

An updated draft of the Personal Data Protection Bill, 2019 (“Updated Draft Bill”) was introduced before the parliament on December 11, 2019 and can be viewed here:

http://prsindia.org/sites/default/files/bill_files/Personal%20Data%20Protection%20Bill%2C%202019.pdf.

The first iteration of the Updated Draft Bill, i.e., the Personal Data Protection Bill, 2018 was released in July, 2018 (“Draft Bill”).

The Updated Draft Bill has been referred to a select committee of parliament. The parliamentary select committee is to submit its report on the Bill before the end of the Budget Session in 2020 (which usually takes place in February).

The Bill may undergo changes based on the feedback provided by the select committee. After that, the Bill would be placed before both houses of the parliament. The Bill will have the force of law once it has been passed by both houses. Upon coming into force it will replace the existing data privacy regulations issued under the Information Technology Act, 2000.

The Updated Draft Bill makes some significant changes to the 2018 draft. Some of these are set out below.

| TOPIC | DRAFT BILL (2018) | UPDATED DRAFT BILL (2019) |
|---|---|--|
| <p>» Data Localisation</p> | <p>Copy of personal data to be stored on a server or data centre located in India. Sensitive Personal Data may be transferred with explicit consent, and under standard contractual clauses/ intra-group schemes. Critical data can only be processed in India.</p> | <p>Mandatory requirement to store a copy of personal data in India done away with.</p> <p>Transfer of sensitive personal data outside India is permissible, if a copy is retained in India. Similar conditions apply to processing of sensitive personal data and critical data.</p> |
| <p>» Right to correction, erasure, etc. of information</p> | <p>Data principals have the right to correct inaccurate or misleading personal data, complete incomplete personal data, and update personal data that is out of date.</p> | <p>An additional right to erase personal data, which is no longer necessary for the purpose for which it was processed, has been added.</p> |
| <p>» Consent Manager</p> | <p>-</p> | <p>Concept of consent manager introduced. It can be used by data principals to gain, withdraw review and manage consent given to the data fiduciary. It is required to be registered with the Data Protection Authority.</p> |

| TOPIC | DRAFT BILL (2018) | UPDATED DRAFT BILL (2019) |
|--|--|--|
| <p>» Explicit Consent</p> | <p>Thresholds for constituting explicit consent were specified.</p> | <p>Specifications have been removed.</p> |
| <p>» Social Media Intermediaries</p> | <p>-</p> | <p>Provisions introduced to regulate social media intermediaries having users beyond a threshold notified (as yet unspecified). In addition to conducting data protection impact assessments, maintenance of records, audit of policies, and appointment of a data protection officer, these entities have to provide an option to users for voluntary verification of their accounts.</p> |
| <p>» Privacy By Design</p> | <p>Privacy by design policies were not required to be approved by the Data Protection Authority.</p> | <p>Data fiduciary may submit its privacy by design policies to the Data Protection Authority for certification.</p> |
| <p>» Regulatory Sandbox</p> | <p>-</p> | <p>Data Protection Authority can create a regulatory sandbox for encouraging innovation in artificial intelligence, machine-learning or any other emerging technology.</p> |
| <p>» Definition of Personal Data</p> | <p>Refers to data about a natural person who is directly or indirectly identifiable, having regard to any characteristic or feature of the identity of such natural person, or any combination of such features, or any combination of such features with any other information.</p> | <p>Definition clarifies that it includes data available online or offline, and any inference drawn from the data for the purpose of profiling.</p> |
| <p>» Government Access to Anonymised Data</p> | <p>-</p> | <p>Government has power to direct any data fiduciary or processor to provide anonymised personal data or other non-personal data "to enable better targeting of delivery of services or formulation of evidence-based policies by the Central Government".</p> |

HOW THIS MAY AFFECT YOU, AND WHAT YOU SHOULD DO NOW:

The existing data management practices of your organization will likely be affected once the Updated Draft Bill comes into force.

There is no 'one size fits all' approach or plan for compliance. You should first take stock of the steps you need to accomplish, and then tackle them one by one.



Step 1: Take stock and gather information

- » Identify if your organization collects or processes personal data and/ or sensitive personal data of individuals.
- » Conduct an assessment on the data life cycle, i.e., collection points, where its stored, retention periods, etc.
- » Identify what compliances and measures you already have in place.



Step 2: Review and assess your status

- » Identify where you currently are, where you need to get to, and what you need to do to get there.
- » Identify 'gaps' in compliance, and how you should fill them.
- » Analyze if current practices of data security, etc., are sufficient (don't reinvent the wheel)



Step 3: Identify priorities and make a plan

- » Start thinking about which areas you should focus on first (i.e., HR, a particular product or service line, etc.).
- » Identify and/ or recruit technical and legal resources (including a data protection officer).
- » Put in place a governance structure, and set a budget.

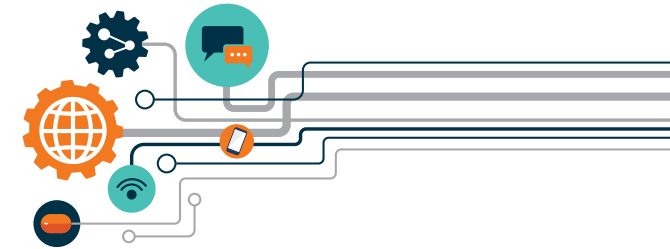


Step 4: Implement the changes

- » Implement policies and governance structures, make technical changes to your platform/website, renegotiate existing contracts.
- » Sensitize your employees about changing regulations, and what measures they can take to ensure compliance.
- » Test compliance with on-going monitoring measures.

HOW WE CAN HELP:

- » We will update on you on the progress of the proposed regulation.
- » If you have any questions on how this law will affect your business in particular, we can help you work through these.
- » We can help you get started on Step 1 and Step 2, which you can start on now, and which will likely be the most time consuming.



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