

Chapter 4

Shielding the Confidentiality, Privacy, and Data Security of Bio–Medical Information in India: Legal Edifice

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ABSTRACT

The framers of Indian Constitution were very much cognizant about the significance of human nobility and worthiness and hence they incorporated the “right to life and personal liberty” in the Constitution of India. Right to life is considered as one of the primordial fundamental rights. There is no doubt that Indian Judiciary has lived up to the expectations of the Constitution framers, both in interpreting and implementing Article 21 initially, but there are still a few complications left as to the viability of Article 21 in modern times. Looking at the wider arena of right to life, it can be articulated that broader connotation of “right to life” aims at achieving the norms of “privacy” as well.

PROLOGUE

Analysing the concept about biomedical information has become a complex and tedious issue. There is as such no prescribed definition or clear cut theoretical ground to extrapolate the term. Biomedical information and its privacy, security as well as confidentiality has been a topic of ‘emerging field’ since decades. Biomedical information can be understood as a field which is mainly concerned with the reasonable use of technology, so as to improvise public health, health care and biomedical research

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(“Medical Informatic and Telemedicine”, n.d.). The medical information in India is being recorded in an old manual way of keeping records, instead of new methods coming up for securing one’s data. The health care delivery systems in India has become a tool or a subject matter for concern, which now needs utmost priority. There have been many healthcare organisations who are working for protecting and securing the biomedical information since decades. Apart from these organisations, we have the Indian Medical Council Regulations states that every medical practitioner is required to maintain the patient-physician confidentiality as well as security. Data protection provides for various set of privacy rules, policies and procedures that ultimately focuses to reduce intrusion and interruption into person’s privacy which might result by the collection, dissemination and storage of one’s personal information.

The aspect which remains doubtful is that as to what all is to be covered under right to privacy for secreting biometric information and what not. The biometric informations so provided are important from the government’s perspective and there lies a number of advantages like Aadhar based Direct Transfer Subsidy, Jan Dhan Yojna, Passport in 10 days, Digital locker, Voter Card Linking, Monthly Pension Provident Fund Opening new bank account, Digital Life Certificate and SEBI facilities (Ahmed et al, 2016). As it was rightly quoted by some renowned jurist that privacy has been considered a matter of interpretation and construction. It might take number of decades to decide as to what is the concrete form of privacy and security as the terms are itself very wide in their interpretation. Therefore, the term ‘privacy’ is quite a vague one to understand and comment upon.

GLOBAL PERSPECTIVE

The shielding and safeguarding of biomedical information has become a concern at global level. Every country focuses upon certain aspects of an individual to protect his or her information thereby securing his or her privacy, in whatever field so. Universally, many legislations have been made in order preserve such rights of the person. Few of the legislations of different nations are highlighted as under, as to how they deal with security and privacy provisions of their citizens or people residing in such countries.

United States of America

In United States of America, healthcare systems are viewed as one of the most appropriate factors in ensuring the security and privacy of one’s life. In order to conduct any diagnose, patients are required to disclose their true medical information. But however, such information needs to be protected in any form. In order to protect and safeguard such information, there has been recently enacted Health Insurance Portability and Accountability Act (HIPAA) for providing healthcare applications to patients (Appari et al, 2010). Apart from HIPAA, United States healthcare systems have formed many other legislations such as Health Maintenance Organisation Act 1973. Moreover, there also have been Privacy and Security Rules for the protection of biomedical information formed under HIPAA in 1996. This is how the security and confidentiality of biomedical information is protected in a country like United States of America.

United Kingdom

In United Kingdom, the law with regard to the protection of bio-medical information as well as other information is thus provided under The Data Protection Act (DPA) of 1998. It has been in the latest

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