

MeitY has notified the draft Digital Personal Data Protection Bill 2022 (DPDPB, 2022) on 18th November 2022. Below is a brief chapter-wise summary of the proposed legislation along with a comparison with the JPC Report and Data Protection Bill 2021.

Chapter 1: Definitions and Scope

SUMMARY OF PROVISIONS- This chapter outlines the applicability of the DPDPB 2022. The law will apply to automated processing of personal data which is either collected from Data Principals online or personal data which is collected offline but is digitised. The law will also have extra-territorial applicability where personal data is being processed outside the country for profiling of Indian residents or for providing goods or services to Indian residents. Non-automated processing, processing of offline personal data, processing for personal or domestic use are excluded.

COMPARISON WITH JPC REPORT AND DPB 2021-Non-personal data and anonymised data have been omitted from the scope of the law. Application of the law now extends to processing of digital personal data through automated means. Data collected offline which is then digitised is also included within the scope. The DPDPB also omits any classification of personal data as sensitive personal data or critical personal data. Specific obligations governing social media platforms have been left out of the ambit of this Bill.

Chapter 2: Obligations of Data Fiduciary

SUMMARY OF PROVISIONS- General obligations of the data fiduciary include the primary responsibility to process personal data only for a lawful purpose for which the data principal has given consent or is deemed to have given consent. Data fiduciaries are required to give an option to Data Principals to access the privacy notice in English or in any scheduled language. Consent managers may be used by Data Principals for giving or reviewing consent and every consent manager is required to be registered with the Data Protection Board.

There are some additional obligations imposed on significant data fiduciaries such as the appointment of a Data Protection Officer based in India, an independent Data Auditor, and the responsibility to undertake measures such as Data Protection Impact Assessment.

COMPARISON WITH JPC REPORT AND DPB 2021- While DPB 2021 contained a separate chapter on Transparency and Accountability measures such as privacy by design, explicit mention of the same has been omitted in the current Bill. There is a change in the manner of providing privacy notice to Data Principals- there must be an option to access it in English or one of the languages specified in Schedule 8 of the Constitution. The Data Protection Board and affected Data Principals must be informed of any personal data breach, the statutory time period of 72 hours has been omitted. Explicit mention of security safeguards such as encryption and access control which were previously mentioned, has been omitted.

Chapter 3: Rights and Duties of Data Principal

SUMMARY OF PROVISIONS- In addition to the right to obtain information about personal data being processed by the Data Fiduciary, Data Principals have the right to seek correction and erasure of their

personal data. Data Principals can also nominate another individual to exercise their rights on their behalf in the event of the Data Principal's death or incapacity. A new provision on 'Duties of Data Principals' has been added, violation of which attracts a financial penalty of up to rupees ten thousand.

COMPARISON WITH JPC REPORT AND DPB 2021- The right to data portability and the right to be forgotten which found mention in the 2021 version of the Bill, have been omitted in the DPDPB 2022. A new provision on the duties of data principals has been introduced.

Chapter 4: Special Provisions

SUMMARY OF PROVISIONS- This chapter contains the provisions on cross-border transfers of personal data and the clause on exemptions. Transfers of personal data outside the country will be permitted to notified countries and territories based on assessment of certain factors by the Central Government. Some of the exemptions which have been carved out include processing of personal data for judicial functions, for prevention of offences, for actions by State instrumentalities, and for enforcement of legal rights.

COMPARISON WITH JPC REPORT AND DPB 2021- While previous drafts of the DPB and PDPB considered a host of instruments of transfers rooted in a risk-based approach based on the type of data processed, the new draft proposes the idea of whitelisting a group of countries or territories as deemed fit by the Central Government.

Chapter 5: Compliance Framework

SUMMARY OF PROVISIONS- This chapter broadly focuses on the framework, composition and structure of the Data Protection Board of India. This chapter also focuses on the methods of grievance redressal, review and appeal, dispute resolution and penalties. In terms of the enforcement mechanism, new provisions have been introduced on alternate dispute resolution and voluntary undertakings by entities.

COMPARISON WITH JPC REPORT AND DPB 2021- Compared to the draft DPB, 2021, the Bill is less prescriptive on the structure, makeup and functionalities of the Data Protection Board of India. A point to note is that the body shall no longer be referred to as the Data Protection Authority as prescribed by the DPB, 2021. The new Bill also addresses the penalties associated with non-compliance and removes the scope for criminal penalties. A clause has also been added to enable alternate dispute resolution mechanisms such as mediation for resolution of complaints.

Chapter 6: Miscellaneous

SUMMARY OF PROVISIONS- This chapter contains rule-making powers of the Central Government and allows the Central Government to amend the financial penalties that have been imposed under the law. Additionally, to remove difficulties in interpretation of the law, the Central Government has been empowered to make provisions, by an order, within five years of the date of commencement of the Act. It has also been provided that in case of inconsistency with other laws, the DPDPB will prevail to the extent of such inconsistency.