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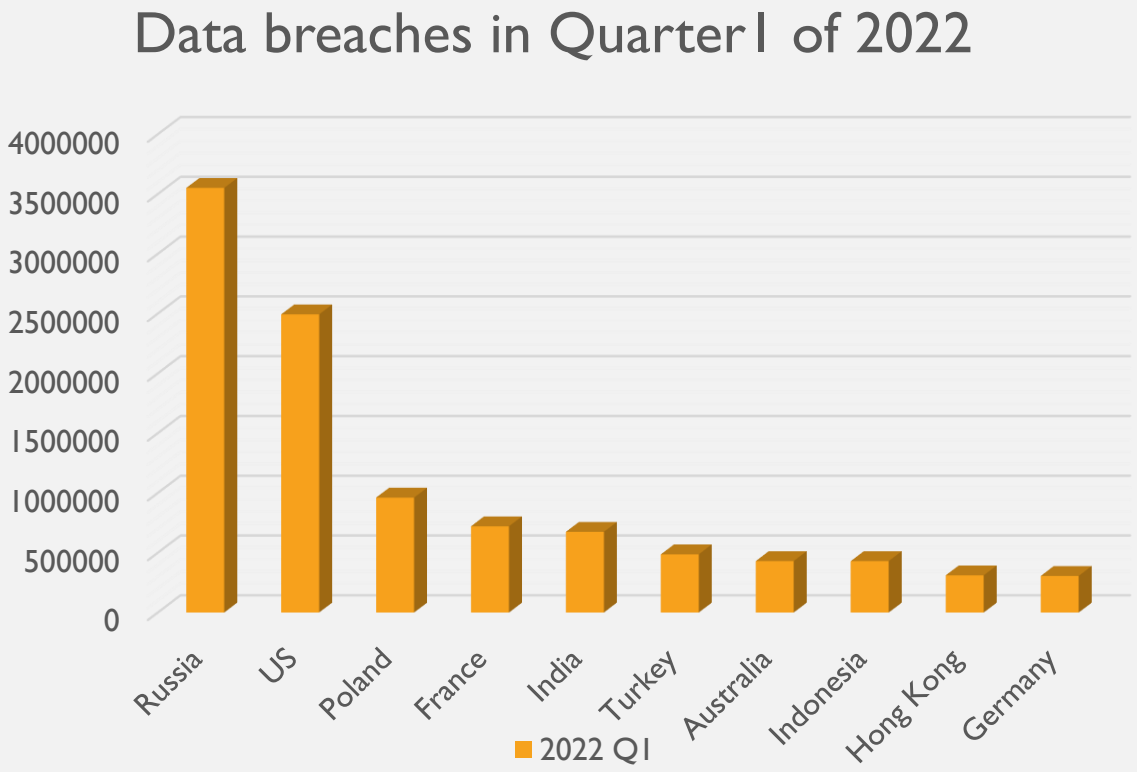
Data breaches in India and related Policy Considerations

SANKHYA (संख्या)

"There cannot be a good plan for economic progress without adequate data and there cannot be adequate data without a good plan for collecting them…"

P.C Mahalanobis, Member, First Planning Commission of India & Scientist

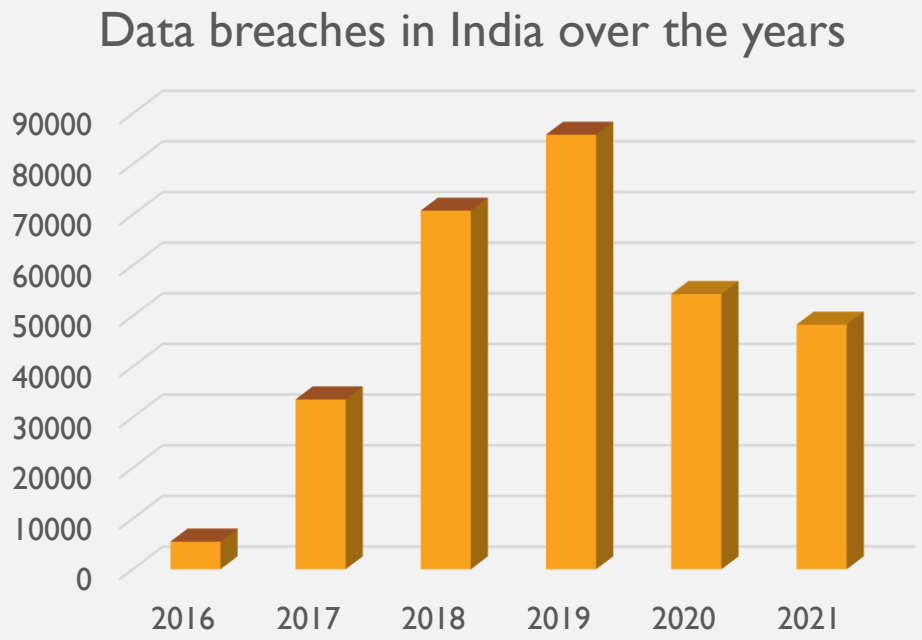
DATA BREACHES: A STATUS REPORT



Source: Surfshark.com

- Over 18 million data breaches occurred in the first quarter of 2021.
- Data breach incidents increased in Russia in 2022 after the invasion of Ukraine.
- Prior to that, the United States was the largest victim of data breaches in the world.
- India ranked fifth in the world for data breaches for the first quarter of 2022.

DATA BREACHES : INDIAN SCENARIO



Source: CERT-In

Incidence of data breach has decreased by 11% from 2020 to 2021.However, India is still ranked 5th in term of data breach numbers.

As on 2021, the average cost of data breach for a company in India was valued at 14 crores.

Lack of robust data framework has resulted in release of multiple legislations pertaining to storage, retention and use of data by different regulatory bodies.

Recently, CERT-In released directions on information security practices and procedures to be followed to reduce cyber incidents.

India (CERT-In)

- Data Breach to be reported in 6 hours
- Data logs to be retained for 180 days

Other Nations

- As per the GDPR, first information of data breach to be reported in 72 hours and thereafter in phases.
- HIPAA breach notification varies on the extent of breach
- GDPR suggests data should not be retained any longer than necessary

POLICY CONSIDERATIONS

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Although the CERT-In Directions are an attempt in the right direction, they have been criticized as the directions were released without any public consultation. Further, it contains no provision for informing data subjects of the breach.

The mandatory requirement of retaining the personal data of data subjects fails to consider the 'right to be forgotten' which has been emphasized in the recent judgments of High Courts as an embodiment of the right to privacy.

The requirement of reporting data breach incident in a period of 6 hours is not at par with global standards and imposes severe pressure on small companies without 24/ 7 tech support.

The lack of clarity on the definitions of terms such as 'data leak', 'ICT system', and 'data breach' can cause confusion and affect the reporting standards that are to be followed by organizations

Direction to VPN service providers to record data and save it locally may result in an exodus of these companies from India since compliance of these directions shall result in compromising privacy services offered and an increase in cost. Further, local VPNs shall be affected as informed users shift to foreign VPNs with better prices and services.

Taking into account the fact data has become an integral part of service for all sectors, the government should create certain cardinal principles that should be complied by all regulators and private bodies equally. This shall permit industry players and regulators to devise policies relevant to their respective market segments without violating the basic data principles.

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** Sankhya means numbers and is also a school of rationalist Indian philosophy. According to Sankhya philosophy reliable knowledge comes from only three pramanas (proofs)- pratyakṣa ('perception'), anumāṇa ('inference') and śabda (āptavacana, meaning, 'word/testimony of reliable sources').*