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## Information security legislation and regulations in India

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### Abstract

In addition to meeting their material and spiritual requirements, human people were empowered to fully cultivate and make use of their inherent humanity, intelligence, capacity, and moral compass, all because of the guarantee of human rights. Recognizing the intrinsic dignity and basic rights of every individual, they laid the groundwork for all fundamental freedoms, justice, and peace in the world. In 1994, Baseu Everyone, no matter their situation, has an inherent right to be safe from the state or other forms of public power; these rights are known as human rights. They sprang from people's desires for a world that recognises and values each person's intrinsic dignity. All other individual rights were based on the most prized and basic human rights—a person's right to exist and an individual's right to freedom. As a fundamental human right, the right to exist has assumed a prominent and important role. The right to life and personal liberty, as guaranteed in the most well-known provision of the Indian Constitution—provision 21—could be enforced against the state and extended to all citizens and foreigners. Recent years have seen an expansion of the right to life and individual liberty, as reported by the revised reading of Article 21 in the Maneka Gandhi case. The current emphasis on this issue has covered a lot of ground, including things that the framers of the Constitution may or may not have intended.

**Keywords:** Law, Safety, Data Protection, Fundamental, Censorship

### Introduction

As the new millennium has progressed, new technology challenges and possibilities have arisen in the field of human rights on a global scale. New methods of controlling reproduction or combating climate change, together with the lightning-fast expansion of the Internet, social media, and artificial intelligence, all demonstrate that scientific and technical advancements pose threats to human rights as well as opportunities. Data is now fundamental to the functioning of the internet and, by extension, the economy. Data collecting and processing has become an empire for some of the world's biggest corporations. Companies may delve into people's personal lives, often without their knowledge or permission, thanks to the extensive datasets that they collect. Due to an idea that is fundamental to the web-self-regulation—these corporations have managed to avoid the repercussions of these invasions.

India is a young country that is expected to benefit from its youthful population in the next decades. It is also famous for

being the biggest democracy in the world and having one of the fastest-growing economies. Among India's most influential social technologies, the cell phone ranks high. More and more, it's the way that Indians are obtaining motivational services. Demand factors like quickly increasing affluence, fast mobile technology adoption across demographics, and mobile technology catering to a large population that has previously had poor opportunities to connect with each other efficiently and effectively are driving the unprecedented pace and scale of digital adoption. Supply factors like falling bandwidth prices and low mobile device prices are also contributing. The rapid roll-out of 4G is another key component. A "mobile-first" ecosystem, centred on mobile, is being propelled by the quick adoption of digital technologies.

From a cultural standpoint, nuclear or joint families have traditionally been the norm in India; nonetheless, despite the effects of urbanisation, the average family size is still approximately 5.5. The well-known "thrifty gene"

originated in India, where a huge portion individual are considered to be living in poverty. As a result, Indians are known to be very thrifty and value efficiency. Because it is both a social facilitator and a highly personal tool with all the information, pricing, and connections at one's fingertips, a cheap mobile device with cheap or unlimited data leverages the thrifty heritage mentality. On average, Indians spend a lot more time than the typical person staring at their phones since they live in huge joint families and use their phones to create their own virtual world. For many people in India, their mobile phones serve as more than simply a means of communication; they are also their primary means of connecting with the outside world and expressing themselves. Another way that mobile technology meets the frugal gene is by facilitating the following: price comparison, review reading, bargain hunting, cash on delivery, and product return policies. Consumers' system behaviour and decision-making have been profoundly impacted by mobile technology and digitization. Because the gap between rural and urban customers is closing thanks to mobile internet, the urban-rural paradigm is no longer a good way to look at India's rising consumption goals and tastes. There are already 1.18 billion mobile connections, 700 million people using the internet, and 600 million people using smartphones—a number that is growing by 25 million per quarter. With 12 GB per user per month, India has the world's highest mobile data usage rate. Nearly all of the country's one billion internet users will be using mobile phones to access the internet by 2030. They will start making money, buying things for themselves, and taking part in consumption patterns made possible by mobile technology.

### Literature Review

Konrad Kollnig\*, Anastasia Shuba, Reuben Binns, Max Van Kleek, and Nigel Shadbolt (2021) <sup>[1]</sup> A study examining 24,000 Android and iOS applications in 2020 found widespread third-party surveillance and trading of user IDs in both systems. While Android apps often access children's whereabouts, iOS apps in the children's category used less advertising-related tracking. Issues highlighted in the study could lead to privacy violations in the US, EU, and UK, including third-party tracking without user authorization, sharing personally identifiable information without parental consent, transmitting personal data to countries lacking adequate data protection, and the persistent absence of transparency regarding tracking. Design choices by Apple and Google partially influence tracking transparency. The study concluded that neither platform was significantly superior in terms of privacy across all parameters.

Naavi (2020) <sup>[2]</sup> proposes a solution to address conflicting priorities around data privacy, addressing the challenges of drafting laws to protect privacy while processing technological restrictions without reducing the value of individuals' data. The book breaks down the Act into its components and explores various viewpoints that lead to different interpretations of legal laws. It covers topics such as data auditing, data trust scores, and an Indian personal data standard, serving as a compliance framework. Data auditors and data protection officers will find this book helpful, as it provides practical advice on how to use technology to their advantage and provides a solid

framework for all parties involved.

Examining the impact of policy and legal frameworks on digital rights for Indian civil society, THE REPORT (2020) delves into the topics of surveillance and data protection. It is a component of the Report on Digital Civic Space in India by the Centre for Internet & Society. Surveillance technology, its design and effect, as well as domestic laws and international standards are all covered in the paper.

Anghrija Chakraborty's (2019) <sup>[4]</sup> research on data protection laws focuses on privacy and client confidentiality. The book, *Demystified*, addresses the issues arising from new laws, social norms, economic models, information technologies, and global convergence. It addresses questions about applicable laws, data handling, ownership, and penalties for compliance. The book also explores ways for business and nonprofit organizations to implement a comprehensive privacy program to protect and manage personal data. The research highlights the importance of understanding the laws and regulations that apply to data protection.

Julie M. Robillarda *et al.* conducted a study to assess the openness, precision, and content of privacy policies and terms of service for mental health apps sold on major online marketplaces. They analyzed the top 100 apps by combining terms "track" and "mood" and analyzed their privacy policies and terms of service. The researchers found that most apps that allow users to monitor their mental health also gather data. While the store requires all apps to provide a privacy policy and terms of agreement, most failed to do so. The majority of reviewed privacy policies acknowledged massive data gathering and were written above secondary school level. The study highlighted the need for better regulation of the mobile app ecosystem and highlighted issues with mental health applications' associations with data sharing, transparency, and permission.

Bernadette Kamleitner and Vince Mitchell (2019) <sup>[5]</sup> emphasize the importance of interconnected data security measures to safeguard personal privacy. The current regulatory framework is suited for two-party information exchange, but a better understanding of interdependent violations can help. The General Data Protection Regulation of the European Union provides an example of how better knowledge of these phenomena can help. The authors propose a novel phenomenological framework, "the 3Rs," which aims to build on the similarities between property and privacy. They have compiled a toolkit of four types of interventions for marketers, regulators, and privacy groups. The fourth type offers extreme options and removes customers' roles in protecting their privacy. By understanding these processes, we can better protect personal privacy in today's rapidly evolving technology landscape.

### The right to free speech and censor board

Censorship is a practice where the government, special interest organization, or individual attempts to force their moral or political views on others by removing content they find offensive. This practice has its flaws, as it is based on deception and euphemism, stemming from the social compact that inhabitants have with the state, which allows it to choose what "expression" is worthy of diffusion among its inhabitants. The government is then portrayed as a

saviour, who will rescue the people from their downfall and silence them for their own benefit.

Free speech has always been considered essential to social and political discourse, but it is now being used by the government to promote their agendas through censorship and manipulation. The right of freedom of expression and suppression are both essential to human dignity, but the censorship movement claims to contradict its own justifications. Some people choose to keep quiet while others want their voices heard, leading to a rush of suppression.

Censorship did not begin with weak principles, as post-colonial nations often cited as evidence for their own narrative control and culture independence. The freedom to freely express oneself is fundamental to human dignity and a cornerstone of a democratic nation and liberal society. However, its value as a goal remains controversial, with opinions on the importance of free speech varying greatly. Some believe it is essential for people's ability to realize their greatest social potential, while others believe it is vital for the dissemination of accurate information.

### Censorship in India

The freedom to express oneself freely is guaranteed by the Indian Constitution as a fundamental right. The founders of India's constitution cherished this right. Freedom of expression emerged as a response to repressive colonial regimes, and the people placed a high importance on it since it was a sign of their independence. That this right is essential in a democratic country like ours was conveyed to them. Jawahar Lal Nehru articulated the significance of including the right into the constitution-drafting process when he said, "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press."

Despite its inculcation, Free expression, like all other fundamental rights guaranteed by the Indian Constitution, does not exist in a vacuum. That is to say, the government may limit it if certain requirements are satisfied:

1. The limitation in question must be backed by legal authority. Authorities that do not have the backing of the law cannot limit freedom of speech.
2. (1) At least two of the categories of limitations outlined in Article 19 (2) must be satisfied by the legislation. These include
  - i. Security of the State,
  - ii. sovereignty and integrity of India,
  - iii. friendly relations with foreign States,
  - iv. public order,
  - v. decency or morality,
  - vi. contempt of court,
  - vii. defamation or
  - viii. instigation of criminal behavior. It is not acceptable to limit free speech on such broad grounds as "in the interest of the general public".

(2) Reasonableness is a prerequisite. Neither too much nor too little is acceptable. Just, fair, and reasonableness also apply to the process and way the limitation is imposed.

Once it was established that the right will inevitably lead to censorship of some kind organically accepted. However, the

concept of prior censoring still did not sit well with people. Unlike the Constitution of Japan and Germany, which prohibited pre censorship; censoring in India acted as a sieve, filtering out everything it had to, before it even reached the cup. The problem herein would be however to strike the right balance between preserving to express oneself freely in relation to other lawful societal concerns. The importance of safeguarding communal interests and social values from the "onslaught" of free speech is debatable, and different people have different views on the role of free speech.

### Reasonableness of Censorship Regulations

Are the censorship regulations reasonable under Article 19 (2) of the Constitution? The Court taken a look at this subject after the determination that censorship is within the purview of the state. In broad strokes, the Act lays forth the rules that the censors must follow. The Act authorizes the Central Government to issue directions 'to censors. In exercise The Board of Film Censors was given instructions by the Central Government under this jurisdiction. More specific criteria for cinema censorship were laid forth in the then-current guidelines. The petitioner in the K.A. Abbas case 333 argued that the Central Government's directives regarding the censorship of cinematic exhibition were very nebulous. His argument was based on an attempt to use the "void for vagueness" theory that the US Supreme Court had developed. The Respondent, Union of India, argued that the American doctrine is not applicable in India. The argument put forward was that the idea could not be brought into India since it had been embraced in the US as part of "due process."

### Emergency and Censorship

Although the aforementioned cases marked many of the firsts with regards to censorship, it was only during the emergency period, where the concept of prior censoring solidified. June 25, 1975, was the day of the third declaration of emergency was followed by a censorship order that required every newspaper, periodical or other document to submit for scrutiny to an authorized official. Any report, commentary, rumor, or news item about certain topics would undergo strict scrutiny before being published. Any material likely to bring about an extreme reaction - for example, was slanderous of, or harbored animosity against, the federal or state governments key authorities such as the President of India, the Vice President, the Prime Minister, the Speaker of the Lok Sabha and Governors of the states was prevented from publication. Thus, the press had largely become a mere instrument used by the state. At its meeting, the Shah Commission of Inquiry did note,<sup>360</sup>

-guidelines issued by the Chief Censor even exceeded the scope of Rule 48 of the Defence and Internal Security of India Rules insofar as They made sure that editors couldn't leave editorial columns empty or filled them with quotes from famous writers or national heroes like Mahatma Gandhi or Rabindranath Tagore.

### The Legal Regime Indian Penal Code

In order to understand the status of censorship in India, it becomes imperative to look into the criminal laws of our

country that continue to be a potent source of censorship. The criminal laws in India have been seen to be prescriptive while describing what is to be excluded from the protection having the right to freely express oneself. In the Indian Penal Code, while Section 153A prohibits any expressions that foster animosity, bigotry, discord, or discordance among diverse religious, ethnic, or linguistic groups, communities, or castes. It is prohibited to make or publish claims or imputations that indicate that –

"any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India".

It further curtails the right by penalizing the punishment for communication that willfully and maliciously offends someone's religious emotions is outlined in Any written or spoken statement that intentionally and maliciously insults the faith or the beliefs of any group of people is punishable under Section 298, 368 were also penalized by section 295A. Expressions/writings that come under the aforementioned categories can be notified and thence declared to be forfeited to government.

The most interesting among them is Section 295 A. The section poses there are two requirements that must be met for this to be applied. Firstly, it must have been insulting to a religion or religious belief of a certain class. secondly, such an act should have been done deliberately and with a malicious intent 'to triggered motions. While emphasizing on the *intent* of the accused, the Select Committee in 1970, opined the following in its report:

"that the insult to religion or the outrage to religious feelings must be the sole, or, primary, or at least the deliberate and conscious intention". The Committee "were impressed by an argument to the effect that an insult to a religion or to the religious beliefs of the followers of a religion might be inflicted in good faith by a writer with the object of facilitating some measure of social reform by administering such a shock to the followers of the religion as would ensure notice being taken of any criticism so made. We have therefore amplified the words 'with deliberate intention' by inserting reference to malice, and we think that the section which we have now evolved will be both comprehensive and at the same time of not too wide an application."

### **Security laws and data protection regime in India**

The Indian Judiciary is the supreme protector of individual liberties, responsible for interpreting and interpreting laws and legislations formulated by the Indian Parliament. The judiciary plays a crucial role in maintaining the balance of power in India's constitution by validating laws, orders, and acts of the legislative, executive, and administrative branches of government. It ensures that no human rights are violated and national laws are formulated in harmony with international conventions and standards. The judiciary also recognizes and protects certain unremunerated rights, particularly fundamental and human rights, by interpreting laws and broadening their scope. National security is

paramount in enforcing security laws, which address grave issues like terrorism, separatism, organized crimes, and public disorder. The judiciary ensures that human rights are not compromised while enforcing security laws by defining, defining, and interpreting the terms used in laws.

The courts play an important role in combating national security threats, such as terrorism, by enforcing human rights and promoting modern judicial principles. Judicial activism is recognized as a potent tool for maintaining human rights and national security, and judicial intervention can remind the legislature to adopt a more rational and balanced approach in the fight against terrorist attacks and other security risks.

### **Preventive Detention Act (1950-69)**

In 1950, only one month after the Constitution was passed, the Preventive Detention Act was signed into law. The government has the authority to detain any individual under this statute without any charge for up to one year who engages in a behaviour that is prejudicial to "the defense of India, the relations of India with a foreign power, the security of India, the security of the State, the maintenance of public order, or the maintenance of supplies and services essential to the community." The judicial significance of preventative detention must be carefully considered. the top court in the land describes "Whereas punitive incarceration is after trial on the allegations made against a person, preventive detention is without trial into the allegations made against him."

As mentioned earlier, The Indian constitution under article 22 (1) and 22 (2) has provided various safeguards to the detained person which the highest court in the land has often referred to. Following the guidelines set down in Article 22 (1) and Article 22 (2), the Indian Constitution, in accordance with the statute of preventative detention, are not extended to the detained person. The following section analysed the constitutionality of the Act and why it has been repealed later in 1969.

### **The Prevention of Terrorist and Disruptive Acts (1985-95)**

Following Indira Gandhi's murder in 1985, this legislation was enacted. The act, meant to be anti-terrorist legislation, was prone to misuse and was therefore controversial. The act was passed with an objective of "to prevent and cope with terrorists and disruptive activities and for matters therewith or incidental thereto". The act was criticized for being misused on religious minorities, Dalits, political opponents, and campaigners for human rights. It was repealed in 1994. According to an NHRC report, there were unprecedented custodial violence, custodial deaths, rapes, etc. while the act was in force. Additionally, the right to a fair trial, freedom of religion, expression, and association have been jeopardized under this act. The Apex court mentions, "[i]f the law enforcing authority becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself and ultimately it invites anarchy."

### **Constitutional validity**

Kartar Singh v. the State of Punjab was a seminal lawsuit that questioned the constitutionality of this statute. The court



ruled that the act is competent under "article 248 read with Entry 97 of List I" while considering its legislative competence. The act does not cover merely public order as given under List II. "[It] envisages a graver situation threatening the sovereignty and integrity of India." Thus, it was held to be within legislative competence.

### Conviction under the Act

Section 3 (1) defines the terrorist acts under which the conviction is done, the act says, "Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits a terrorist act."

### Conclusion

Privacy is an issue of profound importance around the world. Privacy is an important component of human personality. Privacy is rapidly becoming inextricably linked to the world of digital communications and social media. Social media and social networking sites (SNS) have risen sharply in popularity and widespread use, allowing new forms of socialization, sharing, and communication between people. This new state of communication raises new privacy questions. Online self-disclosure of personal information by social media users lies at the heart of the problem posed by social media. We are now beginning to realise that, on occasion, social media and other websites can have a dark side. The concept of privacy is dynamic and continues to change with the times of the day. Many scholars have tried to define privacy but there is currently no internationally accepted definition of privacy. Privacy is a sweeping concept, encompassing inter alia freedom of thought, control over one's body, solitude in one's home, control over personal information, freedom from surveillance, protection of one's reputation, and protection from searches and interrogations.

In the digital age, privacy has close nexus with data protection, data security, and surveillance. With the emergence of new technologies like Social media, artificial intelligence, and big data; new concepts of privacy like 'Privacy by Design', 'Privacy by Default', and 'Intellectual privacy' are evolved.

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