

## AN ANALYSIS OF THE DIGITAL PERSONAL DATA PROTECTION BILL, 2022

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### ABSTRACT

*The Digital Personal Data Protection Bill 2022 ushers in a new era of data protection in India, prioritizing transparency and accountability. Focusing on explicit consent, the legislation mandates clear notices from data controllers, even retroactively, ensuring individuals are informed about data processing. "Presumed/deemed consent" provides flexibility in urgent scenarios. The bill introduces "significant data controllers" with additional responsibilities and safeguards for children's data. Data processors must implement security measures and notify breaches promptly. The establishment of the Data Protection Board of India enhances enforcement. The bill addresses cross-border data transfers, imposing substantial fines for non-compliance. Despite remarkable clarity, issues arise, prompting suggestions for non-personal data coverage, fine proportionality, and additional instruction. The bill, which functions as a social contract, navigates the challenges of the digital age by emphasising a shared commitment to privacy, accountability, and fairness. As India navigates this transformative legislation, it becomes a cultural manifesto, encouraging stakeholders to influence the changing narrative of the country's digital future. The bill is a prelude to collaborative conversation, symbolising India's commitment to a legally sound and values-driven digital world.*

**Keywords:** *Data Protection, Data Controllers, Digital World, Notice and Presumed Consent.*

## 1. INTRODUCTION

The Digital Personal Data Protection Bill 2022 is making waves in India, ushering in a new era of data protection with a focus on transparency and accountability. Controllers are now tasked with providing clear and detailed notices about the personal data they collect, even retroactively, ensuring individuals are well-informed about how their data is being processed, irrespective of when consent was initially given.

Consent, a cornerstone of data protection, takes centre stage in the bill. Data controllers must now seek explicit and positive consent for specific purposes, with the added requirement that consent requests be accessible in English or any local Indian language. The bill introduces the pragmatic concept of “presumed/deemed consent” for situations where obtaining explicit consent is impractical, allowing for flexibility in urgent scenarios like data disclosure for essential services.

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## 2. DIGITAL PERSONAL DATA PROTECTION BILL, 2022: FEATURES

The legislation places substantial responsibilities on data controllers, emphasising their accountability for compliance, safeguard implementation, and the establishment of complaint mechanisms. The introduction of “significant data controllers” adds an extra layer, considering factors like data volume, sensitivity, and potential harm to data subjects<sup>1</sup>. This category comes with additional obligations, such as appointing a resident Data Protection Officer (DPO) in India and conducting data protection impact assessments.

Children’s data receives special attention, with the bill implementing safeguards like mandatory verifiable parental consent, prohibiting tracking, behaviour monitoring, and targeted advertisements<sup>2</sup>. Recognising parents or legal guardians as the decision-makers for children’s data rights underscores the bill’s commitment to protecting the vulnerable.

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<sup>1</sup> Divyanshi Kaushal, *The Digital Personal Data Protection Bill, 2022*, 3 JUS CORPUS L. J. (2022)

<sup>2</sup> P. Arun, *A Soft Tone with a Tiger Claw: A Critical Commentary on the Digital Personal Data Protection Bill, 2022*, 58(6) ECON. & POL. WEEKLY (2023)

Data processors are not spared from responsibility either, with the bill requiring them to implement reasonable security measures to prevent data breaches. In case of a breach, timely notifications to the Data Protection Board of India and relevant authorities are mandated, ensuring a swift and transparent response.

The establishment of the Data Protection Board of India stands out as a significant milestone. Operating digitally, this independent body holds the power to identify violations, impose sanctions, and take legal action. The enforceability of its orders as civil court judgements strengthens the mechanisms for data protection.

The bill takes a comprehensive approach to personal data breaches, covering a wide range of unauthorised activities that could compromise confidentiality, integrity, or availability. The requirement for prompt notification ensures quick mitigation measures can be implemented<sup>3</sup>.

Addressing cross-border data transfers, the bill empowers the Central Government to notify specific jurisdictions outside India under certain conditions. This balanced approach seeks to facilitate international data flows while upholding data protection standards.

The financial sanctions in the bill are substantial, reflecting the gravity of non-compliance. Fines ranging from INR 250 million to a staggering INR 500 crore send a clear message about the importance of adhering to data protection regulations.

The bill's commendable clarity compared to its predecessor is laudable, although some areas remain unclear due to the absence of specific procedural guidelines. Notably, the relaxation of data localization restrictions is expected to foster a more favourable environment for India's growing economy and businesses.

### 3. CRITICISM AND RECOMMENDATIONS

In the midst of these advancements, criticisms have emerged. Some argue that the bill should explicitly cover non-personal data, while others express concerns about the treatment of anonymized data. The fines and penalties have faced scrutiny for potentially impacting smaller businesses disproportionately. The concept of "significant data controllers" and the

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<sup>3</sup> Divyanshi Kaushal, *supra* note 1

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criteria for their application have also sparked discussions, and there are calls for more detailed guidance on cross-border data transfers.

To address these concerns, recommendations include providing explicit clarity on non-personal data, precise guidelines for anonymized data, reconsideration of fine scales for proportionality, transparent criteria for “significant data controllers,” and refinement of cross-border data transfer mechanisms<sup>4</sup>. Additionally, implementing a regular review mechanism would ensure the legislation stays abreast of technological advancements and emerging challenges.

Approaching the Digital Personal Data Protection Bill 2022 through a human lens, it’s evident that this legislation is not just about rules and regulations; it’s about ensuring every individual’s right to privacy is respected and protected in the digital realm.

Imagine receiving a notice that clearly explains how and why your personal data is being processed, even if you gave your consent before the bill came into effect. This commitment to transparency, reaching back in time, is a significant stride towards building trust between individuals and the entities handling their data.

Consent, the cornerstone of privacy, takes a front seat in the bill, emphasising not just its necessity but also the need for simplicity. Imagine being able to provide your consent in a language you’re comfortable with, making sure the complex legal jargon doesn’t act as a barrier. The introduction of “presumed/deemed consent” recognises that life isn’t always predictable, and sometimes urgent situations necessitate a more flexible approach, especially when it comes to essential services or work-related matters<sup>5</sup>.

In this digital age, where data is often referred to as the new oil, the bill puts the spotlight on those responsible for handling this precious resource: data controllers<sup>6</sup>. These entities are not just guardians; they are now accountable for every step of the data processing journey. The introduction of “significant data controllers” acknowledges that some hold a heavier responsibility due to the nature and volume of data they handle. Imagine an extra layer of

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<sup>4</sup> P. Arun, *supra* note 2

<sup>5</sup> Mrisho Swetu, *Recommendations on the Personal Data Protection Bill*, SSRN ELEC. J. (2022)

<sup>6</sup> *Id.*

protection for sensitive information, with designated officers ensuring compliance and conducting impact assessments.

Children, often more vulnerable in the digital landscape, receive special attention. Now, think about how reassuring it is to know that their data is not only protected by verifiable parental consent but is also shielded from practices like tracking and targeted advertisements. Parents or guardians stepping in as decision-makers further fortify the protective barrier around children's digital lives.

In this intricate web of data processing, data processors play a crucial role. The bill recognises their responsibility in ensuring the security of personal data, envisioning a scenario where breaches are not just about penalties but about prompt notifications, swift responses, and lessons learned.

The creation of the Data Protection Board of India can be likened to having a digital watchdog, ensuring that the rules are not just written but enforced. Imagine this board as a guardian of your digital rights, ready to take on the challenge of identifying violations, imposing sanctions, and safeguarding your data as if it were its own.

Think about the financial sanctions not just as penalties but as a strong deterrent against negligence. The fines, ranging from substantial to extraordinary, send a powerful message: the importance of safeguarding personal data is not just a legal obligation but a moral one.

Yet, in this journey towards a comprehensive data protection regime, criticisms arise. Picture the ongoing conversation not as a clash but as a collective effort to refine and perfect a piece of legislation that impacts us all. The call for clarity on non-personal data is akin to ensuring that every aspect of our digital lives is considered. The discussions on anonymized data are not just legal nuances but reflections of a society striving for a delicate balance between innovation and privacy.

Consider the concerns about fines and penalties not as objections but as a call for fairness, especially for smaller businesses navigating the digital landscape. The debates around "significant data controllers" and cross-border data transfers aren't roadblocks but signposts pointing towards a more inclusive and globally aware framework.

In response to these discussions, the recommendations act as a compass, guiding the bill towards a more refined and balanced state. They are not demands but suggestions—a collaborative effort to create legislation that stands the test of time and technology.

#### 4. NAVIGATING THE NEW LEGISLATION

As India navigates the complexities of the digital age, this bill is not just a legal text; it's a societal contract. It speaks to businesses, urging them to innovate responsibly. It addresses individuals, promising to protect their digital rights. It calls out to regulators, seeking a delicate equilibrium between privacy and progress.

Picture the Digital Personal Data Protection Bill 2022 as a living document, one that echoes the collective consciousness of a nation grappling with the intricacies of the digital age. It's not just a set of legal clauses; it's a shared commitment to the fundamental values of privacy, accountability, and fairness.

Consider the nuances of the bill as brushstrokes on a canvas, each adding depth to the portrait of a modern, digitally aware society. It's a canvas where the strokes of transparency and accountability illuminate the path towards a trustworthy digital landscape. Every notice and every detail about the processing of personal data is a stroke that contributes to a clearer, more vivid understanding between individuals and the entities handling their information<sup>7</sup>.

Imagine consent as a handshake, a simple yet powerful gesture affirming the agency individuals have over their own data. The bill doesn't just demand consent; it orchestrates a dance where individuals lead and data controllers follow. The introduction of "presumed/deemed consent" is like adding a flexible spin to this dance, recognising that sometimes life moves too fast for formalities<sup>8</sup>.

The spotlight on data controllers is akin to handing them the keys to a sacred vault. These guardians are not just custodians; they are entrusted with a profound responsibility. The

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<sup>7</sup> Ashwini Kumar, *The Digital Personal Data Protection Bill 2022 in Contrast with the EU General Data Protection Regulation: A Comparative Analysis*, 5(2) INT'L J. MULTIDISCIPLINARY RSCH. (2023)

<sup>8</sup> *Id.*

creation of “significant data controllers” is an acknowledgment that, in this age of information, some are custodians of treasures more valuable and sensitive than others.

In the realm of children’s data protection, envision the bill as a guardian angel. Verifiable parental consent is not just a checkbox; it’s a shield against the digital hazards that could harm the youngest members of our society. The bill acts as a virtual guardian, ensuring that children can explore the digital world without fear of exploitation.

As the bill extends its arms to data processors, see it as a mentor rather than an enforcer. The emphasis on reasonable security measures is an invitation for processors to become partners in safeguarding digital landscapes. In the event of a breach, the call for prompt notifications echoes the urgency of addressing issues together, turning a potential crisis into a collective learning experience.

The establishment of the Data Protection Board of India transforms the bill into a digital magistrate, ensuring that the rules are not just observed but enforced. Think of this board as a guardian of justice in the digital realm, a place where violations are scrutinised, sanctions imposed, and justice served.

The financial sanctions, instead of being seen as penalties, could be seen as a societal contract. They are a collective commitment to valuing and protecting personal data, a shared understanding that the consequences of neglecting this responsibility extend beyond legal fines<sup>9</sup>.

Amidst the constructive criticisms, consider the bill as an open dialogue rather than a monologue. The call for clarity on non-personal data is a plea for inclusivity, an acknowledgment that our digital world is not confined to individual experiences. The discussions on anonymized data are not hurdles but stepping stones towards a more nuanced understanding of privacy in the age of data analytics.

The deliberations about fines and penalties are not challenges but opportunities for refining a system that must balance the scales of justice for businesses of all sizes. The debates around

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<sup>9</sup> Mrisho Swetu, *supra* note 5

“significant data controllers” and cross-border data transfers are not conflicts but conversations about creating a global digital community with shared values<sup>10</sup>.

In response to these conversations, the recommendations become not mandates but shared aspirations. They are blueprints for an ideal digital society, a roadmap that acknowledges the need for constant refinement in the ever-evolving landscape of technology.

As India journeys through the complexities of the digital age, this bill is not just a legal manuscript; it’s a cultural manifesto. It speaks to the ethos of a society navigating the delicate dance between technological progress and ethical responsibility. It’s an invitation for every stakeholder to contribute to the evolving narrative of India’s digital future.

## 5. CONCLUSION

In wrapping up the discussion on the Digital Personal Data Protection Bill 2022, it becomes evident that this legislative initiative is not the final destination but rather the opening of a new chapter in India's digital evolution. Rather than offering a conclusive endpoint, the bill serves as a prologue to the unfolding narrative of the nation's digital trajectory. It introduces a dynamic and evolving storyline that calls for active collaboration, open dialogue, and widespread participation. In essence, the Digital Personal Data Protection Bill 2022 is a catalyst for societal engagement, urging individuals and entities to actively contribute to the evolving discourse. It symbolizes a commitment to crafting a digital future that is not only legally sound but also reflective of the values, hopes, and ambitions of the Indian people. As the bill unfolds and transforms through the democratic process, it sets the stage for a collaborative journey towards a digital landscape that aligns with the collective vision of the nation.

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<sup>10</sup> Ashwini Kumar, *supra* note 7