



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

The Digital Personal Data Protection Bill, 2022

Divyanshi Kaushal^a

^aGovernment Law College, Mumbai, India

Received 19 December 2022; *Accepted* 03 January 2023; *Published* 07 January 2023

The government primarily the Ministry of Electronics and Information Technology has recently introduced the Digital Personal Data Protection Bill, 2022, and has invited suggestions and feedback for the same. The main issue which is to be resolved by this bill is the conflict between privacy concerns with regard to data use and the accessibility of this data to the government for lawful purposes. The different aspects of the bill have been analysed in detail and how will it benefit the government as well as ensure the privacy concerns of the citizens are protected. The bill seeks to promote data minimization and bring transparency in data collection, and the clause regarding children seeks to prevent cyber crimes against children. With data becoming such an important element of every day it is important to regulate the data and also keep in mind the privacy concerns and the issues related to the use of this data.

Keywords: *data protection, data fiduciary, rti.*

INTRODUCTION

With the world moving towards advanced digitalization day to day, the Ministry of Electronics and Information Technology has brought the digital personal data protection bill, 2022¹. Data has become one of the most crucial assets of today's time. Anything which garners

¹ Digital Personal Data Protection Bill 2022

attention and takes the centre stage also brings in challenges for itself to be tackled in the best manner possible, the same rule goes for data it has become so important today that with time various implications have seemed to arise. The first and foremost challenge with data comes is privacy which is considered to be a fundamental right of the citizens of the country the other challenge is how this data is crucial to the government to be used for various lawful purposes and to avoid the misuse of this data. Both challenges clash with each other and that's where the issue arises. The digital personal data protection bill serves the purpose to resolve this conflict. The purpose of this Act is to provide for the processing of digital personal data in a manner that recognizes both the right of individuals to protect their data and the need to process personal data for lawful purposes and matters connected therewith or incidental thereto.

The said act is important in the present scenario which will resolve the issue of privacy violations which are often the most complained issue in the country as well as look into the matters of cybercrime which has drastically increased in the past years with the growth of ease of access of digital devices as well as internet facilities.

The Central Government withdrew the Data Protection Bill (PDP) which was first proposed in 2019. Union Electronics and Information Technology Minister Ashwini Vaishnaw said the Centre was deciding parliamentary panel's review of the bill and had suggested 81 amendments, leading to the need for a new comprehensive legal framework. He mentioned that 81 amendments and 12 recommendations were proposed to make a comprehensive legal framework for the digital ecosystem and the same was deliberated upon by the Joint Committee of Parliament. "Considering the report of the JCP, a comprehensive legal framework is being worked upon Hence, in the circumstances, it is proposed to withdraw 'The Personal Data Protection Bill, 2019' and present a new bill that fits into the comprehensive legal framework", he said.²

² 'Union Government rolls back the data protection bill' (*The Hindu*, 3 August 2022)
<<https://www.thehindu.com/news/national/union-government-rolls-back-data-protection-bill/article65721160.ece>> accessed 18 December 2022

The Personal Data Protection Bill, 2018, was formulated by a high-level expert group headed by former Supreme Court judge BN Srikrishna. The PDP bill was first brought to the Parliament in 2019 and passed on to the JCP for examination at the time. The JCP was chaired by BJP Member of Parliament (MP) Meenakshi Lekhi initially. PP Chaudhary was appointed in her place since ministers are not allowed to chair Parliamentary Committees. In August the bill was introduced in the parliament by the Narendra Modi-led government and the ministry of electronics and information technology circulated the draft of the new bill inviting any suggestions as well as feedback from the people with regards to the same.

THE DIFFERENT ASPECTS OF THE BILL

The purpose of the said bill has been discussed earlier in the introduction, the application of the bill is within the ambit of the country wherein it will apply to the data which is collected by the data principles online or the data which if collected offline is later digitized.³ It is also specified that the said act will also apply to the processing of data outside the country's territory if the profiling of this data is related to any activity taking place in the territory of the country. However, the provisions of the said bill do not apply to non-automated data, offline personal data, data that is for personal purposes, and personal data about an individual which is maintained as a record for more than 100 years.

As discussed earlier in the introduction section the data can be used only for a lawful purpose and this lawful purpose means anything which is not expressly forbidden by law. The bill also proposes that before the collection of the data fiduciary needs to give an itemized notice to the data principal giving all the details with regards to the collection of the data. The notice can be in written or electronic format. It is also to be noted that the bill has specifically mentioned the concept of free consent mining that the consent of the data principal should not be forcefully obtained, it is also to be noted that the consent can be withdrawn at any point in time and the data fiduciary will have to take the requisite steps in the feasible time limit. The bill also mentions how in certain specific cases consent is deemed to be given like in cases to provide

³ Digital Personal Data Protection Bill 2022

any individual with data during a crisis or a disaster or to maintain public order, to provide health services, in case of some reasonable purpose as the situation may be.

The bill has very rightly elaborated on all these given conditions of deemed consent. The bill also elaborates on the various obligations of the data fiduciary which has nine sub-clauses under it all described clearly. In addition to this, the bill also has certain additional clauses which are related to the processing of the personal data of children. The bill also elaborates in detail on the rights and duties of the data principal along with some special provisions. The bill also seeks to provide compliance guidelines and the formation of a Data Protection Board of India, for which the details of its formation its working members of the board as well as the functions have been written in the bill. The provisions related to the financial penalty, arbitration matters, and voluntary undertaking have been also discussed in the bill. The said bill is drafted and it also has made amendments to certain existing acts, as well as laws of the country like certain clauses of The Information and Technology Act, 2000⁴ as well as the Right to Information Act⁵ have been amended due to the formulation of the clauses of the said bill.

ANALYSIS OF THE BILL

Though the bill has not yet become an act and is still in the process of deliberation wherein it has been presented to various stakeholders for feedback, various people have put forward their opinions about the bill putting across several questions to the government while some have accepted the clauses of the bill and called it a fair play. It is important to understand how the different aspects of the bill can be interpreted.

CERTAIN CONCERNING ASPECTS OF THE BILL

The bill does not seek to classify the data as critically sensitive or any other such classification bringing all sorts of data under one single umbrella which might not seem to be a correct step by the rafters as this can bring in ambiguities in the understanding of the laws which will come into effect. Another aspect of the bill that has been pointed out is that the Data Protection

⁴ Information and Technology Act 2000

⁵ Right to Information Act 2005

Board which has the power to issue notifications has no specific timelines as against the time frame that was prescribed in the 2019 rules which were never implemented. Similarly, no specific time frame has been given to conduct the inquiry by the Board which is ambiguous.⁶

Another concern flagged is about the composition and the appointment of the members by the Government of India. The clause of cross-country transfer of the data is another concerning factor as it cannot be pointed out with certainty what will be the selected factors the government will have in mind while deciding which country can be the one where this transfer can take place. The Digital Personal Data Protection Bill gives the power to the Government to exempt any instrumentality of the state in the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, maintenance of public order, etc., without any explanation.

THE BENEFITS OF THE BILL

Certain beneficial aspects of the bill can be that it brings in the first legal framework to bring in more transparency related to the processing of the data and resolve the ambiguous ambit of privacy that has been the bone of contention for a long now. It also calls for data minimisation which essentially means that the data to be collected should be minimised. It also elaborates on the aspect of storage limitation meaning that the data should be stored for the period that is necessary for the stated purpose. The government has pointed out that the said bill will bring ease of doing business, look forward to the privacy of individuals and data protection as well as cater to the public interests. In addition to the said benefits, the clause to the personal data of the children can be well inferred that the government has been quite considerate towards the breach of data and the cybercrimes happening against children and how they become prey of evils that they are not aware of. Thus the parent's consent and the idea to correct or erase the data have also been welcomed.

⁶ Seema Jhingan & Jyoti Vats Mishra, 'A Dive Into The Digital Personal Data Protection Bill, 2022' (*Mondaq*, 8 December 2022) <[https://www.mondaq.com/india/data-protection/1259392/a-dive-into-the-digital-personal-data-protection-bill-2022#:~:text=process%20personal%20data,Crore\)%20in%20case](https://www.mondaq.com/india/data-protection/1259392/a-dive-into-the-digital-personal-data-protection-bill-2022#:~:text=process%20personal%20data,Crore)%20in%20case)> accessed 17 December 2022

A BRIEF HISTORY OF THE DATA PROTECTION REGIME

Justice K. S. Puttaswamy (Retd) v Union of India:⁷ In the given case which was decided in the year 2017, a nine-judge bench of the supreme court held that Indian citizens have a fundamental right to privacy under Article 21⁸.

B.N. Srikrishna Committee, 2017: The Government appointed a committee under the leadership of B.N. Srikrishna in 2017 to look into the aspects of data protection and the committee submitted its report in 2018 along with a draft data protection bill.

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021: The rules direct social media platforms to exercise greater diligence about the content on their sites.

CONCLUSION

The issue of data protection has been very relevant in today's world and this makes the bill catch all our attention. The present bill has been inviting the feedback of the various stakeholders and it will be interesting to see how the bill will be finally implemented and whether will there be any changes in the draft. The application of the bill on the ground and its repercussions are something that will be faced once it is implemented. If the different clauses of the bill are implemented well and the government is successful in resolving digital personal data protection concerns, the bill will be of huge importance.

⁷ *Justice K. S. Puttaswamy (Retd) v Union of India* AIR (2017) SC 4161

⁸ Constitution of India 1950, art. 21