

Autor:	Talha Salaria	Quelle:	
Dokumenttyp:	Sonstiges	VerlagDr. Otto Schmidt, Köln	Fundstelle: CRI2013, 61

India: Data Privacy Legislation

Talha Salaria, Bangalore. Further information about the authors tp.63.

As international companies increase their outsourcing laws in India are coming under increased international scrutiny. On his recent visit to India, British Prime Minister David Cameron urged Indian Prime Minister Manmohan Singh to ensure better protection for U.K. data held on Indian computer servers.¹ The European Union still considers India data protection laws as inadequate and this has become a sore point in the negotiations between India and the European Union to enter into the proposed Bilateral Investment Protection Agreement, which India hopes to conclude by April 2013.²

1.ExistingDataProtectionFramework

The existing data protection framework in India is covered primarily under Section 43A of the Information Technology Act, 2008.³ According to Section 43A, a company is required to compensate any loss or damage caused by negligence in implementing and maintaining reasonable security practices and procedures for any sensitive information held by such companies.⁴ The framework providing for compensation is also covered under the ITA and the Indian Telegraph Act, 1885 together with the respective rules.⁵

2.Clarifications

In 2011, India augmented its data protection laws by notifying the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (2011 IT Rules) which defined what constituted "sensitive personal data" to information "and enlisted the provisions governing the collection, disclosure and overseas transfer of data of Information Technology (DIT) restricted the application of the rules to companies located in India.⁶ A subsequent clarification issued by the Department⁷

While these measures did provide some improvement, they were still found to be inadequate and unclear by both the industry as well as the lawmakers themselves. Additionally, in terms of sand Information Technology and the Department of Personnel, there were reported to have different views.

3.DraftPrivacyBill2011

In parallel to the 2011 ITRules being issued under RighttoPrivacyBill, 2011 which was discussed by DoPT be asked to draft the RighttoPrivacyBill. T headed by Justice AP Shah, which submitted its report recommendations of the report were that the new legislation with international standards, (ii) apply to both privacy protection, and (iv) establish an enforcement regime within industry and monitored by a regulatory framework which would include Privacy Commissioners appointed at central and regional levels.⁹

he ITA, the Union Ministry of Law had prepared a draft committee of secretaries (CoS) who suggested that the DoPT constituted a Group of Experts on Privacy to the DoPT in October 2012. Some of the key recommendations (i) be technologically neutral and interoperable across private and public sectors, (iii) create a uniform level of privacy where the privacy principles can be developed by the Group of Experts on Privacy.

4. Need for Stand-Alone Privacy Legislation

In January 2013, the Law Minister wrote to the Prime Minister underlining the urgent need to bring in stand-alone privacy legislation based on the report of the

Minister underlining the urgent need to bring in stand-alone privacy legislation based on the report of the Group of Experts on Privacy.¹⁰

With conflicting views by different arms of the government on improved data protection laws to meet its international obligations, the government will be able to establish and implement

ment and the clock ticking down on India's need to fulfil its commitments, it remains to be seen how fast the satisfactory data protection framework in India.

Fußnoten

- 1) Vina, Gonzalo, "Camerons Press for Better Data Protection in India", Bloomberg, February 19, 2013.
- 2) "India asks EU to declare it a data secure country" Press Trust of India, October 17, 2012 ; Sen, Amiti, "India protests European Union study of data laws", The Economic Times, July 9, 2012.
- 3) Chowdhury, CRi 2009, 62.
- 4) Section 43A: Where a body corporate, possessing, dealing or information in a computer resource which it owns, controls and maintains reasonable security practices and procedure wrongfully gains into any person, such body corporate shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person for the purposes of this section (i) "body corporate" means any company or proprietorship or other association of individuals engaged in commercial or professional activities ; (ii) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit, (iii) "sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.
- 5) See (i) Sections 69 and 69B of the Information Technology Act, 2000, (ii) Procedure and Safeguards for Monitoring and Collecting Traffic Data or Information Rules 2009, (iii) Procedure and Safeguard for Rules 2009, and (i) Indian Telegraph Act, 1885.
- 6) Chowdhury/Ray, CRi 2011, 165.

- 7) *Clarifications dated August 24, 2011 and May 11, 2011 issued by the Department of Telecommunications.*
- 8) *Chhibber, Maneesh, "Law Minister seeks stand-alone privacy legislation, writes to PM", Indian Express, January 20, 2013.*
- 9) *Report dated October 16, 2012 of the Group of Experts on Privacy under the chairmanship of Justice AP Shah, Former Chief Justice, Delhi High Court.*
- 10) *Supra n. 9.*

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