Lecture- 22

Privacy (Data Protection) Laws in India

Data Protection refers to the set of privacy laws, policies and procedures that aim to minimise intrusion into one's privacy caused by the collection, storage and dissemination of personal data. Personal data generally refers to the information or data which relate to a person who can be identified from that information or data whether collected by any Government or any private organization or an agency.

The Constitution of India does not patently grant the fundamental right to privacy. However, the courts have read the right to privacy into the other existing fundamental rights, ie, freedom of speech and expression under Art 19(1)(a) and right to life and personal liberty under Art 21 of the Constitution of India. However, these Fundamental Rights under the Constitution of India are subject to reasonable restrictions given under Art 19(2) of the Constitution that may be imposed by the State. Recently, in the landmark case of Justice K S Puttaswamy (Retd.) & Anr. vs. Union of India and Ors., the constitution bench of the Hon'ble Supreme Court has held Right to Privacy as a fundamental right, subject to certain reasonable restrictions.

India presently does not have any express legislation governing data protection or privacy. However, the relevant laws in India dealing with data protection are the Information Technology Act, 2000 and the (Indian) Contract Act, 1872. A codified law on the subject of data protection is likely to be introduced in India in the near future.

The (Indian) Information Technology Act, 2000 deals with the issues relating to payment of compensation (Civil) and punishment (Criminal) in case of wrongful disclosure and misuse of personal data and violation of contractual terms in respect of personal data.

Under section 43A of the (Indian) Information Technology Act, 2000, a body corporate who is possessing, dealing or handling any sensitive personal data or information, and is negligent in implementing and maintaining reasonable security practices resulting in wrongful loss or wrongful gain to any person, then such body corporate may be held liable to pay damages to the person so affected. It is important to note that there is no upper limit specified for the compensation that can be claimed by the affected party in such circumstances.

The Government has notified the *Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011*. The Rules only deals with protection of "Sensitive personal data or information of a person", which includes such personal information which consists of information relating to:-

- Passwords;
- Financial information such as bank account or credit card or debit card or other payment instrument details;
- Physical, physiological and mental health condition;
- Sexual orientation;
- Medical records and history;
- Biometric information.

The rules provide the reasonable security practices and procedures, which the body corporate or any person who on behalf of body corporate collects, receives, possess, store, deals or handle information is required to follow while dealing with "Personal sensitive data or information". In case of any breach, the body corporate or any other person acting on behalf of body corporate, the body corporate may be held liable to pay damages to the person so affected.

Under section 72A of the (Indian) Information Technology Act, 2000, disclosure of information, knowingly and intentionally, without the consent of the person concerned and in breach of the lawful contract has been also made punishable with imprisonment for a term extending to three years and fine extending to Rs 5,00,000 (approx. US$ 8,000).

It is to be noted that s 69 of the Act, which is an exception to the general rule of maintenance of privacy and secrecy of the information, provides that where the Government is satisfied that it is necessary in the interest of:

- the sovereignty or integrity of India,
- defence of India,
- security of the State,
- friendly relations with foreign States or
- public order or
- for preventing incitement to the commission of any cognizable offence relating to above or
- for investigation of any offence,

It may by order, direct any agency of the appropriate Government to intercept, monitor or decrypt or cause to be intercepted or monitored or decrypted any information generated, transmitted, received or stored in any computer resource. This section empowers the Government to intercept, monitor or decrypt any information including *information of personal nature* in any computer resource.

Where the information is such that it ought to be divulged in public interest, the Government may require disclosure of such information. Information relating to anti-national activities which are against national security, breaches of the law or statutory duty or fraud may come under this category.