



THE DIGITAL PERSONAL DATA  
PROTECTION BILL, 2022

## THE DIGITAL PERSONAL DATA PROTECTION BILL, 2022

### BACKGROUND

On November 18, 2022, the Ministry of Electronics and Information Technology (**MeitY**) released a new draft of the proposed personal data protection legislation called the Digital Personal Data Protection Bill, 2022 (**Bill**).

This is the fourth version of the proposed data protection framework introduced by the Government of India and is much leaner in scope as compared to the previous iterations. The Bill introduced by the MeitY replaces the earlier Personal Data Protection Bill or the 'PDP Bill' which was introduced in 2019 and subsequently withdrawn in August 2022.

The Bill has been drafted in plain and simple language without any provisos. Based on the explanatory note to the Bill, the Government's endeavour is to introduce legislation for the citizens which is easy to understand and comprehend. This is also the first legislation in the history of India where 'Her' and 'She' have been used to refer to the individuals irrespective of their gender. The Bill is likely to be introduced in the monsoon session of the Parliament beginning in July.

The explanatory note to the Bill provides that it seeks to balance the rights and duties of the Indian citizen on one hand and the obligations to lawfully use personal data by data fiduciaries on the other. The Bill is based on similar underlying principles which are the basis of personal data protection laws in other jurisdictions including the GDPR. These include:

1. Lawfulness, Fairness and Transparency
2. Purpose Limitation
3. Data Minimisation
4. Accuracy
5. Storage Limitation
6. Integrity and Confidentiality
7. Accountability

Keeping the abovementioned principles in mind, the Bill has been drafted with the aim of creating a balance between the rights of individuals, public interest, and the ease of doing business in India, especially for the startup ecosystem. The key highlights of the Bill are set out in this update providing an overview of the proposed legislation.



## 1. SCOPE AND APPLICABILITY OF THE BILL

- a) The Bill applies to the processing of digital personal data collected from individuals online within the territory of India or such personal data which is collected offline but subsequently digitised.
- b) **Extraterritorial Application:** The Bill also applies to the processing of digital personal data outside the territory of India if such processing is in connection with any profiling of individuals in India or the activity of offering goods and services to individuals within the territory of India.
- c) **Exemption:** The Bill does not apply to non-automated processing of personal data, offline personal data, data processed by an Individual for personal/domestic use, or personal data about an individual that is contained in a record that has been in existence for at least 100 years.

## 2. KEY DEFINITIONS

- **Personal Data** means any data about an individual who is identifiable by or in relation to such data.
- **Data Principal** means the individual to whom the personal data relates and in case the individual is a child, it includes the parents or the lawful guardian of such a child.
- **Data Fiduciary** means any person who alone or in conjunction with other persons determines the 'purpose and means of processing' of personal data.
- **Data Processor** means any person who processes personal data on behalf of a Data Fiduciary.
- **Processing** means an automated operation or set of operations performed on digital personal data including operations such as collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, use, alignment or combination,



indexing, sharing, disclosure by transmission, dissemination or otherwise making available, restriction, erasure or destruction.

- **Personal Data Breach** means any unauthorised processing of personal data or accidental disclosure, acquisition, sharing, use, alteration, destruction of or loss of access to personal data, which compromises the confidentiality, integrity or availability of personal data.
- **Child** means an individual who has not completed eighteen years of age.

### 3. GROUNDS OF PROCESSING DIGITAL PERSONAL DATA

The Bill provides that the personal data of an individual can only be processed in accordance with the provisions of the Act, for a lawful purpose for which the concerned individual has given or is deemed to have given her consent.

- a) **Consent:** Consent has been defined to mean any freely given, specific, informed, and unambiguous indication of an individual's wishes, by which the individual through a clear affirmative action signifies her agreement to the processing of her personal data for a specified purpose.
- b) **Deemed Consent:** The Bill provides that an individual is deemed to have provided her consent for the processing of her personal data in certain clearly defined situations including:
  - Where the individual voluntarily provides her personal data, and it is reasonably expected that she will provide such personal data.
  - Performance of any function under any law or the provision of any service or benefit to the individual or issuance of certificates etc. by the State.
  - Compliance with any judgement or order issued under any law.
  - Responding to a medical emergency involving a threat to the life of the individual.



- To provide medical treatment during an epidemic or outbreak of disease or any threat to public health.
- Taking necessary measures during any disaster or breakdown of public order.
- Employment purposes.
- Public Interest such as prevention and detection of fraud; mergers and acquisitions; network and information security; credit scoring; operation of search engines for processing of publicly available personal data; the processing of publicly available personal data; recovery of debt.
- Any fair and reasonable purpose as may be prescribed such as the legitimate interest of the Data Fiduciary which should not outweigh the adverse effects on the rights of Data Principals; any public interest; reasonable expectations of the Data Principals having regard to the context of the processing.

#### 4. OBLIGATIONS OF THE DATA FIDUCIARY

The Bill defines a Data Fiduciary as any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data. The Bill imposes the following obligations upon the Data Fiduciary:

- **Accountability:** A Data Fiduciary has a responsibility to comply with the provisions of the Act with regards to any processing undertaken by it or on its behalf by a Data Processor or another Data Fiduciary.
- **Accuracy:** A Data Fiduciary is required to make reasonable efforts to ensure that the personal data processed by it is accurate and complete if such personal data is likely to be used to make a decision that affects the Data Principal or is such personal data is likely to be disclosed to another Data Fiduciary.
- **Implementation of Technical and Organizational Measures:** A Data Fiduciary must implement appropriate technical and organizational measures to ensure



effective adherence to the provisions of the Act and to take reasonable security safeguards to prevent personal data breach.

- **Notification of Personal Data Breaches:** The Bill prescribes that in the event of a personal data breach, the Data Fiduciary or Data Processor, as applicable, must notify the Board and all affected Data Principals in the form and manner as may be prescribed.
- **Storage Limitation:** A Data Fiduciary must cease to retain personal data as soon as it is reasonable to assume that:
  - a) The purpose for which the personal data was collected is no longer being served by its retention.
  - b) Retention is no longer necessary for legal or business purposes.
- **Notice:** On or prior to seeking the consent of a Data Principal, the Data Fiduciary is required to give an itemised notice in clear and plain language providing a description of the personal data sought to be collected and the purpose of processing of the personal data.
- **Publication of Business Contact Information:** Every Data Fiduciary must publish the business contact information of a representative who is able to answer questions of Data Principals regarding the processing of her personal data.
- **Grievance Redressal Mechanism:** The Bill provides that every Data Fiduciary must establish a procedure and an effective mechanism to redress the grievances of a Data Principal.
- **Valid Contract:** The Bill provides that a Data Fiduciary may share, transfer or transmit personal data to any Data Fiduciary or engage a Data Processor only under a valid contract. Further, the Data Processor if permitted under its contract with the Data Fiduciary may further engage, appoint, use, or involve another Data Processor in processing personal data only under a valid contract.



## 5. PROCESSING OF CHILDREN'S DATA

- The Bill prescribes that before processing any personal data of a Child, the Data Fiduciary must obtain verifiable parental consent.
- The Bill prohibits the Data Fiduciary from tracking, behavioural monitoring of children or targeted advertising directed at children. The Bill also restricts the processing of personal data that is likely to cause harm to a child.

## 6. RIGHTS OF THE DATA PRINCIPAL

The Bill empowers the data principals by giving them control over the processing of their personal data by providing the following rights:

- **Right to Information of Data**

The Bill entitles the Data Principal the right to know and obtain a confirmation of whether the Data Fiduciary is currently processing or has processed her personal data including a summary of the personal data, details of processing activities and identities of all Data Fiduciaries with whom personal data has been shared.

- **Right to Correction and Erasure:**

The Bill provides that the Data Principal has the right to request for correction or deletion of her personal data in accordance with applicable laws.

- **Right of Grievance Redressal:**

The Bill provides that the Data Principal has the right to readily available means of registering a grievance with a Data Fiduciary. Further, if the Data Principal is not satisfied with the response of the Data Fiduciary or does not receive any response within 7 days, the Data Principal may register a complaint with the Data Protection Board (**Board**).



- **Right to Nominate**

The Bill provides that a Data Principal shall have the right to nominate any other individual to exercise the rights pertaining to her personal data in the event of death or incapacity of the Data Principal.

## 7. SIGNIFICANT DATA FIDUCIARY

The Bill prescribes that the Central Government may after performing an assessment on the basis of relevant factors notify a Data Fiduciary or Class of Data Fiduciaries as a 'Significant Data Fiduciary'. The Bill sets out the following relevant factors that the Central Government may consider while performing such an assessment:

- (a) the volume and sensitivity of personal data processed;
- (b) risk of harm to the Data Principal;
- (c) potential impact on the sovereignty and integrity of India;
- (d) risk to electoral democracy;
- (e) security of the State;
- (f) public order; and
- (g) such other factors as it may consider necessary.

The Bill prescribes the following additional obligations upon Significant Data Fiduciaries:

- **Appoint a Data Protection Officer (DPO):** The Significant Data Fiduciary must appoint a DPO who will represent them and be based in India. The DPO will be responsible to the Board of Directors or the similar governing body of the Significant Data Fiduciary. The Bill provides that the DPO shall be the point of contact for the grievance redressal mechanism.
- **Appoint an Independent Data Auditor:** The Significant Data Fiduciary must appoint an Independent Data Auditor in order to evaluate compliance with the provisions of the Act.





- **Conduct Data Protection Impact Assessment (DPIA) and Periodic Audit:** The Significant Data Fiduciary is required to take undertake such other measures as may be prescribed including conducting a Data Protection Impact Assessment (DPIA) and Periodic Audits.

## 8. CROSS-BORDER TRANSFER OF PERSONAL DATA

The Bill provides the power to the Central Government to notify a list of countries or territories outside India to which personal data may be transferred by a Data Fiduciary subject to the terms and conditions as may be specified by the Government.

## 9. ENFORCEMENT

The Bill provides for the establishment of a Board called the Data Protection Board of India to determine non-compliance with the provisions of the Act and impose penalty for such non-compliance. The Bill also provides that the allocation of work, the pronouncement of decisions and other functions of the Board shall be *digital by design*.

## 10. PENALTIES

The Bill provides that if the Board pursuant to an inquiry determines that non-compliance by a person is significant then it may impose a penalty as specified in Schedule 1 of the Bill, not exceeding INR 500 Crores in each instance. The financial penalties prescribed for the non-compliance of the Bill are set out below:



S. No.	Description of Non-Compliance	Penalty Prescribed
1.	Failure of Data Processor or Fiduciary to take reasonable security safeguards to prevent personal data breach.	Up to INR 250 crore
2.	Failure to notify the Board and affected Data Principles in case of a personal data breach.	Up to INR 200 crore
3.	Non-fulfilment of additional obligations in relation to the processing of children's personal data.	Up to INR 200 crore
4.	Non-fulfilment of additional obligations by Significant Data Fiduciary.	Up to INR 150 crore
5.	Any other non-compliance with the provisions of the Bill.	Up to INR 50 crore

## 11. PROVISION FOR ALTERNATE DISPUTE REDRESSAL AND VOLUNTARY UNDERTAKING

The Bill provides that if the Board is of the opinion that any complaint may be more appropriately resolved by mediation or any other process of dispute resolution, the Board may direct the concerned parties to attempt resolution of the dispute through mediation by a body or group of persons designated by the Board or such other process as the Board may consider fit.

The Bill also provides that the Board may accept a voluntary undertaking from any person regarding compliance with the provisions of the Bill at any stage. The voluntary undertaking may include an undertaking to take specified action within a specified time, an undertaking to refrain from taking specified action, and an undertaking to publicize the voluntary undertaking. The acceptance of the voluntary undertaking by the Board shall constitute as a bar on proceedings under the Act. However, a penalty may be levied if a person fails to comply with any term of the voluntary undertaking accepted by the Board.

## 12. REVIEW AND APPEALS

The Bill provides that the Board may review any of its orders and may modify, cancel, withdraw or suspend any order issued by the Board. For the purpose of review, the Board must act through a group for hearing which is larger than the group that passed the order in question.

An appeal may be filed against any order of the Board before the High Court within a period of sixty days from the date of the order.

---

*The contents of this article are intended for informational purposes only and are not in the nature of a legal opinion. Readers are encouraged to seek legal counsel prior to acting upon any of the information provided herein. Kindly get in touch with **Mr. Akshay S Nanda**, Partner (Competition Law and Personal Data Protection Practice) at [Akshayys.Nanda@sarafpartners.com](mailto:Akshayys.Nanda@sarafpartners.com) for any further information.*



### **Delhi NCR**

FC – 10 & 11,  
Sector 16 A, Filmcity  
Noida – 201 301  
+91 (11) 4405 0600  
[Delhi@sarafpartners.com](mailto:Delhi@sarafpartners.com)

### **Mumbai**

One International Centre  
Tower 2, Unit No 2402, 24th floor  
Senapati Bapat Marg  
Lower Parel - 400013  
+ 91 (22) 4405 0600  
[Mumbai@sarafpartners.com](mailto:Mumbai@sarafpartners.com)

### **Bengaluru**

6 Awfis Residency Square,  
Richmond Rd, Shanthala Nagar,  
Richmond Town,  
Bengaluru – 560025  
+91 (80) 4405 0600  
[Bengaluru@sarafpartners.com](mailto:Bengaluru@sarafpartners.com)