

**DATA PRIVACY, DATA PROTECTION:**  
**“The Unprecedented Challenges of Ambient Intelligence”**

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**ABSTRACT**

*Privacy has emerged as a basic human right across the globe and in India too it has been recognized as a Fundamental Right under Article 21 of the Indian Constitution. Right to Privacy is closely related to the protection of data which in this technological and globalized world, has become very difficult to achieve. Further, violation of privacy rights by the ruling majority through discriminatory legislation has also become possible due to lack of legal protection to this Right. In India, this Right was not initially recognized as a Fundamental Right, neither any specific law on data protection for securing the Rights of Privacy of the citizens was enacted. At the same time, there had been many allegations regarding violation of privacy rights both by the Government as well as by the Private Commercial Entities from time to time in India. Such allegations were also placed before the Courts of Law where the Courts had given landmark Judgments including guidelines and rulings. It thus becomes very important to analyze all these legal developments relating to the Right to Privacy and Data Protection to understand the extent of security granted by the Indian legal framework to the citizens over Right to Privacy. It has however been found that adequate recognition has been given to the Right to Privacy by the Indian Legal Regime and therefore significant steps were taken to prevent data theft and misutilization of sensitive information, yet a major extent of progressive developments is still needed to enhance the scope of data protection in the contemporary times for securing the Right to Privacy of the Indian citizens.*

**Keywords-** Data Privacy, Data Protection, Indian Constitution, Information Technology, Indian Penal Code, Personal Data Protection Bill etc.

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## I. INTRODUCTION

When the whole world is undergoing through a “Digital Revolution”, Government of India also envisaged the idea of digital world through its “Digital India” initiative very recently. But the question is, whether a country like India which doesn’t possess a specific statute for Data Protection will be able to succeed in this initiative? Here comes the importance of Data Protection. Every country which has a vision of complete digitalization and digital economy must have a strict, transparent and accountable data protection laws as its own. Through this research paper, I had tried to conduct an elaborated study on the concept of data protection, its importance in India, various statutes talking about it, its effect on society and also the Indian proposed bill on Personal Data Protection.

## II. RESEARCH OBJECTIVES

- i. Data Privacy focuses on the rights of individuals.
- ii. The purpose of data collection and processing, privacy preferences and the way organizations govern personal data.
- iii. To focus on how to collect, process, share, archive, and delete the data under the law.

## III. RESEARCH QUESTIONS

- i. How Good have we strategized our data?
- ii. How good are we at building privacy and ethics in using the data?
- iii. Are there security solutions to manage your data privacy program?
- iv. Do we have mechanisms in place to destroy or delete data if requested to do so?
- v. What will be the effects of Data Protection on Society?

## IV. CONCEPT OF DATA PROTECTION

Data privacy or information privacy is a branch of data security concerned with the proper handling of data – consent, notice, and regulatory obligations. More specifically, practical data privacy concerns often revolve around: Whether or how data is shared with third parties. How data is legally collected or stored.

## V. NEED OF DATA PROTECTION IN INDIA

1. In this data economic world, the corporate bodies and big companies started to consider Data as an asset and also finds value in its storage, collection and distribution. In order to

- fulfill this vision, they started to protect their Big data.
2. Right to Privacy which (includes personal data) being a fundamental right in India, the government of India has an obligation to formulate and implement a legislation for Personal data protection.
  3. In order to combat the rising cyber attacks like identity theft, data stealing and all, we need a specific legislation with strict sanctions and a redressive mechanism.

## VI. INDIAN LEGAL FRAMEWORK ON RIGHT TO PRIVACY

As of now in India, we know that there is a lack of definite legislation that could specifically deal with privacy and protection of data. However, in the absence of such legislation, there still exists a legal framework that though not directly but indirectly deals with privacy and data protection. Apart from statutory protection, privacy is also being protected under the Constitution of India. So, there are two protections by way of which privacy rights, as well as personal data, can be protected.

- i. Constitutional protection
- ii. Statutory protection Constitutional protection

The Constitution does not expressly or explicitly grant privacy as Fundamental Right. It is nowhere point out in the Constitution. However, it is intrinsic in Right to Life and Personal Liberty under Article 21 of the Constitution and other freedom guaranteed under part III of the Constitution. Although it has been granted as Fundamental Right in the Puttuswamy case<sup>29</sup> by a nine Judges bench the right cannot be enjoyed in total. Rational limitation can be forced under Article 19(2). Privacy has been made an inalienable right that we possess since our birth. Therefore, the Minority segment of Judges was holding the view from the beginning when the concept of privacy was in controversy, that the Right to Privacy is a Fundamental Right under Article 21 of the Constitution.

Thus, we can say that the core of the Constitution is Article 21 because it incorporates within it many rights which are essential to give constitutional recognition to newly emerging rights with the changing need of the society. Statutory protection In India, the pieces of legislation that deal with data protection in the present context are IT Act, 2000, Indian Contract Act, 1872, Intellectual Property Laws, Credit Information Companies Regulation Act, 2015, etc. which are discussed below in brief: IT Act, 2000- In India, the IT Act, 2000 is the first-ever IT legislation

whose aim is to deal with ecommerce, e-governance, and cybercrimes. Besides, it is the legislation dealing with data protection. The purpose of the IT Act is to protect against the infraction of information due to a leak of information from a computer.

- i. It contains various provisions viz. Sec. 65 and Sec. 66 which prevent others from illegally using technology like computer, laptop and information kept theirs in.
- ii. Sec. 43 of the said IT Act contains punishment for any destruction of data kept in the computer. Under this Section, if any person uses computer data in an unauthorized manner or illegally then he will be liable for a penalty of 3 years imprisonment or 5 lakhs rupees as a fine or with both.
- iii. Section 65 protects those who knowingly or besides, if any company violates the provision of the IT Act, then the managers of the company and directors are in person accountable for the offense.

Later, the 2008 Act has been passed to handle the matters that the original Act failed to cover and to assist further development of IT and related security concerns. The new Amendment Act gives power to the Indian government under Section 69(A) to prevent intercept, monitor, and decrypt computer systems, resources in computer devices and also to block electronic data stored therein. But this came under major controversy and later in the year 2015 it has been declared by the Supreme Court that Section 69(A) under which the government can issue direction to block internet sites is constitutionally valid as there prevails adequate procedural safeguard.

In Indian Penal Code, 1860 There is a lack of direct provision in criminal law for violation of data privacy. However, there are certain crimes from which an inference can be made that there exists a penalty for violation of privacy say e.g, Under Article 408 of IPC liability arises out of dishonest misappropriation of movable property.

Intellectual Property Law In India, the Copyright Act, 1957 deals with matters of copyrighted piracy (theft) and for such piracy impose compulsory punishment which is in proportion to the seriousness of the offense. Moreover, wherein an author produces books, records, or broadcast programs by collecting information from a different source by devoting time, money, labor, and skill amounting to work within the meaning of the Copyright Act are protected as being copyright of that person. Thus, the outsourcing parent entity may have recourse under the Copyright Act for any violation occurring to that database. In India, any information relating to

the credit of individuals is to be collected as per the privacy norms that are mentioned in the CICRA regulation.

## VII. DATA PROTECTION IS A RIGHT?

Data protection is a right because this it is interrelated to Right to Privacy (which includes privacy of data) a fundamental right in India. And no data privacy is possible without data protection. So, data protection is also a right.

1. Indian Constitution: The development of the Constitutional right to privacy started in 1950s in the milieu of police supervision of the accused and domiciliary visits to a person's home at midnight. In the case of *M.P Sharma v. Satish Chandra*<sup>1</sup>, Supreme Court held that, even though search and seizure is a part of the responsibilities of a police officer, conduction of it at midnight is a violation of Article 19(1) (f) of the Constitution. The Court added that a mere search by a police officer did not affect any right to property, and the seizure related to it is just temporary in nature. So it will act as a reasonable restriction on the right to privacy.

2. Indian Penal Code, 1860: The Indian Penal Code has come into existence during the British rule in India. The first draft was formulated in 1860s under the leadership of Lord Macaulay. Indian Penal code doesn't satisfy the whole need of Data Protection in India. Our Indian Criminal law does not exclusively deal with breaches of data privacy. Under the Indian Penal Code, legal responsibility for such breaches must be dependent upon the related crimes.

3. Information Technology Act (Amendment) 2008: Indian Parliament had made many efforts to bring the concept of data privacy under IT Act, 2000. This Act has been amended many times to meet the new challenges posed by the development of cyber world. Among them, the latest is 2008 Amendment Act. According to the Data Protection & Information Technology (Amendment) Act 2008, the words 'data protection' and the 'Information Technology' has its own connotation with each other. The objectives of the Act precisely talks about the protection of the cyber related rights. This Act includes provisions to prevent the illegal use of computers, computer systems and data stored within. There are a number of other provisions related to 'data protection'. The newly inserted section 43A and Section 72A of the Act also talks about the protection of data. The main drawback of this legislation is that the present provisions talking about the data security and confidentiality are insufficient to cover the newly emerged cybercrimes.

4. **Right to Information Act, 2005:** In India, the practical establishment of right to information of citizens to secure information comes under the control of public authorities to promote transparency and accountability. Section 2(j) of the RTI Act talks about the definition of 'right to information'. Here an issue arises that, the 'data' which was kept with the public authority are safe or not especially the digital data under clause (iv) of Section 2(j) is properly maintained or not. Therefore, the data protection under this Act is a concern and being taken care as a matter of an individual's right.

5. **Evolution of PDB Bill: Personal Data Protection Bill, 2019** Another recent effort towards data protection is the introduction of a Bill<sup>50</sup> on December 11, 2019, in the Lok Sabha by Mr. Ravi Shankar, Minister of Electronics and Information Technology, The main objects of the Bill were to draft a data protection regime to recognize current issues and possible statutory protection.<sup>51</sup> And this is not the only Bill introduced, before this in the years 2017 and 2018 also Bills about data protection were introduced in Parliament.

### VIII. CONCLUSION AND SUGGESTIONS

In India, the Right to Privacy has evolved as a Fundamental Right due to several interpretations made by the Judiciary. But if we notice our present scenario then we will find a vast technological development due to globalization. As we can see in today's world technology is becoming a part of our life, it benefitted us to a large extent but at the same time, it became a threat because with the development of technology many problems like cybercrimes, data theft, misuse of data, etc. came in front of us, which has a direct link to our privacy. As we know, that at present we have to share our personal information or data with a party whether it may be a Government or private entity to avail any kind of services, while sharing such information may increase the risk of data theft or misuse of data because in India there is a lack of adequate Data Protection Laws even though it has certain legislations which though not directly but in an indirect way is dealing with Data Protection. Some of which are the IT Act, Criminal Law, Intellectual property law, etc. When such information is leaked or misused by a third party illegally then it can be treated as a 'Breach of Privacy'. Moreover, many loopholes could be seen in the existing legislations like for internet the provider of service, data intercessors are not answerable for any infraction of data processing if they proved that such data was processed without their knowledge, so to give protection to data privacy we need a stringent Data Protection Law.

As an alternative to the collection of biometric information, few experts have suggested shifting to smart cards which would be an optional one. Smart cards which require pins will demand citizen's conscious co-operation during the identification process because biometric are permitted to recognize individuals even if they don't agree to get identified. Once smart cards are disposed of, nobody can use them to identify any individual. Adopting smart cards would eliminate or at least reduce the peril of criminals and terrorists, foreign government utilizing the database of biometrics to identify Indians.

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