

**TELECOM COMPANIES AND PROTECTION OF PERSONAL DATA IN  
INDIA**



Privacy is an internationally recognized human right. However, the new age technologies and enterprises which collect, process and utilize personal information on a large scale for unintended purposes raise significant concerns for personal privacy. In the Indian context, especially in the absence of specific privacy laws, it is extremely difficult to ensure protection of privacy rights. Although Indian courts have been applying a combination of different laws to ensure protection of data and privacy, absence of effective legislative or judicial measures encourage the blatant misuse of personal information by corporates, banks and telemarketing companies.

In this backdrop, the recent judgment of the Delhi State Consumer Disputes Redressal Commission (the “Commission”), which imposed a total fine of Rs.75 lakhs on Airtel, the Cellular Operators Association of India (“COAI”), ICICI Bank and American Express Bank on a complaint of consumer harassment by unsolicited telemarketing calls and text messages assumes enormous significance. The Commission’s judgment is reportedly based on the fact that mobile service providers traded subscribers’ personal information in violation of their contractual obligation to treat it as confidential. Although the courts have in the past issued restrictive directions on similar cases, this is the first time in India that any entity has been penalized for Unsolicited Commercial Communications (“UCC”).

There were media reports that the Commission’s judgment was stayed. While hoping that the higher judiciary will uphold this landmark judgment and that Indian consumers will get some relief from UCC, let us briefly examine the previous experiences and analyze the legal framework in India and other countries.

India's constitution provides protection for citizens’ privacy rights. Also, Section 427 of Indian Telegraph Rules, 1951, *inter alia* provides that telephone should not be used to disturb or irritate any persons or to transmit any message for communication which may annoy a person. In 1997, the Supreme Court of India directed the Reserve Bank of India (“RBI”) to institute measures to reduce unsolicited calls on the ground that the right to privacy is a fundamental right guaranteed under Articles 19 and 21 of the Constitution of India. (*People’s Union for Civil Liberties (PUCL) v. Union of India and Anr.*, AIR 1997 1 SCC 301.) However, the guidelines issued by RBI in November 2005 only applied to banks

and financial institutions and it did not serve any purpose. The issues remain unresolved and there are public interest litigations pending disposal in the Supreme Court of India seeking protection of privacy rights from UCC.

Further, certain banks and service providers have reportedly instituted their own Do-Not-Call Registries (“DNCR”) pursuant to the Commission's orders in the case of *Bharti Tele Venture* in September 2006 (which was stayed by the Delhi High Court) this was not effective because of various registration requirements and the fact that, notwithstanding the DNCR, telemarketers who claim to be independent of these entities continues the unsolicited calls. In this order, the Commission also requested the Telecom Regulatory Authority of India (“TRAI”) to regulate telemarketing activities.

In view of the foregoing and in the absence of any effective laws to prevent unsolicited calls, the TRAI has come up with certain proposals in a Consultation Paper on UCC dated November 20, 2006 (the “Paper”). The Paper defines UCC to include telephone calls on fixed or mobile phones, SMS, MMS, video or voice mail, and any other form of electronic communication via telecommunication services. While the Paper explores the effective measures to eliminate UCC by introducing specific regulations and setting up a national DNCR, the concerns of COAI and other parties to exempt communication between the service provider and his subscriber for business and commercial purposes, from the scope of UCC should be addressed. Also, telemarketing is an important marketing tool.

In the international scenario, all the major countries such as the US, UK and Australia have introduced adequate legislative measures to prevent UCC and also set up DNCRs. Also, the courts in these countries have taken serious cognizance of data privacy issues. In December 2005, the United States District Court of California ordered DIRECTV to pay \$5,335,000 (which was the largest civil penalty the Federal Trade Commission (“FTC”) ever announced for enforcing consumer protection law), in addition to other directions for violation of FTC’s Telemarketing Sales Rule.

Although the Commission's judgment is of international standards, India should adopt serious measures to prevent UCC. A specific law dealing with UCC, with adequate enforcement mechanism, exemplary damages and fines, provisions for termination of business licences in case of violation, and penalties for trading of consumers' personal information should be introduced. However, the ultimate

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solution will require the joint participation of the telemarketers, companies, service providers, government, and the consumer organizations.