

Personal data protection bill 2006

A critical Analysis

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Privacy

The legal standing becomes very weak,
and more so
if it is *contractual*..

Wolfenden committee report

- The committee recommended that,

“It is **not**, in our view, **the function of the law to intervene in the private life of citizens**, or to seek to enforce any particular pattern of behaviour.”

Wolfenden committee report

- **The Report of the Departmental Committee on Homosexual Offences and Prostitution**

We can summarize that

“Sharing of personal information between consenting parties would be out of legal purview

unless

There is breach of terms under which such information was shared.”

Therefore

- The power of this law is on the strength of terms of contract,
- And , the true power of any law lies not just in its words but on the **ability and ease of enforcement.**

Features of subject matter of this law

- Intangibility,
- Volatility,
- Susceptibility, and
- Multi media portability,

Well,

- when we say “**ease of enforcement**” all these words should be capable of being appreciated by enforcement & judicial agencies at local level..
- With the given judicial and police institutions ability to appreciate these phrases at lower cadres, the true intentions of this bill will remain a mirage.

But,

There is a way out,

- education
- To have a line of thought which the agencies at present can appreciate.

Cyber Jurisprudence

Conception of *information* should be that of “property” or Information as personal property

Considering information as property

Giving life to the words in the preamble of this bill

.. and to prevent its usage by other organization for commercial or other purposes and entitle the individual to claim compensation or damages due to disclosure

becomes very simple, and law can be interpreted as follows

- Here information, has to be understood as private property and *right on this private property is absolute*
- The person to whom it is vested for a purpose is just, *in possession and not absolute owner of such information*
- The owner of such property will have absolute right to verify infringements to such rights

- If such property is misused against the contractual term,
- or possession is changed without the consent of owner,
- the person with whom such property is, shall be considered as “ **in wrongful possession of stolen property**” and
- any subsequent use will amount to **wrongful gain/unjust enrichment**

Against which the owner has right to claim damages to the **extent of profits made**

Using existing legal framework

- Indian penal code Sec 410 – Stolen property

Since the information disclosed by an individual is in “Trust” any breach should be made a criminal offence and provisions like,

- Criminal breach of trust Sec 405, 409
- Criminal misappropriation Sec 403
- Receiving stolen property Sec 410

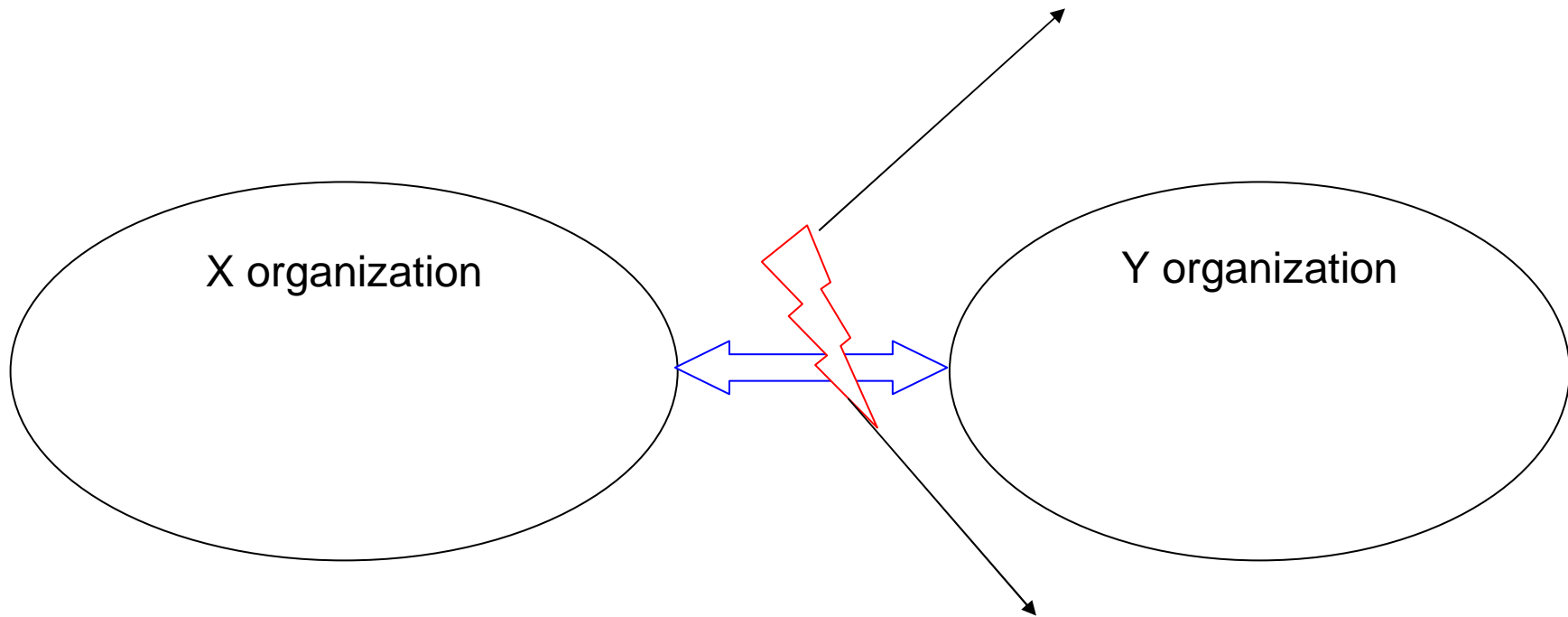
Going by preamble:

This law activates only when the data is transferred by or used by one organization to another organization for commercial and other purposes but

- Does not take into consideration negligence
- Loss of information due to accidents
- Data theft

Which in the absence of evidences to prove contrary will go unpunished.

Law Prevents use of personal information for



Commercial or Other purposes

- Sec 2 (c) "personal data" means information or data which relate to a living individuals
- Section 3, Conflict as to term processing without consent, Where in, Processing defined includes obtaining as processing

Sec 2 (e) "processing" means obtaining, recording or holding the personal data or information of an individual and carrying out any operation on the information including alternation, disclosure, transmission, dissemination and destruction

Sec 3, Exception 2

Information obtained through public sources need no permission, now who discloses it in public and what are public domains have to be discribed...

Need for specialized enforcement agency

- Data controller is a regulating body for organizations collecting personal information, and not enforcement agency.

Sec 4.

- The personal data of any person collected by an organization whether government or private, shall not be disclosed to any other organization for the purposes of direct marketing or for any commercial gain:
- Provided , that personal data of any person may be disclosed to *charity and voluntary* organizations after obtaining prior consent of the person.

This exception should be removed, this weakens the very essence of the entire provisions of this law. In cyber space practically its impossible to discriminate between commercial and non commercial activities.

If information as per this law has to be protected
the information enforcement has to be
brought down to the magisterial level, for the
sheer volume of transaction involved here.