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The Personal Data Protection Bill, 2018 In A Nutshell

The Personal Data Protection Bill, 2018 has been made public on 27.07.2018 and its journey to parliament is imminent. This is a keystone development in the evolution of data protection law in India. The bill aims to protect personal data which is essential facet of informational privacy. The privacy has already been declared as a Fundamental Right by the Hon'ble Supreme Court of India.

The Bill is brought to address some of the burning issues around privacy of personal information in India. The Bill aims to establish robust data privacy laws that encompass all players in the ecosystem.

The collection, use and transfer of personal data is currently covered by Informational Technology Act, 2000 and SPD Rules which have proved to be inadequate.

The Bill applies to collection, disclosure, sharing or processing of personal data by any Indian Company, Indian Citizen or any person or body of persons created under Indian laws.

The Bill is broadly based on the framework and principles enshrined under the General Data Protection Regulation (the "**GDPR**") recently notified in the European Union

Key Takeaways from the The Personal Data Protection Bill, 2018

1. The Bill establishes **fiduciary relationship** between the individual (referred as Data Principal in the Bill) and the service provider (referred as Data Fiduciary in the Bill). This is due to the dependence of the individual on the service provider to obtain a service. In this way, the service provider is made duty bound to process personal data in a fair and reasonable manner that respects the privacy of individual.
2. The Bill imposes limits on collection, storage, use and processing of data. The data has been further categorised as Personal Data and Sensitive Personal Data which shall be processed only in accordance with the provisions of Chapter III & IV respectively.

At the time of collection of data, the Data Fiduciary shall provide to Data Principal the detailed information with regard to purpose of data collection, categorization of data, contact details of Data Protection Officer, procedure to withdraw the consent, source of data (if data in not collected directly from Data Principal), period of retention of data, procedure of Grievance Redressal and right to file complaint before Data Protection Authority of India.

The Data Fiduciary shall provide to Data Principal aforementioned information and take meaningful consent for processing his/her data. The Bill imposes on Data Fiduciary the burden of proof to establish that consent has been taken as per the mandate of the law.

3. The Data Principal (individual) has been given the right to:
 - i. to **inquire** from the data fiduciary as to whether the data fiduciary is processing or has processed his personal data;

- ii. to **obtain brief summary** of the personal data being processed by the Data Fiduciary;
 - iii. to **correction** of personal data;
 - iv. to be **Forgotten** i.e. to restrict or prevent continuing disclosure of personal data;
4. The Bill establishes the concept of **Privacy by Design**. This mandates that Data Fiduciary shall implement policies and measures to ensure that :
- (a) managerial, organisational, business practices and technical systems are designed in a manner to anticipate, identify and avoid harm to the data principal;
 - (b) technology used in the processing of personal data is in accordance with commercially accepted or certified standards;
 - (c) privacy is protected throughout processing from the point of collection to deletion of personal data;
5. The Chapter VII of the Bill establishes strict transparency and accountability measures. The Data Fiduciary shall remain transparent in its practices related to processing personal data. The Data Fiduciary shall implement appropriate security safeguards to prevent misuse, unauthorised access to, modification, disclosure or destruction of personal data. These security safeguards shall be reviewed periodically.
6. Considering the significance to protect personal data and potential harm, the Bill lays down robust enforcement mechanism. The Bill mandates that in specific situations processing of personal data shall not commence unless Data Fiduciary has undertaken **Data Protection Impact Assessment** in accordance with the provisions of the Bill. Then the assessment shall be

reviewed by Data Protection officer (appointed by the Data Fiduciary), who shall submit the same to the Data Protection Authority of India.

The Data Fiduciary shall have its policies and conduct of processing of personal data audited annually by an independent Data Auditor. The auditor has to evaluate the compliances of Data Fiduciary in view of the provisions of the Act.

7. The Bill provides for the establishment of a **Data Protection Authority**. The Authority is empowered to:
- i. take steps to protect interests of individuals,
 - ii. prevent misuse of personal data, and
 - iii. ensure compliance with the Bill.
8. The Bill prescribes strict civil and criminal liabilities for any violation or contravention.

Civil Liabilities

- Penalty of INR. 5 crores or 2% of annual global turnover (whichever is higher) is prescribed for failure to undertake a Data Protection Impact Assessment or conduct a data audit or appoint a Data Protection Officer, etc.
- Penalty of INR. 15 crores or 4% of annual global turnover (whichever is higher) is prescribed for violations like processing personal data in contravention of the Bill.
- Stringent penalty is prescribed for failure to comply with request of data principal and failure to furnish report, returns, information, etc.
- Any data principal who has suffered harm as a result of any violation of any provision under this Act shall have the right to file complaint before

Adjudicating Officer and seek compensation from the data fiduciary or the data processor, as the case may be.

Criminal Liabilities

- Obtaining, disclosure, transferring or selling of personal data in contravention of the Act is an offence punishable with imprisonment for maximum 3 years or fine of maximum rupees 2 lakh or both.
- Obtaining, disclosure, transferring or selling of sensitive personal data in contravention of the Act is an offence punishable with imprisonment for maximum 5 years or fine of maximum rupees 3 lakh or both.
- The offences punishable under the Act are cognizable and non-bailable.
- Where an offence under the Act has been committed by a company and it has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence.

The Bill is a welcome first step towards a comprehensive data protection law in India.
