

## Regulatory Insights

18 November 2022

### Government introduces Digital Personal Data Protection Bill, 2022 – Key highlights

#### In brief

The government has introduced a new legislation that frames the rights and duties of the citizen (namely digital nagrik) and obligations to use such data lawfully by the organisations (namely data fiduciaries). This new legislation is known as the Digital Personal Data Protection Bill, 2022<sup>1</sup> (DPDP 2022).

The DPDP 2022 carries the understanding that emerged during consultation with stakeholders in the process of drafting the previous version of the bills and addresses various aspects of privacy concerns given the ongoing digitalisation and technology requirements by the industries.

#### In detail

##### Objective

The overall essence of the DPDP 2022 is to establish the comprehensive legal framework governing digital personal data protection in India. In this regard, a Board, to be called the Data Protection Board of India will be set-up by the Central Government by way of a notification<sup>2</sup>, which will function independently.<sup>3</sup>

##### Key highlights

The key requirements highlighted in the DPDP 2022 are as discussed below.

#### 1. Applicability

The ambit of its applicability has extended to cover more than individuals and the term 'person'<sup>4</sup> has been defined to include 'an individual, a HUF, a company, a firm, an association of persons or a body of individuals whether incorporated or not, the State and every artificial juristic person' as opposed to 'a natural person' which was provided in the earlier version of the bills.

<sup>1</sup> <https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022.pdf>

<sup>2</sup> Clause 19

<sup>3</sup> Clause 21(1)

<sup>4</sup> Clause 2(12)

## 2. Definitions

Definition of Personal Data<sup>5</sup> has also been revised to ‘mean any data about an individual who is identifiable by or in relation to such data’ which typically retains the similar meaning as in the previous versions.

The concept of non-personal data and definitions of any special type of personal data like – sensitive, critical etc. has also been done away with as provided in the previous version of the bills. This would mean that there is no special categorisation of data’s in particular.

However, the other definitions like data fiduciary, data processor, processing and data principal remain very similar.

## 3. Ground for Processing, Notice and Consents

New procedural concepts of seeking ‘consent’ either explicitly or deemed has also been specifically prescribed under the DPDP 2022, which was not explicitly prescribed under the previous versions.<sup>6</sup> The term ‘parental consent’ has also been introduced which includes the consent of lawful guardian.<sup>7</sup>

Clear process of providing notice by the data fiduciary (i.e. organisation or data collector) to the data principal (person whose data is being collected) has been prescribed under DPDP 2022. The earlier versions of the bill did not specify any such processes.<sup>8</sup>

Also, the term ‘consent manager’ has been defined under the DPDP, 2022. Every consent manager is required to be registered with the Data Protection Board of India established by the Central Government, subject to such technical, operational, financial and other conditions as may be prescribed. We are yet to see what type of accurate qualifications such consent manager is required to possess.<sup>9</sup>

## 4. Obligation of the Data Fiduciary & Compliances

A major change has been proposed that compliance to the DPDP 2022 is mandatory irrespective of any agreement to the contrary. Such change overrides the concept proposed in the earlier versions of the bills that an agreement between parties, states and organisation would supersede the provisions under the bills.<sup>10</sup>

Also, the obligations of the data fiduciary have been aligned to the Information Technology Act, 2000 wherein the reasonable security safeguards are required to be taken by fiduciaries to prevent personal data breach.

## 5. Compliances by Significant Data Fiduciary

The concept of Significant Data Fiduciary as introduced in the 2019 version of the bill has also been retained.<sup>11</sup>

The Significant Data Fiduciary is required to appoint a Data Protection Officer who will represent the Significant Data Fiduciary under the provisions of this Bill when enacted and be based in India.<sup>12</sup> Such Significant Data Fiduciary needs to undertake measures including data protection impact assessment and periodic audits from time-to-time.<sup>13</sup>

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<sup>5</sup> Clause 2(13)  
<sup>6</sup> Clause 7  
<sup>7</sup> Clause 10(1) Proviso  
<sup>8</sup> Clause 6 and Clause 7  
<sup>9</sup> Clause 7(7)  
<sup>10</sup> Clause 9 of the DPDP 2022  
<sup>11</sup> Clause 11  
<sup>12</sup> Clause 11(2)(a)  
<sup>13</sup> Clause 11(2)(c)

## 6. Transfer of personal data outside India

The much-debated mandatory localisation norms has been eased out to the extent that the Central Government may, after an assessment of such factors as it may consider necessary, notify such countries or territories outside India to which a data fiduciary may transfer personal data, in accordance with such terms and conditions as may be specified, subject to certain exemptions that are specified in the DPDP 2022.

The concepts laid in the previous versions of the bill about 'retention of critical data within the Indian boundaries' has been done away with.

The Central Government may, by notification, exempt from the application of provisions of the DPDP 2022, the processing of personal data – (a) by any instrumentality of the state in the interest of sovereignty; (b) for research, archiving or statistical purposes.

## 7. Revised Penalty

Non-compliance under the DPDP 2022 may trigger the following penalties.

Sr. No.	Particulars	Penalty
1.	Failure of data processor or data fiduciary to take reasonable security safeguards to prevent data breach <sup>14</sup>	Upto INR 2500m
2.	Failure to notify the Board and affected data principals in the event of a personal data breach <sup>15</sup> or non-fulfilment of the additional requirement in relation to children <sup>16</sup>	Upto INR 2000m
3.	Non-compliance by significant data fiduciary <sup>17</sup>	Upto INR 1500m
4.	Non-compliance with duties of data fiduciary	Upto INR 10 thousand
5.	Any other non-compliances, not specifically listed above	Upto INR 500m

<sup>14</sup> Clause 9(4)

<sup>15</sup> Clause 9(5)

<sup>16</sup> Clause 10

<sup>17</sup> Clause 11

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