



## Data Protection and Privacy in India

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### ABSTRACT

Human rights are not only necessary but also important for any human being to live freely and behave with dignity. Articles 8, 12, 17, 18, 19, 28 of the Universal Declaration of Human Rights 1948 are related to human rights. While at the national level, Article 19. 21 of the Indian Constitution is also related to such rights. Fundamental right to privacy in Aadhaar card case, Puttaswamy (12) other v Union of India & others (2017) 10 SCC .Declared Human rights are moral principles that establish certain norms related to human behavior. These rights are regulated by national and international laws. The Data Protection Act was passed by the Indian Parliament in September 2023, as recommended by the Krishna Committee. This issue becomes even more important when the Act talks about data protection to some extent. But there is no mention of human rights protection, as is specifically mentioned in the European Union's data protection law. Has been mentioned. India is among the 27 countries in the world where large scale cases of personal data theft and violation of rights have been reported. India is among the lowest ranked countries in terms of personal data violation.

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**Introduction-** Personal Information is protected under the I.T. Act 2000 and IT Rules. Government has rectified the I.T. Rules 2011 under IT Act to govern entities that collect and process sensitive personal Information in India.

Now Recently Indian parliament passed the Data protection Act. India's 2nd attempt in framing a privacy legislation.

In 2017-18 the Indian Government Constituted the B.N. Srikrishna committee to examine issue relating to personal data protection in India. The Personal Data Protection Act based on recommendation of this committee.

No article of our Constitution explicitly talk about privacy. Article 21 talks about the right to liberty and life but not privacy. In 1992 in the **Case Neera Mathur vs life insurance corporation** the S.C. considered the right to privacy as a part of the right to liberty and life under Article 21.

**JUSTIFICATION OF PROBLEM-** This study basically trying to find present scenario of Data Protection under IT Act 2000 and personal data protection Act 2023. This Study have provide to protection of privacy under various Indian laws and foreign laws.

**LITERATURE REVIEW-** Several significant books, articles, website has been searched in the preparation of this paper like an important, Act 'Data Protection Act 2023. This Act also provide protection of personal Digital Data about every person.

### **OBJECTIVES AND AIMS OF THE RESEARCH**

- To analyze response of Indian citizen and Indian Laws.
- To provide equal legal status of Rights of citizen and duties.
- To suggest detailed guidelines to help making of new laws related to Data protection and privacy.
- To suggest in Balancing of Indian and foreign Laws.
- To date Collection processing over requirement of data collection by state relaxation by state.
- To suggest the discharge of duties including rights of the people.



- An effort to reconcile people's data protection and human right.
- There is a need to regulate the harm caused by the processing of Data.

### **RESEARCH QUESTION**

- a. Is Indian society ignorant about data protection due to its e illiteracy?
- b. Is there lack of awareness regarding data protection?
- c. Is the data ignorant of the right related to data Protection?
- d. Are urban people more aware of their right than rural people?
- e. Are rural people unfamiliar with modern equipment and technology?
- f. Does the current Data protection Act not provided complete protection to Data?

### **BEST PROTECTION OF DATE PRIVACY**

- a. Protection of personal Digital Data
- b. Individuals should be aware of how their data is used.
- c. Taking measures to provide the right to self-block Personal Data.
- d. Efforts to provide the right to remove old information from social media.
- e. Create new laws by harmonizing the old law. (IT Act 2000) and personal Data Protection Act 2023.
- f. Create new methods incorporating artificial intelligence, face recognition, deep fake technology.

### **LEGAL FRAMEWORK GOVERNING DATA PROTECTION AND PRIVACY.**

1. The Indian Constitution
2. I.T. Act 2000
3. Bhartiya Stakshy Adhiniyam 2023.



4. Data Protection Act 2023
5. Criminal procedure (Identification). Act 2022
6. Universal Declaration of Human Right 1948
7. Human Right protection Act 1993

### **RESPONSE OF INDIAN JUDICIARY**

In the Case of Gopalan Vs. state of madras (1950) 13 S.C. expressed his opinion that Art 21 provides protection only against the function of the executive, not against legislation. In the Case of Maneka Gandhi Vs. UOI the S.C. reversed decision in the Case of Gopalan and decided that Article 21 provides protection not only against the functioning of the executive but also against the legislature. In the Case of Khadak singh vs. U.P. the S.C. decided that the arrival of the police at the Petitioners house at night is an attack on his physical freedom interfering in the physical freedom of a person without any legal authority. To violate the right. So they are unconstitutional.

### **UTILIZATION OF PERSONAL DATA BY GOVERNMENT**

No Personal Data can neither be used nor, published by anyone. But Government may be an exception to this that is personal data can be used by the government for the following purposes:-

- ❖ Personal data should be done for various purposes.
- ❖ For Administration and delivery of Public services.
- ❖ To establish social justice
- ❖ Identity manager and social sorting
- ❖ Communication and behavior monitoring

### **PRINCIPAL OF DATA PROTECTION**

- i. Storage limit
- ii. Data quality



iii. Purpose specifics

iv. Range of use

v. Security monitoring

vi. Openness

vii. Personal Partnership.

viii. Accountability

ix. Limitless data retention

## **INTERNATIONAL PROVISION**

### **1. EU's new data Protection regulation laws:-**

- This law will become a global norm for the protection of face book's online information, especially because of the facebook data collecting, scam.
- Due to the new rules, Europeans will again be able to establish control over their data.
- The main principle established by this law is that individuals Clearly will be allowed to use.

**2. US Data Privacy Protection law:** The US has various federal laws that capture various aspects of data privacy. Such as Health data, financial information and data collected from children.

Data privacy in the US is different from of the EU. Which has comprehensive data privacy law. However, some states passed comprehensive data secrecy laws.

**3. Data Conseration Act in China:** China's Personal Information Protection Act Come into force in November 2021, It is designed to prevent companies and other from misusing the personal information of their customers. It is similar to EU data protection regulation.

**Data Protection Act in Switzerland:-** Guidance of right to privacy to its citizens under their constitution and enacted rules. The Swiss Federal Data Protection Act prohibits personal data processing without the consent of the person to whom the data is related to.



## TOP FIVE COUNTRIES WITH DATA PROTECTION

- EU
- Iceland
- Norway
- Japan
- Switzerland

## LOW COUNTRIES WITH DATE PROTECTION.

- Malaysia
- India
- Thailand
- Russia
- China

## RECOMMENDATIONS OF SHRI KRISHNA COMMITTEE

**Individual consent:** The proposed bill makes individual consent the center of data sharing, empowers users, data fiduciaries.

- The Data Protection bill also demands confidentiality be design an behalf of the data processor and defines terms such as consent data breach, sensitive data etc.
- The right to forget it refers to the ability of individuals limit, deal, delete or correct the disclosure of misleading, embarrassing non-relevant internet or chronological information on the internet.

**ii. Data protection Authorities:** The data protection law will establish a Data Protection Authority and independent regulatory body responsible for enforcement and effective implementation of the law.



**iii. Data storage:** The Bill Makes provision on data storage, making it mandatory to store data a copy of personal data in India.

**iv. Appellate Tribunal:** The central government shall establish an Appellate Tribunal or empower the existing Appellate Tribunal to leave and dispose of any appeal against the order of the DPA.

**v. Penalty:** A Penalty may be imposed for violation of the data Protection law. The penalty imposed will be up to a certain upper limit or one percent of the total worldwide turnover of the previous financial year, whichever is higher.

**vi. Liability and principal of Rights on the fiduciary.**

**vii. There will be no retrospective effect in the law.**

**viii. Impact on Allied Laws.**

**ix. Children's Data**

### **Indian Data Protection Act 2023**

This Act of Parliament received the assent of the President on the 11th August, 2023. Act to provide for the processing of digital personal Data in a manner that recognizes bottle the right of individuals to protect their personal data lawful purposes.

**This Act has 09 chapters, 44 sections and one schedule-**

**Sec.-1-** Start title and commencement.

**Sec.-2-** Definition.

**Sec.-3-** Application of Act.

**Sec.-4-** Ground for processing personal data.

**Sec.-5-** Notice.

**Sec.-6-** Consent.

**Sec.-7-** Certain legitimate use.

**Sec.-8-** General obligation of Data Fiduciary.



**Sec.-9-** Processing of personal data of children.

**Sec.-10-** Additional obligation of significant data fiduciary.

**Sec.-11-** Right to access about personal data.

**Sec.-12-** Right to correction and ensure.

**Sec.-13-** Right of grievance redressed.

**Sec.-14-** Right to nominate.

**Sec.-15-** Duties of data principle.

**Sec.-16-** Processing of personal data outside India.

**Sec.-17-** Exemptions.

**Sec.-33-** Penalties.

**Sec.-34-** Crediting sums realized by way of penalties to consolidated fund of India.

**Sec.-37-** Power of central government to issue directions.

### **THE ISSUES & PROBLEM:-**

This is against the RTI Act. Section 8(1) (2) of the Act protects personal information. It is opposed to the right to privacy because it gives sweeping deterrent powers to the government. There is no autonomy for the Data Protection Board. This Act will be digital whereas according to the National Family Health Survey only 33 percent women in India use the internet. Lack of coherence with the Criminal Procedure (Identification) Act 2022. As it provides exemption for taking retina, biological identification of the criminal accused which is violative of Article 20(3) of the Constitution. Allows national agencies to use personal data, which is a violation of Article 21. It allows private or government organizations to use data to some extent, whereas personal data can be used by the government for personal or political gain. There is no mention of its protection. There is no mention of any restriction on sharing personal information on OTT platforms. Unlike the European Union, the DP Act does not give paramount importance to fundamental rights. Provision of arbitration (will promote economic transactions).



**CONCLUSION:-**

People of our society depend on these social media platforms not only to get information but also to store and share their data with people across the world. So it is very important to protect such shared and stored data from misuse by other people or any agency through some specific and strong laws, in this digital age where we consider data as a part of our privacy and property which is valuable everywhere it makes it the responsibility of the government to protect it in any way. Availability of bulk data in open and accessible platforms poses a huge risk of crimes like identity theft, data misuse, other cyber crimes, hacking etc. Data Protection

Security of information is also included in it. Social media is a form of communication which is done through internet. There are many other types of social media like blogs, micro blogs, vlogs and websites etc. and recently social networking sites like Facebook, Twitter, Whatsapp etc. have gained a lot of popularity among people. The main purpose of these social media sites to connect with the world globally. But the data provided so shared by them is not secure in the digital world, and this creates problems and crises may happen.

Many organizations are using computers to keep and store information of many people, which always poses an upcoming threat that the stored data may be missed or fall into wrong hands, and later on abused. After demonetization, our government has made many experiments to identify the culture of increasing digital payments, Therefore, there is a need to focus on the legal framework for privacy and security of data of more organizations in India. Because unlike the UK, Australia and other European countries, India still does not have a data protection law. Even though the concept of data protection has been expanded, and made it a fundamental right of Indian citizens, the existing law is not enough to protect the full enjoyment of the above fundamental right.

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