

## A Critical Study of Information Technology Act, 2000 with special reference to Informational Privacy in India.

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### 1.1 Introduction:

The advent of information technology and internet and specifically the exposure to global market, it had become essential to provide some protection to the commercial activities in India. With this specific intention, the Information Technology Act, 2000 was enacted. The object of this Act is to facilitate e-commerce mainly. The main provisions related to transactions by electronic data interchange and other means of communications are provided in the Act. The government has enacted various Rules governing the protection of privacy and empowering the government under the Act. Let us have a look at some of the important provisions of Information technology Act 2000.

### 1.2 Information Technology Act, 2000<sup>2</sup>

On October 17, 2000, the Information Technology Act of 2000 initially went into effect. It lacked safeguards for protection and instructions on how to handle sensitive personal data about an individual in a secure manner. The Information Technology (Amendment) Act, 2008 eventually added Section 43A<sup>3</sup> to the Information Technology Act, notifying the Information Technology (Reasonable security practises and procedures and sensitive personal data or information) Rules, 2011<sup>4</sup>, (hereinafter referred to as the "2011 Rules"), as a result of which several additional amendments and bills were passed. The 2011 Rules' main characteristics are:

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<sup>2</sup> The Information Technology Act, 2000 *available at*:  
[https://www.indiacode.nic.in/bitstream/123456789/13116/1/it\\_act\\_2000\\_updated.pdf](https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf) (Visited on Sep 11 2022)

<sup>3</sup> Section 43A in The Information Technology Act 2000, "Compensation for failure to protect data" *available at*: [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_45\\_76\\_00001\\_200021\\_1517807324077&sectionId=13058&sectionno=43A&orderno=49#:~:text=Compensation%20for%20failure%20to%20protect%20data.,-%2D%2DWhere%20a](https://www.indiacode.nic.in/show-data?actid=AC_CEN_45_76_00001_200021_1517807324077&sectionId=13058&sectionno=43A&orderno=49#:~:text=Compensation%20for%20failure%20to%20protect%20data.,-%2D%2DWhere%20a) (Visited on Jan 17 2023)

<sup>4</sup> The Information Technology (Intermediaries guidelines) Rules, 2011 *available at*:  
[https://www.meity.gov.in/writereaddata/files/GSR314E\\_10511%281%29\\_0.pdf](https://www.meity.gov.in/writereaddata/files/GSR314E_10511%281%29_0.pdf)

Section 43A - This section, which is the cornerstone of data protection, states that if a body corporate negligently fails to implement and maintain reasonable security practices and procedures and causes wrongful loss or wrongful gain to any person by having, using, or handling sensitive personal data or information in a computer resource that it owns, controls, or operates. But this section is not sufficient to protect informational privacy of an individual up to full extent.

Section 72A<sup>5</sup> - According to this section, anyone including an intermediary who discloses information about another person to anyone else without that person's consent or in violation of a lawful contract while performing services under the terms of a legal contract with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain shall be punished with imprisonment for up to five years. Which researcher will discuss in chapter 4 in a detailed manner.

These 2011 Rules apply only to persons and body companies in India. Section 43A of the IT Act states that any corporate body that handles sensitive personal data or information and is careless in maintaining a reasonable level of security to protect that data or information, resulting in wrongful loss or wrongful gain to any person, shall be liable for damages to those people.

These two provisions of IT Act 2000 were not able to cater to the increasing need of Informational privacy because these provisions are made with understanding a protection of data in physical form and prevention of wrongful loss or gain but the whole human life has so transformed that there are unlimited ways of data utilization and therefore regular principles of law and culpability are not sufficient.

After studying and analyzing the above legislations, it has been observed that there is an interface between Right to Privacy and Information Technology Act. Also, it has emerged from the above discussion that the enactment of the Information Technology Act, 2000 was not sufficient to cover the right to privacy issues arising over data protection.

The researcher has been able to find out IT Act 2000 came as a response to provide legal validity to the online transaction. Amendment of 2008 to provide the criminal

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<sup>5</sup> Section 72A in The Information Technology Act 2000, "Punishment for disclosure of information in breach of lawful contract" available at:  
[https://www.indiacode.nic.in/bitstream/123456789/13116/1/it\\_act\\_2000\\_updated.pdf](https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf)

accountability for the breach of virtual as well as physical privacy and has made its scope wider. With the growth of the internet and the responsibility of intermediaries it has been provided to secure it by framing rules as well as rules are provided for protection of personal information like passwords etc. Even For protection of credit information, the Credit Information Company (Regulation) Act, 2005<sup>6</sup> is enacted but still it appears that there were glaring gaps between the existing legal regime and objectives of Informational privacy.

The Information Technology Act of 2000, as revised by the Information Technology Amendment Act of 2008, contains the most notable clauses.

The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, in particular, supplement Section 43A, which deals with "reasonable security practices and procedures." These regulations' reach and coverage, though, are constrained.

India currently lacks a central, national regulatory organization or complaints body for data protection. The Digital Personal Data Protection Bill 2022 is a short version of the bill. There are so many questions and loops which makes the bill inadequate to fulfill the need of the time.

The existing legal regime which is responsible for the protection of Informational Privacy is not able to cope up with the changing and evolving technological evolution. Thus, this is leading to a vacant legal space which can be exploited. The space which is created because of the absence of legal provisions for the protection of Informational Privacy has made the personal information of an individual a matter of free commodity for the State as well as non-State actors, which leads to making Right to Privacy redundant.

This Right is Guaranteed by the Constitution as a fundamental right and recognized by Supreme Court in the case of Puttaswamy cannot be waived by subscriber by just making a digital contract in the form of deemed consent. The method of allowing subscribers to used services only if they agree with the privacy policy is not simple question of freedom of contract but it involves comprehensive question that whether to be participated in the digital platform is also a part of right to life and to what extent

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<sup>6</sup> The Information Technology (Intermediaries guidelines) Rules, 2011 *available at*: [https://www.meity.gov.in/writereaddata/files/GSR314E\\_10511%281%29\\_0.pdf](https://www.meity.gov.in/writereaddata/files/GSR314E_10511%281%29_0.pdf)

Right to Privacy is available for an individual to protect his Informational Privacy on digital platform. This is the legal area which has been kept vacant by the legislatures of this country and therefore a substantial vacuum of legal provisions for the protection of Informational Privacy is experienced by researcher. Issues which arise with reference to informational privacy in India which attracted the attention of the researcher for this research can be discussed as follows:

**a) Absence of remedies**

Since the whole Information Technology regime is governed by IT Act 2000, its amendment and rules made under it. The approaches of law under this legal system are sectoral in nature. This means law tries to identify problems in specific sectors and provides a sector specific solution. Harm or damages to the individual caused by the non-protection of the privacy is still beyond comprehension of many problems in the legal field. People do not find a suitable and easily accessible legal mechanism for the violation of privacy of information. Therefore, the remedy which is used for protection of right to privacy is equivalent to absence in nature.

**b) Conflict of Interest and Informational Privacy:**

With the evolution of Information technology collection of data has become less expensive and an easy process. People are habituated to share their data and information for social and other circumstantial compulsions. People are facing conflict of interest related to informational privacy in India.

On one hand, people want to participate in the society and society is transformed itself to be included in the digital society. Digital society means the part of individual life which is dependent on connecting and participating in communication involving digital platforms in addition to physical media. Therefore, the interest of participation is at one hand and the loss of privacy interest in the information is at another. Author believe that this conflict of interest for Informational privacy is the product of absence of legal protection and uncertainty in the market driven technology.

**c) Imbalance of the competing interest:**

When someone shares his information either by his choice or by the compulsion of circumstances then he wants to access the digital life and protection of her informational

privacy which may be connected with other forms of privacy like privacy of her person or privacy of her choices etc. Data processing and Artificial intelligence is evolving up to that extent so that the individual mind can be manipulated by the data giants.

Commercial and other forms of interest in the individual information are huge and because of that the interest of an individual about his informational privacy is competing and conflicting with the interest of data giants. The data giants have created such a digital life by which the individual has no opportunity to choose nonparticipation and therefore law needs to balance the individual interest of informational privacy with the uncomfortable strength of data giants and their interest in the individual personal information.

Conclusion:

To achieve this objective the attempt of enacting the legislation have been made and for this purpose multiple drafts of the bill for the protection of informational privacy have come for public discussions namely Data Protection Bill 2013, Data Protection Bill 2014, Justice B. N. Shrikrishna Committee Report, Data Protection Bill 2018, Personal Data Protection Bill 2019. After that Joint Parliamentary Committee was formed to study the proposed bill of 2019. On the report of Joint Parliamentary Committee government has proposed bill of 2021 which also have been withdrawn in august 2022 and finally the draft of Digital Personal Data protection Bill 2022 has been published for public discussion in the month of November 2022.

Researcher have taken complete overview of this legal regime and discussed the issue and proposed laws related to Informational privacy in India. Researcher also have compared the Indian legal regime with the standards of Informational privacy under EUs GDPR. Researcher have discussed the emerging issues and concerns related to protection of Informational privacy, like Accountability of data, transparency of data, consent, notice, cross border data transfer, Exemptions to government, Penal provisions for the noncompliance of provisions of the bill, responsibilities and duties of Data Principal which are yet to find their solutions and the metal is yet to be tested in the real world. Researcher have concluded that the framework for the protection of Informational privacy has to maintain balance between rights of people and interests of the State.

