

Snapshot of the Legal Framework relating to Data Protection in India

Introduction

At present, there is no comprehensive legislation in India that deals exclusively with data protection. There are certain sector specific requirements dealing with cross border transfer of data but are not uniform, e.g. telecom sector has a different requirement compared to health care sector. Further, the Reserve Bank of India has directed all payment system operators to ensure that data related to payment systems operated by them are stored only within India.

Background

The Information Technology Act, 2000 ("**IT Act**") is the only legislation that lays down rules for data protection in general. The IT Act was amended in 2008 to include a section requiring companies to comply with security procedures when dealing with personal data. A set of rules were framed under the IT Act in 2011 ("**SPDI Rules**") to prescribe these requirements in relation to '*sensitive personal data and information*' ("**SPDI**") e.g. passwords, financial information, medical information, biometrics, etc.

Current framework

- The SPDI Rules, amongst other things, prescribe that a company that processes SPDI must comply with the following requirements:

  (a) It must maintain a detailed privacy policy

  (b) It must obtain consent in writing before processing SPDI

  (c) It must comply with certain international security standards

- Specific conditions have also been prescribed under the SPDI Rules for disclosure of SPDI to third parties and cross-border transfer of SPDI. For instance, in the case of cross-border transfer of SPDI, it is important to ensure that same level of data protection is adhered to by the transferee.

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Declaration of '*right to privacy*' as a fundamental right by Supreme Court of India

A constitutional bench of the Supreme Court decided on 24 August 2017 that '*right to privacy*' is a fundamental right under the Constitution of India.

Upcoming data protection framework

A new, comprehensive data protection legislation ("**New DP Law**"), modelled on the lines of the European Union's General Data Protection Regulation ("**GDPR**"), is in the pipeline and is expected to be enacted soon. Currently, it is pending consideration before a Joint Parliamentary Committee. Further, a separate committee has been formed to look into aspects of non-personal data.

Key changes under the New DP Law

The New DP Law is slated to significantly transform the current data protection framework. *Among others*, the New DP Law is expected to have broader application, postulate several core data protection principles, enlarge grounds for processing without consent, empower providers of personal data with several rights, require certain types of personal data to be stored exclusively in India, prescribe enhanced security principles (like privacy by design, etc.), prescribe more stringent conditions for cross border transfer, contemplate constitution of a regulatory authority and prescribe an unprecedented penalty scheme (including criminal action in some cases). Therefore, it will be important to keep track of these developments in the near future.

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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