

# India Data Protection Bill 2019

Grant Thornton's view



## The Bill

Today's digital technologies are responsible for carrying, transmitting and storing business-critical and personal data. With increasingly more organisations using computers to store and process personal information, there was always a danger that information could be misused or fall into the wrong hands. As a result, a number of concerns grew around the use and access of such information.

On the lines of the General Data Protection Regulation (GDPR) and Justice B N Srikrishna Committee report, the Indian Personal Data Protection Bill (PDPB) was drafted in 2018. Subsequently, in 2019, the Union Cabinet gave its nod to table the Personal Data Protection Bill 2019 (Bill). The Bill seeks to lay down laws on processing of personal data by public and private entities. The Bill contains 14 different chapters and 98 clauses.

### Key highlights of the Bill



#### Consent

Personal data should be shared and processed by entities (data fiduciaries and data processors) only after consent from data owners (data principals). Minor's data should be shared only after consent from parents/guardians as per the rights defined in sections of the Bill



#### Data storage

All financial and critical data has to be stored and processed in India. Sensitive data has to be stored in India but can be processed outside with consent, and non-critical and non-sensitive data will be categorised as general data with no restrictions on where it is stored or processed.



#### Data accountability

Data fiduciaries need to be accountable and should ensure accuracy and quality of data at all times. They should also maintain transparency in operations while information is collected, processed, transmitted and stored.



#### Exemption power to government

The Bill empowers the Central Government to exempt certain data processors from the application of this act in the interest of sovereignty and integrity of India, the security of the state or friendly relations. The government can use non-personal or anonymous data for research or any other purpose.



#### Data categorisation

All data should be categorised as critical, sensitive or general based on which usage rights are to be defined.



#### Purposeful usage

Entities should clearly define the specific lawful reasons for collection and the duration of requirement, and limit the use to extent as required for processing and subsequent reference.



#### Security Safeguards

Data fiduciary shall prepare a privacy by design policy and ensure appropriate technology safeguards have been implemented. They should conduct risk/impact assessment towards maintaining data confidentiality, integrity and availability.



#### Data governance

To manage, administer and monitor the functioning of the Bill, the government will set up a governing body called Data Protection Authority of India (DPAI), while data processing entities need to have a dedicated Data Protection Officer (DPO).



#### Audit and compliance and penalties

Data fiduciaries/processor are subjected to routine compliance audits by DPIA/regulatory bodies and are liable for penalties for sharing data without consent, data breach incidents recorded or other reasons as mentioned in the Bill.

The Bill seeks to lay down a legal framework to preserve the sanctity of 'consent' in data sharing and penalise those breaching the norms. It is largely aimed at checking social media trolling and will encourage entities to start processing data in India. With high levels of data consumption, the country is expected to become one of the world's largest data refineries.

### Proposed clauses and their categories

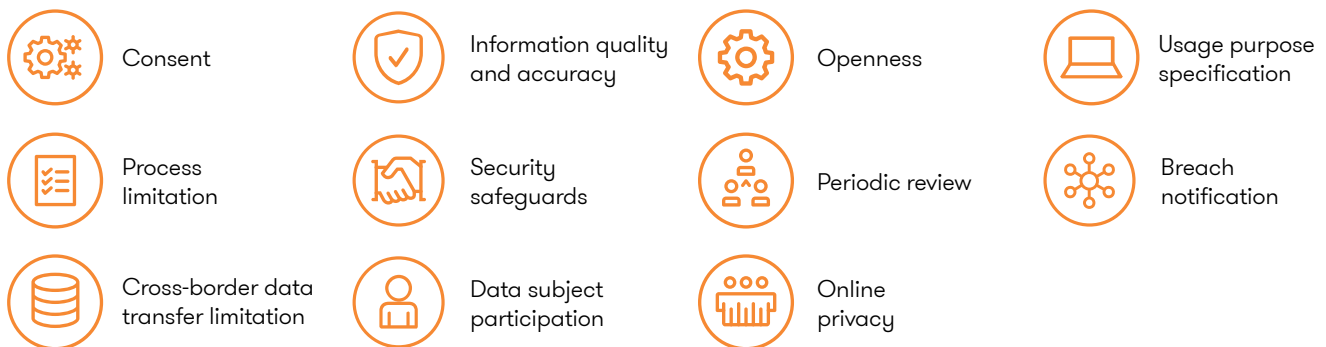
- **Chapter 1** – Clauses 1 to 3 – Preliminary information and definitions
- **Chapter 2** – Clauses 4 to 11 – Obligation of data fiduciary
- **Chapter 3** – Clauses 12 to 15 – Ground for processing of personal data without consent
- **Chapter 4** – Clause 16 – Personal and sensitive personal data of children
- **Chapter 5** – Clauses 17 to 21 – Rights of data principal
- **Chapter 6** – Clauses 22 to 31 – Transparency and accountability measures
- **Chapter 7** – Clauses 33, 34 – Restriction of transfer of personal data outside India
- **Chapter 8** – Clauses 35 to 40 – Exemptions
- **Chapter 9** – Clauses 41 to 56 – Data Protection Authority of India
- **Chapter 10** – Clauses 57 to 66 – Penalties and compensation
- **Chapter 11** – Clauses 67 to 77 – Appellate tribunal
- **Chapter 12** – Clauses 78 to 81 – Finance accounts and audits
- **Chapter 13** – Clauses 82 to 85 – Offenses
- **Chapter 14** – Clauses 86 to 98 – Miscellaneous – Delegations, power to government, overriding effect, etc.

## Our view

Any personal data that could be critical, sensitive or can be used maliciously by someone is included when considering data privacy. Personally identifiable information (PII) is any data that could potentially be used to identify a particular person. Examples include the full name, PAN card, driver's licence number, bank account number, passport number and email address. Sensitive personal data or information (SPDI) could include details such as passwords, Aadhaar card, credit/debit card or other payment instrument details; it could also include physical, physiological and mental health condition, medical records, biometric/genetic information, etc.

The Bill will provide powers to the data owners by making them a participant in the data privacy and protection governance framework. The Bill will put more accountability on the organisations which are processing the data by ensuring deployment of strong data/information handling policies and implementing IT security controls to prevent misuse. The formation of DPAI will lead to a robust data governance framework to monitor operational compliance. The Bill will also enable organisations to align themselves to address cross-border/international data transfer requirements. Non-compliance with the requirements such as sharing of data without consent, non-reporting of breach or any inaction will lead to stringent penalties as defined the Bill.

To protect data (PII/SPDI) from unauthorised use, data privacy will have to work on some defined principles or controls. The number of controls and principles differ by country but generally will include:

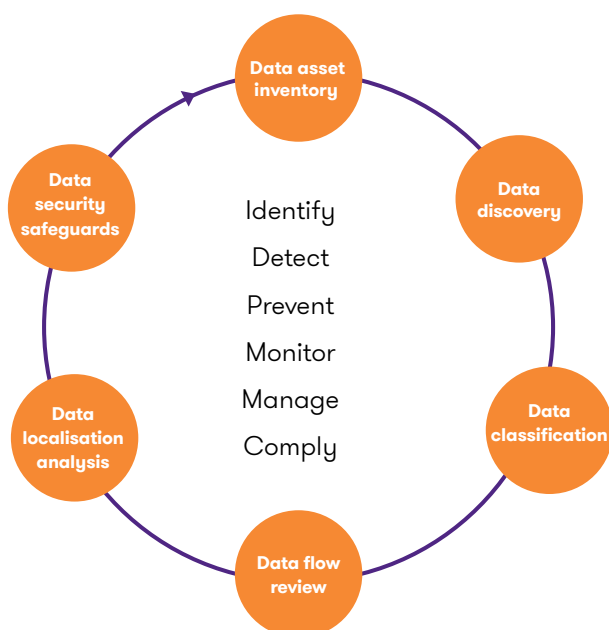


Data security is all about data classification, data privacy and data protection.  
 Data protection prevents unauthorised use of information assets, while privacy defines who has authorised access.  
 Data protection is a technical control, while data privacy is a process and legal matter.

## How Grant Thornton can assist you

Every organisation is at a different stage of data privacy compliance. We can help organisations with a well-defined structure and framework to position their compliances in line with the Bill more effectively.

### Data privacy and protection lifecycle



### Our customised services include:

- Data privacy dipstick analysis
- Data localisation compliance
- Data protection policy and standard operating procedure (SOP)
- Audit readiness and compliance
- Breach prevention programme
- DPO as a service
- Implementation assistance

To know more about our solutions, please contact:



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