
Assessing the General Data Protection Regulation in the view of its implementation as a standpoint of reference to the Personal Data Protection Bill.

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Improving the quality of our lives should be the ultimate target of public policies. But public policies can only deliver best fruit if they are based on reliable tools to measure the improvement they seek to produce in our lives.

- Jose Angel Gurria

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Introduction

Over the last 33 years, we have witnessed a huge growth in our interaction with computers in regards to both global and individual use. At home, desktops have been popularized and since then have been both supplemented and replaced by mobile technology. The World Wide Web, Google, Bing, Twitter, and Facebook were invented, which resulted in the internet becoming a global commercial hub and even a social medium. This drastic change has resulted in a larger amount and variety of personal data getting generated and even processed through our computers which have expanded and changed beyond what most people could have imagined back in 1980 (Fred Cate, Peter Cullen & Viktor Schonberger, 2014). The United Nations through its “ report of the UN Secretary-General’s High-level Panel on Digital Cooperation” even went on to say that we are living amidst a digital revolution in the age of digital interdependence. This is very evident as earlier we used to rely on memories and paper to capture information, whereas

nowadays information gets permanently stored in our computer systems. We currently are living amidst a paradoxical situation where we seek privacy while disclosing personal information in order to receive basic services and even establish friendships (Marc Pelteret & Jacques Ophoff, 2016).

While we are surrounded by negligence and lack of awareness, many have advocated for the importance of privacy and even privacy laws. We need to understand that privacy laws are very important in today's electronic world where things can be easily captured, stored, and even shared. This has even resulted in many countries around the world trying to come up with legislations, yet privacy continues to be a complex subject (Marc Pelteret & Jacques Ophoff, 2016).

Understanding the General Data Protection Regulation

The right to privacy has been given importance in the European Union since 1950, it was even included in the "European Convention on Human Rights", where it stated that "Everyone has the right to respect for his private and family life, his home and his correspondence." The European Union ended up recognizing the need for protection back in 1995 as a result of rapid technological developments this resulted in them introducing the European Data Protection Directive. Irrespective of introducing these standards the EU wasn't able to keep up with the transformation of the Internet into the data hoover it is today. As a result of this rapid growth, many new stakeholders in form of businesses started using the digital platform which resulted in the creation of new problems. One of the major problems back then was when a google user sued a company for scanning her email, this controversy resulted in Europe's data protection authority deciding to update the 1995 directive (Ben Wolford).

The GDPR was formally entered into force in 2016 after it was passed in the European Parliament and was put into effect on May 25, 2018. Presently the GDPR is considered to be the toughest privacy law in the world and it helped Europe to signify its strong stance on data privacy and security.

Now let's try to understand what makes the GDPR so effective and successful because as a legislation it's really well defined and categorized in a structured manner to ensure that it can be understood and followed effectively. Within GDPR, its scope, accountability, the process of data

flow, authorities involved, core principles, etc are well defined which avoids the creation of ambiguity. We also need to understand that these regulations were made over time and not hastily, even after its creation all countries in the EU were given an additional two years to comply and get ready to work based on this new law. Additionally, the policy inputs and outputs in regards to the GDPR were clearly defined as the European parliament was very firm in regards to its stance as to what it wanted to achieve and what was needed for it. I believe transparency maintained in the creation of this legislation and its functioning has been very crucial in its success. It is very clearly stated what consent means, what a data protection officer's mandate is, how is information processed, what rights are granted under this legislation, etc. The emphasis on transparency has also increased the awareness associated with GDPR. We also need to recognize the extensive importance given to consultation given under the GDPR, large scale public consultation didn't take place only during the creation of the legislation but consultation is also given importance under article 36 of the GDPR.

I believe that a law's success is based on its applicability and use, the GDPR has proven to not only be applicable in regards to the European Union's needs, but it has also been widely accepted and followed. Several programs were started to conduct GDPR training which is a very major contributor to its success. The EUGDPR Institute is very important as it has created a platform where it offers training through web-based training programs, e-learning, events through conferences, training workshops, seminars on several GDPR issues and mandates.

We also need to understand that the seven core principles of the GDPR have played a huge role in facilitating its implementation and success. These principles ensure that the individual's rights and security of sensitive personal information could only be used for legitimate purposes. These principles are as follows;

- Accountability.
- Accuracy.
- Data Minimisation.
- Integrity and Confidentiality.
- Lawfulness, Fairness, and Transparency.
- Purpose Limitation.
- Storage Limitation.

GDPR Implementation

The implementation process has been key in the GDPR's success to strengthen privacy laws and even set a benchmark for others to follow. The implementation and operating procedure are systematically laid down, it follows this order: Determines your organization's role under the GDPR (data controller or processor)- Assign someone to the data protection officer role- implement consent management- Review and update data retention and data backup- Identify and document business processes and associated IT systems processing personal data- Identify and assess any cross- border data flows- Prepare for persons exercising their GDPR rights- Prepare for a data breach. This process laid out is really systematic and goes in line with the principles of the legislation.

Learnings in the Indian Context

Before we trace down the learnings, we need to understand the background of privacy laws in India, a comparison between the GDPR and the Personal Data Protection Bill, and issues in the PDP bill. Currently, India is not part of any convention on the protection of personal data which is considered to be equivalent to the GDPR. Whereas India has adopted or we could say that has been party to International declarations and conventions such as the Universal Declaration of Human Rights and the International Convent on Civil and Political Rights, which do recognize the right to privacy. Even though India doesn't have any legislation on data protection yet, it is important to note that the Information Technology Act (2000) was amended to include section 43 A and section 72 A which lay emphasis on data protection, privacy, and confidentiality (Talwar Thankore & Associates, 2020). We must understand the reason behind forming this bill. Following the Supreme Courts' decision back in 2017 when it held privacy as a fundamental right under article 21 of the Constitution. The court even came across issues about the privacy of personal data and facts which was also important to the right to privacy. This was followed by the creation of a committee of experts chaired by Justice B.N. Srikrishna to examine issues related to data protection in India. The committee ended up submitting its report along with the draft of the bill in 2018, after which the bill was then introduced in 2019 (Anurag Vaishnav, 2019).

Before we go on to trace down the issues with the bill and its learnings from the GDPR. We need to look at the grounds on which both can be compared;

- Coverage of entities: Both prescribe to a single law for private and public entities.
- Sensitive personal data: The GDPR doesn't include financial data, passwords, however, it is included under the PDP bill.
- Local storage of data: It is not mandatory under the GDPR, but it would be mandatory to store the critical personal data only in India under the bill.
- Cross border transfer of data: It is permitted by the GDPR only if the country receiving has adequate standards of data protection which are assessed by the European Commission. Whereas under the PDP bill it would be permitted if it's approved by the regulator or based on the government's decisions.
- Data breach notification: Potentially harmful data is dealt with similarly both initially by reporting to the regulator. The only difference is that under the GDPR an individual may not be informed if the processing entity has taken correction action and under the PDP bill the regulator determines whether the individual will be notified based on the seriousness of an action by the individual.
- Criminal penalties: Under the GDPR there are fines but no criminal penalties, whereas imprisonment under five years is issued for certain offences in the PDP bill.

We need to note that even though the statement of objects and reasons of the Personal Data Protection Bill 2019 stated that it is based on the recommendations of the report of the expert committee and suggestions received from various stakeholders, several changes were made in this bill compared to the draft bill in 2018 and many suggestions were even ignored. This did raise many issues to add to the concerns raised by this bill as a whole. This bill isn't as easy to comprehend as the GDPR due to the differences in structure, it even lacks clarity in multiple parts. As many things are stated but no details are mentioned adding to the ambiguity. Some of the major concerns which this bill raises according to me are, in case of the rights given to

individuals (data principals) not being well defined, setting up of the Data Protection Authority of India under chapter IX raises many questions based on the nature of the authority, use of consent is also a very critical part of the bill when it is looked at in regards to the government's role, issues related to data retention and use also need to be relooked and finally in cases of the data breaches giving data fiduciaries a choice is a major issue as then we might fall into a cycle of underreporting.

Such issues have made it very evident as Noam Chomsky states that there is a tremendous gap between public opinion and public policy. The Indian policymakers have faced these issues as the sentiment to have a personal data protection policy amongst the citizens wasn't matched and properly executed under the bill which ended up raising these issues. The Joint Parliamentary Committee's detailed examination of this bill will be of utmost importance. However, we need to understand that outcomes targeted based of this bill need to be backed up by creating or at least identifying avenues for its implementation. Creating awareness about the bill would be very important if it is eventually gets passed, the EUGDPR institute could be considered as a good example of platforms that can be created in training individuals how to use these new laws. Also, transparency needs to be a key in the functioning of this bill if it becomes an act, what every stakeholder is getting into, and how the data will be used with certain exemptions needs to be clearly defined and justified. Sooner or later India will have personal data protection legislation, now all that we need to see is the approach chosen and its result nationally and globally as in when the implementation starts and sets in.

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