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Legal & Regulatory Trends

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A key part of digital transformation is keeping up with all the changes in the Indian digital and technology regulatory frameworks and ensuring compliance with evolving laws.

With our newsletter, keep abreast of the latest developments pertaining to start-ups, platform regulation, employment trends, data protection and others. In the 'expert speak' section, find out what it takes to create a holistic and effective digital strategy.

START-UPS DEMAND MARKET REGULATION DUE TO BIG TECH

Alliance of Digital India Foundation (**ADIF**) – a start-up industry alliance for digital businesses in India has reached out to the government [seeking](#) separate market regulation for tech start-ups. ADIF seeks ex-ante competition regulation to safeguard the tech start-up industry against big-tech competition. India's current markets regulator only acts after violation/ harm has occurred. ADIF has advocated for a pre-dispute/harm regulatory framework, which will allow smaller tech players to enter the market and level the playing field.

Primary reasons for seeking a new competition law are disruption of a level playing field including:

- Conflict of interest between platform owners and platform service providers;
- Self-preferencing by big tech players;
- Bundling of services; and
- Deep-discounting practices on e-commerce platforms.

NEW E-COMMERCE POLICY PROPOSED: FOREIGN DIRECT INVESTMENT (FDI) IN INVENTORY MODEL TO BE BANNED

It has been reported that the government is looking to [revise](#) the e-commerce policy. At [present](#), FDI is not permitted in inventory-based models of e-commerce. This means that for those businesses that wish to sell their own inventory, no foreign investment is permitted. Domestic industry players have repeatedly raised concerns over violation of this rule by big tech platforms. In furtherance of this, some

of the proposed changes in the e-commerce policy include:

- *Curbing paid online reviews by consumers* – this will be ensured by implementation of the new [guidelines for online consumer reviews](#) released by the bureau of Indian standards.
- *Ban on sale by related parties on digital platforms* – this will lead to a ban on the inventory-based model of e-commerce. This is aimed at removing the problem of self-preferencing and deep discounting.
- *Introduction of a fallback liability* – owing to this addition, the platforms will be liable in case of default by the sellers.

INTERMEDIARIES ARE NOT REQUIRED TO TAKE ACTION, BASED SOLELY ON USER COMPLAINTS – HOLDS DELHI HIGH COURT

In *Samridhi Enterprises Vs. Flipkart Internet Private Limited & Ors.*, the plaintiff [alleged](#) that Flipkart had failed to remove infringing content from their platform and was thus, liable. The Delhi High Court held that as per the 2021 Intermediary Rules, intermediary platforms like Flipkart are only required to inform the users not to display or host infringing content.

It further held that, there is no statutory requirement on the intermediary to take any action. The case remains sub-judice.

IRDAI RELEASES GUIDELINES ON CYBERSECURITY

The IRDAI recently [released](#) cybersecurity guidelines that delineate cyber security and incident reporting obligations applicable to all insurers, Foreign Re-Insurance Branches (FRBs) and Insurance Intermediaries regulated by the

IRDAI. The new cybersecurity guidelines are in line with the CERT-In's cybersecurity guidelines, 2022. Some of the key compliances with the guidelines include:

- Appointment of a chief information security officer, a Chief Risk Officer who will be responsible for the overall risk management functions of the organization which shall include information security risk management in its purview.
- Establish guidelines for the usage of data, IT assets, and intellectual property.
- Establish policies for security domain policies for data classification, asset management, access control, human resource security, information systems acquisition and development, etc.

THE DIGITAL INDIA BILL MAY SOON BE RELEASED FOR PUBLIC CONSULTATION

The Ministry of Electronics and Information Technology (“MeitY”) is all set to bring in a new act to replace the decades old Information Technology Act, 2000 (“IT Act”), which currently regulates the technology ecosystem in India.

MeitY has conducted two closed-door [consultations](#) with legal and industry experts to ensure that the draft bill released for public consultation is based on sound inputs. It is [reported](#) that the bill will soon be released for public consultations. Some of the key points raised in the consultations relate to: fair trade practices for platforms, user choice, and online diversity, and ease of compliance for start-ups among others.

The government raised a critical point relating to the [removal](#) of the safe harbour exception for intermediaries and making such protection conditional and not a statutory right.

IMPLEMENTATION OF NEW LABOUR LAWS UNLIKELY BEFORE ELECTION 2024

It seems that the four labour codes released by the government between 2019 and 2020 [will not](#) come into force before the 2024 general elections. The new codes [consolidate](#) nearly 30 central labour laws and bring in critical labour reforms including:

- Making it easier for small and medium-sized companies to lay off employees without government approval.
- Removing the existing broad ban on employing people on fixed-term contracts.
- Enforcing reforms on union strikes, discarding rules that bar women from working night shifts, among others.

People aware of the status of the codes have stated that there are three reasons for the delay: (i) some states have opposed the implementation; (ii) labour ministry and labour unions have reached a stalemate; (iii) stakeholder consultations have not concluded.

DIGITAL DATA PROTECTION BILL TABLED IN THE MONSOON SESSION OF THE PARLIAMENT

The Digital Data Protection Bill, 2022, a draft of which was released last year has now been [cleared](#) by the Union Cabinet. The data bill will now be placed in the monsoon session of the Parliament for approval and passing by both the houses. The data bill is a critical part of the government's new omnibus technology laws. Once passed, the bill will have far reaching implications for all businesses engaged in the use of digital personal data – whether in India or outside it. Some of the obligations will include – maintaining the accuracy of data, minimising collection, and defining purpose of the data collection. Further, the data fiduciaries must ensure the security of data to prevent data breaches. The penalty for failing to do so will be as high as INR 250 crore. The bill is also likely to restrict cross-border transfer of data subject to a negative list.

Expert Speak

How to build an effective digital strategy?

Nearly 70% of the Indian enterprises identify as 'digital businesses', with most of them focused on digitization of their operations. It is [predicted](#) that towards the end of 2023, investments in digital transformation are likely to exceed \$1.6 trillion, which will double in 2024. Accompanying these large investments, are rapid changes in the legal and regulatory regimes governing technology, digital platforms, and e-commerce. The upcoming governance frameworks will not only set the guardrails for innovation but will also define the limits of financial success for tech-centric projects. Therefore, effectively navigating such frameworks should be an organisational priority.

While the new laws claim to be driven by the ethos of 'ease of doing business', they are likely to require many structural changes in organisations and transform compliances.

In this section, we capture two key elements that must feature in any effective digital strategy from a legal standpoint:

I. Preparedness for legal & regulatory shifts

The technology industry in India is currently governed by the IT Act and its many rules. However, last year MeitY announced that it is looking to enact an omnibus regulation to govern various aspects of technology, platforms, user harms, and data in India.

In March this year, the Minister of State for IT, Rajeev Chandrasekhar [unveiled](#) the proposed structure of the Digital India Act (**DIA**), which is set to replace the current IT Act. Further, three new frameworks, which will form part of the omnibus regulation are under public consultation or have been proposed. These include:

- (i) [The Draft Indian Telecommunications Bill, 2022](#) (**Telecom Bill**);
- (ii) [The Digital Personal Data Protection Bill, 2022](#) (**Data Protection Bill**); and
- (iii) [National Data Governance Framework Policy](#) (**Data Policy**)

Since the proposed laws seek to replace decades old statutes, it is essential for businesses to be prepared for changes in the scope of regulation and compliances. Unlike company and secretarial laws, the IT frameworks mandate structural, organisational, and cultural compliances.

Compliances that DIA and Data Protection Bill are likely to bring into force:

- Ensuring fair trade practices in digital platforms.
- Mechanisms to ensure rights of digital users such as right to their data, age gating for safety of minors, rules for monetisation of user generated content etc.
- Due diligence by platforms that qualify as intermediaries such as publishing terms and conditions, privacy policy, rules, and regulations of use.

- Ensure that the website rules and regulations prohibit the publication of certain types of content on the platform.
- Establish measures to ensure safety of online users and address grievances.
- Appoint a chief compliance officer for ensuring compliance with the DIA, appoint a grievance officer to address grievances.
- Publish a monthly compliance report in relation to the compliances under the DIA.
- Ensure minimisation of data collection, limited data usage, auditable technical and organisational measures, purpose limitation, mechanisms to protect minors' data.

II. **Grievance redressal and consumer engagement**

The legal compliances surrounding grievance redressal are critical in any digital governance strategy. A recent [report](#) informs that consumer complaints in relation to e-commerce platforms have gone up by 300% in the last few years. The primary trouble areas for online platforms are timely acknowledgment of consumer complaints and effective resolution of grievances.

Currently, the consumer engagements are governed by the Consumer Protection (E-commerce) Rules, 2020 notified under the Consumer Protection Act, 2019 and the Legal Metrology (Packaged Commodities) Rules 2011 under the Legal Metrology Act, 2009. These require e-commerce platforms to:

- Establish a consumer grievance redressal mechanism.
- Appoint a dedicated grievance redressal officer and display their name and other contact details on the platform.
- The complaints must be acknowledged within 48 hours and must be resolved in under 30 days.
- Display the specifics of the manufacturer and the product details.

As a part of the proposed e-commerce policy, the Confederation of All India Traders (CAIT) has [sought](#) redressal of two key issues faced by the e-commerce industry, being - deep discounting and preferential treatment of sellers.

Digital advertising has also been one of the key areas of focus by the Department of Consumer Affairs (**DoCA**) and the Advertising Standards Council of India (**ASCI**). Earlier this year, ASCI released a [report](#) on social media advertising violations, which indicates a high degree of complaints against influencers for wrongful marketing. As a key part of consumer engagement, ensuring that contracts require compliance with influencer marketing guidelines is an essential.

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