

Bill No. 277 of 2024

THE DIGITAL PERSONAL DATA PROTECTION
(AMENDMENT) BILL, 2024

By

SHRI JAGDAMBIKA PAL, 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.

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

2. In section 9 of the Digital Personal Data Protection Act, 2023 (hereinafter referred to as the principal Act),—

Amendment of
section 9.

(a) for sub-section (1), the following sub-section and explanation thereto shall be substituted, namely;—

“(1). A data fiduciary shall process the personal data of a child or a person with disability who has a lawful guardian only after obtaining verifiable parental consent

or verifiable consent from a lawful guardian, using digitally authenticated consent mechanisms which shall be verifiable through digital tools such as two-factor authentication, digital certificates, or the consent manager ecosystem.

Explanation.— For the purposes of this sub-section,—

(1) Data fiduciaries shall incorporate a range of age-verification mechanisms suited to the platform’s risk and service type. 5

(2) Parental consent shall be authenticated to ensure compliance with age limits and proper oversight.”; and

(b) in sub-section (2), the following Explanation shall be inserted, namely;—

“*Explanation.*— For the purposes of this sub-section, “detrimental effect” includes, but is not limited to:— 10

(i) the collection or use of personal data that could lead to behavioral profiling, targeted advertising, or manipulation, especially for in-game purchases or incentives;

(ii) the sharing of personal data that may expose a child to risks such as identity theft, online harassment, or addiction; 15

(iii) the processing of personal data that may impair the mental health, safety, or moral development of a child.”.

3. After section 9 of the principal Act, the following section shall be inserted:—

Insertion of new sections 9A and 9B.

Restriction on processing personal data of children by data fiduciaries.

“9A. (1) The data fiduciaries processing the personal data of children shall adhere to the principle of data minimization, collecting only such data as is necessary for the provision of services to the child. 20

(2) The data fiduciary shall ensure that no personal data of children be retained for a period longer than necessary for the specific purpose of processing, unless retention is mandated by law in this behalf.

(3) The data fiduciary shall delete the personal data of children upon termination of service or consent withdrawal, as the case may be. 25

Data Fiduciary to conduct Data Protection Impact Assessment while processing Data of Children.

9B. (1) Any data fiduciary processing a substantial volume of personal data of children shall conduct a Data Protection Impact Assessment (DPIA), identifying potential risks to child privacy and safety.

(2) The DPIA shall be submitted to the Data Protection Board of India annually along with measures taken to mitigate identified risks in such manner as may be prescribed. 30

(3) Any fiduciary failing to conduct assessments or protect children from systemic harm shall be subject to additional penalties under this Act.”.

Amendment of section 12.

4. In section 12 of the principal Act, in sub-section (1), the following provisos shall be inserted, namely:— 35

“Provided that in case where the Data Principal is a child, the right to request erasure may be exercised by—

(a) the parent or legal guardian of the child, until the child reaches the age of eighteen years;

(b) the child herself, once she reaches the age of eighteen years, provided she has the capacity to make an informed decision regarding her personal data: 40

Provided further that in the event of a dispute between the child and the parent or guardian, the Data Protection Board of India shall decide on the right to erasing of the personal data of such child.”.

STATEMENT OF OBJECTS AND REASONS

The Digital Personal Data Protection Act, 2023 represents a significant step in safeguarding personal data, including that of children. However, the Act leaves several critical issues unresolved, particularly when addressing the digital rights of children, especially those from marginalized backgrounds. In India, where digital literacy remains low, with only twenty per cent of rural populations being digitally literate and many children sharing devices with family members, the parental consent requirement may unintentionally exclude children from engaging in vital online services. As the Report of the Group of Experts on Privacy (chaired by Justice A.P. Shah) and the Report of the Joint Parliamentary Committee on the Personal Data Protection Bill, 2019 highlighted, it is crucial to develop flexible data privacy frameworks that do not impede access to essential digital tools, particularly for children.

Children from marginalized communities often face disproportionate barriers to access, especially in scenarios where parents may not be able to navigate consent procedures due to literacy or technical challenges. The current requirement of rigid parental consent, as prescribed by section 9 of the Digital Personal Data Protection Act, 2023, is overly strict and limits equitable participation for children in educational and developmental platforms.

The age-gating rules, as currently framed, remain unclear, and there is a need for robust age-verification mechanisms that cater to a wide range of platforms with different levels of risk. Given India's diverse socio-economic landscape and aspirations to build a strong digital economy, there is a need to provide alternative, flexible methods of age assurance that go beyond documentary-based methods and incorporate more technology-driven solutions. This can prevent children from being excluded from the digital ecosystem due to logistical challenges, while also ensuring their privacy and safety are maintained.

The need is to amend the Digital Personal Data Protection Act, 2023 with a view to,—

- (a) strengthen the age-verification process through innovative and diverse mechanisms suited to the platform's risk type;
- (b) establish clearer prohibitions on profiling, particularly in online games and services;
- (c) ensure the implementation of Data Protection Impact Assessments (DPIAs) for platforms processing substantial amounts of children's data;
- (d) encourage the use of flexible, digitally authenticated consent systems, such as DigiLocker, that can verify both the child's age and the parent-child relationship in an inclusive and streamlined manner;

The aforesaid amendments will bridge the gap between privacy rights and equitable access, ensuring that no child is excluded from India's growing digital ecosystem due to barriers in parental consent while maintaining robust child privacy protections.

Hence this Bill.

NEW DELHI;
November 11, 2024

JAGDAMBIKA PAL

ANNEXURE

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

(ACT NO. 22 OF 2023)

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Processing of
personal data of
children.

9. (1) The Data Fiduciary shall, before processing any personal data of a child or a person with disability who has a lawful guardian obtain verifiable consent of the parent of such child or the lawful guardian, as the case may be, in such manner as may be prescribed.

Explanation.—For the purpose of this sub-section, the expression “consent of the parent” includes the consent of lawful guardian, wherever applicable.

(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.

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Right to
correction
and erasure of
personal data.

12. (1) A Data Principal shall have the right to correction, completion, updating and erasure of her personal data for the processing of which she has previously given consent, including consent as referred to in clause (a) of section 7, in accordance with any requirement or procedure under any law for the time being in force.

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BILL

to amend the Digital Personal Data Protection Act, 2023.

(Shri Jagdambika Pal, M.P.)