

India's evolving Fintech laws

State-level fintech policies

LAW/ POLICY / REPORT

Fintech policy issued by only one Indian state so far, the Government of Maharashtra in 2018.

FACTS

Aims to set up a global fintech hub in Mumbai.

GH VIEW

No central legislation on fintech in India.

The Maharashtra policy is progressive, providing regulatory sandboxes and focusing on fintech start-ups.

Cryptocurrency and blockchain technology

LAW/ POLICY / REPORT

Circular on 'Prohibition on dealing in Virtual Currencies' dated April 6, 2018 issued by the Reserve Bank of India (RBI).



FACTS

Prohibits entities regulated by the RBI from dealing in virtual currencies or providing services for facilitating any person or entity in dealing with or settling virtual currencies.

GH VIEW

This circular has been challenged in the Supreme Court of India (1) by several corporations. It allowed the prohibition to continue, but instructed the central government to frame regulations on cryptocurrency by end-March 2019.

The private sector, across industries, is already using blockchain in its businesses, for example, in supply chain finance or in domestic/ international trade finance, all using customised blockchain platforms.

LAW/ POLICY / REPORT

High-level committee (chaired by Subhash Chandra Garg, Department of Economic Affairs, Ministry of Finance, Government of India), set up in 2017 and reformulated in 2018.

FACTS

To devise an appropriate legal framework to ban use of private cryptocurrencies in India and encourage the use of Distributed Ledger Technology with blockchain which eliminates the need for intermediaries.

GH VIEW

The Supreme Court order (as above) is expected to expedite the committee's regulations on cryptocurrency.

Artificial Intelligence (AI) and Robotics

LAW/ POLICY / REPORT

Discussion paper on 'National Strategy for AI' by NITI Aayog in June 20-18.

FACTS

The paper highlights the five sectors that will best use AI for solving societal needs:

- healthcare
- agriculture
- education
- smart cities and infrastructure
- smart mobility and transportation.

GH VIEW

This is only a discussion paper and therefore imposes no obligations on stakeholders.

The focus is: the key challenges in AI and recommendations. Therefore, so far, four committees have been established to assess the following:

- platforms and data for AI;
- leveraging AI for identifying National Missions in key sectors;
- mapping technological capabilities, key policy enablers, skilling, re-skilling and R&D;
- cyber security, safety, legal and ethical issues.

A public-private collaboration, comprising NITI Aayog, Intel and Tata Institute of Fundamental Research, will set up a Model International Centre for Transformative Artificial Intelligence to develop and deploy AI-led, application-based research projects.

LAW/ POLICY / REPORT

Multi-stakeholder task force, set up in February 2018, with representation from the government, defence services, academia, industry professionals and start-ups, under the chairmanship of N Chandrasekharan, Chairman, Tata Sons.

FACTS

Task force formed to study the strategic implications of AI in national security and in the global context.

Final report published in June 2018.

GH VIEW

The report studied the level of AI development in India in general and specifically in the context of defence needs. It recommended leveraging the AI expertise of the private sector for defence.

LAW/ POLICY / REPORT

Report on 'India's Trillion Digital Opportunity' by Ministry of Electronics and Information Technology on 20 February 2019.

FACTS

To unlock the potential and productivity of the digital economy in India.

GH VIEW

Mentions the establishment of a centre of excellence for blockchain (among other such centres of excellence).

Payment Systems

LAW/ POLICY / REPORT

Payment and Settlement Systems Act, 2007
a. Payment and Settlement Systems Bill, 2018.

FACTS

The act provides for authorisation, regulation and supervision of payments systems by the RBI.



Amendments have been proposed through the 2018 bill. Key proposals are:

- establishment of a Payments Regulatory Board;
- regulatory sandbox for a period of six months;
- puts banks and non-banks on a par with each other by making authorisation criteria to operate payment and settlement systems ownership-neutral

A dissent note (19 October 2018) was issued by the RBI, opposing the establishment of any entity for payment systems that will not be governed by RBI.

GH VIEW

The bill was formulated after an inter-ministerial committee was formed in 2017. It is currently pending.

The concept of regulatory sandboxes, uncommon in India, is now being explored. The Government of Maharashtra's 2018 state fintech policy has a built-in provision for a regulatory sandbox.

LAW/ POLICY / REPORT

Notification on 'Storage of Payment System Data', issued by the RBI, 6 April 2018.

FACTS

Issued under the Payment and Settlement Systems Act, 2007.

GH VIEW

This requires payment systems to store data only in India, which is more far-reaching than the requirement under the broader, overarching proposed legislation, the Personal Data Protection Bill, which requires users to store 'at least one copy' of domestic data in India. This notification can, therefore, lead to conflicting provisions and a multiplicity of governing bodies on the same subject, and possibly, a turf war.

Cross-cutting policies, regulation, across Fintech

Data protection regime

LAW/ POLICY / REPORT

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011

FACTS

Ministry of Electronics and Information Technology is in the process of replacing these rules with the Information Technology (Intermediary Guidelines) Rules, 2018.

GH VIEW

IT Act rules on data. The new proposed Data Protection Bill and the Information Technology (Intermediary Guidelines) Rules, 2018 must be synchronised to avoid contradictions.

LAW/ POLICY / REPORT

Personal Data Protection Bill, 2018 issued by Ministry of Electronics and Information Technology

FACTS

Objective of the Bill is inter-alia to protect the autonomy of individuals in relation with their personal data, to create a framework for the use and flow of personal data and to establish a Data Protection Authority.

GH VIEW

Current bill has inadequate provisioning for data ownership, with consequences on the use, access, flow of data.

This bill should be read with the Srikrishna Committee Report 2018.

LAW/ POLICY / REPORT

Draft National E-commerce Policy issued by Department of Promotion of Industry and Internal Trade

FACTS

Policy encapsulates all e-commerce activities; awaiting public comments till 29 March 2019.

GH VIEW

Includes provisions on data ownership and cross-border data flow. Should include elements of the Personal Data Protection Bill.

LAW/ POLICY / REPORT

Telecom Regulatory Authority of India recommendations

FACTS

Provides for data localisation.

GH VIEW

These are not in consonance with the Personal Data Protection Bill.

LAW/ POLICY / REPORT

Draft Digital Information Security in Healthcare Act (DISHA), issued by the Ministry of Health and Family Welfare

FACTS

Provides for data localisation.

GH VIEW

These are not in consonance with the Personal Data Protection Bill.

LAW/ POLICY / REPORT

Constitution of India Right to privacy is: fundamental right, September 2018

FACTS

Judgment passed by the Supreme Court of India in Justice K.S. Puttaswamy & Anr. v. Union of India & Ors (3) which upheld the right to privacy as a fundamental right.

GH VIEW

Case filed by several petitioners (led by Justice K.S. Puttaswamy Retd. and Mr. Praveesh Khanna) challenging the Aadhaar scheme as violative of the fundamental rights of the citizens of India, viz., right to privacy under Article 21 of the Constitution of India.

Peer-to-peer lending

LAW/ POLICY / REPORT

Non-banking Financial Company – Peer-to-Peer (P2P) Lending Platform (Reserve Bank) Directions, 2017 issued by the RBI.

FACTS

These directions provide a framework for the registration and operation of NBFC-P2Ps in India.

Cloud Computing

LAW/ POLICY / REPORT

Maharashtra Cloud Computing Policy, 2018, issued by the state government of Maharashtra.

FACTS

To ensure that all state government organisations use cloud services.

GH VIEW

India has no primary legislation on cloud computing. However, media reports indicate that a draft policy is under formulation by a panel, established by the Government of India. It will be headed by Kris Gopalakrishnan, Chairman of Axilor Ventures (2). In 2013, India's Ministry of Electronics and Information Technology initiated the GI Cloud (popularly known as 'MeghRaj'). The goal is to evolve a strategy and implement various components, including a governance mechanism to ensure the proliferation of cloud usage in government. Companies, such as Amazon Web Services and Microsoft, have been empanelled as cloud service providers since 2017.



The state policy can be superseded by a central government cloud policy which has been proposed and should be in consonance with the Personal Data Protection Bill.

LAW/POLICY/REPORT

Integrated Goods and Services Tax Act, 2017, issued by GST Council.

FACTS

The term 'cloud services' has been included in the definition under Section 2(17) of 'online information and database access or retrieval services' as an electronic service.

GH VIEW

As can be seen from this table, cloud finds mention in other existing policies/ laws.

LAW/ POLICY / REPORT

National Digital Communications Policy, 2018, issued by Department of Telecommunications..

FACTS

Envisions inter-alia the establishment of India as a global hub for cloud computing by enabling regulation for the proliferation of cloud-based systems and facilitating cloud service providers to establish captive fibre network.

Internet-of-Things (IoT)

LAW/POLICY/REPORT

Draft policy on Internet of Things, 2015, issued by Ministry of Electronics and Information Technology

FACTS

Envisions development of a cross-sectoral connected, secure, smart IoT-based system.

GH VIEW

Even though the draft policy was issued in 2015, it remains in draft form even today. The policy, when implemented, should be updated to include new technologies.

The opening up of the telecom sector to 100% foreign direct investment in 2013 is key to giving the requisite impetus to IoT in India.

LAW/POLICY/REPORT

National Digital Communications Policy, 2018, issued by Department of Telecommunications

FACTS

It envisages harnessing the power of emerging digital technologies, including IoT, to enable the provision of future-ready products and services.

GH VIEW

Yet more multiplicity of IoT policies; government must provide a nodal authority for IoT.

LAW/POLICY/REPORT

Report on 'India's Trillion Digital Opportunity' by Ministry of Electronics and Information Technology on 20 February 2019.

FACTS

To unlock the potential and productivity of the digital economy in India.

GH VIEW

Promotes investment and recommends standard setting for development of technologies in the IoT sector by a body of experts; proposes establishment of centres of excellence for IoT, fintech.

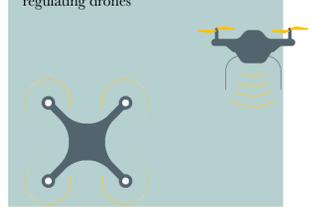
Drones

LAW/POLICY/REPORT

Requirements for Operation of Civil Remotely Piloted Aircraft System (also known as Drone Regulations 1.0), issued by Ministry of Civil Aviation (effective 1 December 2018).
a. Ministry of Civil Aviation released a Drone Ecosystem Policy Roadmap (also known as Drone Policy 2.0) in January 2019

FACTS

Lays down the basic framework for regulating drones



GH VIEW

Drone Policy 1.0 is a general framework while Drone Policy 2.0 focuses on commercial application/ use of drones. These need to be integrated.



INDIAN COUNCIL ON GLOBAL RELATIONS
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Cyber security

LAW/ POLICY / REPORT

Information Technology Act, 2000

FACTS

To provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication.

GH VIEW

This is the primary legislation dealing with cyber crimes.



LAW/ POLICY / REPORT

National Cyber Security Policy, 2013

FACTS

An umbrella framework for defining and guiding security of the cyberspace.

GH VIEW

Aims to protect public and private infrastructure from cyber attacks.

The Government of India is in the process of establishing a Computer Emergency Response Team in the Financial Sector (CERT-Fin).

LAW/ POLICY / REPORT

Cyber Security Framework in Banks, 2016, issued by Reserve Bank of India

FACTS

To enhance the resilience of the banking system against cyber risk by enhancing current defences.

LAW/ POLICY / REPORT

Basic Cyber Security Framework for Primary (Urban) Cooperative Banks, 2018, issued by RBI

FACTS

To put in place a robust cyber security/resilience framework in urban cooperative banks to ensure adequate security.

LAW/ POLICY / REPORT

Reserve Bank Information Technology Pvt. Ltd.

FACTS

An entity under the RBI solely to improve cyber resilience

National Policy on Electronics

LAW/ POLICY / REPORT

National Policy on Electronics, 2019, issued by Ministry of Electronics and Information Technology.

FACTS

To provide support to the start-up ecosystem and skill development for emerging technologies, such as AI, IoT, drones etc. across sectors like defence, agriculture, health, smart cities, automation.

GH VIEW

Overarching electronics policy. Approved by the Union Cabinet on 20 February 2019, it replaces the National Policy on Electronics 2012.

National Policy on Software Products

LAW/ POLICY / REPORT

National Policy on Software Products, 2019, issued by Ministry of Electronics and Information Technology

FACTS

To develop India as the global software product hub, driven by innovation, improved commercialisation, sustainable intellectual property, promoting technology start-ups and specialised skill sets, for development of