



EMERGING AFFAIR OF DATA PRIVACY

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ABSTRACT

The issue of Data protection is continuously becoming an emerging topic with the development of internet services and their dynamic nature. It is extremely crucial to protect and secure the data. In this present era, the quality of the internet has uplifted so far and there are many online applications or social media apps which used to demand our personal information. Thus, we need to remain concerned about the protection of our online information. Through, this paper, we would deeply study the concept of Data Privacy, the number of ways by which our data got the steal and used for certain commercial purposes such as advertising or marketing. The business of various hackers has also initiated to rise due to the advancement in technology. Eventually, this triggers the legislature to introduce certain new and strict laws regarding the procurement of data, which can assure confidence in the people. We would also study the various legislations which are already been introduced by the Indian Parliament such as the Information Technology Act, of 2000. Likewise, we would also understand the view of the Indian Constitution on Data Privacy along with the various case laws which transformed the "Right to Privacy" under the category of Fundamental Rights through Article 21. Therefore, the factor of Data Privacy is one of the vital branches counted under the field of Cyberlaw. Ignorance of the same cannot be tolerated at the present to protect the Right to Privacy under Article 21.

Keywords data protection, internet services, social media apps, personal information, hackers

I. Introduction

In the current modern age, data on the internet is not secured. Presently, every single portal on the web, social media applications, etc won't able to process easily unless our data is challenged. Each activity in the aura of the internet ranging from buying tickets to ordering foodstuffs our private data is gathered by the various sites in an indirect way. Thus, the concept of Data privacy is trending in this modern era. Data privacy is the protection of our private data or a record of online confidential information from a third-party user. Basic privacy must be maintained to safeguard one's private information. In other words, the data of an individual should not be revealed to any third-party website or any application which would infringe on his/her private life. No sort of interruption should be made to reveal the individual's private data. Data are extremely vital in the current times that even large reputed companies agree to pay for its exchange. There is neither any legal definition nor any special legislation meant for data protection. But the general laws based on privacy empower the users to take their support in case of a data leak. Trust plays a big role here, therefore, the user must hold nice faith in the websites or other third-party sources as far as the personal data is concerned. The absence of trust between the intermediary and the online user would account for the invasion of the user's privacy and the heavy disturbance in web life. Hence, the share of technology in our

today's lives is goodly diversified which results in the great usage of the internet by people to enhance their convenience. Therefore, it is very necessary for us that we should remain very concerned about our data. BBC report states that the data of Europe get shared around 376 times in advertising sales⁹⁴. With the growing network of technology, the issue of data privacy is also parallelly getting the list of trending legal matters. A release of the data which belongs to the government organization can allot the opponent country a big insight⁹⁵. Likewise, in the hospital, the patient's health report can be traced and eventually can be used for some bad purpose, a leak of data of a business entity could put it in the astonishment of loss or danger in case if has reported to the competitor⁹⁶. This denotes that the security of online personal information is the need of the current generation.

II. Merits of Data privacy & Effect of Data leak

Every coin has its two sides, likewise, data privacy also has dual sides. The concept of data privacy has its both excellence and its absence lead to bad outcomes which are listed below.

A. Merits: Data protection provides punishments to those who are held responsible to leak the individual's data. Secondly, it upholds the fundamental right of Right to Privacy under Article 21⁹⁷ of the Indian Constitution. Data privacy also promotes the user to have a grip on his data. Lastly, it works for the public to magnify their belief towards the technology and so on.

B. De- Merits of Data leak: The result of the data leak may put an individual's life in a zone of danger. All the biological or health records within the hospital premises and business records of a company also exist under the class of personal data. As a result, there is a high

probability that hackers may trace them and ultimately blackmail the users at the cost of their data. There is an ample number of portals that are used to claim and forward the user's essential information. This creates the presence of weird advertisements and undesired promotions. Sometimes the location of a user got discovered by someone through illegal means which eventually harms the person's right to freedom of speech and expression protected under Article 19⁹⁸ of the Indian Constitution.

III. View of the Indian Constitution regarding Data Protection

According to Article 21 of the Indian Constitution, "No person shall be deprived of his life or personal liberty except according to procedure established by law⁹⁹". There is a bundle of rights under this article which are meant to protect the personal liberty of the person which also comprises of the "Right to Privacy". This right also includes the right to data privacy which means that person's online information must not report to any third party which may misuse that to blackmail him. In other words, the protection of personal liberty is very vital for the people which ensures them to reside freely in a legal manner without suffering any pressure. Thus, no person is authorized to infringe on the personal liberty of others.

In K.S. Puttaswamy (Retd.) vs Union of India¹⁰⁰, it was said that the Right to Privacy is truly important as far as human dignity and liberty are concerned. In this case, the advocate general representing the union stated that the Right to Privacy is not under the list of fundamental rights as its reference is nowhere in the Constitution. But the supreme court in its interpretation quoted that the Right to Privacy is very crucially important and is Counted under the fundamental right of Article 21 of the Constitution. Justice K.S. Puttaswamy objected to the Aadhar act and the collection of personal

⁹⁴ BBC NEWS, <https://www.bbc.com/news/technology-61465973> (last visited on March 23, 2023).

⁹⁵ LIFELOCK, <https://lifelock.norton.com/learn/identity-theft-resources/what-is-data-privacy-and-why-is-it-important#:~:text=Why%20is%20data%20privacy%20important,the%20hands%20of%20a%20competitor> (last visited on March 23, 2023).

⁹⁶ *ibid*

⁹⁷ Constitution of India, 1950 art. 21

⁹⁸ Constitution of India, 1950 art. 19

⁹⁹ Constitution of India, 1950 art. 21

¹⁰⁰ Justice K.S. Puttaswamy(Retd) vs Union Of India on 26 September 2018

information a person including biometrics. Eventually, the court in its judgment answered that this collection of data is valid as it is made for the welfare of the people and the state because it would help in lowering the level of corruption in the country. Therefore, it is also the responsibility of the state to adopt necessary measures regarding the safety of people's privacy.

IV. Present Laws based on the Protection of Data

In India, there is not any particular law that is solely devoted to online Data privacy. There are different types of provisions under various statutes of laws that are based on the concept of Data privacy. The leading law regarding Data privacy is the Information technology Act, of 2000¹⁰¹. This law deals with cybercrimes. It only deals with the information or data found in the online world or electronic form. This law got amended in form of the Information Technology Amendment Act, of 2008¹⁰² which came into practice on October 27, 2009. Section 43-A¹⁰³ the Information Technology Act, says that any corporate body having a deal with personal data found neglectful towards the security of the data that produced a bad result, shall be liable to compensate the damages to the affected person.

Section 72¹⁰⁴ of the Information Technology Act, of 2000, talks about the exposing of data or information by breaching the legal contract. According to this section if a person is found to reveal online data or information by breaking the lawful contract would result in a sentence of up to three years or a fine of not more than five lakh rupees amount. Both fine and jail can also apply to him depending upon the circumstances.

¹⁰¹ WORLD INTELLECTUAL PROPERTY ORGANIZATION, <https://www.wipo.int/edocs/lexdocs/laws/en/in/in024en.pdf> (last visited March 26, 2023).

¹⁰² WORLD PRESS, https://cactusblog.files.wordpress.com/2010/01/it_act_2008.pdf (last visited March 26, 2023).

¹⁰³ Section 43A in The Information Technology Act, 2000

¹⁰⁴ Section 72 in The Information Technology Act, 2000

Penalty for the same is also mentioned in the same section which states that if an individual has made access to any electronic record, book, register, correspondence, information, document, or other material without the consent of the concerned person, exposed all the above electronic items, that would put him under the punishment of about two years or the fine amounting to Rs. 1,00,000 or combined.

Section 75¹⁰⁵ of the IT Act, 2000 says that the same provisions of the said act would also be operative on the offenses that are committed outside the territorial boundary of India.

Personal Data Protection Bill, 2019¹⁰⁶: After the case of KS Puttaswamy, when the apex court categorized the Right to Privacy as the fundamental right, a ten members committee was created by the Ministry of Electronics and Informational Technology collectively which was led by the former judge B.N. Srikrishna to release suggestions and for ordering bill based on the Data privacy. During their research of a year, a report named "A Free and Fair Digital Economy: Protecting Privacy, Empowering Indians" was represented to them followed by the bill regarding the protection of Data.

This bill would ultimately safeguard the people by protecting their online personal information. It will also allow the punishment of those who have stolen the data by illegal means.

V. Conclusion & Recommendations

In this 21st century, the value of the data has been maximized very much. With the huge upliftment in the position of social media, the urgency of legislation based on data protection is mandatory. We can refer the puttaswamy's case, in which the supreme court in its verdict recognized the Right to Privacy as a fundamental right under Article 21¹⁰⁷. Since the internet is so common in the current era, the trend of data security has risen completely. The

¹⁰⁵ Section 75 in The Information Technology Act, 2000

¹⁰⁶ Personal Data Protection Bill, 2019. (2023, March 26). In *Wikipedia*. https://en.wikipedia.org/wiki/Personal_Data_Protection_Bill,_2019

¹⁰⁷ Constitution of India, 1950 art. 21

use of Instagram, Facebook, Youtube or Google, and so on has increased so greatly that the offense of stealing online data has become enough frequent. The personal information of an individual is always captured by either Google or LinkedIn and all the details regarding our debit card or credit card got taken by the mobile wallet apps such as Paytm, Mobi wick, etc. So, this creates fear in our minds as far as the data is concerned. Hacking online data has become a very common offense in these times. This concludes that our legislature needs to frame strict and decent legislation about the protection of online data to stop the business of hackers. We can also adopt some of the measures from our end to safeguard our data. We must avoid revealing our banking details on any online platform and set some typical passwords in our online accounts. Furthermore, we should strive to protect our home Wi-Fi to prevent the disclosure of our online activities to the third person. These few steps can help us in procuring our data in this growing age.

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