
DEVELOPMENT OF A DIGITAL MAZE AND DATA PRIVACY CONCERNS

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ABSTRACT

This article explores the relationship between technological development and privacy laws focused on the Indian legal frameworks. Emphasizing the contemporary significance of data privacy, with the importance of the prevention of data misuse. Incorporating and highlighting the importance of the same with previous instances of data misuse in instances such as the Aadhar card case along with cases backing the data up. Introducing concepts surrounding PETs and surveillance capitalism. This article explains the need for robust technological changes as after the lockdown period there has been a 500% increase in online crime at a global stage. The steps of data protection for both aware citizens and organizations. Creating an ecosystem of data consciousness and achieving benefits in the digital era.

Keywords: Data, Digital protection, Privacy, Laws

INTRODUCTION

Technology is a rather highlighted term in everyone's dictionary when considering the connectivity of a population exceeding the mark of a billion in the current times. Indians as a nation have been woven together in their quotidian life with the smooth functioning of data transactions for every citizen.¹ In the digital era, larger amounts of data are directly connected by transactions or commercial activities. This pattern has been seen to be followed since patterns today formulate the basis for future needs and demands.²

Providing both static and dynamic data accumulation for mass producers wanting them to exploit the data for their use. The need to shape the deepening increase in the use of data and its confidentiality has consistently been a concern to the citizens and government in the dernier cri, these aspects fall under the ambit of our fundamental rights specifically within the right to life, the right to live with dignity and the rights relating to liberty.

This is followed by a set of disconcerting factors which raise concerns regarding privacy laws, this gained prominence with cases that can be supported with instances such as the case of *L. Prakash v. State of Tamil Nadu* which provided for punishments to handle the misuse of data online. However, related concepts were first introduced to the general public in 2010 by design from Canada by the Privacy Commissioner of Ontario.

TECHNOLOGICAL ADVANCES

As modern technology has introduced us to methods that help us navigate through vast data rapidly, it must be introduced that an important aspect of the aforementioned data transfer and privacy is related to the storage of the data. These may include aspects of data localization or even cross-border data transfer. Making Privacy-enhancing technologies (PETs) a protective shield against invasive threats to privacy and enhancing the experience while handling data. PETs have

¹ Noshir Kaka, Anu Madgavkar, Alok Kshirsagar, Rajat Gupta, James Manyika, Francisco Kushe Bahl, Shishir Gupta, *Digital India: Technology to transform a connected nation*, MCKINSEY GLOBAL INSTITUTE (Mar. 27, 2019), [Digital India: Technology to transform a connected nation | McKinsey](#).

² Richard B. Freeman et al., *Data Deepening and Nonbalanced Economic Growth*, SSRN PAPERS no. 7, Page 24 (2021).

been defined as either soft or hard privacy technologies that help assist organizations in protecting their valuable customer information.³

The rise of this form of technology can be dated back to reports like “Privacy Enhancing Technologies (PETs): The Path to Anonymity,” first published in the year 1995.⁴ Remaining in an early stage there is a set of rules and regulations to facilitate the well-regulated functioning of the technology. From a technical perspective, this can be followed by the help of technologies such as encryption, firewalls, access controls, and other security technologies as these have a history of satisfying the needs of their users in the past, making them practices that should be adopted by the majority.

LEGAL PERSPECTIVE

In the Indian context importance of the related laws can be taken into consideration with the help of the following instances-

There is a presence of about 5.16 billion users on the internet to date.⁵ This number of the Indian population is expected to reach 900 million people by 2025⁶, their presence has been raising concerns for data protection and digital safety even further for our government and policymakers.

The substructure for data protection laws is presented through comprehensive laws like the Information Technology Act, 2000⁷ by the Department of Electronics and Information Technology under the Ministry of Communication and Information Technology which was read along with the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (“Privacy Rules”)⁸, Guidelines for privacy and data protection, 2018 and the Indian Contract Act, 1872. These laws were followed by the Inception of Information

³ Paul Wagner, *Privacy Enhancing Technologies and Synthetic Data*, SSRN PAPERS Page 7 (2021).

⁴ John Borking, *Privacy-Enhancing Technologies: The Path to Anonymity*, INFORMATION AND PRIVACY COMMISSION, ONTARIO, 15-19 (1995).

⁵ The World Bank, Individuals using the Internet (% of population) - INDIA, INTERNATIONAL TELECOMMUNICATION UNION (ITU) WORLD TELECOMMUNICATION (2022), Individuals using the Internet (% of population) - India | Data (worldbank.org).

⁶ Internet and Mobile Association of India (IAMAI) & KANTAR, Internet in India Report 2022, ICUBE (2023).

⁷ The Information Technology Act, 2000, (India).

⁸ Pratik Waghmare, The ever-growing digital scams in India, TIMES OF INDIA (July 17, 2022, 2:36 A.M.), The ever-growing digital scams in India (indiatimes.com).

Technology (Amendment) Act, 2008 as the ambit of digital laws is not exhaustable as the growth of technology is continuous.⁹

These promise a dignified life to the users of the internet for the transfer of their information with privacy within a set framework for both organizations and citizens. Various nations like China, Indonesia, and Vietnam have not worked on this set path however have set laws regarding personal data protection.

JURISPRUDENTIAL PERSPECTIVE

This showcases the importance of the current legislations such as the Digital Personal Data Privacy Act of 2023 which have a separate set of reservations that consider cross-border data transfer along with raising awareness about of misuse of information through checks to be done before publishing personal data online.

There remains a need to improve and exalt the laws governing this arena. Issues parametric to the abovementioned laws are within the horizon of penalization of cyber-crime, recognition of transactions through digital mediums, and recognition of digital signatures while keeping the privacy of citizens who abide by the system's rules and regulations as the utmost priority.¹⁰ Formulating a safe digital space that enables citizens to act with a higher efficiency plays an important role in the digitization of this nation.¹¹

However, with the recent advances and the emergence of big tech companies the data principle; as defined in the digital personal data protection bill, 2023, has seen reduced control over their data and has fallen within the trap of "surveillance capitalism". This concept can be defined as an economic political idea where corporations and organizations commodify large data of their customer for their prospective R&D making this a potential threat to misuse This may create problems at various legal, political, and technological levels.¹²

⁹ Simon Kemp, Digital 2023: Global Overview Report, UNESCO (2022).

¹⁰ Apoorva, A background to Section 66A of the IT Act, 2000, PRS (Mar. 24, 2015), (prsindia.org).

¹¹ Duraiswami & Dhiraj R., *Privacy and Data Protection in India*, vol. 6 JOURNAL OF LAW & CYBER WARFARE, pp. 166–86 (2017).

¹² Privacy and Information Technology, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Nov. 20, 2014), Privacy and Information Technology (Stanford Encyclopedia of Philosophy).

With India being the second fastest digital-adopting nation between 2014-2017¹³ various prospective steps have to be taken for the above data consideration. Current legislation such as the Digital Personal Data Protection Act of 2023¹⁴ has been formed to reach and safeguard them. This act has its substructure modelled as per the previously drafted Personal Data Protection Bill of 2019. They emphasize the idea of privacy and basic rights of citizens.

On similar grounds Jude Cooley explained the law of privacy and asserted that privacy is synonymous with 'the right to be let alone'¹⁵ which is reflected in Article 8 of the European Convention on Human Rights, proclaiming that “Everyone has the right to respect for his or her private and family life, home and communications,”¹⁶ providing global standards for privacy and related disciplines.

The importance of privacy at a jurisprudential level was withstood via the case of Justice K. S. Puttaswamy (Retired). vs Union of India And Ors., 2017. Herein, it was held that “Privacy is a constitutionally protected right which emerges primarily from guarantee of life and personal liberty in Article 21” and claims rules and regulations regarding biometrics and Aadhar card¹⁷. This case overruled the M.P. Sharma and Kharak Singh case of 1954¹⁸ wherein an eight-judge bench decided that privacy is not a fundamental right for citizens.

Another vivid instance where a similar issue was faced in our country's history was the Cambridge Analytica Scandal, herein a UK-based analytics firm leaked the sensitive data of about 500,000 Indians this data had been gathered without consent and turned out to be a portrayal of actions which can be taken place without a proper form of laws.¹⁹

Conclusion and current circumstances

Given the current dynamic within the Indian demographic, we have analysed an alarming increase

¹³ Development Report 2016: Digital Dividends, THE WORLD BANK (2017).

¹⁴ Digital Personal Data Protection Act, 2023, No. 22 (India).

¹⁵ Thomas M Cooley, A Treatise On The Law Of Torts pg. 29 (2nd ed., 1888).

¹⁶ European Court of Human Rights, *Guide on Article 8 of the Convention – Right to respect for private and family life*, 2-172, (2022).

¹⁷ Justice K S Puttaswamy Retd And Another v Union of India And Others, (2017) S.C. 420 (India).

¹⁸ Kharak Singh v The State Of U P & Others, Lnd (1962) S.C. 436 (India).

¹⁹ Sujay H. Deshpande, *Data Privacy in India Technical and Legal Perspective*, SSRN PAPERS Page 7 (2023).

in the number of crimes after the COVID lockdown²⁰ as well as a significant increase in the no. of internet users. Now is the time for some crucial privacy-related steps to be taken for the protection of citizens by the government. Instances such as unrestricted sharing of addresses and essential personal details to anybody whether government or private have not yet been safeguarded by any concrete laws.

Thus, there needs to be a well-rounded and comprehensive set of rules and regulations by the judiciary. At the ground level, the policymakers and government should introduce steps like using encryptions and unique passwords along with their uses to the citizens.²¹ Such actions can be aided and meticulously practiced by enabling a set of plans to incorporate digitally literate users who are well aware of the significance of unauthorized access or use of their personal or sensitive data, unlike many currently since any law is as good as its enforcement.²² Creating an ecosystem that would manage data effectively, consciously along with giving the right to be forgotten would be a huge leap in privacy laws.²³

Thus, in the strategy to navigate the evolving landscape of technological growth, we need to formulate a symbiotic relationship to not only accommodate these changes but accommodate safeguard privacy rights sincerely to the citizens. This would lead to a trajectory that is unlike the current precedents however would help establish novel and original precedents in the realm of technology and privacy.

²⁰ INTERPOL, *Cyber Crime COVID 19 Impact*, (2020)

²¹ Simran, Are we closer to a law on privacy? Are we closer to a law on privacy?, PRS (Oct. 19, 2012), (prsindia.org).

²² Staff Reporter, Cybercrime went up by 500% during pandemic: Chief of Defence Staff, THE HINDU, Nov. 12, 2021.

²³ Justice B.N. Srikrishna, A Free and Fair Digital Economy Protecting Privacy, Empowering Indians, PRS (2019), (prsindia.org).