

India’s Personal Data Protection Bill, 2019

(Tabled in the Lok Sabha on December 11 2019 and referred to a joint select committee of both Houses of Parliament)

The Personal Data Protection (PDP) Bill, 2019, which was initially introduced in 2018 by the B. N. Srikrishna committee, has undergone substantial changes since its introduction. The updated version of the bill has been made public and organisations across industries are evaluating the possible impact of the regulation on their businesses. While India-based organisations with global footprints have already taken measures to comply with regulations such as the European Union’s General Data Protection Regulation (GDPR), entities which operate primarily in the Indian market are anxious to understand the impact of the bill on their day-to-day operations. We summarise the key highlights of the bill. The joint select committee will give its report before the end of the Budget Session 2020, which usually commences in the last week of January.

To be adopted by



Will come into force on



Applicability

• Data fiduciary

• Data processor

• Public company

• Private company

• Partnership firm

• Any other corporate body

• State entities (including government agencies)

• Registered place of business within India

• Offers goods or services to individuals in India

• Profiling of individuals in India

Penalties for non-compliance

Fines of up to **INR 15 crore or 4%** of the organisation's total annual worldwide turnover

Imprisonment for **3 years or a fine of INR 2 lakh** or both for re-identification and processing of de-identified personal data

Penalty of up to **INR 10 lakh** for failure to comply with data principal requests

Key definitions

• **Data fiduciary** is anyone who **determines the purpose** and **means of processing** of personal data.

• **Data processor** is anyone who **processes personal** data on **behalf of a data fiduciary**.

• **Data principal** is the **natural person** whose **personal data** is processed by a data fiduciary.

• **Authority** is the **Data Protection Authority**, as formulated by the Central Government.

• **Social media intermediary** is any entity who **enables online interaction** between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services.

• **Consent manager** is a data fiduciary registered with the **Authority** and enables a data principal to gain, withdraw, review and manage their consent.

Types of data

Personal data is data about or relating to a natural person who is directly or indirectly identifiable by:

- name
- contact details
- address
- educational details.

Sensitive personal data includes data such as:

- financial data/biometric data/genetic data
- health data
- official identifier
- sex life/intersex status
- sexual orientation/transgender status
- caste or tribe/religious or political belief or affiliation
- any other data categorised as sensitive personal data by the authority under concerned sectoral regulators.

Critical personal data: Categories of personal data to be notified by the Central Government in the future.

Personal data
Can be stored outside India

Transfer outside India permissible

Sensitive personal data
To be stored in India

Transfer outside India if:

- explicit consent has been obtained
- a contract or intra-group scheme exists
- permission has been given by the Central Government.

Critical personal data
To be processed only in India

Transfer outside India only under certain exceptions, such as:

- provision of health or emergency services
- where such transfer is deemed permissible by Central Government.

Data protection officer (DPO)

The PDP Bill, 2019, specifies certain rules for to the appointment of a DPO, such as:

- allowing only **significant data fiduciaries** to appoint a **DPO**
- the DPO is to be **based in India**.

Processing by employer

Any **personal data (excluding **sensitive personal data**) may be processed **without consent** if necessary for:**

- **recruitment** or **termination** of employment
- provision of **services/seeking benefits**
- **attendance verification**
- **performance management**.

The Authority to make available a **sandbox** for innovation in **artificial intelligence, machine learning** or any other emerging technology.

30 days

Time frame within which **complaints made to the data fiduciary should be resolved.**

Data principals have the **right to erasure of their personal data that is no longer required for processing.**

Data fiduciaries to be classified as **significant data fiduciary by the **Authority**, based on:**

- **volume** and **sensitivity** of personal data processed
- **turnover**
- **risk of harm** resulting from any processing or any kind of processing undertaken
- use of **new technologies** for processing.

Social media intermediary may be classified as a **significant data fiduciary** by the Central Government.

Role of data fiduciaries

The PDP Bill, 2019, details the functions of data fiduciaries, which includes:

- performing **data protection impact assessment**
- **registering** with the **Authority**
- **maintaining records** of data life cycle
- **conducting an independent annual audit** of policies and processes.

Role of a consent manager

As per the PDP Bill, 2019, a consent manager:

- should enable a **data principal** to withdraw, review and manage **consent** through a platform
- must be registered with the **Authority**.

Exemption for government agencies

The PDP Bill, 2019, exempts government agencies from the proposed Act's applications in cases of:

- interest of **sovereignty** and **integrity** of India
- **security** of the state
- **friendly relations** with foreign states
- **public order**.

Privacy by Design (PbD)

The PbD measures in the bill mandate:

- **embedding privacy** into business processes and technologies
- submitting a PbD policy to the **Authority for certification**
- availability of a **certified PbD** policy on the data fiduciary's website.

Child personal data

This provision in the bill necessitates verifying the age and obtaining the consent of a child's parent or guardian.

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