

Internet and cyber security governance and violation of right to privacy

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ABSTRACT--- *To protect the rights to privacy and freedom of expression, as well as to achieve transparency, including in balancing the two rights, is not an easy task in the context of the present Internet Governance structures and practices. Internet Governance issues nowadays cover a mixture of international and national problems, commercial interests and human rights protection, national State power and transnational digital giants, and an assortment of civil society organizations and whistleblowers. The multi-stakeholder governance approach is exactly a reflection of the present complex situation, in which State authority has not been the predominant player, despite the fact that its powers continue to increase in the name of protecting national security, public order and other public interests.*

Keywords--- *Data Privacy, Digital, Protocol, Internet, Governance.*

I. INTRODUCTION

The increase in communication through internet provides interaction among individuals and the entire globe. It has also been re-organizing aspects of human life in an unprecedented manner. The unique characteristics of the technology e.g. connectivity, openness, resilience and speed have propelled the Internet to a dual status technology that differs significantly from other interactive communications media like the telephone and passive recipient communication media like radio and TV, making it both a principal communicating medium and a distinctive and extended life sphere that embraces a wide range of human activities and interactions, old or new. While the Internet and related Information and Communication Technologies (ICTs) have created more opportunities for the extension and enhancement of these two fundamental rights, there is little doubt that the Internet is also generating more challenges, risks and threats to the same two rights, and to their interrelations with the notion of transparency.

II. RIGHT TO PRIVACY

The physical body and the eternal mind are inseparable elements of a human personality. The integrity of these two can exist on the foundation that provides for right to preserve a private space in which the human personality arises. In an age where information technology governs virtually every aspect of our lives, it is difficult to bring about a balance to individual liberty and interconnected liberty in a digital world. In the case of *Kharak Singh v. The State of U.P.*, the Supreme Court for the first time recognized that citizens of India had a fundamental

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right to privacy which was part of the right to liberty in Article 21 as well as the right to freedom of speech and expression in Article 19(1)(a).

III. FREEDOM OF EXPRESSION

Freedom of expression is guaranteed under Article 19(1) (a) of the Constitution. That can be enforced by the State and are in the interests of sovereignty and integrity of the State, the security of the state, friendly relations with foreign states, public order, decency or morality. .

Freedoms under Article 19 read with Article 21, enables the citizens to have a selection of obligations on various aspects of and other matters on which independence and autonomy require optimal to be made within the privacy of the mind. An interlinked issue regarding the online privacy and the way in which we could calculate the total damage done by its breach.

IV. INFORMATION PRIVACY AND DATA PRIVACY IN THE DIGITAL AGE

With advances in innovative and sophisticated technologies, public bodies and entities from the private sector can now use “automated” means to collect process and store all kinds of personal information. For instance, when individuals use or buy all sorts of services and products e.g. when registering for an email service, visiting a doctor, or entering into a contract they hand in their personal information. It is in this context that data protection laws have been developed to protect personal data from being misused for illegitimate purposes.

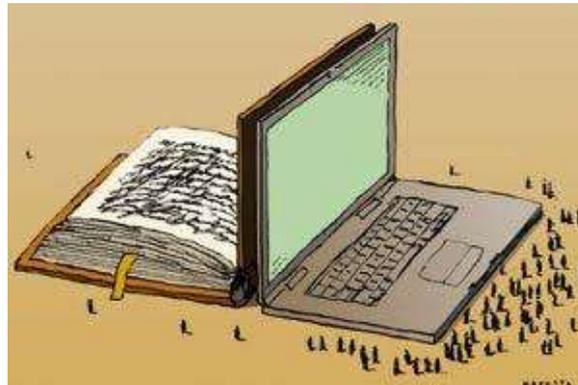


Figure 4.1: Data in the digital age

Data protection laws are intended to guard personal data that is planned to be part of a filing system or collected, processed and stored by “automated” means. Private data includes data attributed to an individual, such as home address, telephone and social security number that might be used to identify the individual, as well as personal data that is generated on a sporadic basis such as medical data, credit card purchases, phone calls which may be used to track the subject’s activities. Personally Identifiable Information (PII) refers to any information, be it stored online or offline, that identifies a person, or information that is not publicly accessible and purely statistical, or information that is certain types of data defined by law as PII. A much used concept is Information privacy (or data privacy), which refers to ‘a person’s control over the dissemination of information about himself to others’, or ‘the right to control one’s personal data’.

V. LEGAL FRAMEWORK IN INDIA

The study analyses the legal framework, current mechanisms for balancing rights, and specific issues, cases and trends. As revealed by the research, traditional laws and regulations for the safeguard of privacy and expression often do not deal with digital issues. Also covered are the interplay and interactions between multiple players e.g. the State agents, Internet users, ICT companies, civil society organizations, the judiciary and the security services. Various policy recommendations are made that address both key issues and various stakeholders groups. In this paper attempt is made to explore these issues further to provide at least partial answers to these open questions. One of our findings in the emerging Internet Eco-system, is the right to privacy in an online context which primarily refers to the right of individuals to information/ data privacy, which is subject to increasing threats that come from multiple sources and in various forms. For instance, increases in the use of Privacy-Invasive Technologies (PITs) have contributed to a gradual collapse in the traditional communal boundaries established by such constructs as law, morals, communal rules, physical obstacles, technical limits, and geographical barriers, contributing to privacy invasions as reported across the globe. Given that the new virtual world and the emerging information economy are based on digitized data and cannot function without data collection and data processing, we must understand that the control of personal information and personal data is a critical element in the digital age, if we aspire to values such as the individual's dignity, autonomy and liberty. For instance, Internet Service Providers must fulfill certain contractual duties previously agreed by both parties of a contract as provided under Information Technology (Intermediaries Guidelines) Rules, 2011 and The IT (Guidelines for Cybercafés) Rules, 2011. The violation of such duties would infer legal consequences, mostly in the form of economic loss. Such obligations are mostly provided by privacy clauses in terms of service in consumer contracts.

VI. NATIONAL LEGAL FRAMEWORKS

6.1 Privacy law

The privacy right has been recognized by most countries across the world and is protected by various legal mechanisms and legal instruments. The privacy rights are first recognized as a constitutional right against the interference from State authorities with private life. For instance, though the right to privacy was not originally written into the USA's Constitution, it was later developed from different constitutional amendments. Most European countries—following the EU basic law, the Charter of Fundamental Rights and the European Convention of Human Rights (ECHR) recognize the fundamental right to privacy in their constitutions, in different forms. For instance, the right to privacy and private family life is protected by German constitution under the rubric of “personality right” in particular, and the right to dignity in general under Articles 1 and 2 of the Basic Law.

6.2 International legal structure

The most authoritative concept in relation to freedom of expression is prescribed by Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The former contains widely recognized statement on the freedom of expression, that all has the freedom of opinion and expression, including freedom to receive and impart information and ideas through any media and despite the frontiers. Even though the UDHR is not a binding treaty, it is a recommendatory resolution adopted by the UN General Assembly that, due to time and universal acceptance, has gained the status of customary

international law. The Human Rights Council unanimously adopted in 2012 the landmark Resolution on the promotion, protection and enjoyment of human rights on the Internet, stating that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one's choice in accordance with Articles 19 UDHR and ICCPR.

6.3 Data Protection law

Nowadays, all the countries have enacted broad data protection legislation, Moreover, countries not having comprehensive data protection legislation including those of child protection or financial records. Data protection law is the most used legal instrument to protect personal data and provides more comprehensive privacy protection. EU Member States have transposed the EU Data Protection Directive 95/46/EC into domestic laws, which include detailed rules covering the whole scope of data processing, including lawful data processing, code of conducts, notification duty of data processors, data subjects' rights, data transfer to third non-EU countries and the setting up of data protection supervising bodies. Outside Europe, many jurisdictions have passed data protection laws or similar laws that secure data privacy.

VII. CONCLUSION

The chief threats to the privacy rights and the freedom of expression is the mass scrutiny conducted by nations over foreigners and their own citizens. India being a signatory to the United Nations Declaration of Human Rights 1948 and the International Covenant on Civil and Political 1966. Both these mechanisms give an independent and higher position to privacy compared to freedom of speech and expression for press. From the above study it is found that, the concept of "freedom of expression" and "the right privacy" support each other in numerous ways, as the right to express ones belief or thinking without restraint is to be protected by providing that individual his privacy right.

Other related risks, which may materialize subsequent to and/or in the breach of these rights, include: a) fraud, theft and misuse (e.g. weaknesses in a biometric system leading to information leaks that may facilitate the illegal altering of financial records); b) misidentification and inaccuracies (e.g. false positive authentications leading to inappropriate access to PII); c) being exclusionary (e.g. biometric systems not equally functional in authenticating individuals from different ethnic backgrounds, or individuals with different capabilities); and d) the misuse of biometric.

VIII. FUTURE DIRECTION

So more positive measures should be taken by State authorities to secure the privacy rights and expression in various forms, counting by: a) encouraging the self-regulation and co-regulation of the private sector of the Internet, including provision for transparency and redress, and without pre-empting or excluding the role of independent courts to make final decisions; b) updating legal protection to adapt to new circumstances by new legislation and law interpretation; and c) improving transparency in e-governance and e-democracy developments.

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