

# WISDOM CRUX

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## Cyber Law

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*(Author /'s Name)*– V.S. Krishna; *SASTRA Deemed to be University Tanjore, Tamil Nadu.*

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### Introduction

Digitalization has changed the society. *While data is becoming the 'new oil', protection of data has become the new 'pollution control'*. With the tremendous development in information technology, the word 'Privacy' has been completely taken off the books. Protection of personal data is inextricably linked with privacy i.e., the right to enjoy one's life and liberty without arbitrary interference with one's private life. The word 'private' must be inferred in contradistinction to 'public'. Social Networks such as Facebook, WhatsApp, Google etc., occupy one of the major sector in the internet era across the globe. YouTube's slogan 'Broadcasting yourself' can epitomize the essence of revolution caused by enormous number of networking. The users connected via social media value their personal information less compared to the service they experience i.e., the users are ready to share any information even though it invades their privacy. This perception of the users is proportional to their panorama of privacy. Of course, 'Anything beyond the limits stares'. Social Networks are no more considered as an exception. They are like fruits which fetches ones nectar when the usage is prudent. Once it extends beyond its threshold limit it sees no boundary for its level of destruction. The information which is made available online creates an opportunity for identity thefts, scam artists, debt collectors and so called stalkers. Plethora of challenges have transpired wherein liberty always plays a pivotal role and places itself in the context of social order like how the present Aadhaar scheme in relation with the data privacy of an individual.

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### Recent Controversy On Right To Privacy

With the advent of Aadhaar program, the government built a nationwide database with biometric information which ensured that subsidies and services reach the citizens whilst eradicating leakages worth about \$10 billion caused by corruption.<sup>1</sup> In the Judgment of Justice K.S. Puttaswamy case,<sup>2</sup> The Supreme Court instead of determining upon the constitutionality of the Aadhaar scheme, examined the Right to privacy. The question that lies at the heart of the debate is *'What should be the extent of data privacy in Aadhaar issue?'*

The Supreme Court in *Govind Vs State of Madhya Pradesh and Ors*<sup>3</sup> recognized decisional autonomy, full development of personality, in addition to informational privacy as an important element of Right to Privacy. The present Aadhaar act not only possess severe threat to informational privacy but also exposes the liberty and dignity of an individual. Right to Privacy is being put at stake in the name of the state interest which must be abrogated. Here, *The state is the means and the individual is end.*

### Laws In India

To date, India is known to have second highest number of internet users in the world. With such immense innovations and growth in technology, it grants access to 'Big Data'. The fluidity of Big Data paves way for numerous issues pertaining to data privacy. Prior to the Personal Data Protection bill and the amendments made on the Information Technology act, India had neither

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<sup>1</sup><https://gulfnews.com/business/economy/jam-trinity-helped-government-save-10-billion-leak-modi-1.2129377>

<sup>2</sup>K.S.Puttaswamy v. Union of India, (2017) 10 S.C.C 1.

<sup>3</sup>Gobind v. State of Maharashtra, (1975) 2 S.C.C 148.

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omnibus data protection regulations as in Europe, nor meticulous sectoral privacy laws as in the United States.<sup>4</sup>

However, the legislature amended the Information Technology Act, 2000 and has included Section 43A and Section 72A with respect to the right to compensate for improper disclosure of personal information. Subsequently, The Central Government had issued The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. These rules imposed additional requirements on those business entities related to the collection and disclosure of sensitive personal data.

'Informational Privacy' has been identified as being a facet of the right to privacy in the recent Supreme Court Judgment in *K.S. Puttaswamy & Anr. Vs Union of India & Ors*<sup>5</sup> where the Court had recognized the right to privacy as a fundamental right under Article 21 of the Indian Constitution as a part of the right to 'life and personal liberty'. The Supreme Court also held that there is a need for the comprehensive law with regard to data protection which deals with prominent issues. The reason behind such a comprehensive framework in India is that the Information Technology Act and the Rules were restricted only to certain kinds of information. Hence, Comprehensive Data Protection Framework is in need of that information that does not fall under Sensitive Personal Data Rules.

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<sup>4</sup>Lothar Determann, California Privacy Law (3d Ed. 2018).

<sup>5</sup>*supra* Note 2

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Added to the above-mentioned privacy issues, similar suit was brought before the Courts of India in *Karmanya Singh Sareen & Anr Vs Union of India Ors*<sup>6</sup> wherein the consent for the collection and sharing of sensitive data of consumers by WhatsApp with Facebook was challenged under the grounds of being in violation of Article 19 (1) and 21 of the Indian Constitution.

In the light of the Supreme Court Judgment in *K.S. Puttaswamy & Anr. V Union of India & Ors*<sup>7</sup> which specified the need to formulate a comprehensive data protection framework. The Ministry of Electronics and Information Technology had constituted a panel of experts under the chairmanship of Justice B.N. Srikrishna to identify and recommend the methods of addressing the issues related to data protection in India.<sup>8</sup> The same was drafted and introduced in the Indian Parliament. The Personal Data Protection Bill, 2018 not only includes the data protection/security obligations but also follows the implementation of the General Data Protection Regulation (GDPR). However, the bill failed to address two crucial intricacies viz,

1. Unlike the GDPR, the bill contemplated 'Data' as a matter of 'trust' and not property i.e., the sole ownership of data was never given its due significance. The *Telecom Regulatory Authority of India (TRAI)* had exemplified that every user owns his data and the entities processing such data are mere custodians.<sup>9</sup>

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<sup>6</sup>Karmanya Singh Sareen v. Union of India, 233 (2016) D.L.T 436.

<sup>7</sup>supranote 6.

<sup>8</sup> <https://scroll.in/article/888365/the-draft-data-protection-bill-is-a-step-forward-but-nowhere-close-to-what-india-needs>

<sup>9</sup> [https://main.traai.gov.in/sites/default/files/RecommendationDataPrivacy16072018\\_0.pdf](https://main.traai.gov.in/sites/default/files/RecommendationDataPrivacy16072018_0.pdf)

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2. The GDPR empowers the consumers the right to demand deletion of their past records at any point of time.<sup>10</sup> On the other hand, the bill enunciates the ‘*right to be forgotten*’ as right to restrict or prevent continuing disclosure of personal data. The process of vindicating why the consumers discontinue giving consent is still left unexplained.

## Statutes

1. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

**Companies are bound to adhere to certain rules when they collect ‘sensitive’ personal data. As per the rules, they are mandated to appoint a grievance officer and furnish a privacy policy.**<sup>11</sup>

2. Credit Information Companies (Regulation) Act, 2005

**As per Section 20 of the act, Credit bureaus have to embrace specified ‘Privacy Principles’ relating to the credit information being used and disclosed and rules pertaining to data protection.**<sup>12</sup>

3. Aadhaar (Targeted Delivery of Financial & Other Subsidies, Benefits & Services) Act, 2016

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<sup>10</sup> <https://gdpr-info.eu/art-17-gdpr/>

<sup>11</sup> See Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

<sup>12</sup> <http://legislative.gov.in/sites/default/files/A2005-30.pdf>

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**As per Section 29 of the act, the information converged for Aadhaar program forbids the sharing of biometric information and requires other identity information to be shared and used only for specified purposes.<sup>13</sup>**

### Conclusion

In the light of the prodigious growth in digital population, data privacy and data protection has become the need of the hour. A robust regime needs to be formulated that would deliver a careful and sensitive balance between the interest of the individual and legitimate concerns of the state. In the age of information era, where information is power and internet is all pervasive, the data is ubiquitous. As rightly said *“From each debate, there arises knowledge of ultimate principle”*. Drafting a Data Protection Law is a complex process and it cannot be executed according to their whims and fancies. Crafting a propitious privacy policy that balances the privacy of the user is a pervasive question even today that's left unanswered. Terms of use and privacy policy should be envisaged as an art form, rather than long form i.e., the document must be customized based on the needs of the people and the general principles of law. The author would like to humbly submit that due to lack of legal jurisprudence in this subject, it is hoped that proper amendments will be made in the near future which will put things in order for innovative policies and foster the development of technology.

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<sup>13</sup> <http://www.lawyerservices.in/AADHAAR-TARGETED-DELIVERY-OF-FINANCIAL-AND-OTHER-SUBSIDIES-BENEFITS-AND-SERVICES-ACT-2016-SECTION-29-Restriction-on-sharing-information>