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**INDIA'S NEW DATA PRIVACY BILL. HOW IS IT  
DIFFERENT FROM THE EUROPEAN LAW ON  
DATA PRIVACY AND HOW CAN IT BE  
IMPROVED?**

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## **ABSTRACT**

Paper gives a brief introduction of what is meant by “Private Data.” The rapid growth of economy and digitalisation has caused the European Union to make laws regarding ‘Personal Data protection’, through GDPR (General data protection regulation). The aim of the law is not just to cover the organisations and companies situated in Europe but also for the organisations of different countries doing business with Europe. Inspired by GDPR, India introduced its ‘New Data Privacy Bill.’ Before 2018, there were data protection laws but there were no provisions for personal data protection. After the suggestion of a draft bill for personal data protection in 2018, a revised bill was drafted in 2019 by the committee. The bills aim at the development of new laws for personal data protection. Further, we have discussed the features of both ‘GDPR’ and ‘New Data Privacy Bill.’

**Keywords -** *GDPR, New Data Privacy Bill, European Union, Data, Privacy, Sensitive Information*

## **INTRODUCTION**

Private data means the sensitive information which each individual possess or any corporation or organisation which is not present in the public domain. And the revelation of such data can either end up causing some damage to the owner of such information. With the advancement of technology and digitalization, holding on to and keeping your sensitive information to your self is not possible, and with increasing cyber-crimes likes identity -theft, frauds, etc. therein want for laws on ‘Data Privacy’.

## **EUROPEAN LAW ON DATA PRIVACY**

with the rapid growth of the digital economy, individuals have started sharing their personal data online and those data are being used by the companies and governments for their private gains without any restraint and guideline and even without the consent of the person whose data they are using. In light of these events, the European Union decided to bring reforms in data protection laws and introduced new laws on personal data protection through GDPR

(General data protection regulation). The aim of the law is not just to cover the organisations and companies situated in Europe but also for the organisations of different countries doing business with Europe.

As today's world revolves around technology and data, incidents related to a data breach are occurring on a regular base, people with malicious intentions are able to store and release personal data of citizens online without their consent. With the digital Economy, EU aims to Bring such laws that would help in clarifying the “regulatory environment” for both business and citizens of the EU.

## **EUROPEAN UNION GENERAL DATA PROTECTION REGULATIONS** **(GDPR)**

GDPR are new rules which were designed to provide EU citizens with more control over their personal data.<sup>1</sup> Under GDPR personal data has been given a broad definition and it includes names, address and photos, even IP address comes under personal data. On the other hand, sensitive personal data are biometrics, genetic data which are used as the unique identification of individuals.<sup>2</sup>

GDPR came into force around 2016, when the European parliament passed it. And came in force in all Europe on 25<sup>th</sup> May 2018. GDPR not only states that the personal data of citizens should be collected legally and with strict conditions, but also people who are responsible for the collection of such data should ensure that data doesn't get misused or gets exploited.

### **KEY FEATURES OF GDPR**

1. This is one of the most noteworthy changes since the past two years.

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<sup>1</sup> Danny Plamer, *what is GDPR? Everything you need to know about the new general data protection regulations*, ZEDNET, (Jun,6,2020, 3:37 PM) <https://www.zdnet.com/article/gdpr-an-executive-guide-to-what-you-need-to-know/>

<sup>2</sup> *Data Protection in the EU*, EUPROPEAN COMMISSION, (Jun,6,2020, 3:48 PM) [https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-protection-eu_en)

2. The main purpose of the law is to guard “personal data of E.U. residents.”<sup>3</sup> Personal Data as in their Email-Ids and IP address.
3. Law has made efforts to bring users on a platform through which they can connect to their data controllers and data processors.
4. Wherever the user is obligatory to fill in their personal details, the terms linked to the consent of the individual should be written in an understandable print.
5. GDPR has also provided its citizens the right to delete their personal data from the online platform.
6. And in instance there has been any breach of data, that should be conveyed within 72 hrs of the break.

## **NEW DATA PRIVACY BILL IN INDIA**

Before 2018, there were data protection laws but there were no provisions for personal data protection. After the suggestion of a draft bill for personal data protection in 2018, a revised bill was drafted in 2019 by the committee. The bills aim at the development of new laws for personal data protection.

The new data protection bill has classified personal data into 3 categories- sensitive personal data, critical personal data and personal data. Sensitive personal data of the users are the ones that comprise of financial status, health status, etc. to protect these data from being transmitted outside India, it made mandatory that the information is stored within India only<sup>4</sup>.

### **Keys Features of the Bill**

#### **1. Right to be Forgotten**

The data which has been made available has fulfilled its purpose can be erased on the request of the user. It has also given the right to the users to ask for the removal of data that has been published without their consent and is illegal.

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<sup>3</sup> Sriram Lakshman, *what is the E.U. law on data protection all about?* THE HINDU, (June,6, 2020, 4:40 PM) <https://www.thehindu.com/news/international/what-is-the-eu-law-on-data-protection-allabout/article23401965.ece#:~:text=The%20European%20Union%20General%20Data.residents.>

<sup>4</sup>Trisha Jalan, *Key aspects of the Personal Data Protection Bill,2019*, **MEDIANAMA**, (MAY, 29,2020, 10:14 PM) <https://www.medianama.com/2019/12/223-key-aspects-personal-data-protection-bill-2019/>

## **2. Significant Data Fiduciaries**

Authority (Data protection authority) can declare any fiduciary data as significant data fiduciary based on the data sensitivity, how personal the data is and what risk might the data hold. Significant data fiduciary will need to carry out a Data protection impact assessment, which is complete by a data auditor and he would be accountable to look for any personal data such a biometric or any such sensitive data.

## **3. Social media intermediaries and verification**

Social media intermediaries are the platform where two different users interact with each other and share personal information. These intermediaries help two or more users to interact with each other using an online service. But these intermediaries don't involve any business or commercial transaction. Through this it is very much clear that these intermediaries share a significant data fiduciary relation with the users and with this new bill, new provisions for verification of the accounts by users would be available and there would be assigned specific marks of verification.

## **4. Non-personal Data**

The central government, through this bill, would be able to direct any processor or data fiduciary to provide the government with any anonymized personal data or non-personal data which would further help in improving the formulation of policies based on evidence.

## **5. Consent manager**

Data fiduciary has been defined as a consent manager. The aim of consent manager is to give users the right to either give their consent or withdraw their consent to data fiduciary on a transparent platform.

## **6. Personal Data**

Bill has expanded the definition of personal data for a natural person which would include bothering online and offline information about the person and also any combination and inferences of such data to be included.

## **7. Exemptions to the government**

In furtherance of national security, sovereignty and friendly relations with foreign states, the Indian government can exempt any agency from the act.

## **8. Data Protection Authority**

There has been a reduction in the independence of the regulator. Various other government officials have been added for the appointment of 'Data Protection

Authority’ like law secretary, cabinet secretary, etc. if a user is not satisfied with the order passed by Data Protection Authority then they can file an appeal to the appellate Tribunal.

#### **9. Processing without consent**

Though the bill has focused more on personal data protection for some “reasonable purposes” personal data of the user can be used without the consent of such users. Those reasonable purposes can be classified as whistle-blowing, medical emergency, or any state affairs.

#### **10. Children’s data privacy**

The new concept of “Guardian data fiduciary” has been introduced in which the fiduciaries are allowed to process personal data of a child, only after confirming their age and taking consent from their parents. Guardian data fiduciary keeps monitoring the behaviour of children and try and try to eliminate any such data that might cause harm to the child.

## **COMPARISON: INDIAN PERSONAL DATA PROTECTION BILL 2019**

### **V. EUROPEAN UNION GENERAL DATA PROTECTION**

#### **REGULATION (GDPR)**

1. Indian personal data protection bill doesn’t provide for the performance of a contract, the reasonable purpose of monitoring data is similar to GDPR but in Indian law, it is limited by specific regulations.
2. Legitimate interest- In Indian personal data protection bill the condition which would be treated as “reasonable purpose” will be defined by DPA ( Data Protection Authority) then the controller as in GDPR, but there are no requirements for DPA for to enlist what those “reasonable purpose” is this can lead to misrepresentation of information.
3. Considerations for processing sensitive data- Indian personal data protection bill gives a broad definition for sensitive personal data and the data not be processed for the employment purpose legal basis. Which make employer rely on the explicit consent of employees.<sup>5</sup>

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<sup>5</sup> *Comparison: Indian Personal Data Protection Bill,2019 vs. GDPR*, COVINGTON & BURLIN (Jun,6,2020,10:10 PM) [https://www.cov.com/-/media/files/corporate/publications/file\\_repository/comparison-chart--gdpr-vs-india-pdpb-2019-feb-03-2020.pdf](https://www.cov.com/-/media/files/corporate/publications/file_repository/comparison-chart--gdpr-vs-india-pdpb-2019-feb-03-2020.pdf)

4. Protection for children- In Indian personal data protection, the age of the child to give consent is higher as compared to GDPR.
5. Right Related to Profiling- In Indian personal data protection doesn't provide for a right to prevent automated decisions like in GDPR.

## **CONCLUSION**

There are various aspects that clearly states that the Indian personal data protection Bill has given wider grounds and definitions as compared to GDPR. But since the inspiration is taken from the GDPR there are still grounds for improvement. The Personal Data Protection Bill is an initiative towards making online exposure a better and safe place and hopefully with the passing of new bills we would be able to reach our goals, as technology is dynamic and we need to constantly need to update ourselves.