

An Introduction to Personal Data Protection Bill and GDPR

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

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AGENDA

- Importance of Data Protection and Privacy
- General Data Protection Regulation
- Personal Data Protection Bill
- Comparison
- Conclusion

IMPORTANCE OF DATA PROTECTION AND PRIVACY

- Technology is completely embedded into our lives
- Use of more and more devices and online services that generate data
- Data collected in country A, processed in country B, stored in country C
- Corporate surveillance
- Data is the new currency; Data is an asset
- Our lives are in the hands of some third party
- Individual choice has become meaningless

GENERAL DATA PROTECTION REGULATION (GDPR)

KEY FEATURES

What is it?	Effective from	Applicability	Objectives
<ul style="list-style-type: none">• Regulation protecting natural persons with regards to managing their personal data.• Core law on data privacy in the EU and acts as a model for nations outside the EU.	<ul style="list-style-type: none">• Adopted on: 14 April 2016• Effective from: 25 May 2018	<ul style="list-style-type: none">• Entities established in the EU.• Entities not established in the EU but offer goods and services in the EU.• Entities that monitor the behavior of individuals in the EU.	<ul style="list-style-type: none">• Regulates the processing, collection, storage, transfer of personal data.• Strengthens privacy rights of individuals by protecting their data.• Give individuals control over their data.

PERSONAL DATA

PERSONAL DATA

- Name
- Email ID
- Home Address
- Phone Number
- Fax Number
- IP Address
- Financial Information
- Employment details



- Gender
- Racial origin
- Religion
- Marital status
- Biometric data
- Medical Data
- Political opinion
- Psychological traits

SENSITIVE DATA

STAKEHOLDERS UNDER THE GDPR

Data Subject -

Individual to whom the data relates

Data Controller -

Entity that determines the purpose of processing data

Data Processor -

Entity that processes data on behalf of the Controller

Supervisory Authority -

Public authority monitoring the implementation of GDPR

Data Protection Officer -

Person appointed to review Controller's obligations

PRINCIPLES FOR PROCESSING DATA

ARTICLE 5

- Lawfulness, fairness and transparency
- Purpose Limitation
- Data minimization
- Accuracy
- Storage Limitation
- Integrity and Confidentiality
- Accountability

ARTICLE 6

- Consent
- Performance of Contract
- Legal Obligation
- Protecting vital interests of data subjects
- Public interest
- Legitimate interest

RIGHTS OF DATA SUBJECTS

Right to Access

Right to Rectification

Right to Erasure/Right to be forgotten

Right to Restrict Processing

Right to Object

Right to Data Portability

Right to object to automated decision making, including profiling

CROSS-BORDER TRANSFER OF DATA

1. Adequacy Decision
2. Appropriate Safeguards
3. Binding Corporate Rules

OTHER REQUIREMENTS

- Conduct **Data Protection Impact Assessment**.
- Maintain **Records of Processing Activities (RoPA)**.
- **Breach Notification** to the Authority within 72 hours, and to data subjects as soon as possible.
- Implement appropriate **technical and organizational measures** to protect the security of personal data.

REMEDIES AND PENALTIES

REMEDIES

- Right to lodge a complaint
- Right to effective judicial remedy
- Compensation

PENALTIES

- No Criminal liability
- Administrative fines up to 20 million euros or a 4% of a group of undertakings' annual global revenue

PERSONAL DATA PROTECTION BILL

BACKGROUND

- India has privacy jurisprudence dating back to a decade.
- Justice A.P. Shah Committee in 2012 – outlined nine principles of privacy.
- Landmark judgment of ***Justice K.S Puttaswamy & another Vs. Union of India.***
- SC declared right to privacy as a fundamental right u/Art. 21 of the Constitution.
- Justice B.N. Srikrishna Committee in July 2017.
- The Committee introduced the Draft of Personal Data Protection Bill in 2018.
- Underwent significant changes; a revised draft was submitted in the Lok Sabha, on December 11, 2019.
- Currently, the Bill has been sent to a joint parliamentary committee for further deliberations before being taken up for passing.
- The Bill is expected to become an Act soon.

CURRENT FRAMEWORK

Information Technology (IT) Act 2000

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal information) Rules, 2011 ('IT Rules/SPDI Rules')

SHORTCOMINGS:

- These Legislations are inadequate to protect and secure the personal data of individuals.
- Not in line with worldwide data privacy regulations.
- Does not regulate cross-border transfer of data.
- Lack of a national regulatory authority for protection of personal data.

KEY FEATURES OF THE BILL

1. Protects individual privacy by regulating usage and transfer of personal data.
2. Introduces data subjects' rights.
3. Imposes obligations on entities that process personal data.
4. Prescribes norms for social media intermediaries.
5. Establish a Data Protection Authority to ensure compliance with the new law.
6. Provides remedies for unauthorised and harmful processing of personal data.
7. Imposes penalties in case of commission of offences specified under the Bill.

SCOPE

- **Extra-territorial application.**
- Applies to entities inside and outside of India.
- Entities outside of India are governed by this Bill if they process personal data:
 - in connection with any business carried out in India;
 - for any systematic activity of offering goods and services to individuals within the territory of India; or
 - with respect to any activity which involves profiling of individuals within the territory of India.

TYPES OF PERSONAL DATA

PERSONAL DATA

Data about or relating to a natural person who can be directly or indirectly identified by name, address, contact details, photographs, social media activity, education details.

SENSITIVE DATA

Data which includes financial data, biometrics, health data, sexual orientation, caste, tribe, religious and political beliefs, any other data categorized as sensitive by the authority under concerned sectoral regulations.

CRITICAL DATA

Not clearly defined; Central Government will notify critical personal data, in case of military or national security data.

RESTRICTION ON DATA TRANSFER OUTSIDE INDIA

PERSONAL DATA

- Can be stored outside India.
- No restriction on transfer outside India.

SENSITIVE DATA

- To be stored in India.
- Transfer outside India permissible if:
 - a) Data subject gives explicit consent
 - b) Pursuant to a contract or intra group scheme
 - c) Central Government has approved it.

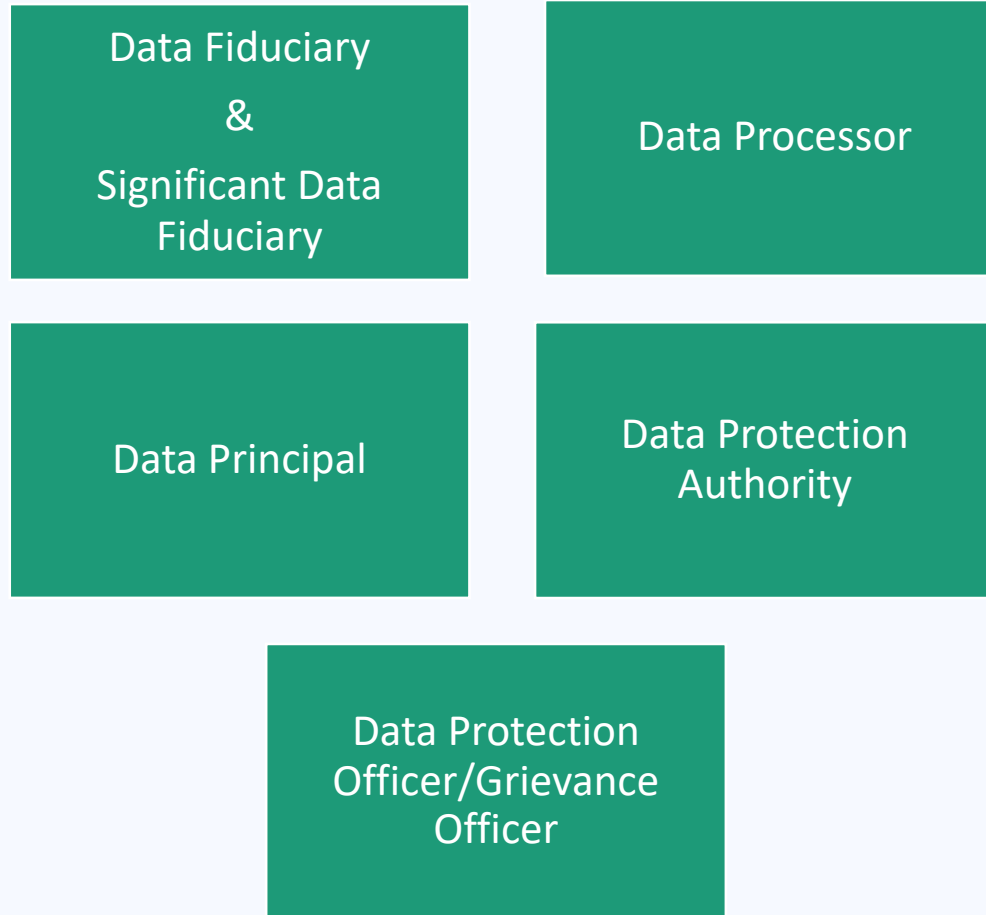
CRITICAL DATA

- To be stored and processed in India.
- Transfer outside India permissible only under exceptional cases:
 - a) Health and emergency services
 - b) Where Central Government deems permissible.

DATA LOCALIZATION

- PDPB experienced a lot of debate on data localization; one of the reasons for delaying the passing of the Bill.
- Mandatory requirement of storing a copy of personal data in India, as laid down in Draft 2018 is now scrapped off.
- **Localization requirements only on sensitive and critical personal data still remain.**
- Financial Data Localization already adopted: RBI's Directive to payment services mandates the data stored abroad to be deleted and stored only in India.
- Government of India is rooting for data sovereignty by mandating certain class of data to be stored within Indian borders.

STAKEHOLDERS UNDER THE PDPB



PRINCIPLES FOR PROCESSING DATA

- Process personal data **fairly and reasonably**.
- Process personal data for purposes that are **clear, specific and lawful**.
- Collect personal data only which is **necessary** for processing.
- Process personal data only on **legitimate grounds**.
- Provide individuals with an **adequate notice** while collecting personal data.
- Ensure that personal data processed is **complete, accurate and up-to-date**.
- **Store** personal data only **as long as maybe reasonably necessary**.
- Implement policies and measures to ensure **privacy by design**.
- Conduct **data protection impact assessments**

INDIVIDUAL RIGHTS

- Right to confirm the processing of personal data.
- Right to access personal data.
- Right to correct and erasure.
- Right to complete incomplete personal data.
- Right to update personal data that is out of date..
- Right to data portability.
- Right to be forgotten.

REMEDIES

1. COMPENSATION

Any data principal who has suffered harm due to violation of this Act or the rules or regulations made thereunder, by a data fiduciary or a data processor, shall have the right to seek compensation.

Basis to determine compensation:

- Nature, duration, extent of violation of provisions
- Nature and extent of harm suffered by data subject
- Intentional or negligent character of violation
- Transparency and accountability measures adopted by fiduciary and processor
- Action taken to mitigate the damage suffered

2. RIGHT TO JUDICIAL REMEDY

Adjudicating Officer → Appellate Tribunal → Supreme Court

3. RIGHT TO LEGAL REPRESENTATION

Data principal may either appear in person or authorize any legal practitioner to present his/her case before the Appellate Tribunal.

CONSEQUENCE OF NON-COMPLIANCE

- Violating the provision of processing or transferring personal data: *fine of INR 15 crore or 4% of the global turnover of the fiduciary, whichever is higher.*
- Data breach and failure/delay to address or report the same: *fine of INR 5 crores or 2% of global turnover.*
- Failure to furnish report, returns, information, etc.: *maximum fine upto INR 20 lakhs.*
- Re-identification and processing of de-identified personal data without consent: *imprisonment of up to three years, or fine of INR 2 lakhs, or both.*
- Failure to comply with data principal requests: *maximum fine upto INR 10 lakhs.*
- Failure to comply with direction or order issued by Authority: *maximum fine upto INR 1 crore.*

HOW IS IT DIFFERENT FROM GDPR?

AREAS	GDPR	PDPB
Categories of data	Personal data, special categories of data	Personal data, sensitive data, critical data
Automated Decision Making	Allowed only after explicit consent. Data subject has a right to object.	No provision
Data Localisation	No requirement	Sensitive and personal data to be stored in India
Data controller/ Data fiduciary	Only a data controller	Data fiduciary classified as significant data fiduciary
Social Media Intermediary	No provision	Lays down certain norms for social media intermediaries
DPA Registration	No requirement	Significant data fiduciary must register with the DPA, and submit its audit reports

CONCLUSION

- Need of the hour to embrace a robust and futuristic law that strikes a balance between individual rights, business and commerce as well as government control.
- PDPB 2019 is a pioneering step in building a comprehensive Data Protection Framework in India.
- It is the first domestic legislation governing individual's rights relating to personal data.
- It proposes to address inadequacies of the current framework.
- Once the Bill gets passed, it will bring India at par with several global jurisdictions in terms of the checks and balances for data protection.
- While it will change business practices of Indian companies, it will also have major implications on foreign companies dealing with Indian data.
- Meanwhile, organizations shall analyse the Legislation carefully to ensure preparedness and compliance with the new law.

RESOURCES

Official Texts

- <https://gdpr-info.eu/>
- http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/373_2019_LS_Eng.pdf

Guidelines on GDPR

- https://edpb.europa.eu/about-edpb/more-about-edpb/article-29-working-party_en
- <https://ico.org.uk/for-organisations/guide-to-data-protection/>

Global Privacy Laws and comparison between them

- <https://iapp.org/>
- <https://www.dataguidance.com/>
- <https://www.activemind.legal/>
- <https://www.dlapiperdataprotection.com/>

For Courses/Trainings and Certifications

- <https://iapp.org/train/iapp-official-training-partners/>
- <https://academy.tsaaro.com/>

THANK YOU

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