



# “COVID-19 & Data Protection Regulation in India”

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## Abstract –

The COVID-19 pandemic caused disruption to the world at the large scale; it increased the use of digital technology during the pandemic. India was also affected because of the pandemic, the Government took various efforts to tackle the situation in various ways and it was supported by the non-governmental entities too. As a result of that the use of digital technology increased but the necessary steps to ensure the protection of the user data was not sufficient as there is not a specific law regarding the data protection in India. It increases the chances of misuse of the user data and also highlights the importance of the protection of data and its regulation.

**Keywords** – COVID-19, Data Protection, Personal Data, etc.

## Introduction -

The acute respiratory disease in humans caused by the corona virus was identified in Wuhan City, Hubei Province of China in the end of the year 2019 and it is commonly referred as COVID-19. Later on it was spread worldwide by humans and declared as the pandemic by the World Health Organisation in March 2020. The Government of India took various efforts to combat this epidemic by imposing various restrictions. The Government of India also imposed the 21 days lockdown in the Country in March, 2020 and later on it was extended along with the restrictions as per the need of time. The COVID-19 has disrupted every walk of life of the Individuals, Government, Corporations and it increased the use of

internet & technology during the period of COVID-19 worldwide to tackle the problems created by the pandemic, India itself is not an exception. The pandemic not only affected the professionals, business entities but the common man's life too. The number of Internet users increased during the period of COVID-19 as the restrictions were imposed in the various countries including India. As the numbers of online services are encouraged by the various Governmental as well as Non-governmental agencies, it created a major problem of its compliance. Various new companies in the form of Start-Ups have been started, promoted and the existing companies started to provide the services using the technology, shifting themselves in the online mode.

#### WORLD INTERNET USAGE AND POPULATION STATISTICS 2021 Year-Q1 Estimates

World Regions	Population ( 2021 Est.)	Population% of World	Internet Users31 Mar 2021	Penetration Rate (% Pop.)	Growth2000-2021	Internet World %
Asia	4,327,333,821	54.9 %	2,762,187,516	63.8 %	2,316.5 %	53.4 %
Europe	835,817,920	10.6 %	736,995,638	88.2 %	601.3 %	14.3 %
Africa	1,373,486,514	17.4 %	594,008,009	43.2 %	13,058 %	11.5 %
Latin America / Carib.	659,743,522	8.4 %	498,437,116	75.6 %	2,658.5 %	9.6 %
NorthAmerica	370,322,393	4.7 %	347,916,627	93.9 %	221.9 %	6.7 %
Middle East	265,587,661	3.4 %	198,850,130	74.9 %	5,953.6 %	3.9 %
Oceania / Australia	43,473,756	0.6 %	30,385,571	69.9 %	298.7 %	0.6 %
<b>WORLD TOTAL</b>	<b>7,875,765,587</b>	<b>100.0 %</b>	<b>5,168,780,607</b>	<b>65.6 %</b>	<b>1,331.9 %</b>	<b>100.0 %</b>

As per Report, internet users in the world by geographic regions – 2021 states that, Asia -2762, Europe – 737, Africa - 594, Latin America/ The Caribbean -498, North America -348, Middle East – 199, Australia -30. (Millions of Users, March – 2021)<sup>1</sup>

India stands at the edge of development, the Indian workforce is young – with 50% of the population is near 25 years of age. The Government of India encouraged the Digital India Programme in 2015 and now India's Digital footprint is one of the fastest growing in the world with the potential to become a Trillion Dollar Digital Economy by 2025.

During the pandemic various activities/programmes are implemented through the Information and Communication Technology platforms and it increase collection of citizen's information by the Government & others, eg. Aarogya Setu App - concerns have emerged on their impact on the privacy of persons. Information is to be collected on a regular basis through e-governance projects as well as by the private sector in the field mainly of e-commerce. The information ranges from data related to – health,

<sup>1</sup> Source- Internet World Stats, [www.internetworldstats.com.stats/html](http://www.internetworldstats.com.stats/html) - accessed on 15 March 2022.

travel, taxes, religion, education, financial status, employment, disability, living situation, welfare status, citizenship status, marriage status, crime record, etc. The extent of the personal information being held by the various service providers including Government as well as non-Government entities lead to the ambiguity over who is allowed to collect data, what data can be collected, what are the rights of the individual and how the right to privacy will be protected? etc.

The World Economic Forum's (WEF's) Global Risks Report 2019, says, "The largest (data breach) was in India, where the government ID database, AADHAR, reportedly suffered multiple breaches that potentially compromised the records of all 1.1 billion registered citizens. It was reported in January 2018 that criminals were selling access to the database at the rate of Rs. 500 for 10 minutes, while in March a leak at a state-owned utility company allowed anyone to download names and ID numbers."

### **During COVID-19 pandemic -**

The use of technology for -

Govt Programmes like Aarogya Setu, Cowin App, etc

E-commerce/Online shopping,

Money transfer;

Teaching -Educational institutions,

Business -Virtual meetings/Conferences,

Offices -Work from Home,

Digital communication, etc.

### **Right to Privacy & it's Development -**

The Right to Privacy is gradually developed in India by the Judiciary by interpreting the Article 19 & 21 of the Constitution of India. In the case of 'Justice K S Puttaswamy Vs Union of India' (2017) 10 SCC 1, the landmark judgment delivered by the 9 Judge bench of the Apex Court unanimously held that Right to Privacy as an intrinsic part of the right to life and personal liberty under the Art. 21 of the Constitution of India.

### **Sensitive Personal Data or Information (SPDI) –**

It is the data or information shared by the user of the digital technology and it includes –

Medical records & History,

Passwords,

Financial information such as – Bank account, credit card details, etc.

Information regarding Physical, Psychological and Mental health conditions,

Information regarding sexual orientation,

Biometric information

### **Data Collection –**

During the period of pandemic on a very large scale data collection has been started. Every Organization, States, Corporate Bodies, Business entities, Social Media platforms, Political parties, etc. are keeping a record through data collection. Nowadays, it is common to use the internet, computer, smartphones for various activities and the user provides the data to the various entities. The chances are more that all activities are being recorded and can be misused or used without the consent of the user for the object which was not consented by the user.

### **Concept of Data Protection -**

The data is capable of narrating a person's past as well as present, his choices, general course of action. The predictions regarding the future purchase, purchase choices, etc. in the case of targeted marketing on various e-commerce applications and websites on the basis of consumer's browsing behavior- it can be predicted.

The same data can be analyzed in different ways having different aims, which gives different results. This can happen in the case of possible impact of analysis of data to which individual consents. Analyzing the data other than the consented objective can have an effect on the privacy of the person.

### **Statement of the Problem –**

Most of the Government as well as Non- Government entities do not have the basics of data collection, protection of user data and prevent the stored data from its misuse.

### **Objectives of the Study –**

The researcher's objective of the research is to touch the significant issues relating to the protection of personal data. Due to the absence of a proper legislative framework in India, the Data Protection Law is facing so many issues. The study related with the protection of Personal Data during the pandemic of COVID-19 and its present status.

**Some important things to consider –**

The importance of the data to the Business is for carrying out the business activity, if the data is not required for the said business then why unnecessary/irrelevant data required/collected by business entity

If the data is considered as an asset then how it is protected/ regulated by the business entity

**Laws relating to Data Protection –**

India has no express legislation regarding the Data Protection or Privacy but it is basically covered under the relevant laws as –

-The Information Technology Act, 2000 and

-The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal data or Information) Rules

**The legal developments during COVID-19 towards data protection in India –**

Proposed Data Protection Law –

The Joint Parliamentary Committee on December 16, 2021 presented the Report on the proposed data protection law along with the revised version of the bill named – The Data Protection Bill, 2021 in the Parliament. The draft bill is yet to be kept for passing by the Parliament, It is based on The General Data Protection Regulation (GDPR) of the European Countries.

Geospatial Data and Map services –

The Department of Science & Technology, Government of India issued the “Guidelines for acquiring and producing geospatial data and geospatial data services including maps” on February 15, 2021.

RBI Guidelines on Card data storage –

The Reserve Bank of India (RBI) issued the “Guidelines on Regulation of Payment Aggregators and Payment Gateways” to license and regulate payment intermediaries facilitating and handling payments between user and merchant using electronic/online payment mode.

Data Privacy Standards issued by Bureau of Indian Standards –

The Bureau of Indian Standards made new standards for data privacy assurance and it was made public in mid – 2021. The standards are made for the purpose of providing a privacy assurance framework

for organizations to establish, implement, maintain and continually improve their data privacy management system.

Traceability feature introduced on large messaging apps -

The Ministry of Electronics and Information Technology on February 25, 2021 notified the Information Technology (Intermediary Guidelines and Digital Media Ethics) Rules, 2021, which replaced the earlier Information Technology (Intermediary Guidelines) Rules, 2011.

Supreme Court of India – Committee on Pegasus spyware

The Supreme Court of India on October 27, 2021 delivered a judgment regarding the report of spyware called 'Pegasus'. The Hon'ble Supreme Court noted the alleged use of the software and its impact on the citizens right to privacy and freedom of speech needs to be examined.

Competition Commission of India and Whatsapp Privacy Policy

Whatsapp LLC, operates the messaging platform Whatsapp – updated its privacy policy and terms of service from January, 2021 and it was challenged and ordered against the Whatsapp Inc. on March 24, 2021 by the Competition Commission of India as it is unfair and unreasonable against the users.

National strategy on block chain –

The Ministry of Electronics and Information Technology published its 'National Strategy on Blockchain' in December 2021 to provide the trusted services delivery to citizens and businesses.

Close watch on Digital lending Apps by RBI –

The Reserve Bank of India constituted a working group on 'Digital Lending through Online Platforms and Mobile Apps' in January, 2021 and it published its Report on November 18, 2021. The RBI recommended that standards on data and network security needs to be prescribed for such apps and it should be reflected in the terms of service.

DNA Technology Regulation Bill –

The DNA Technology (Use and Application) Regulation Bill, 2019 was listed for consideration and passing before the lower House of the Parliament during the monsoon session, 2021. The bill seeks to regulate the use of DNA technology. The bill was however not taken up in the Loksabha.

**Suggestions/Recommendations for Data Protection –**

- There is need of the privacy policy and should be developed, which should be easily accessible for the user of technology, who are sharing their information;

- Obtain the consent of the user prior to collection of the data and sharing it with third parties
- Collect information/data- only which is required;
- Use information for the purpose only for which it is collected and retain only for that specific tenure
- Maintain the security of the information which is shared by the user/owner of the data.

### Conclusion –

COVID-19 has already compelled the use of technology but there is a need of protection of personal data as it is the new oil in the economic sector. India has taken the steps by moving towards the enactment of Data Protection Law as it has taken a leap in the form of Personal data Protection Bill, 2019. COVID-19 has led to an increased need for data privacy and its protection. Data security should be given priority as it will play a key role in the prosperity of digital India.

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