



## **Privacy and Data Protection**

Draft Personal Data  
Protection Bill 2018:  
A Summary

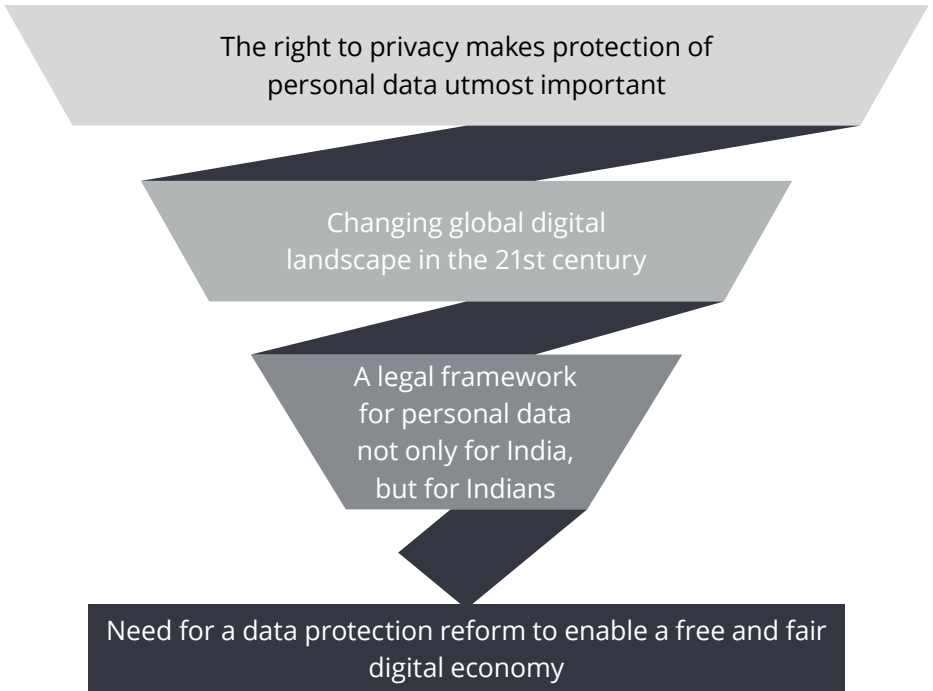
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# Introduction

Protection of personal data of data principal\* is at the core of the draft Personal Data Protection Bill, 2018 (hereafter referred to 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 requirements.

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 principals such as Right to access and confirmation, Right to be forgotten etc.



## Territorial coverage beyond India

to organisations processing the personal data, that have a connection with any business carried on in the territory of India or with any activity which involves the profiling of data principals 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

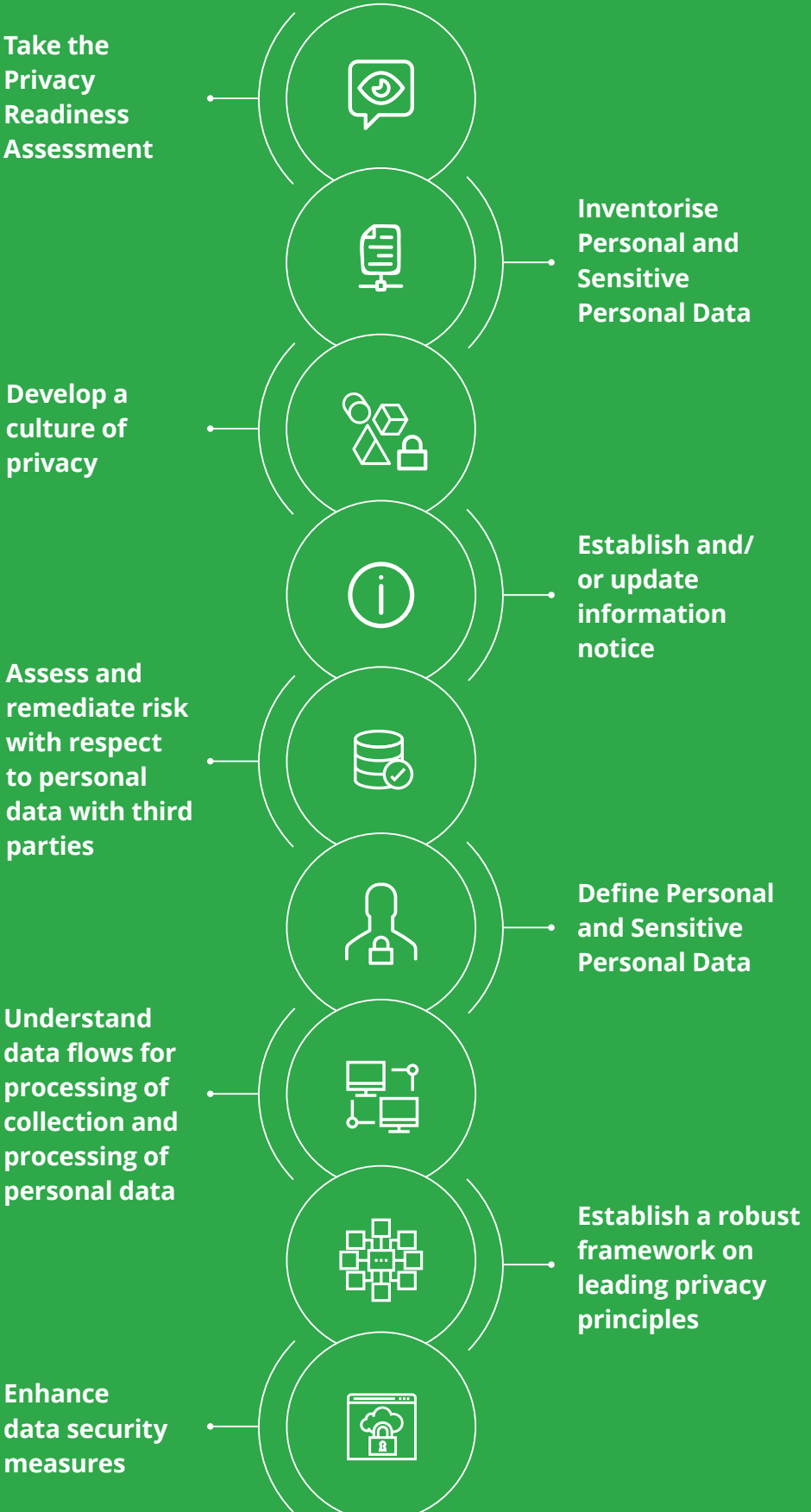
**INR 5 cr** or **2%** of global turnover, whichever is higher

- 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:



# 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/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 inculcating 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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