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# Consumer relations and impacts brought about by the leakage of sensitive data on “liquid” modernity

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**Abstract**: This work aims to analyze the consumption relations and the effects of the leakage of sensitive data in liquid modernity. It is known that in today's consumerist society the great villain is the vulnerability that leads to increased leaks of sensitive data from consumers. To regulate this consumer relationship was published on 08/15/2018 Law 13.709/2018, known as the Personal Data Protection Law. This law in modernity liquid when cases are agreed in the context of sensitive data from consumer relations expands the weakening of consumer rights and, if the impacts of data leakage sensitive as promoted, exerts a decontrol of rights before the actions practiced by suppliers has raised interest in the study on whether the leakage of sensitive data in liquid modernity, and whether it will cause harm to the consumer. Thus, it seeks, with the elaboration of the work, to conceptualize sensitive data, presenting the relevance of its study in liquid modernity and the consequences of its poor application in the lives of Brazilian consumers, analyzing the need for security and punishment of the matter, in order to promote the well-being of those who are excessively harmed by the leak. It can be said that the Law on the protection of personal data will be relevant, aiming at reducing the number of people who have their sensitive data disclosed.

**Keywords:** Consumer relations. Liquid modernity. Sensitive data leaks

## 1. Introduction

The law of data protection in liquid modernity when they agree cases in the context of sensitive data of consumer relations expands the weakening of consumer rights and if the impacts of leakage of sensitive data as promoted, exerts a decontrol of rights before the actions practiced by suppliers.

This work is characterized as important research for the legal world, in view of the political and economic scenario that the consumer is facing the implications of data protection. Soon your discussion is necessary to understand the factors that emerge situations that directly involve the consumer in the leakage of sensitive data.

This research will use bibliographic methods through content analysis, materials already published, such as books, journals, dissertations and scientific articles, current consumerist legislation and consumerist jurisprudence, in order to analyze the impacts on the leakage of sensitive data in the new paradigm of the law on the protection of personal data.

The second chapter deals with consumer law and its evolution as mechanisms for guarantees sensitive data, in it a trajectory of consumer law about the Federal Constitution of 1988 is made. It also exposes the advent of infra constitutional norms in data protection in Brazil, as well as the aspects of globalization influenced by technological development. Furthermore, it explains fundamental rights and their interference in consumerist provision, being discussed along with the importance of sensitive data protection in the social order of modernity Liquid.

The third chapter makes a brief mention to the suppliers and consumers before the protection of their data, using competing interpretations in the context of current legislation. Conceptualizes supplier and consumer within the consumer relationship, using as reference the consolidated law, in addition to clarifying the meaning of personal data

and its formulation in the homeland legislation, as well as the meaning of sensitive data, its species and characteristics.

The fourth chapter deals in a particular way with the protection of sensitive data in Brazil, as well as its diversities and perspectives, explaining the current legal mechanisms available to the consumer of this data specifically. It also cites sensitive data, its legal certainty and state intervention in cases of leaks that reinvigorated the consumer-supplier relationship, which is often the main culprit for such injury. Moreover , it could not fail to be addressed in this chapter on the protection of sensitive data, from the perspective of freedom and equality of individuals. This is still finalized with a discussion on the protection of sensitive data as a fundamental right and its perspective of a regulatory framework for social agents who increasingly need protection.

The research is also justified by the relevance of the theme in the legal scenario and its representation in consumer law, and the recent discussions of law, given the implications brought by the Data Protection Law. This new form of protection leads us to a more in-depth study of this feasibility of protecting the consumer.

However, the present work has as a research problem: The Law of data protection in liquid modernity when they agree cases in the context of sensitive data of consumer relations expands the weakening of consumer rights and, if the impacts of leakage of sensitive data as promoted, exercises a control of rights in the face of the actions practiced by suppliers, and if this will cause harm to the consumer?

The general objective of this work is to analyze the consumption relations and the effects of the leakage of sensitive data in liquid modernity. It is known that in today's consumerist society the great villain is the vulnerability that leads to increased leaks of sensitive data from consumers. To regulate this consumer relationship was published in Law 13.709/2018, known as the Personal Data Protection Act.

We present as specific objectives the conceptualization of sensitive data, the presentation of the relevance of its study in liquid modernity and the consequences of its poor application in the lives of Brazilian consumers and the analysis the need for safety and punishment of the matter, in order to promote the well-being of those who are excessively harmed by the leak.

The present work is based on bibliographic methods, composed of the main authors in the area of consumer law. The purpose is to draw up a guideline that can be addressed and applied to the proposed objectives. The paper will also analyze the consumer profile, in view of the changes, of current legislation.

However, it can be said that the discipline of the Data Protection Act has been developed and substantially amended, as a consequence of the changes that have occurred in the economic, social and technological classes in the last four decades and will have relevance due to the possible decrease in the number of people who have its sensitive data disclosed, and can also be understood as a kind of guardianship for the citizen, ensuring autonomy of choice and serving to avoid any kind of discrimination.

## 2. Consumer law and its evolution as a mechanism for guarantees of sensitive data

### 2.1. The trajectory of consumer law over the federal constitution of 1988

The French Revolution, beginning in 1789, was the great historical landmark for revolutionary changes in the 18th centenary, resulting in the cessation of federative organizations that lasted during the Middle Ages.

The conception advocated by radicalistic at the time was based on the freedom of subjects, these, masters of their destinies and founders of an innovative structure of the State based on rules of fundamental character joint in scripture one: the constitution.

Liberal doctrine set a free march on economics and the subject without the meddling of state power. The state was required to leave, appreciating the autonomy of the nation (SARLET, 2003).

The division of labor fostered consumption, which in fact occurred was an increase in the industrial field, with the creation of an order of salaried subjects who obtained the condition to be consumers of things produced by factories that had stood up.

The 19th centenary was pointed out by the constant flow of claims for improvements in labor conjunctures. Nevertheless, in this period there were not only labor claims, however, workers, in the characteristic of consumers, similarly advocated changes in consumer relations, since consumers, in a global way, needed protection more concretely, with regard to the particularity of the goods consumed, as well as , resources against unforeseeable abuses by the suppliers of those goods, moreover, as regards the contracts arising from consumption itself.

Anna Taddei Alves Pereira Pinto Berquó teaches us that at that time social changes led to transitions in the contractual nature, these transitions were not only in the use of contracts, but also in their legal appearance, which contributed to a new conjuncture in the socioeconomic scenario, which was reconciled with the speed of the means of production and the commercial link (BERQUÓ, 2007).

The state's interposition in consumer contracts consolidated with the claim's movements, with the interest that the State would provide social welfare and protection to the less advantaged. Consumers requested the award of their rights, because they considered themselves to be the vulnerable part in the consumer relationship, a fragility that would then be universally recognized in the dicentric of 80. Public order in the economic sphere does not reflect in unlimited subjects, but aims at a certain protection of groups, as well as numerous social classes (SILVA, 2004).

Given the interference stake in consumer relations in the country at the time of colonization, the Portuguese people did not aim at any kind of economic or social progress within their colonies , because they had merely supervisory activities. Nevertheless, these peoples were of great concern to

consumers, especially in relation to the conflicts that adept from trade.

In view of this Américo Luís Martins da Silva states that some of the sectors at the time required much everything that would be abused by the dominant position, which would be the suppliers, this requirement would be for the absurd prices, for the low valuation of products, as well as the damage caused to buyers, that is, the distribution of damaged products without buyers having the right to prefer (SILVA, 2003).

Consumer law is a kind of economic right of the citizen, during the centenary XX countries have protected the protection of consumer data in order to balance consumer contracts before suppliers that provide products and services (BERQUÓ, 2007).

As a vulnerable part of the consumer relationship, consumer support is a way to ensure consumer market progress today, these markets are being expanded through contracts in a common and indirect way.

For this reason, consumes was adopted by the legislation of several countries, in addition it was the subject of discussions in the United Nations, besides becoming a rule in the Federal Constitution of 1988.

With the progress of trade and the expansion of advertising , consumer societies were created, which emerged shortly after the year 1950, with the implementation of social welfare.

João Batista de Almeida reiterates that the affinity of consumption undergoes constant changes, whether these, referring to an exchange of products, whether individual or indirect through mass expenditure. This affinity of consumption ended up mirroring and modifying civil, economic and also legal relations (ALMEIDA, 1993). In the years 1962 to 1985 in Brazil, consumer aid mechanisms were created, in order to benefit them. The:

> The Administrative Council of Economic Defense - CADE by the Law of Repression of The Abuse of Economic Power (Law No. 4,137/62), the State System of Consumer Protection, in São Paulo (Decree No . 7,890/76), the National Council Self-Regulation – CONAR in São Paulo, in 1980, the State Program for The Protection of The Population and Consumer Protection - PRODECOM, in Rio Grande do Sul (Decree No. 31.203/83), the Special Community Defense Service - DECOM, in Santa Catarina (Decree 20.731/83), the Special Court of Small Causes (Law No. 7,244/84 repealed by Law No. 9,099/95), the National Consumer Protection Council (CNDC) in Brasilia (Decree No. 91,469/85) and public civil action (Law 7.347/85). In 1997, the organization of the National Consumer Protection System (SNDC) was established by Decree 2,181. (BELMONTE, 2002, p. 96-99).

Consumer legal protection has become a global issue and the buyer's own right is considered as a fundamental right. This protection was based on the mere situation of vulnerability that it has and this legal support had the objective of meeting the interests and needs of those in a global way, that is, in all developed countries, giving them educational and informative support on consumer goods.

The Major Law of 1988 defined in article 5, item XXXII, that "the State will promote, in the form of the law, consumer protection" (BRASIL, 1988), that is, the State through law, will provide consumer support, as one of the individual and collective rights. This constitutional defense provision cannot be amended, not even by constitutional amendments because it is a clause.

The State must lead the consumer relationship to a decentralization, which will act as a kind of interventional activity, supporting the consumer through defense instruments that exist in agreement with their rights, the surrounding host (NUNES JÚNIOR and SERRANO, 2003).

These days, positivity and binding are recognized and presented by the principles established within legal norms. The principle of consumer protection brings rules of protection effectiveness and ensures tools to establish the narrated guardianship.

The intercession of this should not be analyzed only normatively because it is the object of public policy. In addition to being an individual and collective right regulated in the Major Law of 1988, the principle of consumer protection also regulates economic activity, in addition, this protection harmonizes the interests between the parts of the consumerist relationship, acting the State in these cases as a mediator of social and economic conflicts (TAVARES, 2003).

Consumer law was included in the Major Law as a fundamental right (Art. 5, XXIII, of the Federal Constitution). The Consumer Protection Code has created a kind of interdisciplinary structure, with rules of applicability in any branches of the right that may have some kind of consumer bond. Because there is a certain vulnerability of the buyer in these consumer relations, a new kind of contract was created based on a social conceptualization.

Within this social conceptualization, it is not essentially important to autonomy of will, but also all the effects caused by a given contract that may influence both the economic situation of the consumer and a legal conception of the integral parties (FERREIRA, 2008).

Every legally constituted structure follows the principle of isonomy that inserts balancing clauses in contracts with the purpose of protecting the weaker part of the contractual relationship, because reciprocal rights and obligations arise from this relationship (DAYS, 2006). Consumer Law is based on its own principles that establish balance in contracts in a consumer relationship (FERREIRA, 2008).

These principles should be strictly followed by consumer links, such as; ability to understand the consumer's person as a vulnerable subject of the bond, state reception; education and information for consumer subjects; consumers and suppliers, regarding the rights and duties of both; incentive

to create security implements to act in the stronghold of products and services; incomplexity of resolving conflicts between subjects contractual; and reprimand for abuses that may be practiced within the consumer market.

### 2.2. The advent of infra constitutional norms in data protection in Brazil

Brazil is a country that does not yet provide adequate intercession to safeguard personal data. Although this protection is provided for in the Major Law of 1988 (CF/1988), the Civil Code (CC), the Law on Access to Information (Law No. 12,527/11) and the Consumer Protection Code (CDC), it still needs in-depth adequacy for reach the level of laws of developed countries, such as Europe, Canada, Argentina, Mexico, Uruguay, Peru, Chile and the United States.

Due to this lack of adequacy, a draft Law for the Protection of Personal Data (ALPDP) was created, established at the Getúlio Vargas Foundation and the Ministry of Justice. These institutions have based laws already validated in the international sphere "such as the European Personal Data Protection Directive (EC 95/46) and the Canadian Data Protection Act, which are analyzed following this work" (LIMA and MONTEIRO, 2013, p. 61).

It is common to ask whether there is a need for this loyal demarcation, given that the technological era makes the use of the internet universal. In this situation, knowing that the internet tool uses personal and many of these sensitive data, such as information concerning the sexual, political, sexual and even philosophical conviction of an individual, as well as national origin, racial or ethnic origin, health references, cooperation in social and political movements or even genetic information biometric data subject requiring the right processing of this information.

Every day, reports are heard about the leakage of "personal, registration or financial" data (LIMA and MONTEIRO, 2013, p. 61). Public databases aimed at monitoring personal data leaks , count several real situations of losses derived from unlocking elements not authorized to the public, which are in need of restrictions and released only to those entrusted, "including bank details, personal document numbers, personal address, among others" (LIMA and MONTEIRO, 2013, p. 61).

In 2005 was revealed an exorbitant display of data , these transcended almost four thousand cases, that is , about 600 million documents released without permission, the surprising thing is that this fact occurred in countries that had already enacted laws regarding these eventualities, without the inclusion of Brazil in this case (LIMA and MONTEIRO, 2013). In this situation, the current media-based society needs a reasoned and effective rule, because the greatest beneficiary of a legal framework is the citizen , this, a fragile part of a relationship, even more so when placed in the face of corporate and state conglomeration .

In situations like this, the jurisdiction has information that integrates domains of their privacy and intimacy treated appropriately, and can be revealed or used by third parties only what is allowed, ensuring a good applicability of essential rights (LIMA and MONTEIRO, 2013).

Currently Brazil still has a scattered protection over data protection, acting in the field of privacy and transparency does not mean acting in data protection without you. The Federal Constitution of 1988 establishes a listing in article 5 of all fundamental rights guaranteed to all members of the State, among these the right to privacy and data protection, such as "the inviolability of communications and the right to habeas date the latter regulated by the Law on Access to Information" (LIMA and MONTEIRO, 2013, p. 62). Based on item X of the Federal Constitution of 1988: "the intimacy, private life, honor and image of people are inviolable, ensuring the right to compensation for material or moral damage resulting from their violation" (BRASIL, 1988).

When talking about this protection directed to the scope of privacy, it is observed that there is no one interpretation, however, it does not mean that the State is totally absent from discussions on the subject. The Brazilian courts broadened their view on the subject and reported in the summary regarding moral damages the following:

> CIVIL LIABILITY - MORAL DAMAGE - Placement of photos in a virtual community - Restriction of incurrent defense - Preliminaries rejected - Improper exposure of the unconfigured person - Communication channel maintained between residents of the condominium where the parties reside - Retraction of the day to day and events that occurred in the residential - In the absence of comments related to the photos, in order to lend spurious connotation spurious lie to denigrate or defame – Dynamics of facts that do not denote intention to achieve honor or personality - Reconvention - Absence of the alleged excess in the action or abuse of power of the party, when exercising its legitimate right of action - Decision that examined the issue succinctly and cohesively, not having to speak in sentence *'petita citra*' - Appeals (SUPERIOR COURT OF JUSTICE , 2011).

Therefore, it can be observed that the courts are paying attention to the possible damage that the Internet can cause, especially when it comes to the use and disclosure of personal information of an individual

The Civil Code in article 21 states that "the private life of the natural person is inviolable, and the judge, at the request of the interested party, will take the necessary measures to prevent or terminate an act contrary to this norm" (BRASIL, 2002). It is known that in Brazil anonymity does not present limitations when talking about freedom of expression. The Mother Letter of 1988 makes it expressly clear in article 5, item IV that "the manifestation of thought is free, being vied anonymity", this legal direction is a way to precisely limit the content generated on the Internet.

Once again, the Civil Code contains in its article 19 the reasoning that "provided that for lawful purposes, there is

protection of the pseudonym in the same way that the name of the natural person is protected", it occurs that the Personal Data Protection Act (ALPDP) intends to conceptualize precisely personal data stating that they can only be disclosed by court order.

The draft Law No. 2,126/2011 transformed into Ordinary Law 12965/2014 also guarantees the protection of data, as well as its provision by means of a court order, internet access is essential to the exercise of citizenship and the user is guaranteed the following rights; I – the inviolability of intimacy and private life, ensuring the right to their protection and indemnification for material or moral damage arising from their violation; II – the inviolability and confidentiality of its communications over the Internet, except by court order, in the cases and in the form that the law establish for the purposes of criminal investigation or criminal procedural instruction (BRASIL/1988).

The Consumed Defense Code (CDC) bases specific protection on consumer relationship data. Its Section VI speaks clearly about the databases and consumer registrations, basing on its article 43 that "the consumer, without prejudice to the provisions of Art. 86, will have access to the existing information in records, records, records and personal and consumer data archived on it, as well as on their respective sources" (BRASIL,1990). In view of this we can analyze that there is a defense of the preservation of data of consumer relations and when talking about databases and buyers' records, it is also expressed that all buyers may have access to the information relating to them contained in any records of archived databases, as well as the origin of all of them.

That is, the article also speaks clearly in its paragraphs that "the opening of registration, form, registration and personal and consumer data must be communicated in writing to the consumer, when not requested by him" and that " the consumer, whenever he finds inaccuracy in his data and registrations, may require his immediate correction" (BRASIL, 1990).

The Consumer Protection Code has already stated in Article 43, § 4, that the database that stores consumer data is public in nature. In view of this, it is known that these databases stored private records are attested through habeas data. Federal Law No. 9,507/97 prescribed in the sole paragraph of Article 1:

> Every record or database containing information that is or may be transmitted to third parties or that is not of private use of the organ or entity producing or depository of the information shall be considered public in nature. (BRAZIL, 1997)

With this, the consent of the habeas data will serve to certify the knowledge of reports belonging to the person of the plaintiff, who has records in database and data of government institutions or even public in nature.

The Federal Constitution of 1988 states in article 5, item XXXIII that any citizen is entitled to receive from public agencies information of his/her particular or collective interest, which are provided in a legal period, under penalty of responsibility, except that secrecy is indispensable to social security and (BRASIL,1988). This item had its regulation made by Federal Law No. 12.527/11, which constituted a specific method for each individual to request data that are in the possession of the Public Administration. Given the concept of privacy, Federal Law No. 7,232/84 that implemented the National It Policy determines that:

> For the benefit of the social, cultural, political, technological and economic development of Brazilian society, art should be based on the principle. 2, item VIII of this Law that establishes legal and technical mechanisms and instruments for the protection of the confidentiality of data stored, processed and transmitted, in the interest of privacy and security of individuals and legal entities, private and public (BRASIL, 1984).

Given the conceptualization of personal data inherent to data protection, the Child and Adolescent Statute (ECA) has basic principles of privacy that must be respected and applied in socio-educational measures, which respect for the intimacy, image and reserve of the private life of children and adolescents. The Statute also determines in article 17 that "the right to respect consists in the inviolability of the physical, psychic and moral integrity of the child and adolescent, covering the preservation of the image, identity, autonomy, values, ideas and beliefs, spaces and personal objects" (BRASIL, 1990).

The National Telecommunication Agency (ANATEL) establishes neutral relationships as one of its support its giver has the charge of "maintaining the confidentiality of user data before third parties , even when those commit alleged acts and may not reveal them only by court order" (LIMA and MONTEIRO, 2013, p. 63).

The use of the internet provider serves as a provider of messages and content that are transmitted between sender and recipient, these do not produce any kind of judgment or value control with each other. Access to user data by providers characterize severing of confidentiality and invasion of privacy, this fact as seen, is based on Federal Law and the Fundamental Law.

The national judiciary is a profound debater of issues related to privacy and particularity on the Internet and points such as the responsibility of managers and how these personal data should be undertaken are still highly commented and uncertain matters.

Speeches open to society, internet-specific regulations and personal data protection laws are necessary conjunctures to determine legal certainty for individuals and institutions in Brazil.

### 2.3. Aspects of the globalization process influenced by Technological development

In liquid modernity, the management of information about the individual, as well as the right to know who handles personal data, means having full power over themselves. Nowadays, there are several forms of incorporating the mentioned right and already known by the consumer subject. Data protection as a fundamental right was developed through technologies that have emerged over the centuries, such as the internet tool.

Obviously, the emergence of new media and new technologies have transformed what once seemed like hard work into something simpler and less laborious. Currently society seeks new concepts, information technology offers several storage possibilities and treats information in a way that enables diversified controls (FLORÊNCIO, 2019).

With the use of technological applications offered nowadays we pay a high price in everyday life, considering that these uses cause a concern in the individual when they leave for some reason to use these tools.

They are not concerns with financial sense, but rather of the amount of data and personal information collected by these technological applications that can somehow lead to a great exposure of the individual. It is precisely the control to avoid unwanted exposures of consumers that the law sought to regulate, that is, include state measures for the security of the individual and for the protection of his personal data, and consequently, maintain due respect for privacy.

In this sense, Juliana Abrusio Florêncio states that one cannot fail to look at social networks without a copious look, considering that the link between control and exposure are increasingly shrunk. The personal life of an individual puts him before society with more and more questions , these range from the lack of display limits, even the right to protection, which is standardized as a fundamental right today (FLORÊNCIO, 2019).

It is perceived that the protection of privacy already had an individualistic characteristic in its beginning, with the right to be experienced solitarily. "During the 20th century, the transformation of the function of the State, combined with the technological revolution, contributed to modify the meaning and scope of the right to privacy" (MENDES, 2014, p. 29). It is in this sense that in the previous century the reinvention of privacy was experienced. The previous mass of personal data protection standards has been built up in public administration and private companies with electronic data processing, as well as the idea of centralizing the database nationally. Brazilian standards follow international devices that contribute to the solidification of an idea of privacy tied to the preservation of individual data (MENDES, 2014).

As can be seen, at the moment technology allows for the fast and efficient storage and processing of personal data, an association between privacy protection and information is noted. When being disciplined, the protection of personal data arises in the informative social environment as a possibility to safeguard the individual personality of a person against the potential risk found in the means of processing personal data, even if the function of safeguarding I did not object to protecting only the data, but the person who holds that data.

For various reasons we have become the society that generates the most personal data in history, this is clearly shown by the databases in the various sectors that exist; Birth and marriage records, school records, census data, military records, passport data, employer and public servant records, health service records, civil defense records, insurance records, financial records, telephone data, among others (MENDES, 2014).

Since such personal information may violate the personality of an individual with the inappropriate form of disclosure and use, such data deserve legal protection, which may ensure freedom and equality of content. Generally, the value of this information obtained is not only distinguished in a storage capacity, but mainly from the perspective of achieving new information about people.

A good example of all this would be the construction of personal profiles with the function of making important decisions about consumers, workers and citizens in general, which can directly affect the lives of these people in addition to influences their access to social opportunities.

> The massive use of personal data from the second half of the 20th century can be associated with two main characteristics of the post-industrial state: bureaucratization (of the public and private sectors) and the development of information technology. (BENNETT, 1992, p.43).

It was the various techniques and their combinations that allowed the recording, as well as the processing, organization and transmission of data that could never be imagined, thus being able to obtain valuable information about each person political, social and economic decision-making. Thus, society can obtain advantages with technological development if it is accompanied by legal protection regarding privacy, while data protection, when delicately analyzed, shows that the problem is not situated in technology, but that it must be understood by the society in which it is inserted, because it is created by it to achieve certain purposes.

In this sense, Laura Schertel Mendes has the idea that in the context of the progress of information technology, the right to deprivation was transformed with the objective of originating the custody of individual data, thus, adapting to stimulus imposed by the rise of the mechanism. With this, the custody of individual data is instigated as an extension of the right to privacy, and consequently shares the same reasoning; the protection of the personality and dignity of the individual (MENDES, 2014).

In the development of information-related technology, privacy is transformed with the objective of protecting personal data so that this is an adaptation to the advances of new techniques. Thus, data protection must be understood as an influence of the right in order to be able to command the privacy of an individual or collective, which coincidentally has the same foundations : the protection of the personality and dignity of the individual.

Furthermore, it is possible to understand that the

protective protection of personal data also has an encompassing scope, because at first it is understood as a global phenomenon, considering that damages that may be caused by improper use of data are by nature diffuse, and require collective legal protection.

Data protection has also led to an autonomous sector of public policies , being able to control the flow of information in modern society. What made this autonomy clear was the realization that this protection gave a kind of development to exclusive legal instruments, specific regulations, subject matter experts, groups willing to denounce abuses and violations and a national place where experiences can be exchanged.

Otherwise, data protection has become significant, because the control of personal data can be controlled by the individual himself, being able to decide how, when and where his data will circulate. Speaking of equality, it presents itself to the extent that the precaution carried out by private bodies when obtaining information in databases affects the opportunities of individuals in social life, thus the legal protection of data helps to combat the distinction of information taken from databases (MENDES, 2014). Aiming to provide a rigidity of guardianship in cases of discriminatory situations.

With everything, it can be understood that the discipline of data protection, as a kind of guardianship for the citizen, guarantees autonomy of choices, such as protection, which serves to avoid any kind of discrimination. The discipline of data protection has been substantially developed and changed, as a consequence of the changes that have occurred in the economic, social and technological classes in recent four decades. This development is of great importance so that the constant challenges that legal protection in defending personal data can be understood, as well as the analysis of future data protection.

### 2.4. Fundamental rights and their interference in consumerist provision

In Brazil there were already talks about consumer reception since the LXX dicentric, the follow-ups of this rise in reality were only recognized through the dissemination of the Major Law of 1988 and through the respective Consumer Code that made the subject reformer and legal. Until this milestone it was clear the total helpless suffered by the consumer, who faced excess of the consumer market.

Constitutionalism has leapt the legal system and its conceptions in the world, implemented the praise of the principle of dignity of the human person and texts of the Greater Law began to determine praise able fundamental rights. In erecting the fundamental condition, this right is recognized in the face of its formalities because it is rudimentary to legal dictates, being a constitutional basis, besides incorporating a framework social and state-owned enterprises.

Consumer protection as a fundamental character is easy to understand, in view of its actual or material. This effective reasoning is explicit in nature, because it is based on the constitutional wording. Otherwise, its materiality flows between the very principle of dignity and consumerist acceptance, considering that, in the end, it is a basic need of the human being that is in the current social environment.

In view of everything, the need shared by an entire society was the reason for the emergence of Consumer Law, with the main objective of giving security to all primordial and unpredictable legal relations, modeling remarkable traits such as instability and dissimilarity between consumers and suppliers in consumer relations (DAHINTEN, A. and DAHINTEN, B. 2017).

The collection of personal data for example is a type of intense activity that refers to both private and state agencies and especially in consumer media. When Brazil is involved in this context there is a suffering of individuals who integrate the social environment due to the effects of this reality, in view of their communication and interactivity in information environments, these specific objects of data collection and probabilities of treatment by individuals' economic gains from this medium.

In fact, some activities that have been enhanced by data collection and processing devices, when employed within a legal limit and for a certain intrinsic purpose can be unveiled in the technological context through important means for business success and citizens' life developments (DODGSON and GANN, 2014).

The authors Dodgson and Gann claim that when it comes to a business organization and its possible improvements, companies provide a presentation that such individuals are operating a social networking check-up through means of research or procession of e-mail offices to capture the indispensable private and institutional nodes in the corporation and thus take deliberations (DODGSON and GANN, 2014).

Another example of significant benefit brought by the aforementioned authors is those about the conscientious treatment and application of data generated by social individuals, such as a review Journalistic. It means that, even being exploited by a professional technician with academic training, she cannot neglect surveillance , being faced by a paradigm instigated by the great capacity of data accumulation and strong acknowledge option of the individuals who compose the social environment.

In short, there is nothing to ask about the primarily of the right to welcome to the consumer. It is not only an inclusion in Art. 5, its intention is run into constitutional conceptions and concepts, including the principle of dignity. It is indisputable that consumer care is a fundamental right in Brazil.

### 2.5 The protection of sensitive data in the social order in liquid modernity

What would actually be the such liquidity reported by Zygmunt Bauman in his writings is actually an adjective that characterizes the current structuring of society, which it also

calls the "society of fluid modernity" (BAUMAN, 2001, p. 31) in opposition to the consistency of ancient modernity.

To lecture on any social concert configured as a substitute for contemporaneity means to run a certain risk of threat. This is because there is no celebrated fact or any standard transformation that determines, in a way that fragmentation between "modernity and postmodernity " (BAUMAN, 2001).

It is noted that the respective Bauman, when speaking on this event, serves phraseology "modern society in its present form" (BAUMAN, 2001, p. 31) patenting the absenteeism of a symbol that interrupts between a distinct era and another.

The author's central idea to stipulate a postmodern era is relieved by the expectation of questions of modernized with an "external perspective" (FALK, 2017, p. 80) consented that the subject, separated from the object, is situated in another degree of investigation, this being postmodernity.

In this sense exposes Zygmunt Bauman:

> Unlike the notion of a post-industrial society, the concept of postmodernity refers to a different quality of the intellectual climate, a distinctly meta-cultural posture, a self-consciousness different from its era. One of the basic elements, if not the basic element, of this self-consciousness is the understanding that modernity is over, that it is a closed chapter in history, which can now be contemplated in its entirety, with retrospective knowledge of their practical achievements, as well as of their theoretical hopes. (BAUMAN, 2010, p. 166).

With an explicit search for this variation between modernity and postmodernity, Bauman debuts his idea from the concepts of "space" and "time", and what they manifested in the current social body. These principles bring an important perception of reality, considering that the term "liquid" (BAUMAN, 2001, p.8) manipulated to typify contemporaneity, comes properly from a new discernment of the events of "space" and "time".

In this sense , it states that:

> Fluids, so to speak, do not fix space or trap time. While solids have clear spatial dimensions but neutralize the impact and therefore diminish the meaning of time (effectively resist its flow or make it irrelevant), fluids do not hold on too much to any form and are constantly ready (and prone) to change it; so, for them, what counts is time, more than that the space that touches them to occupy; space that, after all, fill only "for a moment". In a sense, solids suppress time; for liquids, on the contrary, time is what matters. (BAUMAN, 2001, p.8).

Bauman believes that modernity begins precisely when this concept of "space" and "time" separate in a way that becomes distinct and reciprocally autonomic principles of strategy and action, as opposed to a contemporary Pre temporality that conquered, from its life experiment, as indivisible (FALK, 2017).

A good example that demonstrates the dissimilar approximation of these principles concerns "speed" (BAUMAN, 2001, p. 16), since this deduces an oscillating relationship between proportions of "time" "space".

The idea of "time" reflects, in the patterns presented by Bauman, the energetic, shrewd and "liquid" act of the social body, while "space" is a corpulent, static and firm act, returning increasingly to a representation of the "massive" side of the effective reality, constituting an "obstacle to the advances of time" (BAUMAN, 2001, p. 16).

In liquid modernity, "time" manifests itself with a supreme relevance when compared to solid modernity. This is due to this thought being a great supplanting of the physical obstacles of nations, to the point of having an event delimited by Master Bauman as "technological nullification of time/spatial distances" (BAUMAN, 1999, p. 25).

Nevertheless, it is important to make an observation: social agents do not present themselves equally in conjunctures so that there is a mold to this new contemporary reality. Technology exempts certain individuals from the consonances of a given territory; on the other hand, for the exclusions, the degrowth of state control generates a large share of vulnerability (BAUMAN, 2007, p. 74).

In these circumstances, Bauman declares that these modifications that comprise the events of "space" and "time" have a relationship with the transfigurations of capitalist society and analyzes in a the nominated "modern longings" pointing out the fact that the ideas are encompassing.

In this way he teaches:

> Modernity has brought, among other things, a new role for ideas – because the State sought its functional efficiency in ideological mobilization, because of its marked tendency to uniformity (manifested in the most spectacular way in practice cultural crusades), because of its "civilizing" mission and acute proselytizing and due to an attempt to place classes and previously peripheral localities in intimate spiritual contact with the center that generates ideas of the political body. (BAUMAN, 1998, p. 64- 65).

However, it is not true to say that the teachings expanded by scholars of critical theory no longer have scopes in the face of inter-time dissimilarities, because the postmodern era does not manifest itself as a denial of contemporaneity, it actually means a modifiable welcome and of a current corporate event.

In this sense, the great issue is that the State, seeing the advance of global potentials and being restricted to a local activity, has destined the office to society to take care of itself resisting all the consequences resulting from this responsibility.

Bauman says that "it is no longer true that the 'public' tries to colonize the 'private'. What happens is the opposite: it is the 'private' that colonizes the 'public' space" (BAUMAN, 2001, p. 49) for this sui generis conformity must be bumped into, by means of a leading role of the respective citizen.

The author alludes to:

> Briefly, "individualization" consists in transforming the human "identity" of a "data" into a task and in charge of the actors' responsibility to accomplish this task and the consequences (as well as the side effects) of its accomplishment. In other words, it consists in the establishment of a de jure autonomy regardless of whether the de facto autonomy has also been established (BAUMAN, 2001, p. 40)

The versatility of capitalism weighted in the malleability of society itself and inset by a progressive decoration of "time" and "space", and still aggregated with the abundant seriousness today destined to individual acts, minister much of Bauman's idea about the transgressions present in the postmodern social body and the antecedent. Even so, these theories must incorporate other thoughts that, regardless of not having been asked by Bauman, intervene almost as a presumption its social construction, being in fact an informative society and means information.

Finally, Bauman reports as a particularity pertinent to the current social environment the peculiarity he called the "privatization of modernizing duties" (BAUMAN, 2001, p. 64) this has the meaning of personal delegation and commitment to the alternatives of living in the face of a changeable and inaccurate veracity, a mission that previously it was segmented with the corporate or state structure in force in the era of harsh modernity .

Furthermore, it is supported that, despite the expansion of global jurisdiction and in the face of what had been executed by the government, the State remains in control of the jurisdiction, and for this reason, in the most effective and committed way possible, to advise corporate individuals in the pursuit of their purposes, even though they are living incorporated into a liquid modernity, safeguarding, in an egalitarian way, the interferences of this social conformity.

In this hideout are inserted the private data of social individuals. Basing the personal protagonist of this modern net generation, with more intellectuality expose to personal data a great prominence, since social agents depend only on themselves, as well as their own references so that in this way they are accepted or not accepted by the veracity that surrounds them, and must be welcomed and protected by those mapping personal or sensitive data, classifying and systematically influencing them using engaging and engaging technical specialties, for the purpose of render, malleable social habitus and dependent buyers modern liquid way of life.

## 3. Supplier, consumer and data protection, competing interpretations in the context of current legislation

It is simple to realize that the legal regime for the protection of personal data depends precisely on what is considered personal data and what is its current regulatory regime. With this, it is necessary to define concepts that govern and limit legal protection.

First, the concepts of "data" and "information" should be observed, because even if used in similar ways they have different distinctions. "Data can be understood with potential information, that is, it can become information if it is communicated, received and understood" (MENDES, 2014, p.56).

The author treats this definition by saying that if the "data" takes the form of a printed word is immediate the understanding of the information by readers, that is, this "data" is a kind of act or sign that needs interpretation before taking any meaning, thus being a Pre-information, until it is in fact understood by some individual.

The concept of personal data can simply be the definition of a fact , communicability and conduct, which refer to both material and personal conjuncture of a person who can be identified or identifiable. In this sense, "the definition present in European Directive 95/46/EC, in its art. 2, which conceptualizes personal data as any information relating to an identified or identifiable natural person" (MENDES, 2014, p.56).

In the current legislation, a distinction was prescribed of what is identifiable, which would be all that could be identifiable , directly or indirectly, having an identity number, as well as elements of social, physical identity, cultural and also economic.

Personal information is different from any other data, because it has an objective link with the individual, that is, it reveals characteristics that concern it. Nevermore, it is fair that this information has legal protection, since, because it has the person himself as an object, it is essential that this protection is due to the protection of the consumer individual and his reputation.

It is possible that some data are anonymous, referring to indeterminate people and for statistical purposes. This anonymity of data is a kind of protection to the individual who has had personal data collected and stored. In this case:

It is worth mentioning the decision of the German Constitutional Court of December 15, 1983, in which it was determined that the personal data collected for the census could only be transferred to other organs of the Public Administration if they were become anonymous or after their statistical processing (MENDES, 2014, p. 56).

Similarly, Germany’s Federal Data Protection Act has designated a generation where data processing should take place in a way that uses as little data as possible, as well as offering anonymity to them or even pseudonyms. The same imposition was agreed by European Directive 2002/58/EC, in its art. 6th, I (EU, 2002).

After anonymous characteristics are attributed to personal data, they are no longer subject to protection if they make any personal identification impossible, as legal guardianship covers data that is identified or identifiable person.

However, anonymous data exclusions from regulatory systems should be analyzed as very cautious, after all "it is known that technology is capable of making anonymized data identifiable" (MENDES, 2014, p. 58) .

Therefore, for the protection of the individual personality to become propitious it must be appropriate to the individual, persisting any form of re-identification, making it necessary to apply a legal regime of protection of personal data. The expression "processing of personal data to designate the technical operations that can be carried out on personal data, in a computerized or non-computerized way" (MENDES, 2014, p. 58), have the purpose of cutting the information, making become more valuable and usable.

These are forms of treatment elaborated by European Directive 95/46/EC, i.e., collections and records, as well as the organization of these, or any other configuration made available, as well as comparison, payment or even their destruction. Thus:

> The processing of personal data has a markedly dynamic bias, as it consists in the action of handling information, relating and recon drawing data, in order to obtain conclusions to from the application of criteria (MENDES, 2014, p. 60).

For the conversation of personal data to reach its purpose, those will have to be stored in databases. This database has as characteristic the logical organization of these data that have easy use and access.

In accordance with European Directive 95/46/EC , the database consists of "any structured set of personal data, accessible according to certain criteria, whether centralized, decentralized or functionally or geographically albeit" (Art. 2,c) (EU, 1995).

Databases have several forms of organization to obtain a good use of these forms can be cited the forms, dossiers and manual use. Although they present some kind of risk against privacy violation of a person, there is no denying that the greatest threat to this data lies in the information itself in its natural form.

As has already been noted in the course of the content, the legal regulation of personal data has as a conceptualization that the individual must have full control of revealing and using information to his/her respect to society, with the preservation and development of his/her personality. The role of the State through protective legislation promotes tools necessary for people to have control of the flow of personal information passed to society.

Data protection is the right to the private information of individuals, in turn , only it can determine the context of the privacy itself, that is, to what extent the information about it can be collected, processed and transferred, and the protection is marked self-control and freedom of its holder.

In order for the holder to exercise the power of self-control of his/her information, there must be a legal institute that expresses his willingness to author data: "Consent. This is the mechanism that the right has to enforce the private autonomy of the citizen" (MENDES, 2014, p. 60).

### 3.1 Supplier and consumer concept in consolidated law

A subject sometimes discussed in the Superior Court of Justice ; the very concept of Consumer is sometimes considered a controversial topic. For most educators, the concept is based in four different ways in the Consumer Protection Code.

There is a general concept of consumer; the like-enough consumer; victims of unforeseen consumption; and the broad conceptualization, which is the broadest, because it incorporates all individuals pointed to abusive practices.

Among the concepts mentioned above, the one that creates more non-agreement, according to Cláudia Lima Marques, is the *strictu sensu* consumer, this is every person, physical or legal person who cultivates or manipulates merchandise or some activity as a final recipient (MARQUES; BENJAMIN and MIRAGE, 2004).

There are currents that stand out for explaining the conceptualization of final recipient: "the finalist and the maximalist" (OLIVEIRA, 2008, p.110) as much as it is clearly reasoned that the consumer is a natural or legal person, there is a restraint related to legal entities in the Consumer Code and even after decades the courts continue to find it difficult to stipulate a definitive concept for consumers.

If it is analyzed legally , there is no expectation to restrict the legal entity, it is enough that it manipulates or obtains a good or some kind of activity in the situation of final recipient so that it has the legal reception.

For not having a single concept of consumer and for emerging theories that have gained strength in the decisions of the Supreme Court, such as the finalist, maximalist and the most recent as the mitigated or hybrid. It is important to mention the thought of Júlio Mendes Oliveira:

For the maximalist current, the final recipient is only the phatic recipient, that is, the one who removed the product from the supply chain. It is considered an objective notion of consumer, because what matters is the object of the relationship. For the defenders of this current, the destination given to the product is irrelevant, it is a more comprehensive positioning, even accepting the relationship of consumption between two professionals (OLIVEIRA, 2008, p.110).

The Consumer Code obeys any consumerist medium in the opinion of maximalist scholars. On the other hand, those who defend the finalist doctrine proclaim that the final recipient is the one who displaces the goods of commerce and gives it a final destination for use, that is, dissipates it in the productive network. All this is merely a subjective perception of the consumerist subject, considering that this has a fundamental role, being interspersed in this elucidation the phatic and financial recipient of the network, that is, the merchandise is used for its own consumption, without any

kind of further bonus.

> "The mitigated or in-depth finalist theory softens pure finalism, recognizing the legal entity as a consumer if there is, in this case, the presence of vulnerability" (OLIVEIRA, 2008, p.110).

Superior Court of Justice has lived in constant hesitation in all these theories, now preponderating one conception, now another.

The Consumer Code is governed by the principle of vulnerability, this is an essential driver for an entire study methodology. It is known that the role of principles is not just to guide, they are regiments that should be within the living and legal eventualities and to the greatest extent possible.

The principles do not only have a function of norm, they undertake a primordial hermeneutics guiding the applicability and interpretation of the rules, whether constitutional or infra-constitutional, also exercising interpretation functionalities. In cases where there is a hermeneutic difficulty the interpretive one takes place according to the principle of vulnerability, because the sense of the consumption set has the function of welcoming the vulnerable party, being legal or physical.

As a whole, it is understood that through a balance sheet through a guided analysis, the Consumer Code, enshrines vulnerability as an essential point of the system, and the understanding of the Superior Court of Justice appears to be in accordance with judicial logic (OLIVEIRA, 2008, p. 115). Given the above, it is easily perceived the claim of vulnerability of the individual, while the legal entity must prove it in a concrete way.

The concept of supplier is based on the Consumer Protection Code, as well as the concept of consumer. According to Article 3 of the Law; supplier is "any natural or legal person, public or private, national or foreign" (BRASIL, 1990), being included in this classification the depersonalized entities that in some way potentiate exercises of production, construction, import, and who also market products and offer services in general.

The existence of the consumer is enough for the consumer's subject to be welcomed, thus totally different from the nature of what is exercised by the supplier, that is, the consumer reception is equal regardless of the circumstances of consumption.

When the correlation of consumption is verified, the consumer is already, first of all recognized as the weakest subject of this correlation, in view, in view, that in the conjuncture of commercial media, the supplier is the one who has full control of information about parts and products, as well as the deliberation of places for their availability, the form that the materials will be passed on to consumers, as well as the time they will be passed on.

Consequently, the purpose of the legislator is to level the conjuncture of dissimilarity, not only economically speaking, but in the technical and decisive way that exists among the subjects of consumption. The simplest way is to consider situation described and give full preference to the individual consumer of the relationship, giving him favorable circumstance so that somehow corresponds his benefits to that of the supplier, thus ensuring the similarity of weapons in the transactions of consumption.

### 3.2 Meaning of personal data and its formulation in the legislation of the country

As has been analyzed in previous points, governments in several countries have regulated data analysis as a kind of reaction to the exorbitant procedure of personal information that has been made possible by technology. Knowing the difference between legal systems and certain legislative opts there is the possibility of speaking in a legal regime for the protection of personal data with common principles and rights. It is important to highlight:

> Evidence of a consensus on a minimum regime for the protection of personal data was the approval of the International Standards on The Protection of Personal Data in 2009 in Madrid at the 31st International Conference of Data Protection Authorities (MENDES, 2014, p.45).

This Conference approved the Standards in an amazing way, because it had the assent of more than seventy data protection authorities, these authorities had the right to vote in the Conference itself, it had "general provisions, basic principles, legitimization for the processing, rights of the interested party, security and supervision" (MENDES, 2014, p.45)

People's control over their own information is a characterization of several national laws on the subject. Freedom of data control is based on the authorization of the holder, which gives the right to determine the level of data protection related to it. A number of requirements are required to validate this authorization , such as transparency, freedom and specificity.

To ensure the holder's control over their data, they have been prescribed in most laws on the subject, subjective rights such as information rights, access, rectification and cancellation. An indispensable function was to make concrete the principles laid down in the rules and, as much as those rights have a significant delegation of power from the individual is perceptible that it is not always sufficient to ensure satisfactory data protection in the information society.

The legal conception acquired by several countries to ensure the protection of personal data consisted of a constitutional stronghold, that is, it was a guarantee based on the Constitution, thereby giving confidence in the realization of the right prescribed by a legal regime of protection of personal data. According to Colin Bennett:

> The legal regime for the protection of personal data can be understood as ordinary legislation,

> whose purpose is to regulate the processing of personal data in society. It is therefore the exercise of state power to intervene in data processing, seeking to preserve the collectivity and fundamental rights of citizens (BENNETT and RAAB, 2006. p.125)

This regulation consists of state control over the economy and society, as well as the control of exclusive organs that take care of personal data. While there are several ways to regulate privacy, general data protection laws are considered the most effective to protect the privacy of individuals in developed countries.

The extent of this type of norm, as well as its form of application varies from one country to another and goes according to its statesmanship process, however, it is possible some similarities. The initiation of data protection laws occurred due to data processing by the state, but it was then perceived that the danger was also in private sectors. Thus:

> European Directive 95/46/EC directed countries to enact comprehensive laws comprising both the public and private sectors. This movement eventually influenced countries such as Canada and Australia, which sought, each within its federative structure, to also include the regulation of the private sector. (BENNETT and RAAB, 2006. p.130).

In other countries such as the United States, because it has a different inclination covers only the public sector, in turn, it is the only industrialized country with great advances that has no specific legislation approval for the protection that also welcomes the private sector.

The Privacy Act of 1974 has become a good example of the type of legislation mentioned above, it is generally applied in the Federal Government, but its use is limited. However, even if the United States has legislation for the private sector, it has been vigorously maintained, and despite the fact that there are laws in this type of industry, privacy does not have full protection.

### 3.3 The meaning of sensitive data, its species and characteristics

The General Data Protection Regulation- GDPR, a new European legislation dealing with the direct protection of personal data, entered into force on 25 May 2018. It is known that every day there is a relevant use of data that moves the economy, improves existing markets and enables the manifestation of transformative negotiations. There is daily news of sovereignties of countless countries that are investigating and analyzing the collection and processing of personal data of internet media users.

In Brazil, there is already an investigation there are companies by national authorities of initiative of the Public Prosecutor's Office precisely about the leakage of data of these enjoyers. One heartthrob example was Netshoes, which suffered a security outburst that resulted in the leaking of data from thousands of customers. In addition, the same incident amounted to Banco Inter the extinction of its digital certificate.

Outside the country was also no different, there was the disclosure of Altaba, formerly Yahoo, which suffered sanction from the United States and paid a fine equivalent to 35 million dollars for not communicating about the data leak of millions of users of its network (LEMOS et al., 2018).

In 2017, there was a major data leak in U.S. history, and the one involved this time was the Equifax Credit Bureau, which harmed more than 140 million consumers, a percentage equivalent to half of the nation in the country involved. These incidents with personal data result in the acceleration of update of standards on the subject.

In Brazil, the acceleration of the update of a specific law to protect personal data has a justifiable objective, the country seeks to empower itself to space in the Organization for Economic Cooperation and Development (OECD).

The Brazilian legal provision, as well as the draft laws related to the protection of personal data, list groups of data that help individuals understand so-called sensitive personal data and its consequences on the practical life of users.

There is a normative pyramid of data, is composed first of the information indicated in the Law of Access to Information - LAI. An example of this information is: data, processed or not, that can be used for the production and transmission of knowledge, contained in any medium, medium or format (BRASIL, 2011). That is, the data performed by individuals are incorporated into the information models, and may be an elementary collection of text or even a medical record.

In the middle of this pyramid are the personal aspects that are conceptualized and expressed in Decree No . 8771/2016, which had a primordial and striking role for the Internet. According to him, "personal data is the data related to the identified or identifiable natural person, including identifying numbers, locational data or electronic identifiers, when they are related to a person" (BRASIL, 2016).

At the apex of the pyramid are sensitive data, these still do not have a normative conceptualization in force within our legal structure, but there are three bills that address sensitive data within the National Congress.

The House of Representatives conceptualizes in its bill Law No. 4,060/2012 sensitive data as reports no related to "social and ethnic origin, genetic information, sexual orientation and political, religious and philosophical convictions of the holder" (BRAZIL, 2012). The respective Chamber has also expressed itself regarding Bill No. 5,276/2016, which originates from the Executive Branch, in its sensitive data have a distinct conceptualization:

> It is personal data on racial or ethnic origin, religious beliefs, political opinions, membership of trade unions or religious, philosophical or political organizations, data on health or sexual life and genetic or biometric data (BRASIL, 2016).

Sensitive Data is not a priority in the face of scientific conjunctures, what occurs is that its existence in the face of data collection with human labor should not be ignored in any

way, in view of being a sphere of great potential for data collection, that is, it must be thought that if there is in any way confidentiality or confidentiality, without the power of disclosure mainly for issues of racial, legal and even ethical origin, one has the externalization of Sensitive Data.

# 4. The protection of sensitive data in Brazil and its diversities and perspectives

As already mentioned in a previous chapter, Brazil would need to follow the line of countries such as Canada, Singapore and Japan that prioritized for not defining sensitive personal data, tolerating that the writing of the use of data is a first point at the time of safeguarding the privacy of its holders (LEMOS et al., 2018).

A reasoned approach to the privacy of holders has been more productive , by achieving the reduction of the violation of the rights of data subjects and at the same time potentiating the progress and transformation of techniques that will enrich society and economy in a global manner.

Nevertheless, if definitions of sensitive personal data are elected by the legislator, it is of great importance that this list be numerus clausus, thus preventing a wide-scale perspective where any type of data may be inserted as sensitive and, consequently, susceptible to protective mentoring unsubstantiated and not at risk.

Article 4, item I, of law no. 2,527/11 brings a basic concept of information, being defined as a type of data, whether processed or not, that can be operated for the elaboration and delegation of knowledge, understood in any pillar, medium or form (BRASIL, 2011).

Decree No. 8,771/2016, in article 14, item I, brings a brief definition of personal data, considering all those who refer to the identified or identifiable natural person, in addition the identifying numbers are also elucidated in this elucidation, as well as locational data or even electronic identifiers, when they are relevant to an individual (BRASIL, 2016).

For the purposes of understanding, Bill No. 4,060/12 presents its definition for sensitive personal data in its art. 7, item IV, defining them as references allusive to social and ethnic origin, genetic information, sexual orientation and political, religious and philosophical convictions of the holder (BRASIL, 2012).

Regarding the initiation of the processing of these sensitive personal data , Article 12 of the Law clarifies that this will only occur through the authorization of the holder, and may express it through any protest of will, or even by assumption of legal imposition (BRASIL, 2012).

In addition to more definitions of sensitive personal data, Bill No 5,276/16, in article 5(III), defined this data as information far beyond racial or ethnic origins, religious beliefs and political opinions, including data relating to membership of trade unions or even organizations of religious, philosophical or political character, as well as data related to health or sexual life and genetic or biometric data (BRASIL, 2016).

According to The General Data Protection Regulation (GDPR), the processing of personal data revealing racial or ethnic origin, opinions related to politics, religious or philosophical principles, union subordination, genetic data procedure, biometric data with identifying destination data related to health, life and sexual orientation are part of the special category of personal data (BUSSCHE and VOIGT, 2018).

Bill No. 5.276/2016 in article 11 brings the exceptions of interdiction in the treatment of sensitive data, and as the first of them we have the free, unequivocal, informed, express and specific consent by the holder through manifestation, totally distinct from the manifest of authorization allusive to other personal data, in addition to previous and precise information on the sensitive nature of the data that will be processed, always alerting to the risks involved in the convention (BRASIL, 2016).

Still within the exceptions of interdiction in the treatment, it will also occur in cases where there is no authorization of the holder, in contingencies in which there is compliance with a legal obligation by the executor; when there is the treatment and shared use of data crucial to the execution by the public administration of policies conjecture in laws or regulations; where there are achievements of historical, scientific or even statistical research, which ensure, whenever feasible, the anonymization of sensitive personal data; in the legitimate exercise of rights in judicial or administrative proceedings; in the protection of the life or physical inalterability of the law agent or even of third parties; or in the face of health tutoring, with mechanisms carried out by health professionals or even by health institutions (BRASIL, 2016).

Senate Bill No. 330/2013 brought the exceptions prohibiting the processing of sensitive personal data, and in its article 15 and following items expressed that there will be no prohibition on the processing of such data at the time that the holder or representative legitimately consents in an inherent and express manner; when there are needs for the fulfillment of obligations and rights of the complying in the supremacy of the legislation of the work; and also, when the effective treatment is in the domain of legitimate exercises and with adequate preservations, by foundation, association or by any association that does not have a political, philosophical, profit-making purpose, religious or even trade union, when the processing of data is concerning its constituent concerning or individuals who eat them have usual contacts related to their practices, without access to any other individual without the concession of the holder (BRASIL, 2013).

## 4.1 Current legal mechanisms available to consumers of sensitive data

As already mentioned in a previous chapter, the concept of sensitive data is imposed by the LGPD, more specifically in its article 5, II, which specifies it as personal data on racial or ethnic origin, religious conviction, political opinion, union membership or religious, philosophical or political organization, given regarding health or sexual life, genetic or biometric data, when linked to a natural person

(BRASIL, 2018).

The similarity with the definition profiled by the GDPR from Europe is remarkable, because it affirms its art. 9, I, that there is a ban on the treatments of personal data that reveal precisely the characteristics mentioned above, but further emphasizes the processing of generic and biometric data that will somehow identify the individual in an irrefutable way, as well as data belonging to health or data correlated to the life or sexual orientation of the citizen.

The main information with the restlessness of sensitive data is actually not only the privacy of individuals, but also the manipulation that this data may undergo, and may in some way be used in opposition to their holders, referring them to deprivation of access to goods or services, or even to the exercise of their own rights.

To better understand this concern , it is enough to assume the great potentializing of biometric data, such as facial figures or fingerprints to have minimal awareness of a person's physical, psychological and behavioral particularities (LEMOS et al., 2018).

The contemporary discussions aim at the incidence of behavioral advertising events revived to the construction of consumption profiles, circumstances that are associated without deviations from the regulation of the processing of personal data, private mainly to sensitive data.

In the consumerist environment, as well as in the labor environment, there are immeasurable threats of the application of such data to perpetrate discrimination and profanities to consumers, employees and aspiring employees in the course of selection or enlistment.

This fear is foreseen in several points of European regulation, such as in cases of genetic information, where they ensure that because it is of high complexity and sensitive nature this information has a very high risk of unjustified uses, besides being reused for other purposes not authorized by the individual for treatment, thus hostility based on characterizations should be banned (FRAZÃO, 2018).

It is clear from such clarification that sensitive data require special protection, because there is a potential risk for the rights of the individual, as well as his fundamental freedom, thus concluding that such data should not, as a rule, be subject to treatment, unless it is faced with a more rigid type of rule.

### 4.2 Sensitive data, legal certainty and state intervention

A Bill 330/2013 created by the Federal Senate defined sensitive personal data in a similar way, with sensitive personal data being any personal data expressing religious, political or sexual orientation, philosophical conviction, national origin, racial or ethnic origin, participation in political or social movements, health, genetic or biometric information of the data subject (BRAZIL, 2013).

The General Data Protection Regulation, commented on the sensitive data and stated that:

> Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or association with trade unions and processing of genetic data, biometric data for the purpose of identifying exclusively a natural person, health data or data relating to a It is prohibited to sexual life or sexual orientation of a natural person. (EUROPE, 2016 apud BUSSCHE and VOIGT, 2018).

Countries such as Japan, Singapore and Canada have decided not to conceptualize sensitive people's data in their legislatures, without any detriment to the private lives of their citizens.

The United States has a different protocol for dealing with sensitive data definitions, are actually based on tangible risks to privacy, these depend on the regulated sector, such as health, finance, credit and children (LEMOS et al., 2018).

The crucial objective of defining information as a given sensitive person is precisely to give protection to the holders of this particular data, the taking away from adventures that somehow cause discrimination.

Thus, the bills created in Brazil have as a rule the bulk up of the processing of sensitive personal data. These may intervene, brilliantly, observing a series of premises.

Following the criteria of Bill 5.276/2016, sensitive personal data are classified into the following varieties:

> Sensitive Personal Data of Origin: data on racial or ethnic origin; Sensitive Personal Belief Data: data on religious beliefs, political opinions, membership of trade unions or religious, philosophical or political organizations; Sensitive Personal Data: health data, genetic data and biometric data; Sensitive Sexual Personal Data: data relating to sexual life. Sensitive Personal Data of Origin and Sensitive Personal Data of Beliefs do not require further explanation scans of the literalness of the text. They are classified as sensitive in the face of historical persecutions and prejudices against the racial or ethnic origin of individuals, in addition to religious , political or philosophical beliefs (LEMOS et al., 2018, p. 2).

The figure of Body Sensitive Data, have a much greater challenge, mainly in the face of new technological and progressive advances that treat this kind of data as a "fuel". Citing as an example, medical concepts are essential for the provision of Artificial Intelligence (AI) platforms that will cooperate with physicians in recognition of diagnoses and patient intervention.

IBM and Microsoft began to devote themselves and improve techniques based on this Artificial Intelligence (AI) and Machine Learning, translated as "Machine Learning" with positive results in the assistance of physicians who treat patients with cancer.

As already mentioned, this "fuel" that drives these progressive technologies is precisely the sensitive personal data of the sick. IBM's intellect table needs to be instructed to treat chemotherapeutic patients. The best aspect to do this is to

abundantly research the data of studies and sensitive personal data of patients from their medical records, such as imaging exams (LEMOS et al., 2018).

The segments that will somehow save lives are deeply linked to the number of sensitive personal data that will be examined. The labeling of deliberate information as sensitive personnel data without questioning a probable risk to the privacy of a rights holder will cause objections to the improvement of new techniques.

### 4.3. The protection of sensitive data from the perspective of freedom and equality

Through the European Commission's conceptions in 2018, Sensitive Data has been classified as references related to health, ethnic or racial origin, political principles, guides and who require special reception.

To this do so, the European Commission points out that such data should only be collected and manipulated in specific circumstances, an example of this would be intelligible authorization or where national legislation permits.

The General Data Protection Law (LGDP) no. 13,709 of August 14, 2018, uses the voiceover Sensitive Personal Data as a way of representing these types of data, what happens is that there is an imminence between these types of data and personal data, however, not all personal data is sensitive and not all sensitive data is personal.

In this correlation, it is necessary a clarification: Sensitive data occur both through natural personal data, as well as legal personnel, as well as scientific speculations, market, among others. However, personal data that may be vexatious or contraband against the standards of protection of the completeness of an agent is assigned as a Sensitive Data (VIGNOLI and VECHIATO, 2019).

There is also the existence of other personal data that fall within the context above, they are; salary amount, academic notes, credit card invoices, medical records, in addition to matrimonial determinations, income tax returns, among other types of data. Author Briney shows that government data for having a great capacity for damage to an individual should also be understood as a Sensitive Data and demonstrates as an example the data regarding the onset of avian influenza pestilence (H5n1) that involved data until the spread of their disease (BRINEY, 2015).

The example of pestilence clearly demonstrates the presence of Sensitive Data in areas other than just people, and also appreciates that under appropriate proportions and legal prudence, its remarkable spread can occur. Nevertheless, the premise to be followed is unique, is that Sensitive Data should in no way be disclosed.

That of being sensitive in different patents with intellectual property and are confidential mainly because they are possessors, that is, many corporations have sensitive data and because of this invest significant amounts to safeguard your information, even if various disclosures and cyber-attacks happen (BRINEY, 2015).

Still for Briney, axiomatic data, as well as corporate data, should not be advertised as legally or personal escorted data, but even in this way it is sensitive data. Still under this idea, the National Science Board (NSB) reports other copies of data with limited or roundly restricted admission that may become Sensitive Data, such as: intelligence elements, national security, military actions, business and business secrecy, hiding of rare species, under fear or at risk; or even legal proceedings: such as lawsuits.

More specifically , the National Science Board reports:

> "[...] are defined as factual records (numerical scores, textual records, images and sounds) used as primary sources of scientific research, and which are commonly accepted in the scientific community as necessary to validate research results. A set of research data constitutes a systematic partial representation of the subject being investigated" (National Science Board, 2005, p. 13).

According to the NSB, the reasonableness of previous data of a perquisition is undeniable in its community, since it is the primary and consecutive results of a research, which makes them even more susceptible to use by other scientists.

Briney reports that an individual's data is sensitive by ethical insight , he said scientists have an ethical duty to provide the privacy of the data made available by any agent who has entrusted them in the course of research.

This author does not yet disaggregate the emotion of ethical data and states that ethics in any research discovery has no meaning only of data security conservation. It is essential that researchers keep sensitive data, obtain informed permission and avoid any damage or conflicts of interest with research members (BRINEY, 2015). This subject-researcher correlation will lack mutual trust.

The correlation between the researcher who will treat these data should also follow the same precepts to the point that intolerances or social prejudices do not survive the agents involved in the feat. Thus, when dealing with data secrecy Still for Briney, axiomatic data, as well as corporate data, should not be advertised as legally or personal escorted data, but even in this way it is sensitive data. Still under this idea, the National Science Board (NSB) reports other copies of data with limited or roundly restricted admission that may become Sensitive Data, such as: intelligence elements, national security, military actions, business and business secrecy, hiding of rare species, under fear or at risk; or even legal proceedings: such as lawsuits.

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The correlation between the researcher who will treat these data should also follow the same precepts to the point that intolerances or social prejudices do not survive the agents involved in the feat. Thus, when dealing with data secrecy, or even with sensitive data in perquisitions, there are three points of view that should be reflected in advance: 1. Point out whether the data in question is in fact Sensitive; 2. do not pick up sensitive data without in fact an inevitability; 3. improve security projects for these data with the help of professionals in the subject (BRINEY, 2015).

These views are highlighted due to the actions thrived through research and by researchers during the creation, progress and completion of all studies. These actions need to be committed before access and reuse of data by other scientists in their research, as well as need an advance form of the management of these personal contents by professionals of the media.

Nevertheless, despite the fact that the sensitive data are stored in numerous ways, adventures or environments, there is a great interest of the study of these data in a scientific context. Moreover, it is not by chance that Sensitive Data is sponsored by laws within national and international territories .

A large majority of laws tutor a form of protection and zeal of personal and sensitive data, the biggest setback is that each territory has a type of legislation and it is for this reason that there is no internationally speaking standard model to confront Sensitive Data (BRINEY, 2015).

The European Union is the main responsible for the strongest data protection laws in history, with existing since 1995, a fact reaffirmed and certified in the latest progressions of the General Data Protection Regulation (GDPR) manifested in 2018 by the Commission European.

In the United States, legislation or regulations are depleted by themes with distinct peculiarities, such as health, academic records and other topics. Finally, it must be believed that the obligation to beware of privacy and non-disclosure of individuals' personal data is the investigating scientist, as well as it is also your responsibility to provide the data if its participatory components, its thesis and all manners by the any type of data can be packaged, published and reused.

Because Sensitive Data has variations and is Integrated in multiple areas of knowledge and research, as well as gives its own modern society and its social contexts.

### 4.4 The privacy of sensitive data as a fundamental right and the prospect of a regulatory framework

In the present work, no effort was measured to supply, first, the deserved analysis of personal data and especially sensitive personal data, which have assumed an important corporate role worldwide. Moreover, there was an important leverage regarding the concepts of liquid modernity.

The conceptions used reveal how people organize themselves in the midst of technological influences, as well as the discernment about their identity, their social connections and the relevance of personal and sensitive data in the definition of social, political and economic methods. Porting, it is unsatisfactory to expose that the people to be patronized by the Institute of Brazilian law are entirely those subject to national jurisdiction preponderance , using this hypothesis for personal and sensitive data. FALK also points out that:

> In order for the right to the protection of personal data to fulfil the duty of guardianship provided for in art. 5th, inc. XXXV, must really know those who need it, that is, it has the burden of being attentive to social conformations and demands, in order to make its office effective (FALK, 2017, p. 163).

These days , people who need a commitment to the provision of legal guarantees in the face of the interposition of personal or sensitive data, are alluded to , suggested and qualified by the components described in this research, with support based on Zygmunt Bauman's principles and thoughts.

Among the most concerning aspect of contemporary society, or rather, "Society of liquid modernity " a brief synthesis would be:

> It can be affirmed that, among the social, cultural and political transformations associated with the transition from the "solid" stage to the "liquid" stage of modernity, the removal of the new elite (locally established, but globally oriented and only linked far to the place where it settled) from its former commitment to local population and the resulting spiritual/communicational gap between the spaces in which the spaces in which they lived and lived are the ones who were left behind are the most important (BAUMAN, 2007, p. 84).

The Brazilian legal system is interested in the knowledge and improvement of personal or sensitive data, this interest is revealed when even having a greater or lesser degree the data are included in the legal assets protected by the

respective category.

What is sought to demonstrate with this relationship is that the period in which this right was elaborated, despite having an indisputable protection due to normative texts around the world, it has not been properly protected, considering that, even with the creation of norms, there was no impediment made through broad technologies that can be made available by private or governmental institutions that hinder the leakage of citizens' personal and sensitive data.

Congruence is actually contrary, that is, personal and sensitive data should be sponsored and protected in a significant way, having for example a guarantee of secrecy, while the State should patent itself translucent, however, what actually occurs is the refitting of data and its use illegally precisely by public and private entities, while these are covered up by state power and being attacked by all these particularities is paramount for the legitimacy and protection of personal and sensitive data.

Inhibiting attacks on personal data means effectively neutralizing attempts to capture and misprocess such data; reintegrating the right to the protection of personal data is important in effectively sanctioning those who misappropriate personal data, so that they are discouraged from doing so again (FALK, 2017, p. 166).

Thus, there is no way to disintegrate the primary protection of the data from the question of the validity of the law. "Its effectiveness is linked to an effective penalty, since the absence of sanction has led to the constant assault on this right" (FALK, 2017, p.166).

Moreover, the exercise of capturing personal and sensitive data through the attractiveness of the consumer market and even in the particular way that people organize themselves in liquid modernity , where they voluntarily provide their data to incorporate into society, is not a fact persuaded only by homologate rules.

The indispensability of concrete tutoring of personal and sensitive data goes far beyond a simple standard explicitly contextualized in principles and constitutional guarantees, which is often not properly implemented, because in addition to applying the coercive domain of the State, it is also necessary to involve satisfactory means of defense, with the purpose of benefiting people to safeguard themselves. Faced with the concepts of Stefano Rodotá:

> It is not enough to distinguish the hard core of privacy, and to ensure the most intense protection possible, and a set of information relevant to the collectivity, in respect of which advertising and circulation: consistent with the change of the very definition of privacy, recalled at the beginning, attention must shift from secrecy to control (RODOTÁ, 2008, p. 36).

Data administration is a fundamental issue, because, finally, jurisdiction collides with the one that fully holds the information; passing on the management of your personal and sensitive data creates for people the prospect of contradicting the jurisdiction created punctually by the command of social executors. They also expose Stefano Rodotá:

> Data protection is an expression of personal freedom and dignity, and as such, it should not be tolerated that a data is used in such a way as to transform an individual into an object under constant surveillance (RODOTÁ, 2008, p. 19).

The inconvenient seizure of personal and sensitive data by corporations, individuals, or even Brazilian government agencies, may have a significant part of its actions dispatched by the applicability of a specific law for the safeguarding of data, this is because the normative context when applied by the judiciary will come across structures accessible to the State, having this total ability to apply coercive ways to constitute that rights and tasks are preserved and executed.

Truly punishing undue data movements is an important phase , but the particularities of liquid modernity will never cease to endure, it is because of this that consciously hold social individuals accountable about the relevance and magnitude of their Personal and sensitive data is a stimulus to state power for the adoption of new technologies to defend and protect the privacy of individuals.

# 5. Conclusion

The exercise attributed to the law, of being shaped as prior and admitted provenance of a coercive regulation, basing and qualifying subjects and goods of law, is bound by a great difficulty. This difficulty happens because some assertions beg to stimulate the ideas and ordinary descriptions of the legal fact , of which they are excising for refusing to adapt their aspects to those apprehended and operable by the exemplary principles of normativity.

The content belonging to personal and sensitive data seems to be another of these themes that act on the threshold of the attributions and assimilations of law. With the advanced conceptions during the research work, it was determined that, in view of the existing norms on the theme of the storage of personal and sensitive data, it is observed that the legal nature of personal and sensitive data as well as the registration of right holders as a form of registration in the database, has an important role in the social environment, having a crucial value within the means of information.

Therefore, the security of this information is fundamental for protection, and should be reachable only to people who deserve access to it, thus avoiding any kind of threat to the security of the individual. It is important to show the situation that a right holder may find himself when important information is leaked to his privacy.

In the arrangements, the introduction of the right to privacy has made it advantageous when aimed at social media, governments of several countries regulated data analysis as a kind of reaction to personal information procedures, that is why people's control over their information has become a

feature of several national laws on the subject. Furthermore, the role that the social agents themselves assume in the preparation and permission of data to the numerous functional managers in the technological media, without at least realizing the greatness who have these information data, as well as the governmental possibility of copying this data.

The elementary perceptions that circumvent the composition of people and their social relationships, transceiver by support of personality and power, was also profusely analyzed in the present work. The clarity of afflictions, personal sequelae and the great existence of technological progress address well the Bauman's foundations in dedicating himself to the study of a sui generis century which he calls "liquid modernity", applying to it a great value of the elaboration of personal and sensitive data.

The demarcation of thoughts, in turn, authorizes a rational and objective investigation of congruent devices to search the object adopted for the research. It is concluded from them that the granting of rights to the protection of personal and sensitive data represents much more than an outcome of privacy, but a true point of view of an event similar to those alleged in contextualized legal norms.

By apart from the concepts of personal and sensitive data, this issue is attributed to the possibility of applying characteristic rights and duties, which affect exclusively this medium.

In view of this, it is concluded that the highest authority focuses on the State so that it commits itself to fulfilling its constitutional obligation of guardian and protector of individual rights, i.e., individual rights, for this is how it suggested when it constituted the Mother Charter.

As much as Brazil has specific legislation for the legal processing of personal and sensitive data, such tools do not demonstrate competence for efficient tutoring of this data, since they do not permeate control devices of what is captured and captured in computer media in Brazil.

Taking seriously the indispensability of the protection of personal and sensitive data should be a necessary studied with more impetus by researchers and jurists in Brazil, because such behavior does not truly conceive an alternative, since it is not a state option to implement of the constitutional roles of conservation of private life and similarity among individuals, but a sure and true obligation, since they are all subject to the perception of the dignity of the human person, and should be processed quickly, responsibly and committed and, however far ahead, a new Bauman to implement a social innovation, the law will still remain delayed, which will result in the detriment of its primary functions: to protect, and legitimize.

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