

# The Personal Data Protection Bill, 2019

April 25, 2020

**Context:** The Personal Data Protection Bill, 2019 was introduced in Lok Sabha Dec 2019

- The Bill seeks to provide for protection of personal data of individuals, and establishes a Data Protection Authority for the same.
- Personal data is data which pertains to characteristics, traits or attributes of identity, which can be used to identify an individual
- The Bill categorises certain personal data as sensitive personal data. This includes financial data, biometric data, caste, religious or political beliefs, or any other category of data specified by the government, in consultation with the Authority and the concerned sectoral regulator.
- **Applicability:**
  - government,
  - companies incorporated in India,
  - foreign companies dealing with personal data of individuals in India.
- **Obligations of data fiduciary:**
  - A data fiduciary is an entity or individual who decides the means and purpose of processing personal data. Such processing will be subject to certain purpose, collection and storage limitations.
  - Additionally, all data fiduciaries must undertake certain transparency and accountability measures such as:
    - implementing security safeguards (such as data encryption and preventing misuse of data),

- instituting grievance redressal mechanisms to address complaints of individuals.
  - They must also institute mechanisms for age verification and parental consent when processing sensitive personal data of children.
- **Rights of the individual/data principal:**
    - obtain confirmation from the fiduciary on whether their personal data has been processed,
    - seek correction of inaccurate, incomplete, or out-of-date personal data,
    - have personal data transferred to any other data fiduciary in certain circumstances,
    - restrict continuing disclosure of their personal data by a fiduciary, if it is no longer necessary or consent is withdrawn.
- **Grounds for processing personal data** by fiduciaries only if consent is provided by the individual.
    - However, in certain circumstances, personal data can be processed without consent.
      - if required by the State for providing benefits to the individual,
      - legal proceedings,
      - to respond to a medical emergency.
- **Social media intermediaries:** All such intermediaries which have users above a notified threshold, and whose actions can impact electoral democracy or public order, have certain obligations, which include providing a voluntary user verification mechanism for users in India.
- **Data Protection Authority:**
    - take steps to protect interests of individuals,
    - prevent misuse of personal data,

- ensure compliance with the Bill.
  - It will consist of a chairperson and six members, with at least 10 years' expertise in the field of data protection and information technology.
  - Orders of the Authority can be appealed to an Appellate Tribunal.
  - Appeals from the Tribunal will go to the Supreme Court.
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- **Transfer of data outside India:**
    - Sensitive personal data may be transferred outside India for processing if explicitly consented to by the individual, and subject to certain additional conditions. However, such sensitive personal data should continue to be stored in India.
    - Certain personal data notified as critical personal data by the government can only be processed in India.
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- **Exemptions:** The central government can exempt any of its agencies from the provisions of the Act:
    - in interest of security of state, public order, sovereignty and integrity of India and friendly relations with foreign states,
    - for preventing incitement to commission of any cognisable offence (i.e. arrest without warrant) relating to the above matters.
    - Processing of personal data is also exempted from provisions of the Bill for certain other purposes such as: (i) prevention, investigation, or prosecution of any offence, or (ii) personal, domestic, or (iii) journalistic purposes. However, such processing must be for a specific, clear and lawful purpose, with certain security safeguards.
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- **Offences:** Offences under the Bill include:

- processing or transferring personal data in violation of the Bill,
  - failure to conduct a data audit
  - Re-identification and processing of de-identified personal data without consent
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- **Sharing of non-personal data with Government:** The central government may direct data fiduciaries to provide it with(i) non-personal data(ii) anonymised personal data (where it is not possible to identify data principal) for better targeting of services.
  - **Amendments to other laws:** The Bill amends the Information Technology Act, 2000 to delete the provisions related to compensation payable by companies for failure to protect personal data.