

## CHAPTER X

# Privacy Issues

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### • INTRODUCTION

In 1984, William Gibson first coined the term cyberspace through his work in the form of 'necromancer' a science fiction. The book further describes cyberspace as an online world of computers and elements of society that use these machines clones. The book gave the idea of cyberspace as a three-dimensional virtual landscape. The author also compares cyberspace with physical space but with a slight difference in terms that cyberspace uses computer-generated infrastructure rather than the normal cement-based. Coming towards the limitations of cyberspace, it's actually limitless and does not have boundaries nor any mass or gravity. It's just the interconnection between computer systems and networking. The cyberspace exists in the form of bits and bytes that's basically 0's and 1's.

With the increased use of the internet and the increasing amount of data being entertained in cyberspace creates some problems as well. The major issue faced in the cyberspace that makes it problematic to use is personal privacy concerns. These privacy concerns can endanger a person's identity as the new PII (Personal Identifiable Information) is available on the cyberspace. Biometrics like DNA, fingerprints, iris-scanning used for more secure identification and security reasons do help in the process

of security but not to forget that all biometrics are stored in digital format and of course on the virtual space. The various amendments in the IT act (2008) and the recently introduced bill (The Privacy Protection Bill [2013]) are a positive step that the Indian government is concerned about the privacy and security of its citizens from the virtual world. The Privacy Protection Bill (2013) deals with concerns like the protection of personal data, surveillance, communication, etc. This bill helps the natives to gain some trust in the various E-commerce platforms. The bill states that no person shall collect any personal data of another person without having prior consent of the person to whom it pertains and such consent may be obtained in any manner, and through any medium, but shall not be obtained as a result of a threat, duress or coercion. But apart from the government's concerns, it's also the duty of the end-user to filter the amount of data he/she stores on the virtual land.

- **PRIVACY ISSUES**

In India, many people share their private information on social media, matrimonial sites, and on several other sites without knowing the fact that this information can be misused by some other people. The other fact is that cyberspace is not bound geographically meaning that the information stored by an Indian can be accessed and used by foreigners globally. This situation now introduces us to the word 'Privacy'. The word privacy means, "Privacy may be defined as the claim of individuals, groups or institutions to determine when, how, and to what extent information about them is communicated to others". In easier words, privacy is the right to be let alone. We, humans, want some

private space or privacy so that we can enjoy our life to the fullest. Also, a citizen has the right to protest against his privacy being intruded. Personal privacy is the main and most related term used in the reference of exposure of one's body to another. We use clothes, walls, and fences, etc. to protect our personal privacy and to protect the right to privacy. But our personal privacy is not only physical privacy but our informational privacy also. Some important and crucial information such as name, date of birth, age, sex, address, phone number, bank account number, several passwords, etc. come under informational privacy. The internet while provided ease in terms of use and is really effective in its work but somehow is not all that proper. The internet has created several loopholes and these loopholes are being constantly used for invading into the privacy of the common peoples. Internet is being used to monitor people's life by intruding into their privacy. In the current world you actually don't know when you are being monitored and by whom. This monitoring can create some fatal results as your monitoring can help the intruder to access your interests and your negatives as well. Cause of the internet loopholes several people faced online harassment and have been blackmailed on social networking sites. Their private and important photos are being downloaded and misused. The other major fact that hinders our privacy is that whatever we do on the internet can be accessed by others and there are digital traces, we left behind us.

- **LEGAL WAYS TO COMBAT**

Now coming towards the legal paths to combat cyber privacy that ensures that the breachers are punished.

### **1. Information Technology Amendment Act (2008).**

Information technology Act is an act of the Indian Parliament notified on 17, October 2000. It regulates the cyberspace in India and provides rules and regulations regarding reviews of cyber law.

- **Section 43(A): Compensation for failure to protect data**

where a body corporate, possessing, dealing, or handling any sensitive personal data or information in a computer resource which it owns, controls, or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful gain or loss to any person, such body corporate shall be liable to pay damages by way of compensation, to the person so affected.

- **Section 66(E): Punishment for violation of privacy**

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or both.

#### **Explanation -**

(a) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;

(b) "capture", with respect to an image, means to videotape, photograph, film, or record by any means;

(c) “private area” means the naked or undergarment clad genitals, pubic area, buttocks, or female breast;

d) “publishes” means a reproduction in the printed or electronic form and making it available for the public;

(e) “under circumstances violating privacy” means circumstances in which a person can have a reasonable expectation that-

(i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

- **Section 72: Breach of confidentiality and privacy**

same as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuant of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with both.

- **Section 72(A): Punishment for Disclosure of information in breach of lawful contract**

Same as otherwise provided in this Act or any other law for the time being in force, any person including an

intermediary who, while providing services under the terms of a lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.

### **2. Indian Penal Code, 1860**

There are some sections in IPC that deal with privacy. They are not directly related to cyber privacy but can be helpful for an individual to claim his or her rights. Like Section 499 Defamation, Section 500 Punishment for Defamation, Section 292 Sale, etc., of obscene books, etc., Section 447 Punishment for Criminal Trespass, Section 509 Word, gesture or act intended to insult the modesty of a woman.

### **3. Code for Criminal Procedure, 1973**

Few of the sections in CrPc can also be implied with the other sections in other Acts such as Section 320 Compounding of offences.

### **4. Right to Information Act, 2005**

Section 8 Exemption from disclosure of information.

### **5. The Privacy Protection Bill (2013)**

As the bill says that it is a bill “to establish an effective regime to protect the privacy of all persons and their personal data from Governments, public authorities, private entities, and others, to set out conditions upon which surveillance of persons and interception and monitoring of communications may be conducted, to constitute a Privacy Commission, and for matters

connected therewith and incidental thereto.”

**Following are the chapters of the privacy protection bill (2013):**

1. Preliminary
2. Right to privacy
3. Protection of personal data
4. Interception of communications
5. Surveillance
6. The privacy commission
7. Offences and penalties

This bill deals with all the major aspects of the privacy concern. It states that no person shall collect, store, process, disclose or otherwise handle any personal data of another person, intercept any communication on another person or carry out surveillance of another person except as provided in the act.<sup>16</sup> It also put a bar on collecting data or personal information of individuals without obtaining the prior consent of the person whom it pertains. If made applicable privacy commission would be formed so that no one can carry out any surveillance of any person without taking permission from the privacy commission though it has some exceptions too.

#### • CONCLUSION

Summing up the issue of cyberspace in India and globally, the best one can do to protect personal privacy is by knowing his rights and duties towards an ideal citizen. Firstly, the right to privacy is a fundamental right as guaranteed by our esteemed Indian Constitution in Article 21, our constitution entitles all of us to basic and needed Rights, but there are some restrictions to it as well. No rule can be placed without limitation as unrestricted rules

would result in making the useful rules useless and also there ought to be some restrictions for the controlled and civilized society. Coming towards the technological advancements several methods and techniques have been developed and are being researched about the various new ways and methods to keep track of the so found culprits which could be guilty. The technological advancements have provided the government ease in terms of tracking and tracing of people involved in the sins. Although technological advancements have eased the government's work, it also has eased the work of those prying eyes as they have also advanced and are keeping in pace with developing new ideas and ways to ease their paths. Here comes the responsibility of the government to take on the stress of privacy on its own shoulders and protect the personal privacy of its citizens. The government is made accountable for the loss of a person's personal privacy and personal information being invaded. But making only the government accountable for personal privacy is not correct and should not be encouraged as personal privacy is in the hands of ourselves rather than the ones we elect during the election. The elected representatives do take on the responsibility on its own and it does provide ways, methods, and rules for monitoring the usage and collecting of data or information in IT Act but it requires to be implemented and amended in the constitution itself for better enactment. Another great option left with us is to look inside ourselves and make changes to ourselves. This activity is crucial and this would help to minimize the amount of data we usually share on the internet; the global platform discussed above. By filtering the amount and types of data being shared would help in controlling the personal privacy issues we all have in ourselves while some



hide it and others express it but deep down the concern prevails and would continue to prevail until unless acted upon it and made changes to it. The global platform is definitely full of threats and would continue to be, the only thing we can do is to limit ourselves and see the result of having fewer privacy issues. Always keep in mind that there is someone on the other side of the internet waiting for you to give them your personal information and the evil side will use it towards your bad will. Completing this all, act upon the issue forehand rather than waiting for something to happen and then acting upon it would not help, so start it at the earlier stage is the key to succeeding. The best quote to better understand it is, "Precaution is better than cure" definitely stands true and is true. Acting and preparing yourself for the upcoming possible threats would help in solving it and would certainly result in zero or least loss of personal privacy.

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