



LexCognito

This issue of LexCognito, which in Latin means 'awareness about law', seeks to provide you an insight into significant legal and regulatory developments that have taken place very recently in India.

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India's Digital Data Protection Bill - Where has it reached?

As per media reports, the Union Cabinet has this Wednesday approved the draft Digital Data Protection Bill, which will now be placed before the Parliament for leading it to the path of becoming law in India.

The earlier version of the personal data protection bill was withdrawn after much debate and deliberation so as to bring into force a comprehensive legislation for effectively regulating all aspects of data protection.

Since India recognises the right to privacy as a fundamental right of every citizen, the Government is in the process of making legislation for data protection. The bill as we know is more like a broad legal framework leaving the rule making power with the central government to set the rules for data protection in the rapidly changing digital ecosystem.

The final approved version is not yet available for us. However, let's understand what has been brewing up in the making.

1. Personal Data: Unlike its predecessor, the last available bill has limited itself to govern only personal data and leave the non-personal data, which will be governed by a separate legislation.
2. Life cycle of personal data: The businesses may use personal data for lawful purposes only for which it was collected in a fair and transparent manner. Only such data may be collected which is required for attaining specified purpose and can be stored only till fulfilment of the said purpose. While reasonable efforts are to be taken for keeping data accurate and updated, it must be protected from unauthorized access. The person who decides the purpose and means of processing of personal data should be accountable for such processing.
3. Data Localization: The Bill has done away with data localization requirement which was amongst the most contentious issues in the earlier proposals. The Government will notify countries where personal data may be transferred, stored and processed.
4. Power of the Consent: The proposed law mandates taking an informed consent from the individuals (parental consent in case of children) before collection of their personal

data by giving an itemised notice, which shall not be perpetual and shall remain revocable. While these requirements aim at giving control to individuals to manage use of their personal data, it poses onerous obligations on the businesses. The concept of deemed consent was introduced in certain circumstances to the relief of the industry.

5. Rights come with Duties: No right is an absolute right and is subject to reasonable restrictions and is coupled with the duties. Similarly, while the bill recognises rights of individuals, it poses certain duties upon them considering societal norms and our constitution.
6. Government power to access data: The bills so far have been criticised for having given exemptions to the Government for accessing the data.
7. Penalties: The penalties have now been capped up to INR 500 Crores as compared to 4% of the annual turnover of the violator. The penalty will be levied considering various factors to assess the overall impact of the breach.

India is moving towards bringing balance between protecting privacy and allowing innovation and start-up ecosystems to thrive in a reasonably regulated environment. Till the new regime comes into effect, the existing law remains in force requiring compliance by all businesses for protecting sensitive personal information.

At this time, the industry members should gear up to change their processes while dealing with data so as to ensure smooth transition into the new compliance regime.

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