

Legal and Regulatory Issues of Privacy and Data Protection in e-Commerce: An Analytical Study

A Preface Submitted

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PREFACE

Technology has improved our lives and has made life much easier, but the insecure nature of the internet has invited crimes which were unheard in the past and which are purely the product of modern technologies. Internet and technology together has touched our lives in such a way that development and computer related crimes popularly known as ‘cyber-crimes’ runs parallel to each other. Privacy and Data protection issue is one of such crucial subject which has questioned the status of Indian legal and regulatory system in this contemporary age. Borderless jurisdiction of the internet has further triggered and equipped cyber criminals to intrude into one’s privacy and steal data in less than a minute with the help of tech-gadgets. There is not an iota of doubt that technology has changed our lives in many positive aspects but it is also true that it has facilitated wrongdoers to commit criminal activities on an online platform. Influence of technology has hampered not only our personal space but also our personal information and sensitive data. For instance, most of the people share their data online without thinking much about the privacy issues. They provide their personal information’s/data including their name, age, email address, mobile no. etc. while purchasing goods from online shopping sites like, amazon, myntra, Alibaba etc. Sharing of personal details like location and phone number while hiring cabs from apps like uber and Ola is another example where customers share their personal information to unknown people only on trust that their data shall be protected by the receiving end but unfortunately valuable data are exposed for commercial gains. There is a complete absence consent and knowledge of the data subject. Zoom bombing is another recent example of privacy intrusion in this 2020 which has gained prominence in this covid-19 pandemic where everything is facilitated through online mode ranging from webinar to online classes.

It is very vital to give a quick introduction on how privacy evolved in our society. The amazing fact is our forefather's abhorred privacy and they had hardly any stored data's to be protected from third party/(s). They practiced the style of living closely with each other within four walls and did not care much about intrusion by fellow human beings. In the present day the case has turned upside down and our privacy today has gone in a toss. With the growing exploitation of privacy and data, consumers have become conscious as well as afraid of indulging in online activities. Talking about India, there is no comprehensive law to address the issues of privacy and data privacy protection. In e-Commerce platform these two issues has become more sensitive due to borderless internet and issues of choice of law and jurisdiction which restricts the power of the court. Apprehending criminals and making the intermediaries liable for loss of data and privacy intrusion in online platform is another issue which is techno-legal in nature and which has left a huge doubt in the mind of people regarding competence of our legal system.

The Legal and regulatory issues of privacy and data protection in e-Commerce has engaged the attention of almost every nation and has been a topic of debate for a very long time. These two contemporary issues also find a special place in the international documents too. In India the statutes which deals with the issues of privacy and data is the Information Technology Act, 2000. This Act has gone through several amendments to meet the growing challenges of cyber crimes. The Information Technology (Amendment) Act, 2008 is the latest amendment Act till date. This Act does not address the gamut of cyber issues therefore Acts like Indian Contract Act, 1860, The Consumer Protection Act (COPRA) 1986, now 2019, The Indian Penal Code, 1806, The Securities and Exchange Board of India (SEBI), 1992, and the Reserve Bank of India

(R.B.I.) covers issues which are not touched by the Information Technology Act, supra. The Constitution of India is another most important branch of Law which touches the issues of privacy and freedom of speech and expression and other contours of rights which revolves around one's privacy. Perusal of landmark judgments provides a deep knowledge on the evolution of the concept of privacy in India. *Kharak Singh Case (1964)*, *Kesavananda Bharati case (1973)*, *Maneka Gandhi Case (1978)*, *R. Rajagopal vs. State of Tamil Nadu (1994)* and the *S. Puttaswami and Ors. vs. Union of India and Ors. (2017)* are the some of the cases on privacy and other fundamental rights. Puttaswamy case is the most important case because the Supreme Court finally gave verdict on privacy and gave it a constitutional status and protection under article 21. Now violation of privacy would amount to violation of fundamental right.

In India issues of privacy and data as mentioned earlier is not exhaustively covered by any laws and with the involvement of technology and internet, need for their protection has increased enormously. Till date the term 'privacy' and 'data privacy' has not been defined under any law and there is no legal definition as such. It is ironic to state that not even a single piece of Indian legislation defines the term privacy. But one can find provisions for punishment for privacy intrusion under section 66E of the Information Technology (Amendment), 2008. So far the most accepted and popular definition of privacy is given by Samuel Warren and Louis Brandeis, it reads as "*right to be left alone*". Oxford dictionary gives a definition of privacy as "*freedom from public attention*" without any disturbances." "Data privacy" is another term which too has not been defined under the Indian Statutes. But the term 'data' only has been defined under section 2(1) (o) of the Information Technology Act, 2000. Compensation are prescribed for both failure to protect data and for disclosure of information under sections 43 A and 72 A respectively but

the issue and the obvious question which is to be addressed here is how can our laws will address and adjudicate upon the issues of privacy and data privacy intrusion in the absence of any legal and standard definition. The contour of privacy and data privacy issues in e-Commerce is very vast and our laws are scattered and incompetent to deal with contemporary cyber issues.

In a nutshell one part of the research work deals with legal and techno-legal issues. The former one is the lack of legal definition of the term privacy and data privacy and later part covers issues like privacy intrusion and failure to protect data in e-Commerce, third party liability i.e. liability of the intermediaries in e-Commerce transaction and lastly issues of cookies, security and confidentiality etc.

With the growing borderless internet, privacy and data protection of individual has become a crucial concern over the globes. This issue has not only grabbed the attention at National level but at international platform too. International Organizations and documents like World Trade Organisation Intellectual Property Rights (TRIPS), Asia Pacific Economic Cooperation (APEC) etc. are few of the names which have or discuss the various issues of privacy intrusion, failure of protecting data and e-Commerce issues which takes place within the country as well as between different countries.

A comparative study plays a vital role in understanding the prevailing situations of any issues from two angles, one at the National level and another at the international level. A similar approach was adopted to understand privacy and data protection issues in e-Commerce in India. A comparative study of the four Nation viz; United Kingdom, European Union, United States of

America and India was made to understand the above mentioned issues and loopholes in our laws. A Careful perusal and analysis of the laws of these four countries shows that United Kingdom, European Union and United States of America have the most promising legislation unlike India. The former two countries have a comprehensive legislation popularly called U.K'S Data Protection Act 1998 and GDPR (General Data Protection Regulation)