

DATA PROTECTION AND PRIVACY LAWS: AN IMPACT MADE BY EU

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I. ABSTRACT

With the rise of the age of technology, EU focussed on providing its citizen with Protection of their Personal Data and hence enriching their Right to Privacy through GDPR. GDPR ensures that Privacy of EU Citizens are intact and with its breach the entity in question faces huge penalties. These penalties later are used only to fund of the needs of its citizens. The process of development and impact of such developments on the lives of its citizens, the world at large and businesses functioning in lines of using user data, is shown. The growth of Legislations worldwide on its Data Protection policies gives scope for more improvements as the technology moves forward. India's rise for the same taking the inspiration from GDPR and the world, is seen in the paper. The reach and Impact of EU GDPR has been discussed.

Keyword: GDPR, Data Privacy, Protection, Sanctions.

II. INTRODUCTION

The world is fast-moving with the rise of technology, people are now able to do, what was an “unimaginable” feat a few years ago. The use of technology has been evolved multiple folds since. Earlier messages that used to be delivered via post, is now being received via our phones in milliseconds of its delivery. Technology is now so much driven into our lives, that our day-to-day tasks cannot be done without its help and to utilise such technology one has to provide certain ‘data’ for the purpose of it to function.¹⁰⁸⁷ Data, here, means personal information which is stored in virtual form, also that can be filed and accessed only virtually. Previously, data was stored and accessed through huge physical storage system, which simply led to manual protection of our data. Now, more and more data are being stored virtually, on Cloud storage units, which cannot be seen or accessed physically.¹⁰⁸⁸ This gives

rise to the security concerns of our personal data that is been collected from of us, even though in consensual manner.¹⁰⁸⁹ In some cases, we are not aware that a third party is being involved in collection and some others are involved in the selling of our personal data. Legislations need to be strong to protect the data and hence our privacy. EU has thus created legislation in form of GDPR, to protect the interest and privacy of EU citizens. This has set precedence to many other countries and has made an impact in a futuristic view keeping in mind the dawn of a new era of technology and its security.

III. ISSUE AT HAND:

When we focus on the kinds of problems that have risen with the boom of technology, it mainly concerns with the data security. Our issue here is to look into facts and reality, **if Data Privacy and Protection is enabled to ‘All’** through our legislative systems and thus, justice is served.

¹⁰⁸⁷ Derrick Oien & Michael Umansky, Smartphone Wars: Data Ownership, Access and Storage in the New Era, 4 J. LEGAL TECH. RISK MGMT. 34 (2009).

¹⁰⁸⁸ Eric Johnson, Lost in the Cloud: Cloud Storage, Privacy, and Suggestions for Protecting Users' Data, 69 Stan. L. REV. 867 (2017).

¹⁰⁸⁹ Ibid 1.

A. RESEARCH QUESTION

- Our quest here is to find: *Has EU and its conventions made any impact in the growing world with respect to the data protection and privacy of the human kind?*

B. RESEARCH OBJECTIVE:

The objective of this research paper is to uncover the loopholes present in the EU laws of data protection and privacy, to ensure that none of the modern citizens are exploited, be it the data processors and collectors or the users.

- To ensure the conservation of interest of both the business personnel and customers.
- To view how EU laws have impacted the world.
- To provide improved ideas and solutions for India to rise to the level of its counterparts.

IV. RESEARCH

A. Formation of EU and GDPR

The European Union first came into existence to bring economic cooperation of all the countries in the European continent. Later it rose to form a union of 27 countries, which enabled all legislation mutually agreed by all, in matters of political and economic front. This led to stabilisation of many aspects of livelihood for an EU Citizen. In matters of travelling freely throughout the continent, open possibility of living, studying and working in any country. All the EU countries must treat every other EU citizen as they treat their own citizens in terms of employment, social security and tax.¹⁰⁹⁰ There are several institutions in EU which form a democratic representation of all the EU citizens and their leaders.

- EU Parliament: Represents EU people and is directly elected by them.
- EU Council: Contains all the Heads of State.

- The Council: Represents the governments of all the EU member states.
- EU Commission: Represents the interest and concerns of the EU as whole.

The EU considers protection of Personal Data and Privacy to be fundamental rights.¹⁰⁹¹ With the upsurge of the internet age EU had developed the **General Data Protection Regulations (GDPR)** which was adopted from May, 2018, replacing the already existing Data Protection Directive 1995/46. Its main objective is to protect the 'Personal Data' which includes information such as the name, email, address, tax id number, etc. and enable rights, including right to forgotten. The figure below shows all the member states of EU.¹⁰⁹²



Fig1: Member states of EU¹⁰⁹³

B. Legal Framework

GDPR applies to EU member states and the companies which provide goods and services to EU. Hence, GDPR imposed had effects over the business and which gave rise to new data protection laws, globally.¹⁰⁹⁴

¹⁰⁹⁰ European Commission, Directorate-General for Communication, (2020). The European Union : what it is and what it does, Publications Office. <https://data.europa.eu/doi/10.2775/41083>.

¹⁰⁹¹ Ibid 4.

¹⁰⁹² Privacy Shield Framework, European Union Country Commercial Guide, European Union - Data Privacy and Protection, <https://www.privacyshield.gov/article?id=European-Union-Data-Privatization-and-Protection>.

¹⁰⁹³ Figure, European Commission, Directorate-General for Communication, (2020). The European Union : what it is and what it does, Publications Office. <https://data.europa.eu/doi/10.2775/41083>.

¹⁰⁹⁴ Mike Hintze, *Privacy Statements under the GDPR*, 42 Seattle U. L. REV. 1129 (2019).

The main players of this regulations are the "Data Controller"¹⁰⁹⁵, "Data Processor"¹⁰⁹⁶, "Data Subject"¹⁰⁹⁷, "Supervisory Authority"¹⁰⁹⁸. All the players are been regulated to do their tasks with the utmost of accountability¹⁰⁹⁹. The general principles governing the same are as follows:

- (i) Lawfulness, fairness and transparency¹¹⁰⁰
- (ii) Purpose limitation¹¹⁰¹
- (iii) Data minimisation¹¹⁰²
- (iv) Accuracy¹¹⁰³
- (v) Storage limitation¹¹⁰⁴
- (vi) Data security¹¹⁰⁵

A few Articles that throws light to legislations of Data Protection and Privacy under GDPR are¹¹⁰⁶:

- **Article 13-** Which ensures that the user gets adequate information, while their data is being collected.¹¹⁰⁷
- **Article 14-** Which ensure regulated manner of receiving personal data from the third-party vendor.¹¹⁰⁸
- **Article 25-** this ensures that data protection and minimal data is used while a new product is being designed¹¹⁰⁹
- **Article 6-** provides instances where the persons' data can be legally processed.¹¹¹⁰

C. Impact Made by EU GDPR

GDPR has impacted many countries, mainly due to the business relations with EU and other third world countries. Placement of GDPR not only enhanced data security in EU countries but also those countries and companies had to change

their rules to adapt to the EU laws.¹¹¹¹ In some cases, the companies have a competitive advantage through their adoption of worldwide compliances schemes.¹¹¹² Among the EU countries it gives a stronger role to the data protection authorities and the concept of one continent one law has evolved quickly, thereafter.¹¹¹³

EU GDPR formed the first precedence to set data privacy in legislation.¹¹¹⁴ This led to countries to imbibe in their legislations laws which protected the data and privacy of its citizen. The UK government has well established its data privacy norms, in accordance with the GDPR.¹¹¹⁵ The US States have also got inspired and formed various laws stating a few below¹¹¹⁶:

- California Consumer Privacy Act ("CCPA")¹¹¹⁷
- Virginia's Consumer Data Privacy Act
- New York Privacy Act, and
- Washington Privacy Act.

The Protection of Personal Information Act was adapted in South Africa in July 2020. Australia's Privacy Act has been in place since 1988, but was recently amended to reflect GDPR regulations. In some countries, such as Japan with the impact of high penalties the companies are taking GDPR more seriously.¹¹¹⁸

There are some international laws, apart from EU GDPR, as shown below:

(A) UDHR in Article 12¹¹¹⁹ and

¹⁰⁹⁵ GDPR, Art.4 cl.7

¹⁰⁹⁶ GDPR, Art. 4 cl. 8

¹⁰⁹⁷ GDPR, Art. 4 cl.1

¹⁰⁹⁸ GDPR, Art.4 cl.21

¹⁰⁹⁹ GDPR, Art. 5 cl.2

¹¹⁰⁰ GDPR, Art. 5 cl.1(a)

¹¹⁰¹ GDPR, Art. 5 cl.1(b)

¹¹⁰² GDPR, Art. 5 cl.1(c)

¹¹⁰³ GDPR, Art. 5 cl.1(d)

¹¹⁰⁴ GDPR, Art. 5 cl.1(e)

¹¹⁰⁵ GDPR, Art. 5 cl.1(f)

¹¹⁰⁶ Ben Wolford, What is GDPR, the EU's new data protection law?, GDPR EU, 2022, <https://gdpr.eu/what-is-gdpr/>.

¹¹⁰⁷ GDPR, Art. 13: Information to be provided where personal data are collected from the data subject.

¹¹⁰⁸ GDPR, Art.14: Information to be provided where personal data have not been obtained from the data subject.

¹¹⁰⁹ GDPR, Art. 25: Data protection by design and by default.

¹¹¹⁰ GDPR, Art. 6: Lawfulness of processing.

¹¹¹¹ Craig McAllister, What about Small Businesses: The GDPR and Its Consequences for Small, U.S.-Based Companies, 12 BROOK. J. CORP. FIN. & COM. L. 187 (2017).

¹¹¹² W. Gregory Voss & Kimberly A. Houser, Personal Data and the GDPR: Providing a Competitive Advantage for U.S. Companies, 56 AM. Bus. L.J. 287 (2019).

¹¹¹³ European Commission, General Data Protection Regulation shows results, but work needs to continue, https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4449.

¹¹¹⁴ Vanessa Perumal, *The Future of U.S. Data Privacy: Lessons from the GDPR and State Legislation*, 12 NOTRE DAME J. INT'L COMP. L. 99 (2022).

¹¹¹⁵ Sahar Bhaimia, The General Data Protection Regulation: the Next Generation of EU Data Protection, 18 LEGAL INFORMATION MANAGEMENT 21–28 (2018).

¹¹¹⁶ Ieun Jolly, US Privacy and Data Security Law: Overview, Practical Law Practice Note Overview, 6-501-4555 (WestLaw).

¹¹¹⁷ 2018 Cal. Legis. Serv. Ch. 55 (A.B. 375) (West) (codified in CAL. CIV. CODE § 1798.100-1798.198).

¹¹¹⁸ Hiroyuki Tanaka, Impact of the GDPR on Japanese Companies, 20 Bus. L. INT'L 137 (2019).

¹¹¹⁹ Universal Declaration on Human Rights, Article 12, "No one shall be subjected to arbitrary interference with his privacy, family, home or

(B) ICCPR in Article 17¹¹²⁰

The below figure shows the percentage of different countries who have or do not have or have drafted data protection and privacy legislation in a global stage.

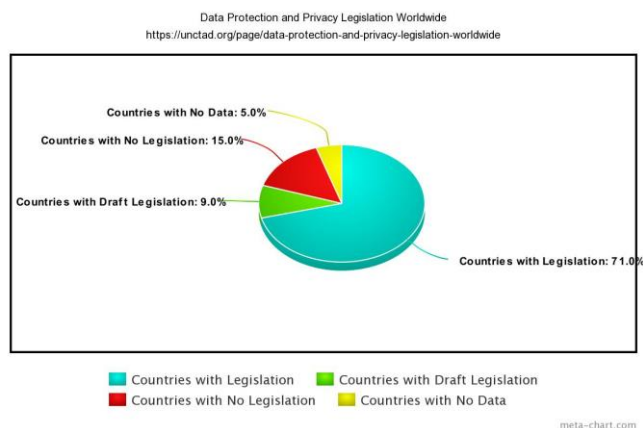


Fig 2: The countries having Data Privacy Legislation

D. Case Laws and Sanctions

In the case of **Bavarian Lager v Commission**¹¹²¹ before GDPR had faced issues balancing the fundamental right of information and privacy. The **Valero Mktg. & Supply Co. v. Greeni Oy**¹¹²², caused due to the differences between the laws of two different countries aroused out of the non-disclosure of the relationship with privacy and right to access.

The **Cambridge Analytica scandal**, shows how users data used without consent can be explicitly used for political advertising.¹¹²³ The Facebook had to pay biggest fine of £500,000, for the role it played, this is the maximum allowed under old data protection rules that applied before GDPR

After the application of GDPR, many cases and sanctions came up due to non-compliance of the Regulation, with its penalties, made

following GDPR a mandate. **British Airways case**¹¹²⁴ had asked to pay a fine of £183m for breach of its security systems. The company was not careful for its customer's personal data. **Google LLC**¹¹²⁵ was fined €50m in 2019 by ECJ, after the complaint by a French regulator for the Transparency policy and the breach of customer's right to informed. The case of **Bonafede v. EE**¹¹²⁶, due to lack of protection of the customer's personal data, she was subjected to stalking, with the help of GDPR laws of Article 6(1), and the case was subjected to Cybercrime.¹¹²⁷ Many more sanctions and fines have been placed in very prominent companies **Amazon, H&M, Tim**, etc., so to set precedence of actions breaching GDPR.¹¹²⁸

Biggest fines for data breaches

Fines over £250,000

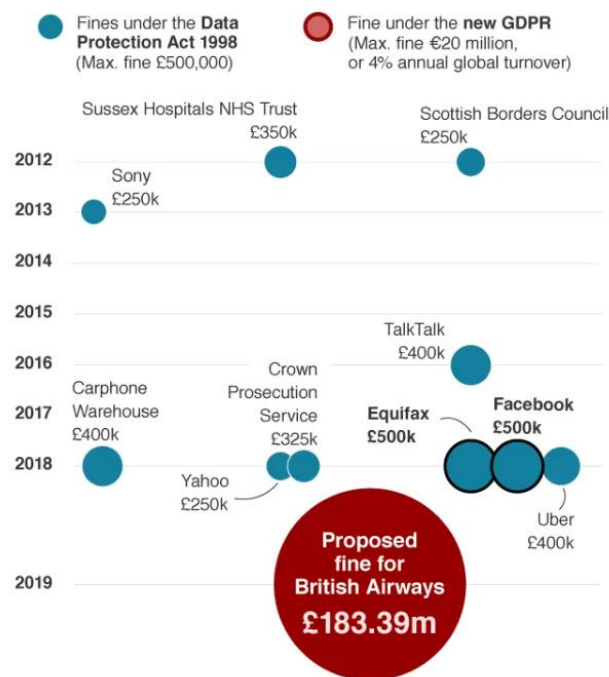


Fig 2: Biggest fines for Data Breach¹¹²⁹

correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

¹¹²⁰ International Convention on Civil and Political Rights, Article 17, "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."

¹¹²¹ Case T-194/04 Bavarian Lager v Commission [2007] ECR II-4523

¹¹²² Valero Mktg. & Supply Co. v. Greeni Oy - 373 F. Supp. 2d 475 (D.N.J. 2005).

¹¹²³ Harshil Kanakia, Giridhar Shenoy & Jimit Shah, Cambridge Analytica – A Case Study, *Indian Journal of Science and Technology*, Vol 12(29), August 2019.

¹¹²⁴ BBC News, British Airways faces record £183m fine for data breach, 8 Jul 2019, <https://www.bbc.com/news/business-48905907>.

¹¹²⁵ BBC News, Google hit with £44m GDPR fine over ads Published, 21 January 2019, <https://www.bbc.com/news/technology-46944696>.

¹¹²⁶ Ayo, Samuel, Data Breach e-Crime, A Case Study and Legal Analysis, (2019).

¹¹²⁷ BBC News, EE data breach 'led to stalking' Published, 8 February 2019, <https://www.bbc.com/news/technology-46896329>.

¹¹²⁸ BBC News, Three years of GDPR: the biggest fines so far Published, 24 May 2021, <https://www.bbc.com/news/technology-57011639>.

¹¹²⁹ Ibid 38, BBC News.

V. ANALYSIS

A. Critical Analysis

GDPR has come into force as at a very crucial time of digital age, there are facts and arguments as to GDPR being enforced didn't account for the rising times of new technologies and rapid migration to Cloud and hence there are probable chances of it affecting the efficiency of the upcoming technology.¹¹³⁰ Further, the main point of criticism arises when the privacy interests of the local EU citizens turn to foreign firms which use their data, though even they are subjected to GDPR jurisdiction, enforcement might be challenging over the course of time.¹¹³¹ It become challenging for companies to provide quality and accountability both together, in rise of age of Big Data.¹¹³² There are small companies which find it difficult to inculcate the Privacy Data Protection as they are few restrictions in the country origin.¹¹³³ EU has the need to in forums like these to do justice to both the Customer's privacy as well as the viability of the companies to uphold their accountability, so as to not face the burden of sanctions and fines.

B. Comparative Analysis

When it comes to Data Privacy, we find no Statutory Act explicitly provisioned in India. But recently, effort was made through passing of the Personal Data Protection Bill 2019. As there were number changes that was recommended during the discussion of this Bill, it was held and an official notice was passed stating that new framework with regards to Data protection will be add onto IT Act, itself.¹¹³⁴

Current provisions under IT Act that provides Data Protection are as follows:

- **Section 43(A)**– ensures compensation in case of failure of data protection.¹¹³⁵
- **Section 69**– This article is prominently discussed, as it sites as to who has the authority to meddle with Data.¹¹³⁶
- **Section 67(C)**– Ensure no third party retains our Data.¹¹³⁷

There are provisions to bring violators to justice. But when it comes to answering the question is India in par with its counterparts, one can say India is in slow process, instead of no process to Protect its citizen's Privacy.

VI. CONCLUSION

In conclusion, one can clearly view the fact that EU through GDPR has impacted the life of EU citizens, and the companies in business with EU countries. It has also gone so far extended in impacting and influencing other countries, in making legislations that come in par with GDPR, and helped to protect the rights of the world as whole to a certain extent. At the same time GDPR has evolve with the evolving world, keeping in mind the rise of technology growing exponentially, also the companies and regulators who are involved in the protection of data and hence privacy of citizens. India, on other hand taking inspiration of GDPR is slowly rising to level by its IT laws, but there is a need for it to realise quick action is to be taken by setting up separate legislations for data protection and privacy of its citizen.

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¹¹³³ Ibid 25.

¹¹³⁴ Mintview, How India can get its data protection law right, MINT, (08 Aug 2022, 02:25 PM IST), <https://www.livemint.com/opinion/online-views/how-india-can-get-its-data-protection-law-right-11659948170679.html>.

¹¹³⁵ IT Act, 2000 Art. 43 cl.A.

¹¹³⁶ IT Act, 2000 Art. 69.

¹¹³⁷ IT Act, 2000 Art. 67 cl. C.

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