

Internet and Democracy

Digital Personal Data Protection Act 2023 (India)

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Highlights

- The Bill will apply 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 such processing outside India, if it is for offering goods or services in India.
- Personal data may be processed only for a lawful purpose upon consent of an individual. Consent may not be required for specified legitimate uses such as voluntary sharing of data by the individual or processing by the State for permits, licenses, benefits, and services.
- Data fiduciaries will be obligated to maintain the accuracy of data, keep data secure, and delete data once its purpose has been met.
- The Bill grants certain rights to individuals including the right to obtain information, seek correction and erasure, and grievance redressal.
- The central government may exempt government agencies from the application of provisions of the Bill in the interest of specified grounds such as security of the state, public order, and prevention of offences.
- The central government will establish the Data Protection Board of India to adjudicate on non-compliance with the provisions of the Bill.

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Principles

- The principle of consented, lawful and transparent use of personal data;
- The principle of purpose limitation (use of personal data only for the purpose specified at the time of obtaining consent of the Data Principal);
- The principle of data minimisation (collection of only as much personal data as is necessary to serve the specified purpose);
- The principle of data accuracy (ensuring data is correct and updated);
- The principle of storage limitation (storing data only till it is needed for the specified purpose);
- The principle of reasonable security safeguards; and
- The principle of accountability (through adjudication of data breaches and breaches of the provisions of the Bill and imposition of penalties for the breaches).

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Provisions

- **Applicability:** The Bill applies to the processing of digital personal data within India where such data is: (i) collected online, or (ii) 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. Personal data is defined as any data about an individual who is identifiable by or in relation to such data. Processing has been defined as wholly or partially automated operation or set of operations performed on digital personal data. It includes collection, storage, use, and sharing.
- **Consent:** Personal data may be processed only for a lawful purpose after obtaining the consent of the individual. A notice must be given before seeking consent. The notice should contain details about the personal data to be collected and the purpose of processing. Consent may be withdrawn at any point in time. Consent will not be required for 'legitimate uses' including: (i) specified purpose for which data has been provided by an individual voluntarily, (ii) provision of benefit or service by the government, (iii) medical emergency, and (iv) employment. For individuals below 18 years of age, consent will be provided by the parent or the legal guardian.

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Obligations of data fiduciaries:

The entity determining the purpose and means of processing, (data fiduciary), must:

- (i) make reasonable efforts to ensure the accuracy and completeness of data,
- (ii) build reasonable security safeguards to prevent a data breach,
- (iii) inform the Data Protection Board of India and affected persons in the event of a breach, and
- (iv) erase personal data as soon as the purpose has been met and retention is not necessary for legal purposes (storage limitation). In case of government entities, storage limitation and the right of the data principal to erasure will not apply.

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Rights of data principal:

An individual, whose data is being processed (data principal), will have the right to:

- (i) Right to access information about personal data-** The Data Principal shall have the right to obtain from the Data Fiduciary to whom she has previously given consent,
 - (a) a summary of personal data which is being processed by such Data Fiduciary and the processing activities undertaken by that Data Fiduciary with respect to such personal data;
 - (b) the identities of all other Data Fiduciaries and Data Processors with whom the personal data has been shared by such Data Fiduciary, along with a description of the personal data so shared; and
 - (c) any other information related to the personal data of such Data Principal and its processing, as may be prescribed.

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(ii) Right to correction and erasure of personal data- A Data Principal shall have the right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent. A Data Fiduciary shall, upon receiving a request for such correction and erasure from a Data Principal: (a) correct a Data Principal's inaccurate or misleading personal data; (b) complete the incomplete personal data; (c) update the personal data;

(iii) Right to nominate- A Data Principal shall have the right to nominate, in such manner as may be prescribed, any other individual, who shall, in the event of death or incapacity of the Data Principal, exercise the rights of the Data Principal in accordance with the provisions of this Act and the rules made thereunder.

(iv) Right of grievance redressal- A Data Principal shall have the right to have readily available means of grievance redressal provided by a Data Fiduciary or Consent Manager in respect of any act or omission of such Data Fiduciary or Consent Manager regarding the performance of its obligations in relation to the personal data of such Data Principal or the exercise of her rights under the provisions of this Act and the rules made thereunder.

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Duties of Data Principles-

A Data Principal shall perform the following duties, namely:—

- (a) comply with the provisions of all applicable laws for the time being in force while exercising rights under the provisions of this Act;
- (b) to ensure not to impersonate another person while providing her personal data for a specified purpose;
- (c) to ensure not to suppress any material information while providing her personal data for any document, unique identifier, proof of identity or proof of address issued by the State or any of its instrumentalities;
- (d) to ensure not to register a false or frivolous grievance or complaint with a Data Fiduciary or the Board;
- and (e) to furnish only such information as is verifiably authentic, while exercising the right to correction or erasure under the provisions of this Act or the rules made thereunder

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Transfer of personal data outside India: The Bill allows transfer of personal data outside India, except to countries restricted by the central government through notification.

- **The Personal Data Protection Bill 2019-** *“the sensitive personal data may be transferred outside India (for processing), but such sensitive personal data shall continue to be stored in India...The critical personal data shall only be processed in India.”*
- **Digital Personal Data Protection Bill 2022-** *“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.”*
- **Digital Personal Data Protection Act, 2023-** *“The Central Government may, by notification, restrict the transfer of personal data by a Data Fiduciary for processing to such country or territory outside India as may be so notified”*

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Processing of Personal Data of Children-

- (1) The Data Fiduciary shall, before processing any personal data of a child or a person with disability who has a lawful guardian obtain verifiable consent of the parent (or legal guardian) of such child or the lawful guardian, as the case may be, in such manner as may be prescribed.
- (2) A Data Fiduciary shall not undertake such processing of personal data that is likely to cause any detrimental effect on the well-being of a child.
- (3) A Data Fiduciary shall not undertake tracking or behavioural monitoring of children or targeted advertising directed at children.

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Additional obligations of Significant Data Fiduciary-

(1) The Central Government may notify any Data Fiduciary or class of Data Fiduciaries as Significant Data Fiduciary, on the basis of an assessment of such relevant factors as it may determine, including—

- (a) the volume and sensitivity of personal data processed;
- (b) risk to the rights of Data Principal;
- (c) potential impact on the sovereignty and integrity of India;
- (d) risk to electoral democracy;
- (e) security of the State; and (f) public order.

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Additional obligations of Significant Data Fiduciary-

(2) The Significant Data Fiduciary shall—

- (a) appoint a Data Protection Officer who shall— (i) represent the Significant Data Fiduciary under the provisions of this Act; (ii) be based in India; (iii) be an individual responsible to the Board of Directors or similar governing body of the Significant Data Fiduciary; and (iv) be the point of contact for the grievance redressal mechanism under the provisions of this Act;
- (b) appoint an independent data auditor to carry out data audit, who shall evaluate the compliance of the Significant Data Fiduciary in accordance with the provisions of this Act; and
- (c) undertake the following other measures, namely:— (i) periodic Data Protection Impact Assessment, which shall be a process comprising a description of the rights of Data Principals and the purpose of processing of their personal data, assessment and management of the risk to the rights of the Data Principals, and such other matters regarding such process as may be prescribed; (ii) periodic audit; and (iii) such other measures, consistent with the provisions of this Act, as may be prescribed.

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- **Exemptions:** Rights of the data principal and obligations of data fiduciaries (except data security) will not apply in specified cases. These include: (i) prevention and investigation of offences, and (ii) enforcement of legal rights or claims.
- More **exemptions** provided in the Bill are as follows:
 - a. For notified agencies, in the interest of security, sovereignty, public order, etc.;
 - b. For research, archiving or statistical purposes;
 - c. For startups or other notified categories of Data Fiduciaries;
 - d. To enforce legal rights and claims;
 - e. To perform judicial or regulatory functions;
 - f. To prevent, detect, investigate or prosecute offences;
 - g. To process in India personal data of non-residents under foreign contract;
 - h. For approved merger, demerger etc.; and
 - i. To locate defaulters and their financial assets etc.