

Bill No. 182 of 2024

THE DIGITAL PERSONAL DATA PROTECTION (AMENDMENT)
BILL, 2024

By

DR. T. SUMATHY (A) THAMIZHACHI THANGAPANDIAN, M.P.

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BILL

to amend the Digital Personal Data Protection Act, 2023.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows:—

1. (1) This Act may be called the Digital Personal Data Protection (Amendment) Act, 2024.

Short title and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.	<p>2. In section 2 of the Digital Personal Data Protection Act, 2023 (hereinafter referred to as the principal Act), for clause (f), the following clause shall be substituted, namely:—</p> <p>“(f) child” means an individual who has not completed the age of sixteen years or such lower age not below thirteen years as the Central Government, for the purpose of the Act, notify;”.</p>	22 of 2023
Amendment of section 7.	<p>3. In section 7 of the principal Act, after clause (i), the following clause shall be inserted:—</p> <p>“(j) for advancing and protecting the individual rights and best interest of children, gender minorities and persons with disabilities.</p> <p>(k) for the transference, upon the request of the data subjects’ legal guardians or parents, as the case may be, to another authorized data fiduciary.”.</p>	5 10
Amendment of section 9.	<p>4. In section 9 of the principal Act,—</p> <p>(a) after sub-section (2) the following sub-sections shall be inserted, namely:—</p> <p>“(2A) A Data Fiduciary shall undertake only such processing of personal data of child which is in the best interest of the child, as may be prescribed based on the cognitive development levels.”;</p> <p>(b) for sub-section (3), the following sub-section shall be substituted, namely:</p> <p>“(3) The Central Government may, upon an assessment of factors pertaining to the best interest of children based on the cognitive development levels, including the nature of digital products or service and associated risks from processing personal data, restrict Data Fiduciaries from undertaking tracking, behavioural monitoring or targeted advertising, for certain prohibited purposes, directed at children.”;</p> <p>(c) for sub-section (4), the following sub-sections shall be substituted, namely:—</p> <p>“(4) The provisions of sub-sections (1) and (3) shall not be applicable to a data fiduciary who undertakes a self-assessment to adhere to the best interest of the child in such manner prescribed.</p> <p>(4A) The self-assessment under sub-section (4) may be presented to the Data Protection Board in such manner as may be prescribed.</p> <p>(4B) Notwithstanding anything contained in sub-section (4) and (4A), the Central Government may approve any self-assessment practice submitted by an industry or trade association, an association representing the best interest of children, any sectoral regulator or statutory Authority, or any departments or ministries of the Central or State Government.”; and</p> <p>(d) in sub-section (5), for the words “sub-sections (1) and (3)”, the words “sub-section (1)” shall be substituted.</p>	15 20 25 30 35
Amendment of section 40.	<p>5. In section 40 of the principal Act, in sub-section (2), after clause (j), the following clauses shall be inserted, namely:—</p> <p>“(ja) self-assessment process and the conditions relating to presentation of the same to Data Protection Board under sub-sections (4) and (4A) of section 9; and</p> <p>(jb) the manner and conditions to determine verifiably safe the personal data of children under sub-section (5) of section 9.”.</p>	40

STATEMENT OF OBJECTS AND REASONS

The Digital Personal Data Protection Act, 2023 has been enacted to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes. However, the default stance within the legislation should assert that all entities designated as Data Fiduciaries (DFs) bear equivalent responsibilities when processing the data of children. These responsibilities are primarily oriented towards preventing any harm to the well-being of the child. Consequently, compelling reasons exist necessitating an amendment to adopt a more refined approach to safeguarding children's privacy. Among these reasons are the pervasive low levels of digital literacy among children and an undue dependence on parental consent.

Estimates from the National Statistical Office (78th Round 2020-21) reveals that less than forty per cent. Indians know how to copy or move files on a computer, with an even lesser proportion having knowledge of internet use. The survey also found that digital literacy is better in lower age groups and reduces among older populations and is worse off in rural households, compared to urban ones. Despite this context, the proposed Bill relies on parental consent, assuming parents to be better placed to understand the potential risks of online data processing.

The proposed Bill curiously is willing to provide exemptions from parental consent requirements for certain DFs who will be certified as being 'verifiably safe'. Such DFs will be permitted to process data of children above a certain age without having to obtain parental consent or complying with prohibitions on tracking and monitoring. This has two issues. It increases bureaucratic entanglement in the dynamic digital economy and is likely to affect innovation and incremental changes by platforms who seek to create more value for children using their products or services. It also discriminates among DFs who may be offering equally strong protections while processing children's data, but may not have applied for the 'verifiably safe' certification, for reasons of resource constraints, limited administrative capacity, etc.

Across the world, technology platforms, who are DFs, have devised various means of protecting children's interests on their platforms, with mechanisms for prediction, prevention, and remedying possible harms which may befall them. For instance, this includes mechanisms to track behavior and content posted by children, to review whether they are exposed to any content which may be promoting violence, self-harm, hate speech, etc., and which may be detrimental to their well-being. Instead of creating a healthy discourse around proactively preventing harm to children, the Bill takes refuge in the fact that it mandates parental consent. The Minister of State in an interview has also indicated the Government's intention to push platforms towards '100% KYC' of every user, meaning collection of KYC details of parents and of children. The underlying belief here is that once parents' consent for their child to use a service, the imperative for further supervision on how the child uses the platform reduces. This not only dilutes the 'data minimization' principle, but also is likely to put children at immense risk of harm, and ought to be countered with serious urgency.

And lastly, the Bill's approach also threatens the decisional autonomy of minors, especially of teenagers whose maturity can be reasonably distinguished from younger children. The proposed Bill's approach will potentially also propagate existing gender biases and disadvantage young girls further, who tend to face hurdles in accessing digital devices in the first place, particularly in patriarchal setups. The proposal of age is directly contrary to various other policies and legislations like as being allowed to work from age 14 and drive a vehicle from age 16. The Cinematograph Act, 1952 also clearly distinguishes between

the differing maturity levels of children of different age groups under 18 (7, 13 and 16). It would be wise if different laws addressing the same category of people *i.e.*, children reflect the same level of nuance when assessing their maturity levels. A law regulating access to new age tech must be even more attuned to the needs and the agency of young users of the internet.

Hence this Bill.

NEW DELHI;
November 13, 2024

DR. T. SUMATHY (A) THAMIZHACHI THANGAPANDIAN

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill *vide* proposed amendment to section 40 provides for the Central Government to make rules regarding self-assessment process and the conditions relating to presentation of the same to Data Protection Board under sub-sections (4) and (4A) of section 9 and the manner and conditions to determine verifiably safe the personal data of children under sub-section (5) of section 9 for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

ANNEXURE

[EXTRACTS FROM THE DIGITAL PERSONAL DATA PROTECTION (AMENDMENT) ACT, 2023]

	*	*	*	*	*	*
Definitions.	2. In this Act, unless the context otherwise requires,—					
	(a)	*	*	*	*	*
	(f) “child” means an individual who has not completed the age of eighteen years;					
	*	*	*	*	*	*
Certain legitimate uses.	7. A Data Fiduciary may process personal data of a Data Principal for any of following uses, namely:—					
	(a)	*	*	*	*	*
	(h) for taking measures to ensure safety of, or provide assistance or services to, any individual during any disaster, or any breakdown of public order.					
	*	*	*	*	*	*
Processing of personal data of children.	9 (1) *					
	(2) A Data Fiduciary shall not undertake such processing of personal data that is likely to cause any detrimental effect on the well-being of a child.					
	(3) A Data Fiduciary shall not undertake tracking or behavioural monitoring of children or targeted advertising directed at children.					
	(4) The provisions of sub-sections (1) and (3) shall not be applicable to processing of personal data of a child by such classes of Data Fiduciaries or for such purposes, and subject to such conditions, as may be prescribed.					
	(5) The Central Government may, if satisfied that a Data Fiduciary has ensured that its processing of personal data of children is done in a manner that is verifiably safe, notify for such processing by such Data Fiduciary the age above which that Data Fiduciary shall be exempt from the applicability of all or any of the obligations under sub-sections (1) and (3) in respect of processing by that Data Fiduciary as the notification may specify.					
	*	*	*	*	*	*
Power to make rules.	40 (1) *					
	(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—					
	(a)	*	*	*	*	*
	(j) the classes of Data Fiduciaries, the purposes of processing of personal data of a child and the conditions relating thereto, under sub-section (4) of section 9;					
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