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## **ABOUT US**

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# **TELECOMMUNICATION AND PRIVACY**

AUTHORED BY - RAJEEV SHIRISHKUMAR GANDHI

## **Introduction**

Today in India, privacy is threatened perhaps the most by the internet and telecommunications. On one hand the increased use of these technologies allows individuals to become more visible, accessible, and interconnected. On the other hand, the same technologies allow governments, corporations, and other entities unrestricted access into the lives of the public. For example, individuals are plagued with spam messages and unsolicited marketing calls/text messages, risk fraud and phishing attacks as they transact online, have personal information gathered, used, and sold without permission or knowledge, and risk having service providers retain user data and history.

Furthermore, online privacy is threatened as the users often do not have control over the information that they generate and the line between what is private information, and what is public information is often fuzzy. This has created a situation where information displayed on social networking sites can be used as evidence against an individual or to make decisions about the individual. Employers now look into an individual's Facebook profile as part of the process for deciding whether to hire or promote a person and law enforcement agencies make decisions based off of social media content.

Another large component of privacy on the internet is with regards to how law enforcement can access online communications and habits through interception, access, or monitoring. The interception of private or personal communications involves restrictions on the right to freedom of expression and the right to privacy. While the Constitution does not explicitly guarantee a right to privacy, the courts in India have consistently read that right into the definition of the fundamental right to life and personal liberty. These rights are not absolute and the courts have held that parliament may impose reasonable restrictions on the exercise of fundamental rights. Countries around the world have taken steps to address privacy issues that arise from the internet, including adopting legislation implementing do not track standards, the right to be forgotten, breach notification, standards around lawful access, and data retention policies.

## The Information Technology Act, 2000

In India the Information Technology Act, 2000 (ITA) was passed as a law addressing digital content and to grant legal recognition to transactions carried out by means of electronic communication. The ITA contains a number of provisions that can, in some cases, safeguard online and computer related privacy, or in other cases, can dilute online and computer privacy. For example, the ITA contains interception provisions for authorized agencies, allows the government to set the national encryption standard, regulates what content can and cannot be put online, and prohibits the anonymous use of the internet.

The Information Technology Act applies to any offence or contravention of the Act committed in or outside of India if the offence involves a computer, computer system, or computer network located in India. Below is a description and analysis of provisions that relate to privacy.

**Digital Signatures:** The ITA provides for the use of digital signatures for authenticating electronic records. This is done through the use of asymmetric encryption, so that the electronic record can be verified using the public key of the subscriber. In India, the issuance of Digital Signatures is the responsibility of the Controller of Certifying Authorities, who can either issue digital signatures to End Users directly, or through the Registration Authorities/Local Registration Authority.

**Hacking:** The ITA does not define the term ‘hacking’ activities such as accessing a computer, downloading copies or extracts of data, introducing a computer virus in the system, etc. are made punishable under the ITA.

**Voyeurism:** The ITA clarifies that a “private area” means the naked or undergarment clad genitals, pubic area, buttocks or female breast”, “publishes” means reproduction in the printed or electronic form and making available to the public, “under circumstances violating privacy” means circumstances in which a person can have a reasonable expectation that he or she could disrobe in privacy, without being concerned that an image of his private areas was being captured or, any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

**Child Pornography:** The ITA prohibits the publishing and transmission of digital material that depicts children in a sexually explicit way. This includes: publishing, transmitting, creating text or images, collecting, seeking, browsing, downloading, advertising, promoting, exchanging, or depicting the same. Furthermore, cultivating, enticing, or inducing children into a sexually explicit act online is prohibited. The term ‘children’ is defined as any person under the age of 18.

**Regulations for Cyber Café:** The Information Technology (Guidelines for Cyber Café) Rules, 2011 provide regulations for the maintenance of user records by cyber cafés. Critical information under the Rules includes forms of identification and user browsing information.

**Encryption Standards:** There are two places in Indian law which lay down regulations for encryption in India. The ITA, provides the Central Government with the power to set the nationally permitted standard for encryption. The Internet Service Providers License, currently sets this limit at 40 bit (even though the ISP License is issued under the Telegraph Act, 1885 and not the ITA

## Policies/Licences

In India interception powers are also given to the government through the Internet Services License (ISP) Agreement and the Unified Service Agreement License (UASL) for service providers. In practice, both licenses afford the government expansive access to communication data held and processed by service providers.

It must be noted that since both the ISP and the UAS License Agreements are issued under the TA, technically the interception of messages under both these licenses can only be done if the conditions specified under the TA and the interception rules are satisfied.

## Security

**Protection of privacy:** There is a responsibility on the ISP to protect the privacy of its communications transferred over its network. This includes securing the information and protecting against unauthorized interception, unauthorized disclosure, ensure the confidentiality of information, and protect against over disclosure of information- except when consent has been given.

## Case Law

### *Amar Singh v. Union of India and others,17*

In *Amar Singh v. Union of India and others*,<sup>18</sup> Supreme Court of India, 11-05-2011 the petitioner claimed that his privacy had been invaded by interception of his calls. The importance of this case lies in the fact that here the Supreme Court discussed the duties of a service provider when it receives an official request for interception, and held that if the request is full of procedural mistakes, then it is the duty of the service provider to simultaneously verify its authenticity while at the same time acting upon it. Discussing these duties the Court held:

- Service provider is duty bound to verify the authenticity of a request for interception if on a reasonable reading it falls short of a genuine official communication.
- It is the duty of the service provider to act carefully and with a sense of responsibility.
- Service provider must immediately act upon a request for interception, but if it seems to be full of mistakes, should simultaneously verify its authenticity.

## Conclusion

- Going through many options which are available to get our data secured, the activities in the online world are getting very secure these days.
- But due to illiteracy and lack of awareness in the cyber field, many people tend to lose their hard earned money in seconds by entering just one OTP on the request of the fraudsters.
- Even though the Cyber World is more secure now, people still have to be more vigilant and try to understand the loopholes in the working of the online transactions, so that they do not get caught in the fraud and lose their money easily to a fraudster.