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Privacy and Data Protection

Draft Personal Data Protection Bill 2018: A Summary

For Private Circulation Only
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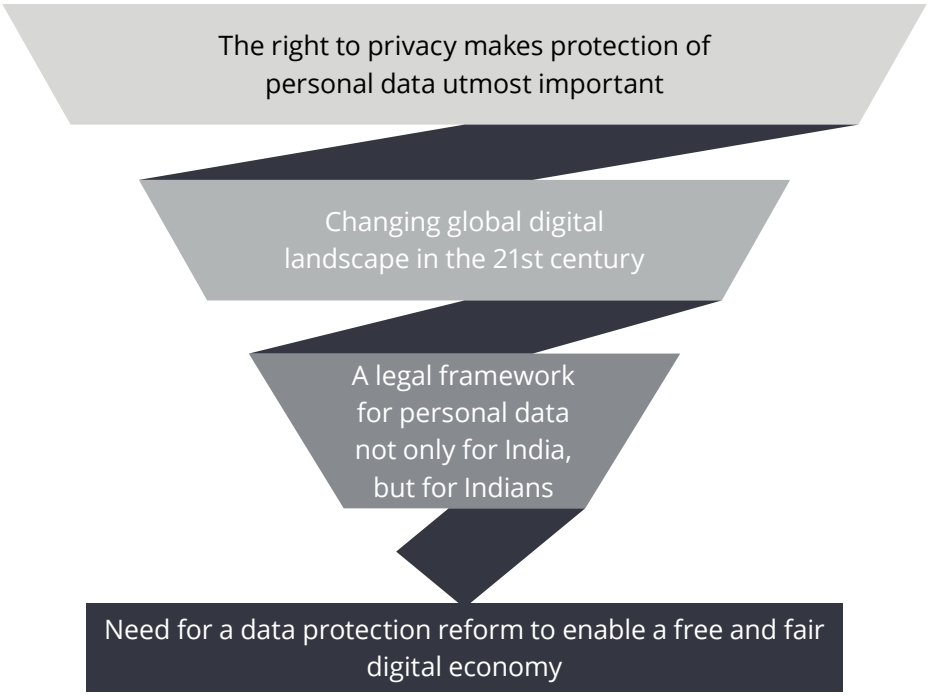
Risk Advisory

Introduction

Protection of personal data of data principal* is at the core of the draft Personal Data Protection Bill, 2018 (hereafter referred as “PDPB” or “bill”).

This means once the bill is enacted and enforced, privacy will no longer be optional and cannot be ignored. Among many significant provisions, the PDPB proposes substantial penalty for violation of the stated requirement.

Such provisions along with heightened focus on collection and use of personal data, will require organisations (referred in the bill as Data Fiduciary and Data Processor) to revisit their risk acceptance criteria and establish a robust privacy and data protection framework.



Understanding the construct of the bill

15
Chapters

112
Sections

4
Rights offered for Data Principals / Individuals

67
Pages

5
Grounds for processing of sensitive personal data

11
Measures to ensure transparency and establish accountability

7
Rules for exemptions

6
Grounds for processing of personal data

3
Months from the notified date for the Data Protection Authority to be established by the central government

Key propositions from the draft bill

Data Protection Authority of India
Bill proposes to establish an independent authority to oversee the enforcement of the provisions of the Bill.

Individual Rights
Bill proposes certain rights for data principles such as Right to access and confirmation, Right to be forgotten etc.

Territorial coverage beyond India
to organisations processing the personal data that has a connection with any business carried on in the territory of India or has any connection with any activity which involves the profiling of data principles within the territory of India

Penalties of upto to Rs. 15 Cr (~USD 2.25M) or 4% of total worldwide turnover

Data Localisation
Bill proposes that at least one serving copy of personal data is stored in India

Implications

Penalty will be imposed if the following obligations are violated:

INR 15 cr or **4%** of global turnover, whichever is higher

01 Prompt action in response to a data security breach

02 Undertaking a data protection impact assessment by a significant data fiduciary*

03 Conducting a data audit by a significant data fiduciary

04 Appointment of a data protection officer by a significant data fiduciary

05 Failure to register with the Authority

INR 5 cr or **2%** of global turnover, whichever is higher

01 Ground of processing of personal data

02 Ground of processing of sensitive personal data

03 Ground of processing of personal and sensitive personal data of children

04 Adhering to data security safeguards

05 Transfer of personal data outside India subject to defined conditions

What next?
A proactive approach

Until the law gets enacted, organisations may consider the following initiatives:

Take the Privacy Readiness Assessment

Inventorise Personal and Sensitive Personal Data

Develop a culture of privacy

Establish and/ or update information notice

Assess and remediate risk with respect to personal data with third parties

Define Personal and Sensitive Personal Data

Understand data flows for processing of collection and processing of personal data

Establish a robust framework on leading privacy principles

Enhance data security measures

Glossary

Data fiduciary
Any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data

Data principal
The natural person to whom the personal data relates

Data processor
Any person, including the State, a company, any juristic entity or any individual who processes personal data on behalf of a data fiduciary, but does not include an employee of the data fiduciary;

Personal data
Data about or relating to a natural person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of the identity of such natural person, or any combination of such features, or any combination of such features with any other information

The Bill in brief

Data Protection Obligation
Personal data should be processed in a manner that is fair, and ensures privacy. It mandates collection and processing of personal data to be limited to a defined purpose

Processing of Personal Data
Six (6) grounds for processing - a) Consent b) Function of Parliament or any State Legislature c) Compliance with law or any order of any court or tribunal d) Prompt action (e.g. medical emergency involving a threat to the life disaster scenario etc.) e) Employment, and f) Reasonable purposes

Data Principal Rights
Individuals /or data principals may exercise - a) Right to confirmation and access b) Right to correction c) Right to Data Portability d) Right to Be Forgotten

Transparency and Accountability
To be achieved by appointing a Data Protection Officer and privacy fundamentals such as Privacy by Design, Information/ Data Security, Data Breach Notification, Impact Assessment, Record Keeping etc.

Cross border data flow
Organisations are expected to store a copy of personal data within India and transfer of personal data outside Indian territory is permissible, subject to conditions mandated by the bill

Privacy is a fundamental right and protecting the personal data of Indian data principal is at the core of the bill.

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