

# INDO-GERMAN ECONOMY

THE BUSINESS MAGAZINE OF THE INDO-GERMAN CHAMBER OF COMMERCE

Empowering Partnerships



1956 - 2021



VOLUME 65 ISSUE 1, 2021

1|'21

## JK Pioneer The brand to rely upon



Pulleys



Tyre Couplings



Automotive & Industrial Belts



Hoses



Corporate Office :

Khivraj Complex II, V Floor, 480, Anna Salai, Nandanam, Chennai-600 035.  
Tamilnadu, India. Mob: +91-9341353053, Tel : +91-44-4399 4666,  
Fax : 044-24320193. Email : poornachandra.tejaswi@jkfenner.com, www.jkfenner.com



## 2021: A Year India Sculpts Privacy Regulation To Enable Technological Supremacy

Article from our Member Company



### A Data-Driven Economy

India is the largest consumer of mobile data globally, with more than 700 million internet users. With the expectation to reach 974 million users by 2025<sup>1</sup>, India has truly awakened to acknowledge the importance of data, its benefits and need for security.

India continues to be one of the global technology heavyweights. Its e-commerce sector alone is expected to reach almost USD 100 billion by 2024 and become the second largest e-commerce market in the world by 2034, surpassing the United States.<sup>2</sup> It is now a leading hub for investment and innovation in sectors on content streaming, online gaming, food-tech, ed-tech, med-tech, fin-tech, artificial intelligence and robotics. The economy is bolstered by the free flow of data across borders, and with the right framework, the value of digital trade can grow more than 14-fold to reach USD 512 billion by 2030.<sup>3</sup>

### Privacy an Individual's Fundamental Right

In a momentous shift in India's privacy jurisprudence, the Supreme Court of India in 2017 declared that the "right to privacy is a fundamental right" of an individual and "an intrinsic part of the right to life and personal liberty" under the Constitution of India. The purpose would be to provide statutory protection to personal data and protect individuals' rights.

### Focus on Personal Data Protection

In 2017, the Ministry of Electronics and Information Technology established a committee to identify issues relating to data

privacy in India and assist in preparing the new data protection law. After releasing a white paper soliciting public comments, the committee issued a detailed report in July 2018 and recommended a draft *Personal Data Protection Bill, 2018* for Government's consideration and public consultation. In December 2019, the *Personal Data Protection Bill, 2019* (PDP Bill) was introduced in the lower house of Parliament, which had significant revisions to the draft bill from 2018.

The PDP Bill is an omnibus, cross-sector privacy law, with similarities to the E.U. General Data Protection Regulation (GDPR). Some of the highlights of the PDP Bill are enlisted below:

1. Aims to replace the existing data protection framework with minimal compliances;
2. Has extra-territorial jurisdiction and applies to entities outside India that have a business connection or conduct profiling of individuals in India;
3. Delegates a host of implementational and granular aspects to the Government and Data Protection Authority;
4. Classifies regulated entities as 'data fiduciaries', 'data processors' or 'significant data fiduciaries';
5. Provides for a localisation requirement of storing a copy of 'sensitive personal data' in India'.

The PDP Bill was referred to a joint parliamentary committee for further deliberation and recommendations. A report and a revised draft of the PDP Bill is expected from the joint parliamentary committee.

### One Eye on Non-Personal Data

Currently, the activity of collection and processing of non-personal data (NPD) is not regulated under the existing data protection legal framework. The Indian Government constituted a committee (NPD Committee) to (a) study various issues relating to NPD,

and (b) make specific suggestions to the Government on the regulation of NPD. Firstly, it seeks to establish a community's rights and protect privacy rights of an individual that may be threatened if any NPD is at risk of re-identification and subsequent abuse. Secondly, it seeks to enable a data-sharing system to unlock NPD's economic value for the country's benefit.

Overall, the proposed framework is envisaged to maximise the potential of NPD usage by creating social, public or economic value for the benefit of the community and country in general, apart from the data collecting entities. This would also create opportunities for innovation in new technologies, products and services.

### A Defining Year Ahead

Overall, it appears that the regulation of activities relating to personal data would be under the PDP Bill, and of NPD would be under a separate framework proposed by the NPD Committee. The interplay between the two regimes would be clearer once an updated version of the PDP Bill is tabled before Parliament and the NPD framework is finalised.

There have been recent privacy concerns in India stemming from data breaches in the fin-tech sector, Government's collection and handling of individuals' sensitive data via its Covid-19 contact tracing *Aarogya Setu* app, and evolving privacy practices of multinational IT companies offering social media, OTT messaging and cloud-based services to users in India. It is very likely that we see a new GDPR-inspired comprehensive data personal protection law come into fruition this year.

### Author Details:

Mr. Aaron Kamath

-Senior member of Technology, Media and Telecom Practice (Nishith Desai Associates)

Email: [aaron.kamath@nishithdesai.com](mailto:aaron.kamath@nishithdesai.com)

<sup>1</sup> *SpaceX Eyes Indian Telecom Market With Satellite Internet*, available at <https://analyticsindiamag.com/spacex-eyes-indian-telecom-market-with-satellite-internet/>.

<sup>2</sup> *Indian E-Commerce Industry Report* (November 2020), available at <https://www.ibef.org/industry/e-commerce-presentation>.

<sup>3</sup> *The Data Opportunity: The Promise of Digital Trade for India*, available at <https://alphabeta.com/our-research/the-data-opportunity-the-promise-of-digital-trade-for-india/>.