

Bated Breath

Yes indeed, on Day 1 of the IDPS 2021, it was easy to see that there was a certain anxiety about what will be the nature and constituents of the final draft of the PDPB, and when it will see the light of day. Stake holders committed to data protection are waiting with bated breath. But it was a kind of relief and reassurance felt when Justice Srikrishna, in his captivating delivery, mentioned that he feels that the Bill will be through this winter session of parliament, even as he expressed that he too cannot speculate about what the final provisions of the Bill will be.

Justice Srikrishna conveyed that privacy is not a new concept and its importance was heralded in the ancient scriptures of the land as part of *hitopadeshas*. He quoted the ancient text mentioning 9 aspects that always need to be kept secret about oneself including age, wealth, domestic issues, charity etc... Data Subject was the term used in GDPR and Justice Srikrishna elevated the individual status to that of a Data Principal in the draft bill. Speaking about data localization, he stressed that it is not practical to rely on treaties to get access to data stored in servers abroad, instead a copy of it should be stored locally. He emphasized on the importance of time as to when the bill will be made a law, and that it needs to be spelt out clearly and not left indefinite. He elaborated on why non personal data is not a fundamental right and how complex laws can be enacted section by section instead of at one go. In general, there was a clear message that the privacy law has to be enacted as early as possible. On the matter of identifying sensitive personal information, Justice Srikrishna said that what is sensitive is a personal matter and depends on a certain cultural imprint.

Earlier in the day, the welcome speech by Sri SP Arya and the introduction to the event by Sri Naavi set the tone for the rest of the day and the event as a whole. Sri Arya stressed on the importance of data protection in the wake of the ever increasing intensity of cyber crime incidents especially ransomware. He emphasized on how 130 nations have enacted the privacy laws and how other nations are in the process of implementing new laws. Sri Naavi, in his introductory address, introduced the structure of FDPPI and went on to mention how the privacy rules are already in force in India through the provisions of ITA 2000/08. He spoke about the importance of PDPSI framework and how it is an Indian version of a framework that the other nations can use across the world. Sri Naavi emphasized how due to lack of valuation of data, a particular private company lost out on INR 100cr during its insolvency process.

Later in the day, as part of panel discussions, panelists emphasized on the importance of building privacy awareness starting at home and at school. There are good opportunities for data protection professionals especially the DPO roles. It was said that DPO role needs several skills including technical, legal, auditing, good communication etc .. and, on a lighter note, it was mentioned that it may be difficult to find a person who can interview and select a DPO. In another panel discussion, a specific takeaway was about how AI and data analytics technologies are used in profiling and used for social exclusion purposes. The difficulty of identifying offline data stored in order to comply with right to be forgotten requests, was spoken about. Advertisements are believed to be the source of funds to keep the internet running free of charge for users. But if privacy laws force cookies and tracking apps to be blocked, then advertisements suffer and may result in basic internet access being made chargeable. Panelists stressed on how data scrapping tools are blocked in order to block harmful tracking and profiling of individuals. On the issue of misuse of legitimate interest to access personal data, the panelists opined that as long as due process is followed it is necessary to trust legitimate interest requests. The importance of fair adjudication was emphasized by the knowledgeable panelists

especially in the case of percentage based penalty determination and the conflict of Data Protection laws with the sectoral and also new central legislations like RTI.

Overall, it was a day when the data protection professionals viewing the event, were treated to a plethora of knowledge packed information.

Thanks,

18th Nov 2021

Narasinga Rao