is focused on data, both collecting and interpreting it in ways that have never been feasible before.<sup>4</sup> Such data or information has already become a part of the world's governing system. Data helps people or organizations in making important decisions. It helps us to find solutions to our problems, to back up our arguments, to analyze the facts, and keep track of one's projects. Its exponential growth, usage, and importance are a subject of discussion. However, it is also subject to various types of malpractices that harm society and its people. Data that is often stored is marred by data breaches, hacking, and data theft. Yahoo! Inc. ("Yahoo" or the "Company") announced on September 22, 2016, that a state-sponsored hacker had breached the Company's digital systems in 2014 and had stolen personal information from over 500 million user accounts. The information stolen likely included phone numbers, birth dates, names, email ids, "hashed passwords (the vast majority with bcrypt), and, in some cases, encrypted or unencrypted security questions and answers."<sup>5</sup> In 2018, a Marriott data breach resulted in the loss of over 380 million records, including more than 5 million passport details.<sup>6</sup> Identities, credit card details, phone numbers, and home addresses, dates of birth were among the documents that were stolen.<sup>7</sup> In India, an unprotected server in SBI's Mumbai data centre revealed customer data, including balances, phone numbers, transaction records, and bank details.<sup>8,9</sup> Around 200

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<sup>1</sup> Viktor Mayer-Schonberger & Kenneth Cukier, *Big Data: The Essential Guide to Work, Life and Learning in the Age of Insight* (Hachette UK 2013)

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> 'How Data Changed the World' (*Tech Native*, 19 October 2018) <<https://technative.io/how-data-changed-the-world/>> accessed 05 June 2022

<sup>5</sup> *Ibid*

<sup>6</sup> Neil Daswani and Moudy Elbayadi, 'The Marriott Breach' (Neil Daswani & Moudy Elbayadi), *Big Breaches: Cybersecurity Lessons for Everyone* (Apress 2021) 55-74 <[https://doi.org/10.1007/978-1-4842-6655-7\\_3](https://doi.org/10.1007/978-1-4842-6655-7_3)> accessed 06 June 2022

<sup>7</sup> *Ibid*

<sup>8</sup> 'India's Largest Bank SBI Leaked Account Data on Millions of Customers' (*Tech Crunch*, 30 January 2019) <<https://techcrunch.com/2019/01/30/state-bank-india-data-leak/>> accessed 08 June 2022

government official portals made personal Aadhaar details public in 2018, compounding the issue to the point that thousands of government records containing sensitive information could be obtained easily on the internet.<sup>10</sup> As a result, data protection becomes increasingly important as the amount of data created and stored continues to increase exponentially. A country's data protection laws are inextricably linked to the surveillance structures present inside that country.<sup>11</sup> Data protection laws are important as they prevent fraudulent activities and keep people or organizations in check. In the absence of such laws, leaks and breaches are bound to happen. Therefore, India needs a strong set of Data Protection laws.

### NEED FOR LAWS IN INDIA

While data can be put to beneficial use, the unregulated and arbitrary use of data, especially personal data, has raised concerns regarding the privacy and autonomy of an individual. Countries across the world now work towards incorporating the protections in the laws into their data flow structures to preserve commercial interests as well as individual rights.<sup>12</sup> The ongoing increase in the number of cybercrime cases includes theft and sale of stolen data where physical boundaries pose no restriction. Strict data privacy regulations, such as the EU General Data Protection Regulation (GDPR), China's Personal Information Protection Law, California's California Consumer Privacy rights (CCPA), and the proposed Consumer Privacy Protection Act (CPPA) of Canada have become the standard, with each state aggressively defending personal data privacy.<sup>13</sup> All similar laws and regulations concerning data protection have come into effect in the last decade.<sup>14</sup> With more than 450 million people who use the internet

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<sup>9</sup> 'SBI Data Leak: What Happened? What Can You Do? All You Need to Know' (*Business Today*, 1 February 2019) <<https://www.businesstoday.in/technology/story/sbi-data-leak-what-happened-sbi-data-breach-financial-data-168220-2019-02-01>> accessed 08 June 2022.

<sup>10</sup> Mardav Jain, 'The Aadhaar Card: Cybersecurity Issues with India's Biometric Experiment' (*The Henry M. Jackson School of International Studies*, 9 May 2019) <<https://jsis.washington.edu/news/the-aadhaar-card-cybersecurity-issues-with-indias-biometric-experiment/>> accessed 08 June 2022

<sup>11</sup> Graham Greenleaf, 'Promises and Illusions of Data Protection in Indian Law' (2011) 1 (1) *International Data Privacy Law*, 47

<sup>12</sup> Rupinder Malik, 'Revamping India's Outdated Data Laws' (*The Economic Times*, 15 May 2022) <<https://economictimes.indiatimes.com/small-biz/policy-trends/one-of-the-last-few-countries-without-modern-data-protection-law-why-india-needs-an-urgent-revamp/articleshow/91556170.cms>> accessed 10 June 2022

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

and a growth rate of around 7%, India is already on its way to becoming a digital economy. With the rise in commercial availability, the rate of data breaches and losses has also increased. According to a report, in terms of data breaches, India was placed third in the world, with over 85 million Indian users' data breached by November 2021.<sup>15</sup> When compared to the previous year, India had a 351.6 percent growth in compromised accounts.<sup>16</sup> There are several factors contributing to the same. According to a survey conducted by a cyber security firm based in Singapore, 70 percent of businesses that operate in India use ten solutions for issues relating to data protection and cyber security at the same time, while 30 percent run more than ten. However, 57 percent of them encountered unexpected downtime due to data loss in the past year.<sup>17</sup> Downtime can cost businesses a lot of money and damage their reputation.<sup>18</sup> The data harvested from our personal devices, along with our trail of electronic transactions and data from other sources, now provides the foundation for some of the world's largest companies.<sup>19</sup> Data were considered company property and a proprietary secret, even though the data originated from customers' private behaviour.<sup>20</sup> In April 2018, a case was filed in the Federal District Court of Delaware against Facebook and Cambridge Analytica, suing them for stealing and inappropriately utilising the data of over 70 million registered users.<sup>21</sup> There are currently no data protection regulations in India. As a result, while data breaches and data harvesting by social media corporations are unethical and immoral, they are not illegal as per law.<sup>22</sup> As a result, users in India cannot use social media giants for loss of data and data breaches for the moment.<sup>23</sup> Apart from this, a failure in data protection also leads to monetary losses to an entity. According to a report by IBM, the average money lost due to a data breach in 2021 is 4.37 Million

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<sup>15</sup> 'India Ranks Third in Global Data Breaches in 2021: Report' (*Business Today*, 15 December 2021) <<https://www.businesstoday.in/latest/trends/story/india-ranks-third-in-global-data-breaches-in-2021-report-315750-2021-12-15>> accessed 11 June 2022

<sup>16</sup> *Ibid*

<sup>17</sup> Abhijit Ahaskar, '57% Indian Companies Suffered Downtime Due to Data Loss in 2020, Says Report' (*Live Mint*, 5 April 2021) <<https://www.livemint.com/technology/tech-news/57-indian-companies-suffered-downtime-due-to-data-loss-in-2020-says-report-11617606652264.html>> accessed 11 June 2022

<sup>18</sup> *Ibid*

<sup>19</sup> Hossein Rahnama & Alex 'Sandy' Pentland, 'The New Rules of Data Privacy' (*Harvard Business Review*, 25 February 2022) <<https://hbr.org/2022/02/the-new-rules-of-data-privacy>> accessed 12 June 2022

<sup>20</sup> *Ibid*

<sup>21</sup> Ashish Chhibbar, 'Making Private Companies Accountable For Breach of User Private Data' (*Manohar Parrikar Institute for Defence Studies and Analyses*, 24 October 2018) <<https://www.idsa.in/idsacomments/private-companies-accountable-breach-of-user-private-data-achhibbar-241018>> accessed 12 June 2022

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

Dollars. In 2021, over 4000 cases of data breaches were publicly disclosed. Regulating the right to protection of personal data requires attention to the normative elements of privacy as a concept.<sup>24</sup> Now since data spans the world across boundless networks, data protection regulations have been more significant.<sup>25</sup> As of January 2021, there is data protection legislation in over 130 countries.<sup>26</sup> A data protection law has the capacity to provide a clear legal basis for our rights normally assumed to arise from the basic right to privacy, outlining what is allowed and what is not, establishing the extent of our fundamental right to privacy, and explaining what data trustees who acquire our personal information can and cannot do with it.<sup>27</sup> As the number of countries that have introduced regulatory rules for data protection increases, India must avoid further delay and focus on developing its own set of rules and regulations and implement them as soon as possible.

## LAWS IN INDIA

Since managing databases is not as tough as keeping their integrity, the most pressing argument in this period is to devise a perfect technique for data security.<sup>28</sup> There is currently no formal legislation in India addressing data protection. Instead, India's data protection legislation consists of various independent laws and acts. In India, the current data protection laws can be found in the Information Technology Act and the Contract Act 1872. Section 43<sup>29</sup> of the IT Act protects against unauthorised access to computer devices by imposing high penalties of up to one crore rupees. Computer source code is covered by Section 65<sup>30</sup>. Anyone who knows or wilfully, hides, damages, alters, or forces someone to do so faces a penalty of up

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<sup>24</sup> Elif Kiesow Cortez, *Data Protection Around The World : Privacy Laws In Action* (1<sup>st</sup> Edition, T.M.C. Asser Press, 2021)

<sup>25</sup> 'A Practical Guide to Data Privacy Laws by Country' (*I-Sight Software*, 5 March 2021) <<https://www.i-sight.com/resources/a-practical-guide-to-data-privacy-laws-by-country/>> accessed 14 June 2022

<sup>26</sup> *Ibid*

<sup>27</sup> Siddharth Sonkar, 'Privacy Delayed Is Privacy Denied' (*The Wire*, 24 May 2021) <<https://thewire.in/tech/data-protection-law-india-right-to-privacy>> accessed 12 June 2022

<sup>28</sup> Dr. Ajay Kumar Garg & Shikha Kuchhal, 'Data Protection Laws in India A Comparative Study' (2013) 3 (1) *Information Technology*, <[https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/recent\\_issues\\_pdf/2013/January/January\\_2013\\_1357046038\\_cf1fd\\_29.pdf](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/recent_issues_pdf/2013/January/January_2013_1357046038_cf1fd_29.pdf)> accessed 14 June 2022

<sup>29</sup> Information Technology Act, 2000, s 43

<sup>30</sup> Information Technology Act, 2000, s 65

to two lakh rupees in jail or a fine. Hacking protection is provided under Section 66<sup>31</sup>. Section 72<sup>32</sup> guards against data breaching confidentiality and privacy. The Information Technology Act of 2000 addresses issues such as compensation and punishment for unlawful disclosure and exploitation of private information, as well as breaches of contractual conditions pertaining to individual data.<sup>33</sup>The Information Technology of 2000 places no restrictions on how personal details are used internally by the organizations that collect them. The RTI Act of 2005, which is confined to access rights, doesn't help. Outside of the credit reporting sector, in terms of the usage of personal data or sensitive information, the laws in India offer little protection.<sup>34</sup>People are currently only entitled to 'compensation' for genuine losses, not 'damages' as such, under the Information Technology Act. In contrast to compensation, which is a restorative solution, damages can be punitive.<sup>35</sup>The Parliament had conducted an effort to establish India's data protection framework in light of the growing relevance of tech-based enterprises.<sup>36</sup>The parliament was presented with a draft, which was then referred to the Joint Parliamentary Committee. The report of the Joint Parliamentary Committee cleared the ground for India's data protection regulatory framework. The Data Protection Bill's current proposal aims to govern the transmission, collection, utilization, and storage of data.<sup>37</sup> It also extends the provision to foreign organizations in the event that Indians are harmed as a result of their handling of data.<sup>38</sup>With the incorporation of non-personal data, social media laws, and other non-contextual concerns in what was supposed to be a basic framework for the protection of personal data, the JPC has acted as a catalyst for enterprises.<sup>39</sup> This data

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<sup>31</sup> Information Technology Act, 2000, s 66

<sup>32</sup> Information Technology Act, 2000, s 72

<sup>33</sup> Vijay Pal Dalmia, 'Data Protection Laws In India - Everything You Must Know' (*Mondaq*, 13 December 2017) <<https://www.mondaq.com/india/data-protection/655034/data-protection-laws-in-india--everything-you-must-know>> accessed 15 June 2022

<sup>34</sup> Graham Greenleaf (n 11)

<sup>35</sup> Siddharth Sonkar (n 27)

<sup>36</sup> 'The Data Protection Bill, 2021' (*Trilegal*, 24 December 2021) <[https://trilegal.com/knowledge\\_repository/the-data-protection-bill-2021/](https://trilegal.com/knowledge_repository/the-data-protection-bill-2021/)> accessed 16 June 2022

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*

<sup>39</sup> Bhumika Indulia, 'Data Protection Bill, 2021 | Hits, Misses and the Way Forward for Businesses' (*SCC Blog*, 7 April 2022) <<https://www.sconline.com/blog/post/2022/04/07/data-protection-bill-2021-hits-misses-and-the-way-forward-for-businesses/>> accessed 19 June 2022

protection blanket legislation is expected to be considered in Parliament soon and enacted as a major worldwide gold standard regulation.<sup>40</sup>

## CONCLUSION

India is the world's largest democracy. It has also grabbed the spot of the world's fastest-growing economy. With great achievements in the field of data and technology, it has also become a data-centric economy in the last decade. In the last two decades, India's economy, which was traditionally dominated by the government, has created a vibrant private market. The IT Act 2000 and other legislations are simply not enough to regulate the flow of data that takes place in the country and thus, they do not provide significant protection. The data protection structure of the country is still in the early stage but considering the importance of data in today's world India needs to have a new and better legislative framework. By comparing Indian laws to the laws of advanced economies, the necessary requirement for Indian laws can be determined. The government's excessive delay in the matter of the PDP Bill, as well as its authority to further postpone the PDP Bill's implementation by notifying different clauses individually, breaches our right to privacy. Without a Data Protection law, the government is failing its citizens and should fulfill its duty by creating a legislative framework concerning data protection. When done for the correct reason and in a transparent manner, data protection is effective. The information gathered should be specific to the goal. Among the major economies of the world, India is presently one of the last countries which do not have an independent, modern, and comprehensive Data Protection Act, as the IT Act is over two decades old and not up to date. Given India's drive to create an international reputation of a digital economy with a robust data services sector, the administration must move rapidly to put in place a structure that is comparable to its global counterparts.

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<sup>40</sup> *Ibid*