

## The Digital Personal Data Protection Bill, 2023

### Why in news?

Recently, Lok Sabha passed the Data Protection Bill, India's 2<sup>nd</sup> attempt in framing a privacy legislation.



### What is the history of Data Protection Bill?

*India does not have a standalone law on data protection. Use of personal data is regulated under the Information Technology (IT) Act, 2000.*

- In 2017, the central government constituted the **B.N.Srikrishna Committee** to examine issues relating to data protection in the country.
- Based on the recommendation of the Committee, the Personal Data Protection Bill, 2019 was introduced in Lok Sabha.
- It is formulated based on the data regulation of European Union (General Data Protection Regulation (GDPR)) which empower citizens to have a greater say in how their online data is used.



### What are the key features of the bill?

*Personal data is defined as any data about an individual who is identifiable by or in relation to such data.*

- **Applicability-** The Bill applies to the processing of digital personal data within India where such data is
  - Collected online, or
  - Collected offline and is digitised.
- It will also apply to the processing of personal data outside India if it is for offering goods or services in India.
- **Consent-** Personal data may be processed only for a lawful purpose after obtaining the consent of the individual.
- For individuals below 18 years of age, consent will be provided by the parent or the legal guardian.
- Consent may be withdrawn at any point in time.
- **Rights of data principal-** Data principal is an individual whose data is being

processed. He/She will have the right

- To obtain information about processing
- To seek correction and erasure of personal data
- To nominate another person to exercise rights in the event of death or incapacity and
- Grievance redressal
- **Duties of Data Principals-** Data Principals must not
  - Register a false or frivolous complaint
  - Furnish any false particulars or impersonate another person in specified cases
  - Violation of duties will be punishable with a penalty of up to Rs 10,000.
- **Obligations of data fiduciaries-** Data fiduciary is the entity determining the purpose and means of processing.
- Data fiduciary must
  - Make reasonable efforts to ensure the accuracy and completeness of data
  - Build reasonable security safeguards to prevent a data breach
  - Inform the Data Protection Board of India and affected persons in the event of a breach
  - Erase personal data as soon as the purpose has been met and retention is not necessary for legal purposes
- In case of government entities, storage limitation and the right of the data principal to erasure will not apply.
- **Personal data outside India-** It allows transfer of personal data outside India, except to countries restricted by the central government through notification.
- **Exemptions-** Rights of the data principal and obligations of data fiduciaries will not apply in specified cases such as
  - Prevention and investigation of offences
  - Enforcement of legal rights or claims
- The Central government may exempt certain activities
  - In the interest of the security of the state and public order
  - Research, archiving, or statistical purposes
- **Data Protection Board of India-** It will be established by the Central Government. Key functions of the Board include
  - Monitoring compliance and imposing penalties
  - Directing data fiduciaries to take necessary measures in the event of a data breach
  - Grievance redressal
- **Appeal-** The decisions of the board can be appealed to Telecom Dispute Settlement and Appellate Tribunal.

| Penalty      | Reason                                                      |
|--------------|-------------------------------------------------------------|
| Rs 200 crore | Non fulfilment of obligations for children                  |
| Rs 250 crore | Failure to take security measures to prevent data breaches. |

### What is the significance of the bill?

- **Multi-pronged approach -** This framework encompasses various legislative measures such as the

- [Digital India bill](#) that would replace existing Information Technology Act, 2000,
- Draft Indian Telecommunication Bill, 2022, and
- Policy addressing the governance of non-personal data.
- **Privacy** - It will enhance the privacy cognizance of Indian citizens through transformative accountability measures to be adopted by enterprises.
- **Compliance**- It is due to robust protection and security measures, combined with effective privacy policies and grievance redressal mechanisms
- **Data breach**- Multiple exemptions were provided to prevent data breaches such as the
  - [privacy breach in CoWIN portal](#) where the personal details of vaccinated users had been leaked on Telegram.
  - 12,000 confidential records of State Bank of India employees were reportedly made public on Telegram.

*According to data from the [United Nations Conference on Trade and Development](#), 137 out of 194 countries have put in place legislation to secure the protection of data and privacy.*

### What are the issues with the bill?

- **Article 21**- It violates the fundamental right to privacy because of the exemptions provided to the State on grounds such as national security.
- **Regulation**- The Bill does not regulate risks of harms arising from processing of personal data.
- **Rights** - The Bill does not grant the right to data portability and the right to be forgotten to the data principal.

**Right to data portability**- The right to data portability allows data principals to obtain and transfer their data from data fiduciary.

- It is obtained for their own use, in a structured, commonly used, and machine-readable format.
- It gives the data principal greater control over their data.

**Right to be forgotten**- It refers to the right of individuals to limit the disclosure of their personal data on the internet.

- **Personal data outside India**- This mechanism may not ensure adequate evaluation of data protection standards in the countries where transfer of personal data is allowed.
- **Independence** - The *short term (2 years)* of the members of the Data Protection Board of India with scope for *re-appointment* may affect the independent functioning of the Board.
- **Multiple exemptions**- Exemptions citing national security etc., resemble China's data regulation.
- **Right to Information (RTI) Act**- The personal data of government functionaries is protected making it difficult to be shared with an RTI applicant.
- **No compensation** - *Section 43A of IT Act, 2000* imposes an obligation on corporates to award damages to affected persons in case of negligent handling of their sensitive

data. However, the Bill excludes the application of Section 43A.

### Models for data protection laws

- **European Union Model-** The GDPR focuses on a comprehensive data protection law for the processing of personal data
- *Right to privacy* is enshrined as a fundamental right that seeks to protect an individual's dignity and her right over the data that she generates.
- *Digital Services Act* focuses on issues such as regulating hate speech, counterfeit goods etc.
- *Digital Markets Act* has defined a new category of “dominant gatekeeper” platforms and is focused on non-competitive practices and the abuse of dominance by these players.
- **The US Model-** Privacy protection is largely defined as a “*liberty protection*” which is focused on the protection of the individual's personal space from the government.
- There is no comprehensive set of privacy rights or principles that collectively address the use, collection and disclosure of data in the US.
- **China model-** The Personal Information Protection Law (PIPL), gives data principals, the right to prevent the misuse of personal data.
- *Data Security Law* requires business data to be categorised by different levels of importance and puts new restrictions on cross-border transfers.
- It gives the government overreaching powers to both collect data and regulate private companies that collect and process information.
- Businesses may also be required to suspend operations until they demonstrate compliance.
- India too, has introduced a similar provision, where any platform that has violated its norms for at least 2 times can be blocked by the Central government.



### What lies ahead?

- Data is new oil. It is the currency of the digital age and processing of personal data is the pivot around which today's digital economies revolve.
- Hence proper regulation and guidelines by the Government to enhance the data security is need of the hour.

### References

1. [Indian Express- Data protection bill provisions and criticisms](#)
2. [The Hindu- Explained What is data protection bill](#)
3. [PRS- Bill highlights and legislative brief](#)



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