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Evolution of Data Protection Laws in India

Anant Chhabra[a]

[a]Symbiosis International University, Pune, India

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Data has gained immense value in present times. Every interaction with technology involves some kind of data exchange, especially the interaction facilitated through the internet. The data may range from basic details about a movie to personal information about a person. With the increasing amount of data being generated and processed daily, the need for the protection of data is also on the rise. In recent times, there have been many cases of data breaches, wherein huge amounts of personal data of people have been leaked, violating their rights and putting them at risk. Such risk needs to be mitigated as soon as possible, and the legal framework in India needs to be strengthened in the avenue. The current framework does not provide much protection to data per se, but can regardless be interpreted and used in a manner to act as a safeguard for the time.

Keywords: *data, data breach, data protection, data privacy.*

INTRODUCTION

In the current times where the Right to Privacy has been declared as a Fundamental Right under Article 21[1] by the Supreme Court of India in 2017[2], there are still instances where the right to privacy is breached by way of data leaks. In a world like this where data breaches are taking place online in huge numbers, the role of data protection laws becomes more important.

[1] Constitution of India 1950, art. 21
[2] *Justice K.S. Puttaswamy (Retd) v Union of India* (2018) Writ Petition (Civil) No. 494/2012

The digital revolution has exploded in the twenty-first century, and India is no exception. In current situations where technology plays the most vital role in the development of countries, we are in a world of tech where everyone in one way or another is dependent on technology, and there is an even higher risk of a data breach. Nowadays, a third-parties control practically every element of our communication and privacy. The reality of the current digital world is that practically every single activity that people engage in includes some type of data exchange.

PURPOSE OF DATA PROTECTION

The term "data" has been defined under section 2(o)[3] of the IT Act of 2000. Data is the "physical representation of information in a manner suitable for communication, interpretation, or processing by human beings or by automatic means."[4]"Data protection refers to the set of privacy-motivated laws, policies, and procedures that aim to minimize intrusion into respondents' privacy caused by the collection, storage, and dissemination of personal data."[5]In India, there are various data protection laws but they seem inefficient in protecting the data of individuals which leads to violation of various kinds of rights granted under the constitution of India which majorly includes the 'Right to Privacy' enshrined under Article 21 of The Constitution. "Privacy is a fundamental right specifically recognized under Article 12[6] of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights (ICCPR)".[7] Data breach circumstances like this might be problematic for the nation as a whole in a populous country like India, as it is violative of multiple human and constitutional rights.

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[3] Information and Technology Act 2000, s 2(o)
[4] Mubashshir Sarshar, 'Laws relating to Data Protection in India' <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.864.2806&rep=rep1&type=pdf> accessed 20 August 2022
[5] *Ibid*
[6] Universal Declaration of Human Rights 1948, art. 12
[7] 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 23 August 2022

DATA PROTECTION LAWS IN INDIA

The Universal Declaration of Human rights 1948recognizesthe Right to Privacy as a basic human right.[8] In India IT Act, 2000 is considered as the most prominent act regarding Data protection.

IT Act, 2000

The IT Act is considered as the most prominent law regarding data protection in India. IT Act helps in getting justice in case of a data breach by imposing a penalty on the wrongdoer. Section 43[9] of the IT Act of 2000 deals with illegal access to and destruction of data. Only rudimentary protections against data protection violations are provided by Section 43(b)[10]. The harm of, or unauthorized access to, data on a computer system is the only activity covered by Section 43(b). However, any ceiling on damages has been eliminated by the Information Technology (Amendment) Act of 2008. The damages under Section 43 were once limited to one crore rupees, but the IT Act of 2008 eliminated this cap and made the damages unliquidated; as a result, the losses that one may sustain in certain situations may be far more than one crore rupees.[11]

A business that "possesses, trades, or handles any sensitive personal data or information in a computer resource which it owns, controls, or runs" and "causes unlawful loss or wrongful gain to any person" may be held liable under Section 43-A[12] of the IT Act of 2008 for failing to secure data. It must be demonstrated that a corporation violated this section's liability requirements by failing to employ "reasonable security methods and procedures." This provision also holds an intermediary accountable. The intentional or knowing erasure, modification, or hiding of computer source code is prohibited by Section 65. Section 66, despite having unclear wording that safeguards personal data, only provides protection against the loss, alteration, or destruction of personal data. Both Sections 65 and 66 include criminal

[8] Universal Declaration of Human Rights 1948, art. 12
[9] Information and Technology Act 2000, s 43
[10] Information and Technology Act 2000, s 43(b)
[11] Information Technology Act 2000, s 43
[12] Information and Technology (Amendment) Act 2008, s 43A

penalties, such as up to three years in prison or a fine of up to Rs 2,00,000.[13] There is various other section in the IT Act which deals with the various kinds of penalties for crimes as described under the IT Act.

There are various loopholes in the IT Act, 2000 because it is old legislation when a country like India was not much versed with the internet and technology. In current times there is a much higher need for new legislation to protect the data of users so that they do not lose trust. New legislation was also drafted and tabled in the parliament which is rejected as of now if implemented it would have been known as the Data Protection Bill, 2021. It is further said that it will be replaced by a comprehensive legal framework. It was rejected as a need for much better legislation was felt which would be designed to address all the contemporary and future challenges of the digital ecosystem. The Data Protection Bill was tabled in parliament in 2019. The legislation underwent a number of changes to include provisions on regulating social media, and hardware companies, as well as elements on data localization and non-personal data. The legislation was originally intended to protect the digital privacy rights of the country's growing base of internet subscribers and a nascent data economy.

INDIAN CRIMINAL LAWS

Indian criminal Law does not address the issue of data protection directly but there are various provisions that if interpreted properly can be used as data protection laws. According to Section 403 of the Indian Penal Code, a Penalty is imposed upon the persons who for dishonest misappropriation or conversion of "movable property" for one's own use.[14] Property that is neither linked to something nor is land is referred to as movable property. Although no case law has been established on this view, it might be argued that computer-related data and intellectual property fall under the category of moveable property.[15]

Moreover, Section 405 of the Indian Penal Code deals with the criminal breach of trust, according to which, “Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that

[13] Information and Technology Act 2000, s 65 & 66
[14] Indian Penal Code 1860, s 403
[15] Indian Penal Code 1860, s 22

property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust".[16] Although these sections do not address the issue of data protection directly they can be used to protect data and punish criminals. It can also be understood from the language of the sections that these were not drafted for the purpose of data protection, and the original purpose differs.

INTELLECTUAL PROPERTY LAW PROTECTION

Copyright is issued for all types of computer software in India to prevent them from copying and for the protection of data so that it can not be used further without permission. In accordance with the seriousness of the violation, the Indian Copyright Act of 1957 prescribes an obligatory penalty for the piracy of copyrighted works. Computer programs alone are not patentable; they can only be patented when combined with hardware.

CONSTITUTIONAL LAW

The constitution of India also provides protection to the data though not directly but impliedly under Article 19[17] of the constitution of India which deals with the "Right to Privacy". According to the constitution of India "Right to privacy" is a Fundamental Right and such cases of Data breaches violate the Fundamental Right of Citizens. There have been various instances where the Supreme Court of India has held the Right to Privacy as a Fundamental Right. The Indian Parliament has passed a number of laws to protect acknowledged human rights in order to abide by the international human rights instruments (International Covenant on Civil and Political Rights, International Covenant on Economic Social and Cultural Rights, and Universal Declaration of Human Rights). For greater human rights protection and related or incidental problems, the Protection for Human Rights Act of 1993, for instance, calls for the establishment of a National and State Human Rights Commission and Human Rights Courts.[18]

[16] Indian Penal Code 1860, s 405
[17] Constitution of India 1950, art. 19
[18] Universal Declaration of Human Rights 1948, art. 12

THE CREDIT INFORMATION COMPANY REGULATION ACT, 2005

The Company regulation Act, 2005 imposes a duty on credit information companies, credit institutions, and specified users while processing credit data. Furthermore, any credit information firm, credit institution, or specific user that violates this Act may be punished by the Reserve Bank of India. The Reserve Bank of India may be regarded as a particular data protection authority in the sphere of credit information on the basis of this.

SUGGESTIONS

The data leakages which have been found in India and around the world are from the various kinds of service providers who have a huge quantity of data available to them from various consumers. There can be more transparency in this process of data collection and protection so that everyone can know the levels of protection. Moreover, what else can be done by these companies is that they can ask for only a limited amount of data, and the consumers can also be given a choice to alter and modify data as per their choice.

A new data protection law is the need of the hour to protect the data of the customers. The world is much ahead of us when compared. Various legislations around the world are dealing with the issue of data protection much more effectively those laws must be looked upon while formulating new legislation for Indian consumers. Furthermore, it can be said that all the laws which are dealing with the concept of Data Protection are not enough as the original purpose for which they were made is quite different. In this world of tech, where it is the backbone of most of the developing and developed countries of the world it becomes a necessity to protect the data for the security of consumers and for the security of the nation as a whole.

CONCLUSION

Henceforth, it can be concluded that Data Protection Laws in India, while not entirely nonexistent, need to undergo reforms. The current status is there are no explicit laws concerning data protection, but various provisions such as Fundamental Rights, Intellectual Property Laws, and IT Laws among others may be interpreted in a manner suited to act as a protection. But since the dependence on data is high in the present times, and increasing, it is important that new legislation be introduced focusing on data protection. This dependence is

clearly evident as most actions or activities a person does involve some kind of data exchange, thus giving rise to the need for better laws. With the increased dependence, there have been increasing incidents of data breaches as well, which are violative of multiple basic rights of people, and put at risk sensitive information of people. The need for the introduction of the new legislation is felt increasing with the rise in such incidents. Until such introduction, the present laws may be interpreted in a manner to serve the purpose and act as safeguards.