

Regulatory Insights

21 December 2021

Data Protection Bill, 2021 – Committee Report – Highlights

In brief

In 2018, the Ministry of Electronics and Information Technology, Government of India, constituted a committee of experts under the chairmanship of the retired Supreme Court judge, Justice BN Srikrishna. The committee was entrusted to identify aspects of the data protection regulations to make them robust and comprehensive, by virtue of which the draft Personal Data Protection Bill, 2018 was introduced.

The Personal Data Protection Bill, 2019 (2019 Bill) was cleared by the Cabinet on 4 December 2019.

The 2019 Bill was referred to the Joint Parliamentary Committee (JPC). The JPC, post reviewing the 2019 Bill over a two-year period, tabled its report in the Parliament on 16 December 2021¹.

The report has made 81 recommendations, along with more than 150 drafting amendments in the 2019 Bill. The JPC has tabled the draft of the Data Protection Bill, 2021 (2021 Bill).

In detail

The key recommendations highlighted in the report are as follows:

1. Non-personal data

The JPC has recommended including non-personal data in the 2021 Bill. 'Non-personal data' has been defined as '*data other than personal data*'. The term 'Personal' has been removed from the title of the Personal Data Protection Bill, and it has been renamed as Data Protection Bill. The JPC has recommended this change as it is of the view that it is impossible to distinguish between personal and non-personal data when mass data is collected and transported, and since privacy is a concern, non-personal data has to be a part of the Bill.

2. Timeline for implementation of the 2021 Bill

The JPC has recommended a maximum of 24 months for the implementation of all the provisions so that businesses get adequate time for the transition. Such implementation would take place in the following phased manner:

¹ Press Release dated 16 December 2021

- (a) Three months, for the appointment of the chairperson and members of the Data Protection Authority (Authority);
- (b) Six months for such Authority to commence its activities;
- (c) Nine months for starting the registration of data fiduciaries; and
- (d) A maximum period of 24 months for its entire implementation.

3. Treatment of social media platforms

The 2021 Bill has defined social media platform as ‘a platform which primarily or solely enables online interaction between two or more users and allows them to create, upload, share disseminate, modify or access information using its service’. The social media platforms that do not act as intermediaries are recommended to be treated as publishers, and therefore, such platforms shall be now held accountable for the content they host. The JPC has also recommended that no social media platforms should be allowed to operate in India unless the parent company handling technology sets up office in India.

4. Cross-border transfer and localisation norms

The JPC has stated that any transfer of data under a contract or intra-group scheme has to be approved by the Authority in consultation with the Central Government. Such transfer must not violate public policy or state policy. In this regard, a case-to-case basis approval is recommended to be sought by the organisations that intend to transfer sensitive data.

With reference to data localisation, the JPC has recommended that the Central Government, in consultation with sectoral regulators, draft an extensive policy on data localisation, including aspects such as development of adequate infrastructure for the safe storage of data of Indians that may generate employment; introduction of alternative payment systems to cover higher operational costs; and inclusion of a system that can support local business entities and start-ups to comply with data localisation.

The Government has been mandated to take steps to ensure that a mirror copy of the sensitive and critical data, which is already in possession of the foreign entities, be mandatorily brought to India in a time-bound manner.

5. Certification of digital and IoT devices

The JPC has highlighted that it is important to regulate the hardware manufacturers who collect data along with software. Therefore, the JPC has recommended that a formal certification must be required for all digital and Internet of Things (IoT) devices that will ensure the integrity of all such devices with respect to data security.

6. Definitions – Expansion of definition of harm

The definition of ‘harm’ has been expanded to include ‘*psychological manipulation which impairs the autonomy of the individual*’.

7. Breach notification

The 2019 Bill required a data fiduciary to inform the Authority about a personal data breach where such breach is likely to cause harm to any data principal. However, the 2021 Bill mandates that data fiduciaries report every incident of data breach involving personal data to the Authority, irrespective of whether it is likely to cause any harm to the data principal. The JPC also recommends that the data fiduciaries maintain a log of all personal and non-personal data breaches and report the breach within a time period of 72 hours.

8. Registration of data fiduciary with children’s data

The JPC recommended that data fiduciaries dealing exclusively with children’s data be classified as significant data fiduciaries. They are also required to register themselves with the Authority.

9. Retention of data by the fiduciary

The JPC has stated that the provision for data retention in the 2019 Bill was very restrictive in nature and may be a big hurdle in the functioning of agencies that process the collected data multiple times for various welfare purposes. Accordingly, such provision has been tweaked to the extent that the data fiduciary shall not retain

any personal data beyond the period necessary to satisfy the purpose for which it is processed and shall delete the personal data at the end of such period.

The takeaways

Once the 2021 Bill is passed by the Parliament and receives Presidential assent, it will become law. Upon the same becoming a law, the 2021 Bill is expected to create a robust data privacy and protection mechanism in India.

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