

DATA PRIVACY LAWS IN INDIA - SNAPSHOT

Data Privacy – Present and the Upcoming Law

- '*Right to Privacy*' is a fundamental right under Article 21 of the Constitution of India, as held in the case of Justice K S Puttaswamy (Retd) v Union of India and Others (Privacy Case), where the concept of 'Informational Privacy' was also enshrined.
- Certain provisions of the Information Technology Act, 2000 (**IT Act**) and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (**SPDI Rules**) were formulated under Section 43A of the IT Act.
- Sector specific regulations, e.g. in relation to payment systems, banking, telecom, insurance, etc., and certain provisions of general laws such as the Indian Penal Code, 1860 also exist.
- A new framework on data protection which is largely modelled around General Data Protection Regulation is expected to be enacted soon.

Data Privacy – Key Provisions

- **Section 43A of the IT Act**: Failure to implement and maintain reasonable security practices and procedures in relation to sensitive personal data or information (**SPDI**)[1] attracts civil liability.
- **Section 72A of the IT Act**: Disclosure of 'personal information' acquired in the course of providing services, in breach of lawful contract or without the information provider's consent, with an intent to cause wrongful loss or gain, attracts criminal liability.

Compliances under the IT Act and SPDI Rules

Consent	Entity collecting SPDI should obtain consent (via letter/ fax/ other electronic means) from the provider of SPDI.
Privacy Policy	Body corporates or persons on its behalf collecting, storing or otherwise dealing in SPDI should have a robust privacy policy, which should be displayed on its website.
Purpose	SPDI should be collected only for a lawful purpose and the extent of SPDI sought should be proportionate to the purpose.

[1] In terms of the SPDI Rules passwords, financial information, physical, health condition, biometric information, etc. are classified as SPDI.

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Retention	SPDI should not be retained for longer period than required for the purpose.
Right to Rectification and to Opt-out	Information provider has a right to edit and rectify SPDI and withdraw consent at any time, in which case the collector may discontinue provision of services.
Reasonable Security Practices and Procedures	A body corporate or a person on its behalf dealing with SPDI should implement and maintain '*reasonable security practices*' to protect SPDI. SPDI Rules prescribe International Standard IS/ISO/IEC 270001 on 'Information Technology - Security Techniques - Information Security Management System – Requirements' as one such standard.
Transfer of SPDI	Transfer of SPDI within/ outside India is permitted with the consent of the information provider, and if the transferee adheres to the same level of protection for SPDI as the transferor.
Grievance Officer	Every body corporate needs to designate a 'Grievance Officer', whose name and contact details should be displayed on the website. The Grievance Officer should expeditiously redress the grievances of providers of SPDI and not later than one month from the date of receipt of the grievance.

Exemptions

- Outsourcing companies in India under a contractual obligation with a legal entity within India or outside India are exempt from complying with requirements relating to collection and disclosure of Information under the SPDI Rules.
- SPDI sought by Government agencies mandated under the law for the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution, and punishment of offences. Even outsourcing companies are covered under this.

This document provides some basic information pertaining to the issues and should not be construed as a legal opinion or legal advice. It may neither be relied upon by any person for any purpose, nor is it to be quoted or referred to in any public document or shown to, or filed with any government authority, agency or other official body.

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