

What is the citizen's redressal against data hungry service delivery?

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Recently, I noticed that mobile app of my bank pops up a message where it tried to make me understand that the bank intent to collect and monitor my financial transaction related SMS which includes name of transaction party, transaction description and amount for the purpose of performing credit risk analysis assessment. They also want to read my contacts to understand my profile better which helps them provide best loan offers, etc. The pop up has only one button "I understand". It is a forceful intent to make me understand that if you want to avail the services of the bank then reveal financial transaction information. I never requested any loan from them.

The Problem:

It is generally observed that organization try to obtain blanket consent from the user to read SMS, contact details, use Mic and Camera, etc. Especially in case of mobile app, User Interface (UI) is designed in such a way that one must first give consent, only then mobile allows them to access the application. The user is generally unaware of consequences of her consent. It leads to misuse of personal sensitive information.

Regardless, it is Government or Private/Public Sector, there is a general tendency to ask more information than required to provide service to a citizen. The service provider should not ask the information, not necessary to process immediate service request.

Available Instruments:

Mr. Clive Humby, a British Mathematician and Data Science Entrepreneur, in 2006, stated that "*Data is the new Oil*" underlining its importance in terms of monetization power[1]. It establishes the importance of data in new digital economy. Indeed, there is need to flourish Digital Economy in India. But the owners of data, an individual, cannot be treated as oil fields. Therefore, necessary legal framework is to be kept in the place to ensure protection of personal data. To empower Indians, it is necessary to protect their personal data. Such legal framework will encourage innovation, development and progress of the country[2].

In absence of an enabling legal framework on Personal Data Protection, Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011 are framed under Section 43A of the Information Technology Act,

¹ The views of the author are personal.

2000 (21 of 2000) to address the privacy of personal data issues.[3]. As per the provisions of above-mentioned Rule under para (5)- Collection of Information, the consent to share the data is to be taken either in writing or through email or fax from the personal data owner. There is no mention of obtaining consent for the service not requested. The consent of personal data owner cannot be obtained to share the data in anticipation of the service demanded in the future.

To protect privacy of the Indians and to empower them, the committee of experts under the chairmanship of Justice BN Srikrishna has drafted a report on Data Protection Framework and a draft bill. The committee has submitted its report to Ministry of Electronics and Information Technology on July 27, 2018[4]. The report detailed insight on fiduciary relationship and obligations, definition of personal data, consent-based processing, etc. Once the Parliament accepts the bill, India will have its own Sensitive Personal Data (SPD) protection legal framework.

Business Process Reengineering (BPR) will help in minimizing the requirements of data / uploading of files by using existing enabling technologies like Web Services or linking with databases. The services provider in most of the case is not required to keep data after online/real time verification. Obligations of Data Fiduciaries have been well defined in the proposed bill. Even in the present Rules under Section 43(A), agencies collecting data are to adhere standards like ISO 27001.

Mobile/Web Application Development agencies are also to ensure that unnecessary demand for accessing information of the customer may be harmful in the coming data protection regime. For example, permission to read and send SMS “occasionally” is flexuous and out of context in most of the transactions.

Immediate Solution:

Considering Rules framed under IT ACT, there is a need to regulate the mobile/web apps to ensure they adhere to the provisions of the IT Act as such. This is like the websites certified for the **Guidelines for Indian Government Websites (GIGW)**[5]. All mobile/web app having requirements of collection of personal data should be certified for adhering best practices in data protection and privacy by an identified agency say RBI or MeitY before releasing to the public. The first screen of the app should promptly display the certificate with verification mechanism.

In existing grievance management systems like ombudsman, CPGRAM, etc, there is no specific category for data protection breach by various agencies, leading to either rejection or no addressal for the grievances. A separate category on data protection breach

is also required to add in existing grievances management applications for a proper redressal of the grievance under the existing provisions.

There is a necessity to make public aware on the provisions of Rules framed under Section 43(A) of IT Act. It will help public in knowing right to privacy and being the owner of data consent process to share the data with others.

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