

The Personal Data Protection Bill, 2019

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The Minister of Electronics and Information Technology introduced the Personal Data Protection Bill, 2019 in the introduced in Lok Sabha

Key features of the bill

- **Applicability of the bill:** The Bill governs the processing of personal data by:
 1. Government
 2. Companies incorporated in India, and
 3. Foreign companies dealing with personal data of individuals in India.
- **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.
- **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. For instance, personal data can be processed only for specific, clear and lawful purpose.
- **Additionally, all data fiduciaries must undertake certain transparency and accountability measures such as:**
 1. **Implementing security safeguards** (such as data encryption and preventing misuse of data), and
 2. **Instituting grievance redressal mechanisms** to

address complaints of individuals.

3. They must also institute mechanisms for age verification and parental consent when processing sensitive personal data of children.
- **Rights of the individual under the bill:** The Bill sets out certain rights of the individual (or data principal). These include the right to:
 1. Obtain confirmation from the fiduciary on whether their personal data has been processed
 2. Seek correction of inaccurate, incomplete, or out-of-date personal data
 3. Have personal data transferred to any other data fiduciary in certain circumstances, and
 4. Restrict continuing disclosure of their personal data by a fiduciary, if it is no longer necessary or consent is withdrawn.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:** The Bill allows processing of data by fiduciaries **only if consent is provided by the individual**. However, in certain circumstances, personal data can be processed without consent. These include:
 1. If required by the State for providing benefits to the individual
 2. Legal proceedings
 3. To respond to a medical emergency.
 - **Social media intermediaries:** The Bill defines these to include **intermediaries which enable online interaction between users and allow for sharing of information**. 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:** The Bill sets up a Data Protection Authority which may:
 1. Take steps to protect the interests of individuals

2. Prevent misuse of personal data, and

3. Ensure compliance with the Bill.

- **Composition of Data Protection Authority:** 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.
- **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.
- **Exemptions from the provisions of the Act:** The **central government can exempt** any of its agencies from the provisions of the Act:
 1. **In the interest of security of state, public order, sovereignty and integrity of India** and friendly relations with foreign states, and
 2. For preventing incitement to the commission of any cognizable offence (i.e. arrest without warrant) relating to the above matters.
- **Processing of personal data is also exempted from the provisions of the Bill for certain other purposes such as:**
 1. revention, investigation, or prosecution of any offence, or
 2. Personal, domestic, or
 3. Journalistic purposes. However, such processing must be for a specific, clear and lawful purpose, with certain security safeguards.
- **Offences under the bill:**
 1. Processing or transferring personal data in violation of the Bill, punishable with a fine of

Rs 15 crore or 4% of the annual turnover of the fiduciary, whichever is higher, and

2. Failure to conduct a data audit, punishable with a fine of five crore rupees or 2% of the annual turnover of the fiduciary, whichever is higher.
3. Re-identification and processing of de-identified personal data without consent is punishable with imprisonment of up to three years, or fine, or both.

- **Sharing of non-personal data with government:** The central government may direct data fiduciaries to provide it with any non-personal data and 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.