

In 2017 the Indian government had appointed a Committee of Experts led by former Supreme Court Justice Shri B. N. Srikrishna to draft a new data privacy law for India. The committee has released a draft Personal Data Protection Bill, 2018 (“Draft Bill”) on July 27, 2018. The Draft Bill and the committee’s accompanying report are available here:

<http://meity.gov.in/data-protection-framework>.

WHAT WILL CHANGE?

- » The biggest change is the establishment of an Indian data protection regulator. Until now, no Indian government authority was given charge to enforce privacy laws.
- » Protected data will include not just personal data, but biometric data, genetic data, health data and financial data. Collecting/processing different kinds of data will likely be made subject to different standards (that will be formulated in the future).
- » The Draft Bill imports a number of provisions from the European Union’s General Data Protection Regulations (“GDPR”), including the right to be forgotten, the right to data portability (similar to mobile number portability), and data audits and data protection impact assessments.
- » Like the GDPR, data can only be collected and processed subject to prescribed ‘Purpose Limitation’ and under a ‘Privacy by Design’ setup. This may make it harder for businesses to share user data.
- » Similar to GDPR, privacy violations may invite fines of up to 4% of a company’s worldwide turnover.
- » Transferring data outside India will likely become harder, with the transfer of some types of data being completely prohibited.



HOW THIS MAY AFFECT YOU?

- » This law will apply to any personal data of individuals that you collect in India. Even if you don’t have an on-soil presence in India, having a business connection with India or carrying on activities in India will make you subject to this law.
- » You may need to register with the Indian data regulator if you carry on certain categories of data processing activities.
- » Your day-to-day compliances may increase, with additional requirements to appoint a data protection officer, undertake data audits and carry out impact assessments.
- » Non-compliances may result not only in substantial fines, but imprisonment too.
- » If you deal with a particular kind of data (health data or data of children, for example) you may be subject to increased scrutiny and compliances.
- » You may have to store data only within India.

WHAT HAPPENS NEXT?

The Draft Bill will require approval from the cabinet and India’s bicameral parliament before it is implemented. Once approved, a phased implementation over 12 months is proposed. We currently do not know when the Draft Bill will come into force. We will, of course, keep you updated of any developments.

Should you wish, we would be happy to provide you a detailed and bespoke analysis of the Draft Bill and how it may impact your business.

