



A Critical Analysis of Data Protection Law In India

KEYWORDS

Data protection law, Vulnerabilities of data, Privacy law

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ABSTRACT *This paper critically analyzes that how the protected information is vulnerable in the hands of companies employees. The major challenge before us is threat to privacy today we can access any information related with any one from anywhere at any time but this arises a new threat to private and confidential information. For the development of information technology in whole world many countries have adopted different legal frame work like data protection laws, but in India we do not have any such type of strong legislation henceforth we need such law which will protect our constitutional rights.*

Introduction

This is an internet age; we can take India into new heights of excellence in education, medicine and communication, and public services. Indians being known for their hard work and dedication they create global reputation. Development in one sector always impact on other sectors or life.

In olden days persons always pay cash and did not hold bank account and don't know computer, makes phone calls, or use any type of services. "but now one cannot do for long without a bank account or without computer services, making phone calls, because the society is moving from the paper to paperless society. Credit cards, traveler's cheques, emails, online payments etc are have become the necessary for everybody"¹. Just we can click on computer and pay electric bills and phone bills even we can purchase any goods from computer delivered at the door-step such is advancement and dependence on computer. But in the other way round we are giving all our personal information to computer this is rapid manipulation of personal data on the computer.

Now information plays a valuable role its having financing value also most of the information is transmitting for monetary benefits, may be example in this sector only, if your purchased any articles in supermarkets and payment made by plastic debit or credit cards, your personal information will be stored by computers then that company would transfer that information for commercial benefits without notice to consumer, this is how information is circulating from one hand to another hand and more over most of telemarketing activities has been done by this plastic cards and most of the money misuse will happens in this sector only. This follows that with the increasing use of internet, need for changes in law is inevitable. This internet stores huge amount of data for different kind of people with different requirement. It is an witnessed that vast using of internet becomes growth in e-commerce hence internet is itself global.

The thing here is how to regulate these activities that is the subject matter of new legislations to regulate these information which stored in computer how it is holding and how they will pass this information to others, for this problem gives one solution that is data protection legislation and most of these western countries already have this law and they succeed in this sector to protect personal information or data's which has stored in computers.

Historical background of data protection law

In the age of 1970 the first data protection act was enacted in

the German state Hysee. The misuse of records under Nazi's regime had raised concerns among the public about the use of computer to store and process large amount of personal data. It signifies ow public information is misused.

In the year 1973 the Swedan Nation introduced the statute. The U K Government was concerned at the impact that council of Europe conventions should have on business, and wanted to ensure that the U K met international standards to enable data transferred. It introduced a bill in 1982 which become the data protection act 1984.

In 1995 European Union adopted its directive on the protection of individuals with regard to the processing of personal information and data free moment of such data.

The U S framed and developed a 'safe harbor' frame work , according to which the U S companies that have self certified to the safe harbor frame work it has been maintained by U S department of commerce.²

Why India need data protection

In present scenario Indian data's has been protected under information technology Act 2000 in which Sec-43A, and Sec-72A, even the data outsourced India shall be protected under these sections.

'The information technology amendment Act, 2008 has set the ball rolling in addressing the lacuna of data protection laws in our country'

However these amendments of I T Act Sec-43A, and Sec-72A, will not be meet the needs of corporate India, Indian companies in information Technology and Business Process Out Sourcing (BPO) sectors handles and access all kinds of personal data and sensitive data's across the world, including their credit cards medical information. These companies stored and these are all information in their system or computers it may be vulnerable in the hands of companies employees.

There have been some instances of security breaches in Indian companies in B P O industry NewYork based, city bank accounts being looted from B P O in Pune. Another incident, Call Center employee in Bangalore peddling credit card information and stole U S \$398,000 from British bank accounts³

Privacy violation:

The right to privacy can be divides into four concepts

Information 'privacy'⁴:

this involves the establishment of rules governing the collection and handling of personal data, such as credit information, medical records and government records.

Bodily privacy: this concerns people's physical selves against invasive procedures such as genetic tests, and drug testing and cavity researches.

Privacy of communications: this covers the security and privacy of mail, telephones, e-mail and other forms of communication.

Territorial privacy: intrusion into the domestic and other environmental such as the workplace or public space, which includes video surveillance and ID checks⁵

This data protection law minimizes intrusion into person's privacy collection, storage dissemination of personal information. Personal data that can be protected by private persons or government.

Constitutional provisions

The Constitution of India does not patently grant the fundamental right to privacy but these privacy right are included in fundamental right that is Article 19(1)(a) and Article 21, and these fundamental rights are subject to reasonable restriction under Article 19(2) of the Constitution that shall be imposed by states.

In present scenario India does not have any particular legislation that would protect privacy rights of every individual. But the information Technology Act 2000 and amendment Act of 2008 under section 43A says that 'a body corporate who is possessing dealing or handling any sensitive data or information, and is negligent in implement and maintaining reason-

able security practices resulting in wrongful loss or wrongful gain to any person, then such body or corporation may be held liable to pay damages to the person so affected.⁶

Under section 72A of the Information and Technology Act 2008 (amendment) any person, or corporation with knowingly and intentionally without the consent of the person concerned and in breach of the lawful contract has been also made punishable with imprisonment for a term extending to three years and fine extending to 5 lakh or U S \$10750⁷

Conclusion and suggestions

Today we are in the age of internet, large number of personal information and data would be stored and processing transmitting, this data shall be included sensitive, personal details of citizens in the process of data, within India is highly vulnerable it creates big problem in future days. We have recognized privacy rights in Constitution of India under fundamental rights that is part III, but in the name of the development of E-Governance lot of personal information is misused by some agencies. Ex-"E surveillance projects like Adhar/UID, National intelligence grid (NatGrid) crime and criminals tracking networks and systems (CCTNS), central monitoring system (CMS) are not supported by any legal frame work"⁸

May be there shall be a lot of difficulties in implementing such type of legislation if we neglect this problem, citizens are not protect their private rights and no damages can be claim.

Now a days if you go to anywhere, there is surveillances, and information of persons will be stored in computers, so that to overcome this problem we need a data protection law and by this way we can protect individual rights provided by our Constitution.

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