

DATA BREACH IN HEALTHCARE INDUSTRY: AN INFRINGEMENT OF RIGHT TO PRIVACY; A MODERN ERA EFFECT

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ABSTRACT

This research paper explores the impact of innovation and technology in the field of healthcare sector. In the era of globalization, ICT has highly impacted in every sector of human agency worldwide by introducing new dimensions and opportunities. Healthcare sector is one of those sectors which gains rapid shift from the conventional practice such as data protection. With the advent of ICT in the healthcare sector apart from data protection it paved ways for many collateral benefits in the industry, this impact simultaneously resulted into incidents of data breach i.e., breach of privacy. In this research paper, researcher has elucidated the convergence of technology and right to privacy.

KEYWORDS: Healthcare, Data, Breach, Right to Privacy, ICT, Globalization.

1. INTRODUCTION

From past several decades' globalization introduced us with new innovative technologies, which was duly accepted and appreciated in countries worldwide. Due to which in past decade India has evidently seen paradigm shift from conventional practice to modern approach in every sector. One of the most promising advents of past century is ICT. In the present every household is equipped with some form of technology in one or other forms. ICT impacted us in numerous ways and made its prominent place in the growth of economy. Even though India is a developing country but it welcomed ICT in pursuance of the recommendations of UNCITRAL and enacted, Information and technology Act, 2000, with due respect to Article 51 clause c of the constitution of India. ICT has provided us ease in our tedious works with less consumption of time. Use of mobile phones, e-commerce transactions, payment through QR mechanism and sui-generis things have become a part of a welfare state. With the acceptance of technology people started building their beliefs in third party with regard to security of their credentials. Innovation demands sustainability for wider acknowledgement but contingent transitional barriers are inevitable. Data breach is one of the persistent failures of ICT, whereas regulatory mechanisms are stringently taking this issue in consideration. Every sector is dealing with this issue in some or other manner. Healthcare is one of the vulnerable sectors which is impacted by such breach. In the constitution of India, right to health and privacy both are enumerated impliedly which demands protection and

give rise to claim in case of breach. This issue raises an alarming concern towards economic development, as data breach is a pitfall in building a fiduciary relationship between ICT and consumers.

2. HEALTHCARE SECTOR AND DATA PRIVACY

India being a developing country is highly impacted by globalization which elated cash and services inflow in the territory. Health is a primary concern for human beings it made the healthcare sector have maximum outreach and profit due to diversification from the earlier conventional methods. Hospitals, equipments & devices related to medical, health insurance, clinical trials, telemedicine, medical tourism, and medical outsourcing are all part of India's healthcare industry. Due to its expansion, people started building trust with respect to their data such as clinical reports, consultations, and Ors. With the impact of globalization, India is also moving towards a digital India mission. The emergence of digitalization in India leads the pathways for various sectors such as online payment transactions or e-commerce. The Healthcare sector also adopted the notion of digital India by addressing data protection in digital form. The expansion speed of healthcare sector is extremely fast. For this rapid growth related in healthcare sector, either in terms of extended coverage of services or investment, the role of both of the public and private sector is appreciable. Among the fastest growing industries, Healthcare sector of India has an important position which emancipate the idea of belief by the consumers. The concept of data privacy can be traced back to Indian history, which emphasizes the need not to divulge topics of worship, sex, and family matters to others. In the 21st century, we are living in a digital era where data privacy is a major concern, especially with reference to the healthcare sector. Data protection in the health care sector is associated with information privacy which requires handling of data with due care and diligence as it is sensitive and confidential data. In India in past encroaching on privacy is noticeable whereas the healthcare sector is also affected by the same. Healthcare data breach leads to the discovery of personal information which reveals their interest and necessity-based requirement in the public domain. Breach of healthcare data facilitates the healthcare industry to easily hunt their targeted consumers to enhance their economic benefits. It is apparent that for economic benefits industries demote the idea behind the right to privacy.

3. RIGHT TO PRIVACY

The idea of privacy is an intrinsic part of a person's life. In the year 1215 AD by the introduction of the Magna Carta, it was acknowledged that a person's liberty and freedom is an inalienable right of a human being. Afterward, when World War I and World War II shook the belief in humanity, in the year 1945 United Nation was introduced to re-establish the belief and collective responsibility of every nation in the protection and security of humanity. In pursuance of that in 1948 Universal Declaration of Human Rights was made with respect to giving a list of protection to every human irrespective of their identity. Article 12 of Universal Declaration of Human Rights explicitly mentions every form of encroachment into someone's privacy is a violation of his basic human rights. The right to privacy existed in ancient India from the time of the Dharmashastra, according to which privacy was linked to virtuous morals, and the concept was well established at the time. In India, though the right to privacy is traceable from ancestors it gained recognition in India due to membership in the UN. In India right to privacy is a controversial matter for a long time. Indian judiciary has

looked into various cases related to privacy from Maneka Gandhi (1978 SCR (2) 621) to Naz Foundation case (160 Delhi Law Times 277, 2009). In 2011 the Privacy bill was also introduced to address innumerable privacy issues. Finally, in the year 2017, a nine judges' bench of Supreme Court in Puttaswamy versus Union of India (AIR 2017 SC 4161) stated that the right to privacy, though not in express words, is a part of fundamental right under the phrase 'Personal Liberty' used under Article 21 of the Indian Constitution.

4. DATA PROTECTIONS LAWS

India with the passage of time emancipated different laws in form of rules and regulations to protect data. India does not have any specific legislation on the concept of data protection. The credibility of data protection can be inferred from the Constitution of India, Information technology Act, 2000, and Indian Contract Act 1872. Article 21 of the Indian Constitution gives the right to a person to claim the benefit of the sanctity of his privacy. Information Technology Act 2000, in various sections deals with the issue of data privacy. In sec.72 of Information Technology Act 2000, it deals with the penalty for breach of confidentiality and privacy. Section 72A also penalizes any kind of disclosure of information without the concerned person's consent punishable. Other sections 65, 66, 10A also hold the validation of data privacy issues. E-Contracts being administered by the Indian Contract Act give acknowledgment to the non-disclosure of information provided to the parties by one another. The Government has notified the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011. It deals with the protection of "Sensitive personal data or information of a person". In aggregate India has implied laws dealing with the issue of a data breach. The point of concern is its application of it. Though India has a sufficient number of Laws the lacuna is in the execution and administration of it.

5. HEALTHCARE DATA BREACH

The right to health is a fundamental right provided in the constitution of India along with the right to privacy. Data breach of the healthcare sector is a convergence of two rights simultaneously. Health care is a private and sensitive part of human life which deems to be inevitable in occurrence. Healthcare data breach is one of the most violative acts towards a person's vulnerability. Data breaches in the health care sector not only affect the individuals but also the organizations. Healthcare sector digitalization paved way for opportunities along with cyber security concerns. A recent healthcare data breach of around 120 Million Indians data was hacked where Mumbai's high-end Breach Candy Hospital and Utkarsh Scans were majorly impacted. Worldwide data breaches are occurring. Eskenazi Health and many others got affected by such incidents. This domain needs to be adjudged and scrutinized closely for maintaining fiduciary relationship between patients and hospitals.

6. CONCLUSION AND RECOMMENDATIONS

Healthcare is a vulnerable aspect of every individual from cradle to grave. In a lifetime everyone has gone through some or other form of health care but we never bothered about breaches of our data. This issue is highlighted after the advent of the digital era in our community. Digital acceptability is important for economic benefits, perpetuity, avoidance of human fallacy, and many other reasons. But there is a grey area between acceptability and efficiency in execution. India has adapted but now we have to make our mechanism more

definite and clearer. We have introduced digitalization of data but we lack in spreading basic digital literacy. On the one hand, we have introduced data collection in digital form but a protection firewall against hacking from the dark web that we have not yet figured out. India as a developing nation needs to propose one stringent law for the protection of data privacy taking into consideration the requirements of different sectors and targeted consumers. India can take reference from other countries which are efficiently dealing with data breach issues.

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